Shri Vasudevan Nair: Does the hon. Member know that there is no such recommendation?

Shri V. Eacharan: There was an agitation and Mannath Padmanabhan has not said anything against the reservation, as far as the Scheduled Castes are concerned.

Then about the election. The enumeration was necessitated by you, because of a large number of inflated numbers on the electoral rolls. Shri Menon said that there are so many things going on. But when they were ruling they had done so many things They have infiltered the electoral rolls. Now they find it difficult and say that the Church might make a mistake in issuing the age certificates. But the officers are there. They are strong enough to look after the interests of Government and to see how justice should be done in the matter of preparing these electoral rolls So, there is no point in saying that the Church is either ruling or taking advantage of the preparation of the electoral rolls. I want to submit another point on the last Demand relating to the provision of Rs 9 lakhs for the middle-income group houses Government has pointed out that the people are not coming forward to make use of the loan. There are so many difficulties. The procedure adopted at present is very difficult That is why people are not coming forward to take advantage Necessary amendments should be made in the rules to simplify them and remove or minimise the difficulties At present an applicant has to execute an agreement on stamped paper It is not so in the other States After that they have to go to the Registrar's office for registering it. But after repaying the loan, the Government officer will issue a certificate. That will be the only authority that he has repaid the amount. Suppose he wants to dispose of the property after repaying all the loan amount, there is no record of that in the Registrar's office that he has cleared all his debts. So, these are some of the difficulties in the way of taking advantage of the loan. I support the demands.

Mr. Deputy-Speaker: This discussion will be continued tomorrow. We will now take up the other business.

14.33 hrs.

MOTION RE: FOURTEENTH REPORT OF LAW COMMISSION

Shri Ram Krishan Gupta (Mahendragarh): Sir, I beg to move:

> "That this House takes note of the Fourteenth Report of the Law Commission on the Reform of Judicial Administration (Volumes I and II) laid on the Table of the House on the 25th February, 1959.".

डिप्टी स्पीकर साहब, सब से पहले मैं ला कमिशन को ट्रिब्यूट पे करता हूं कि उन्हों ने काफी डिटेन्ड स्टडी के बाद, देश के तकरीबन सभी हिस्सों का दौरा करने के बाद, एक कम्प्रिहेंसिव रिपोर्ट पेश की है उस ने जो हमारे देश का एग्जिस्टिंग ला सिस्टम है, उस को खूब अच्छी तरह से स्टडी किया है, उस के अन्दर जो डिफैक्ट्स हैं, उन्हें प्वाइंट आउट किया है और बड़ी खुशी की बात है कि इस रिपोर्ट पर जो कि बहुत ज्यादा अहमियत रखती है, आज बहस हो रही है।

कमिशन ने जो रिकोमेंडेशन्स की हैं, उन में से मैं चन्द एक को, जिन को मैं बहुत जरूरी समझता हूं, हाउस के सामने पेश करना चाहता हूं। मैं सबसे पहले उसी सिफारिश को लेता हूं जिस के अन्दर उन्हों ने जजिज के सिलैक्शन के बारे में कहा है। इस बारे में कमिशन की यह राय है कि

> "Political, communal, regional and executive influences are the main factors which influence in the appointment of Judges at present.".

They further say that merit alone should be the basis for the selection.

इस बात से कोई डिनाई नहीं कर सकता है कि जजिज वगैरह का चुनाव सिर्फ मेरिट ही पर होना चाहिये । जहां तक कमिशन ने अपनी यह राय दी है कि ऐसा नहीं हो रहा है और इस में कहां तक सच्चाई है, इस के बारे में इख्तलाफ राय हो सकती है । लेकिन मैं इस के बारे में सिर्फ इतना ही कहना चाहता हूं कि उन्हों ने तो रिपोर्ट उसी एविडेंस की बिना पर पेश करनी थी जो कि उन के सामने पेश किया गया । अगर उन्हों ने भी यह राय बनाई और उस राय में अगर कोई कमी है तो उस का कारण यह है कि उन के सामने अच्छी तरह से ऐविडेंस पेश नहीं किया गया । हाउस में बहुत से वकील हैं, काफी प्रैक्टिस उन्हों ने की है, मुझे भी इस बात का तजुर्बा है और यह मानी हुई बात है कि केस चाहे कितना ही अच्छा क्यों न हो, अगर उसे अच्छे ढंग से आर्गू या प्लीड न किया जायेगा तो उस केस को हम लूज कर जायेंगे, लेकिन केस अगरचे वीक है, लेकिन उसे अच्छी तरह से डिफेन्ड किया जाता है, आर्गू किया जा सकता है तो उस में कामयाबी हो सकती है ।

इस बात को छोड़ते हुए जहां तक कमिशन का यह कहना है कि जजेज कामेरिटस के लिहाज से सेलेक्ट किया जाय, यह बिल्कुल दुरुस्त है और ऐसा ही होना चाहिये । इस के लिये मैं दो तीन तजवीजें हाउस के सामने रखना चाहता हूं । । मेरी सब से पहली तजवीज यह है कि जजेज वगैरह को चुनने के लिये जो स्टेट्स से राय ली जाती है, उस को जो अहमियत दी जाती है, वह खत्म होनी चाहिये । इसलिये कि वह इस से एग्जिक्यूटिव के इन्फ्लुऐंस में भी हो जाते हैं और उन का सेलेक्शन करने में भी काफी देरी भी हो सकती है । इसके लिये मैं हाउस के सामने कुछ सवाल जवाब पेश करना चाहता हूं । १६ नवम्बर, १९५८ को एक सवाल हाउस के सामने आया उस सवाल का जवाब देते हुए पार्लियामेंटरी होम मिनिस्टर ने बतलाया कि जजेज की पाइनल सेलेक्शन लिस्ट इसलिये तैयार नहीं हुई कि बहुत सी स्टेट्स ने अपनी राय अभी तक नहीं भेजी । इस से आप अन्दाजा लगा सकते हैं कि काम में कितनी देरी होती है । आये साल हाई कोर्ट्स के अन्दर कितने वेकेंसेज पैदा होते हैं और उन की तादाद कितनी ज्यादा बढ़ती जा रही है । इस के लिये अगर हमें अपने संविधान को भी चेन्ज करना पड़े तो कोई हर्ज की बात नहीं । । मेरी तो इस मामले में साफ तौर पर यह राय है और मैं यह बात हाउस के सामने रखना चाहता हूं कि हमें इस बात का पूरी तरह से ख्याल रखना चाहिये कि जजेज को इस ढंग से सेलेक्ट किया जाय कि जो एग्जिक्यूटिव पावर है उस का उन के ऊपर कोई असर न हो । आप जानते हैं कि एक जज का क्या फंक्शन है । जज का फंक्शन है इंसाफ करना, जस्टिस का ऐडमिनिस्टर करना । अगर उस के ऊपर किसी दूसरी ताकत का इन्फ्लुएन्स होगा तो वह इस काम को कैसे कर सकेगा जस्टिस का जहां तक सवाल है, वह कितनी अहम चीज है ; मैं तो यह कहूंगा कि खास तौर पर जिन देशों के अन्दर डिमाक्रेटिक गवर्नमेंट है, उन गवर्नमेंट की जान जस्टिस है । आप कहेंगे कैसे ? इस के बारे में बहुत से राइटर्स का यह कहना है :

"Justice is a quality of a social order regulating the mutual relation of man. This order regulates the behaviour of men in a way satisfactory to all men."

अगर यह सलेक्शन ही ठीक नहीं होगी, दूसरों के प्रभाव में होगी तो वह किस तरीके से सब को सैटिसफाई कर सकेगी । इस के लिये आप जानते हैं कि यह बात बिल्कुल सही है कि यह तभी हो सकता है जब कि हम ऐसा इन्तजाम करें कि जो जजेज वगैरह सैलेक्ट किये जायें वह किसी पार्टी या एग्जिक्यूटिव के इन्फ्लुएंस में न हो । अमरीका में एक मशहूर जज मि० मैडिना हुए हैं उन्हों ने अपनी किताब में एक लेक्चर लिखते हुए इस के बारे में लिखा.

[Shri Ram Krishan Gupta]

है: मैं उन का कोटेशन हाउस के सामने रखना चाहता हू क्योंकि मैं इस को बहुत जरूरी समझता हू । वह यह है

"There should be no relation between the administration of justice and partisan politics. The very notion that persons may be selected as Judges on the basis of past services rendered as political stooges must be abhorrent to any citizen truly interested in the meeting out of fair and impartial justice by men competent to wear the robe."

इतना कहने के बाद मुझे पूरी उम्मीद है कि जजेज के सेलेक्शन मे आइन्दा पूरी एहतियात से काम लिया जायेगा । कमीशन ने भी ऐसी राय जाहिर की है । कि मैरिट ही इस की बेसिस है, मैं समझता हू कि इसको स्ट्रिक्टली फालो किया जायेगा ।

दूसरी बात मैं हाई कोर्ट और सुप्रीम कोर्ट के जूरिस्डिक्शन के बारे मे कहना चाहता हू । कमिशन ने अपनी रिपोर्ट में फरमाया है कि सुप्रीम कोर्ट का काम बढ़ता जा रहा है । जो मुकदमात हाई कोर्ट में तय हो सकते थे वह आज सुप्रीम कोर्ट में आते हैं, और इस से हाई कोर्ट की प्रेस्टिज का स्टेटस घटता जा रहा है । यह काफी हद तक दुरुस्त है, इस तरफ भी ध्यान देने की जरूरत है ताकि काफी मुकदमात हाई कोर्टों में ही तय हो जायें । सुप्रीम कोर्ट में भी अपील्स आती हैं, अक्सर देखने मे यह आता है कि वह लेबर लाज से ताल्लुक रखती हैं । यह बड़े दुःख की बात है कि मजदूरों के छोटे छोटे झगड़े जो कि ट्रीब्यूनल के ऐवार्ड के होने हैं या हाई कोर्ट से तय होते हैं और जिन में एक या दो मजदूरों को रखने का सवाल होता है, इतने मामूली मामूली मामलात सुप्रीम कोर्ट में आते हैं । आप अंदाजा लगा सकते है कि एक गरीब मजदूर या यूनियन मालिकों की अपील्स का कैसे मुकाबला कर सकते है । इस तरफ ध्यान देने की बहुत ज्यादा जरूरत है ।

मैं यह बात इसलिये कह रहा हूं कि इस कमिशन की रिपोर्ट में आप देख लीजिये कि सुप्रीम कोर्ट के अन्दर लेबर अपील्स कितनी तादाद में आ रही हैं । इस के बारे में मैं एक छोटी सी मिसाल भी हाउस के सामने रखना चाहता हूं । मेरे हल्के में एक मिल है। जिस का नाम टी० आई० टी० मिल भिवानी है, और जिस के मालिक बिडला ब्रादर्स है । इस मिल मे मजदूरो और मालिकों के दर्म्यान दो तीन छोटी छोटी बातों पर झगडा हुआ। ठीक तीन साल हो गये । लेकिन वह मामला अभी तक तय नहीं हुआ और सुप्रीम कोर्ट में आया हुआ है । इसलिये मेरी यह अपील है कि हमें इस तरफ खास तौर पर ध्यान देना चाहिये । या तो हम अलग बैंचेज मुकर्रर करे और जो लेबरर्स के मुकदमे हो उन को उन मे तय करे या हम ऐसा इन्तजाम करे कि गरीबो या मजदूरो के जितने भी मुकदमे हो उन के लिये स्टेट की तरफ से फ्री लीगल एंड का इन्तजाम हो ताकि वह अपने मुकदमात वहा पर अच्छी तरह से लड सकें ।

इस मे दूसरी दिक्कत यह आती है, मै किसी पर हमला नहीं करना चाहता , लेकिन यह सही बात है, कि सुप्रीम कोर्ट के जो ज्यादातर जजेज होते हैं वह लेबर लाज से कम वाकफियत रखते हैं, इस लिये उन मुकदमो को तय करने में काफी काम्प्लिकेशन्स पैदा हो जाती हैं । और देरी लगती है । इस बारे में मेरी इतनी ही राय है कि हम स्पेशल जजेज की बैंचेज मुकर्रर कर दें जो कि लेबर लाज से पूरी वाकफियत रखती हों और इन झगडो को तय कर सकें । आज कल के जमाने में इस बात की तरफ ध्यान देना बहुत ज्यादा जरूरी है । आज अगर किसी कारखाने मे हड़ताल होती है, या हड़ताल न भी हो, मजदूर फ्रस्ट्रेटेड हो तो उसका असर प्रोडक्शन पर पड़ेगा और जिस का असर आगे चल कर तमाम देश की एकानामी पर पड़ेगा ।

दूसरी सिफारिश जो इस कमीशन ने की है और जिसको मैं हाउस के सामने रखना चाहता हूं वह यह है कि मुकदमात को तय करने में, उनका डिस्पोजल करने में काफी देर होती है और जो इस के लिये प्रोसीजर है उसको सिम्प्लिफाई करने की जरूरत है, खर्च भी कम करने की जरूरत है। मुझे पूरा विश्वास है कि इस तरफ भी पूरा ध्यान दिया जायेगा ताकि खर्च कम हो और जो मुकदमात वगैरह हैं वह जल्दी तय हो सकें। आप इस बात को तसलीम करेंगे जैसा मैंने आप से कहा, कि इन्साफ कितनी जरूरी चीज है। अगर इन्साफ को हासिल करने में देर लगे या इन्साफ हासिल करने में पैसा ज्यादा खर्च हो तो इन्साफ की अहमियत खत्म हो जाती है। यह बिल्कुल सही बात है कि जस्टिस डिलेड इज जस्टिस डिनाइड। इस तरफ भी हमें ध्यान देने की काफी जरूरत है। आपका निजाम ऐसा होना चाहिये जिसमें कि मुकदमों के फैसले जल्दी हों और उन में कोई देरी न हो। उन में खर्च वगैरह भी कम हो। इसके लिये हमें ऐसा इन्तजाम करना पड़ेगा कि जो कोर्ट वगैरह मुकर्रर किये जायें वह ऐसी जगहों पर हों जहां लोग आसानी से पहुंच सकें। वह इजीली एक्सेसिबल हों और दूसरे उनको देश के तमाम हिस्सों में थोड़ी थोड़ी दूर पर फैलाया जाये। इस बारे में कमीशन ने जो यह राय दी है कि बैंचेज को ऐबालिश कर दिया जाये मैं इसके हक में नहीं हूं क्योंकि मैं यह महसूस करता हूं कि जो हमारा यह उसूल है कि इन्साफ हर एक को आसानी से मिल सके और उस को कम खर्च करना पड़े, यह उस उसूल के खिलाफ जाता है।

मुझे यह देख कर भी बड़ा दुख होता है कि आप राजस्थान में जयपुर की मिसाल ले लीजिये, हालांकि मैं राजस्थान का रहने वाला नहीं हूं लेकिन मैं हिन्दुस्तान का शहरी हूं और मुझे हर चीज को इस ढंग से देखना है जिसमें आम जनता को, देश को और गरीबों को सबसे ज्यादा फायदा किस बात में है। वहां हाईकोर्ट की जो बेंच थी उसको ऐबालिश कर दिया गया। मुझे इस बात से कोई गुरेज नहीं कि हाईकोर्ट जोधपुर में रहे या अजमेर में रहे या वह जयपुर में कायम हो लेकिन मैं एक बात जरूर चाहता हूं कि जहां भी हाईकोर्ट हो वह ऐसी जगह हो ताकि जिस स्टेट के अन्दर वह हो वहां के लोग आसानी से जल्दी से और ज्यादा खर्चा किये बगैर वह आसानी से वहां पहुंच सकें और जस्टिस हासिल कर ने में डिले न हो। लेकिन अगर स्टेट बड़ी हो तो उसके लिये अगर आप २, ४ जगहों पर बेंचेज मुकर्रर कर दें तो मेरी समझ में नहीं आता कि इसमें क्या हर्ज है? अब उत्तर प्रदेश की बात ले लीजिये। उत्तर प्रदेश एक बड़ी स्टेट है। इलाहाबाद में हाईकोर्ट है लेकिन लखनऊ में बेंच मौजूद है। इसी तरह से पंजाब का हाईकोर्ट चंडीगढ़ में है लेकिन दिल्ली में भी सर्किट कोर्ट वगैरह लगता है। इसी तरह से जयपुर जो कि राजस्थान का कैपीटल है मेरी यह राय है कि वहां पर कम से कम बेंच जरूर होनी चाहिये।

आखिरी प्वाएंट जिसको कि मैं बहुत जरूरी समझता हूं और जिस पर कमिशन ने भी राय जाहिर की है वह सेपरेशन आफ जुडिशियरी फ्रौम एक्जीक्यूटिव को मैं लेना चाहता हूं। यह एक बहुत अहम सवाल है। हमने जो अपना विधान बनाया था उस विधान में भी जो आर्टिकिल नम्बर ५० है उसके अन्दर यह कहा गया है और जो डाइरेक्टिव प्रिंसिपल्स आफ स्टेट पालिसीज है —

"The State shall take steps to separate the judiciary from the executive in the public services of the State"

मैं जानना चाहता हूं कि इस बारे में अब तक कितनी कोशिश की गई और हम कहां तक कामयाब हुए? कमिशन ने भी अपनी राय दी है। इसके मुताल्लिक हाउस में भी एक सवाल आया था। उस सवाल का जो जवाब

[श्री रामकृष्ण गुप्त]

दिया गया उसको देखने से भी यह जाहिर होता है कि इस मामले में जितनी तरक्की होनी चाहिए थी जितना काम होना चाहिए था वह अभी तक नहीं हुआ । वह सवाल यह था :—

"(a) whether any further assessment as to the progress made in the different States with regard to separation of Judiciary from Executive, has been made;

(b) if so, with what result;

(c) whether the States, where complete separation has not been effected, have fixed a target date by which they would complete the separation; and

(d) if so, what are those dates?" The reply was:

"(a) and (b): Latest progress reports are being awaited from the States of Assam, Mysore and West Bengal. There is no change in other States."

मैं इस बात का इसलिए जिक्र कर रहा हू कि जैसे कि मैंने कहा कि डेमोक्रेसी के अन्दर जस्टिस जो है वह डेमोक्रेसी की जान है बल्कि डेमोक्रेसी जस्टिस के सहारे खड़ी रहती है इसलिए जरूरी है कि इसको एक्जीक्यूटिव से अलग किया जाय । इसके बारे में दो रायें नहीं हो सकतीं क्योंकि ऐसा करना डेमोक्रेसी के प्रीजरवेशन के लिए जरूरी है । इसलिए इसका अलग किया जाना जरूरी है ।

अमरीका के एक बहुत मशहूर राइटर ने एक किताब लिखी है जिसका कि नाम "इंट्रोडक्शन टु गवर्नमेंट" है । उसने अपनी किताब में कहा है :—

"The only form of Government in accordance with the law of nature is democracy, i.e. Government whose power is derived from the people. For the preservation of this Government, the independence of judiciary from the influence of the executive is essential."

He further says that separation of power is essential as it is encroaching nature and tends to corruption itself.

And, no matter to whom it was delegated, unless it be an angel, जो कि मुमकिन नहीं है "the persons or a body of persons entrusted with it must needs be checked and restrained from the abuse of it."

इसलिए मैं यह बात कह रहा हूं कि हमें इस तरफ सबसे ज्यादा ध्यान देना चाहिए । अगर जुडिशियरी और एक्जीक्यूटिव को मिला दिया जायेगा और तमाम ताकत एक जगह इकट्ठा कर दी जायगी तो जो हमारी डेमोक्रेसी की बुनियाद है वह हिल सकती है । इसलिए इस बात की जरूरत है और इस उसूल को देखते हुए कि १२ साल हो गये हिन्दुस्तान को आजाद हुए आज हम इस तरफ पूरी कोशिश करें और उसको अलग करने के लिये एक डेट फिक्स करें और उसके अन्दर इस काम को मुकम्मिल करें । दुनिया के जो बिग फ़ोर कंट्रीज हैं उनमें रूस को छोड कर इसी प्रिंसिपल पर अमल किया जा रहा है । रूस में तो जुडिशिएरी पावर उन्हीं लोगों के हाथ में है जो कि हुकूमत करते है और वह इसको एक हथियार की मानिन्द इस्तेमाल करते हैं । लेकिन जहां तक दूसरे बडे बड़े देशों का सवाल है वहां पर ऐसा नहीं है । इसलिए इस बात की तरफ हमें जरूर ध्यान देना चाहिए । इसके बारे में किसी भी पोलीटीशिएन की दो राय नहीं हो सकती । दुनिया के अन्दर बड़े बड़े राजनीतिज्ञ हैं । सब का यह कहना है कि

"Regardless of the form of government, whenever a monopoly of power appeared anywhere in a State, freedom was sacrificed. What is this separation of powers upon

which men have depended to preserve their liberty?

Independence of the judiciary and its separation is the symbol of personal freedom. It should be impartial and unfettered."

इसलिए मैं इस बात पर खासतौर पर जोर दूंगा । तमाम संसार के अन्दर आप देख में अगर सही तौर पर और प्रैक्टिकल तौर पर किसी ने डेमोक्रेसी को अपनाया है तो हमारे देश ने अपनाया है । इसका कारण हिस्टारिकल भी है । इसका कारण यह भी था कि हमारे महात्मा बुद्ध और महाराज अशोक ने तमाम दुनिया को यह रास्ता दिखलाया । आज आप मौजूदा दुनिया में भी देख ल कि ईजिप्ट के अन्दर जो कुछ हुआ उसके लिए भी हिन्दुस्तान से आवाज उठी ।

तिब्बत में भी जो जुल्म हुआ हालांकि चीन हमारा दोस्त था लेकिन हम ने उसके खिलाफ आवाज बुलन्द की । यह क्यो किया । इसका कारण यह है कि हम अमली तौर पर अमरीका या दूसरे मुल्को की तरह कहने से नही बल्कि अपने अमल से डेमोक्रेसी के अन्दर विश्वास करते हैं । इसलिए मैं इस बात पर ज्यादा जोर देता हू कि हमें इस बात का पूरा लिहाज रखना चाहिए और इस काम को जल्द से जल्द पूरा करना चाहिए । अगर हमने यह काम कर लिया और इसको एक्जीक्यूटिव के असर से अलग कर दिया तो मुझे विश्वास है कि हम देश के अन्दर डेमोक्रेसी की बुनियाद इतनी मजबूत कर देंगे कि चाहे वह ऐटम बम हो या हाइड्रोजन बम उसको कोई खतरा नहीं रहेगा ।

यह कहते हुए आखिर में मैं चन्द शब्द लॉ कालिज के अन्दर जो एजुकेशन दी जाती है उसके बारे में भी कहना चाहता हू । आप इस बात को तसलीम करेंगे कि जो मैंने दो बातें कही हैं एक तो सेलेक्शन आफ जजेज और दूसरी जुडिशिएरी को एग्जीक्यूटिव से अलग किया जाये वह कितनी जरूरी है । अब किस के कि हाथ में ताकत दी जायेगी अगर वे उसको बतौर साइंस के स्टडी नहीं करेंगे और अगर हमारे लॉ कालिजेज का इन्तजाम अच्छा नहीं होगा तो उससे फायदे के बजाये नुकसान भी हो सकता है । और यह बात मैं अपने तजुर्बे की बिना पर भी कह सकता हू क्योंकि मुझे भी खुशकिस्मती से तीन साल तक लॉ कालिज के अन्दर स्टडी करने का मौका मिला था । जैसा कि मैंने कहा, आजकल जो प्रेजेंट लीगल सिस्टम है उसके अन्दर थ्योरिटिकल ट्रेनिंग की तरफ ज्यादा ध्यान दिया जाता है प्रेक्टिकल ट्रेनिंग की तरफ कम ध्यान दिया जाता है । मैंने जो तीन साल के अन्दर कालिज में नही सीखा जो प्रेक्टिस में एक साल के अन्दर सीख लिया ।

दूसरे कालिजों के अन्दर स्टूडेंट्स की तादाद बहुत ज्यादा बढ रही है । इसका क्या कारण है ? जिस स्टूडेंट को कही और जगह नहीं मिलती, जिसके लिए और सब जगह के दरवाजे बन्द होते हैं, वह आखिर में आकर लॉ कालिज का दरवाजा खटखटाता है, वह खुला होता है, उसको वहा जगह मिल जाती है । हमें इस बात पर ध्यान देने की पूरी जरूरत है । इन कालिजो में हमें एडमिशन को रेस्ट्रिक्ट करना चाहिए ताकि लॉ की बतौर एक साइंस के स्टडी की जा सके और जो स्टूडेंट वहां दाखिल हो वह इसको बतौर साइंस स्टडी करें और तमाम चीजों को अच्छी तरह से समझें । मुझे विश्वास है कि इस तरफ पूरा ध्यान दिया जायेगा और इस में पूरी रिफार्म की जायेगी । इस लिये मेरी एक तजवीज यह भी है कि जो पार्ट टाइम आजकल कालिज बने हुए हैं उनको खत्म करना चाहिए, मैं उनके खिलाफ हूं क्योंकि इस सिस्टम के अन्दर स्टूडेंट और टीचर का सीधा सम्बन्ध खत्म हो जाता है । अक्सर देखने में आता है कि क्लास के अन्दर स्टूडेंट्स की तादाद बहुत ज्यादा होती है और प्राक्सी इतनी ज्यादा युज होती है कि टीचर सही तौर पर यह अन्दाजा नहीं लगा सकता कि कितने स्टूडेंट क्लास में थे और

[श्री राम कृष्ण गुप्त]

कितने गैरहाजिर थे । मेरा पूरा विश्वास है कि इस तरफ ध्यान दिया जायेगा ।

जैसा मैंने कहा कि लॉ कालिजेज में जैसी लीगल एजूकेशन होगी वही जूडिशियरी की बुनियाद होगी । आप देख सकते हैं कि हमारे देश में जो बड़े बड़े नेता हुए हैं और जिन्होंने देश को आजाद कराया है—मैं यह नहीं कहता कि और लोगों ने इस में हिस्सा नहीं लिया—वह तमाम लॉ कालिजेज से ही निकले थे । महात्मा जी और पंडित जवाहरलाल नेहरू की मिसाल आपके सामने मौजूद है । इसलिए मैं कहता हूं कि इस सिस्टम को सुधारने की बहुत ज्यादा जरूरत है । इस बात को कहते हुए मैं उम्मीद करता हूं कि इस रिपोर्ट के अन्दर जो डिफेक्ट बतलाये गये हैं उन तमाम पर मिनिस्टर साहब गौर करेंगे और उनको दूर करने की पूरी कोशिश की जायेगी । ताकि हम एक ऐसा निजाम कायम कर सकें जिसके अन्दर जूडीशियरी की आवाज मजबूत हो । मैंने यह बात खास तौर पर इसलिए भी कही कि आजकल दो चार ऐसी मिसालें देखने में आयी हैं जिनसे लोगों के दिलों में और खास तौर से मेरे दिलमें बड़ी भारी शंका पैदा हो गई है । आपके सामने मूदड़ा डील मौजूद है । बम्बई के जस्टिस मिस्टर छागला ने उसकी तहकीकात की

उपाध्यक्ष महोदय आप पहले लॉ कालिज पर गये अब मूदड़ा के केस की तरफ जा रहे हैं । लॉ कमीशन की रिपोर्ट पर आप बोल चुके हैं । अब तो आप काफी कह चुके है ।

श्री रामकृष्ण गुप्त . मैं यह कह रहा था कि हमें इस तरफ ज्यादा ध्यान देने की जरूरत है । हम देखते हैं कि जूडिशियरी के काडर्स मुकर्रर होते हैं उनके फैसलों को नहीं माना जाता । मेरी तो यह राय है कि इसमें कोई कास्टीटयूशनल डिफीकल्टी हो तो उसको भी दूर करना चाहिए । हमें जूडिशियल डिसीशन्स का अहतराम करना चाहिए ताकि जूडीशियरी के सिस्टम का देश में पूरा प्रेस्टिज हो और उसकी आवाज बुलन्द हो ।

इतना कहने के बाद मुझे पूरी आशा है कि इस रिपोर्ट पर पूरा विचार किया जायेगा और इसमें जो डिफेक्ट बतलाये हैं उनको दूर करने की कोशिश की जायेगी ।

Mr. Deputy-Speaker: Motion moved:

"That this House takes note of the Fourteenth Report of the Law Commission on the Reform of Judicial Administration (Volumes I & II) laid on the Table of the House on the 25th February, 1959."

No time has been allotted for this motion When the motion is by a private Member, normally, the maximum time is two and a half hours

Shri Braj Raj Singh (Firozabad): That is not at all enough This is a very important subject.

Shri Shankaraiya (Mysore): It is a lengthy report concerning the whole judiciary. Two and a half hours are not enough Many questions have been raised.

Mr. Deputy-Speaker: Our rules lay down that when the motion is by a private Member, the maximum time allowed is two and a half hours May I know roughly how many Members want to participate in this debate?

15 hrs.

Several Hon Members rose—

Mr. Deputy-Speaker: I think even 10 hours would not suffice At this hour, some Members may be absent and there may be many others in the Central Hall. If there are 30 to 40 Members who want to speak and there are only 2 hours.....

An Hon. Member: That rule can be suspended.

Mr. Deputy-Speaker: Even then, there is a limit to which I can go. I cannot extend it indefinitely.

Shri Braj Raj Singh: We discussed the report of the Sanskrit Commission for more than 7 hours without any decision of the House. I think we can give 10 hours for this.

Mr. Deputy-Speaker: That should remain an exception rather than the rule. Anyhow, I can do this much that I might ask the hon. Law Minister to reply tomorrow.

Shri S. L. Saksena (Maharajganj): At least 7 hours should be given for this.

Mr. Deputy-Speaker: I cannot do that. Perhaps the utmost discretion that I can exercise will be to extend it by 1 hour.

Shri Braj Raj Singh: The debate on food was also moved by a private member and 5 hours were allotted for that.

Mr. Deputy-Speaker: The House is certainly the ultimate master

Shri Naushir Bharucha (East Khandesh): It may be held over to any other day that is convenient. There are two huge volumes containing numerous recommendations which require very careful consideration. It is not fair to the Law Commission that the House should be given only 2½ hours to discuss it.

Mr. Deputy-Speaker: What is the reaction of the hon. Minister?

The Deputy Minister of Law (Shri Hajarnavis): We are not averse to extension of time

Mr. Deputy-Speaker: The hon Minister of Parliamentary Affairs is not here. He is the man who can speak on behalf of Government. What is the time-limit for each hon. Member?

Shri S. L. Saksena: 15 minutes.

Mr. Deputy-Speaker: We should be rather more careful in this. I think 10 minutes should be the limit.

Shri Naushir Bharucha: It should be 15 minutes and it must be strictly enforced.

Mr. Deputy-Speaker: Shri Kasliwal has one amendment. I hope all the Members would strictly abide by the time-limit.

Shri Kasliwal (Kotah): I beg to move.

That at the end of the motion, the following be added, namely:—

> "and recommends that the recommendation of the Law Commission for the abolition of benches of High Courts be rejected".

I welcome this opportunity of taking part in the discussion on the report of the Law Commission. The Law Commission has covered a very wide field, but today I propose to confine myself only to one particular point, a point which has already been partially touched by my friend, Shri Ram Krishan Gupta, *viz*, the recommendation regarding the abolition of benches of High Courts.

My amendment recommends that the recommendation of the Law Commission with regard to the abolition of the benches of High Courts may be rejected When the Law Commission was considering this question in 1956, this House was also considering the States Re-organisation Bill. The States Re-organisation Act came into effect on 1st November, 1956, but on 1st August, 1956, the Law Commission presented the fourth report on the 'proposal that High Courts should sit in benches at different places in a State.' The summary of the fourth report is contained in the 14th report to which today's discussion is confined In effect, my amendment only puts a seal of formality on what Government have already done. Government, by their own action, have already repudiated and rejected the

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recommendation of the Law Commission with regard to the abolition of benches, as I will presently show.

First of all, section 51 of the States Re-organisation Act provided for the creation and constitution of benches in the various States. Sub-section (2) says:

> "The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for the State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith"

Sub-section (3) says:

> "Notwithstanding anything contained in sub-section (1), or sub-section (2), the judges and division courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint."

After the States Re-organisation Act came into effect, many benches in various States were formed. In Bombay, two benches were formed in Nagpur and Rajkot. My friend, the Deputy Law Minister, who comes from Nagpur will bear me out in what I am saying. Two benches were again formed in Madhya Pradesh and one in Kerala. The High Court was at Ernakulam and the Trivandrum bench was formed.

Shri Narayanankutty Menon (Mukandapuram): It was not formed Even now it is not continuing. A Bill is coming tomorrow.

Shri Kasliwal: That is a different matter; it is because of some other thing.

Shri Narayanankutty Menon: It does not exist.

Shri Kasliwal: It does not exist on paper, but actually it does. The other benches continued. Those benches were the Delhi bench of the Punjab High Court, the Lucknow bench of the U.P High Court and the Jaipur bench of the Rajasthan High Court. The Capital Enquiry Committee, which was appointed in 1937, to go primarily into the question of the location of capital for Rajasthan, went into this question and said, "We are going to abolish the Jaipur bench for only one reason, *viz.* that the Law Commission has recommended that there should be one unified High Court and that the benches should be abolished." It was a misfortune for Rajasthan that the President of the Capital Enquiry Committee happened to be one of the members of the Law Commission The Chief Justice of Rajasthan happened to be a member of the Law Commission and both of them decided that because the Law Commission was of this view that High Court benches should be abolished, that the Jaipur bench, which was a permanent bench, should be abolished. As I have already said, so far as the question of the abolition of benches is concerned, Government by their own action have repudiated and rejected this recommendation. My amendment only puts the seal of formality on what they have already done.

I will come now to another question The Law Commission has said that it is for the efficient administration of justice that it has made this recommendation. I want to know, where is the question of administration of justice, when there is nothing to administer? Take the case of my own State, Rajasthan. 10 million people today have been deprived of their fundamental right to social justice, right to legal justice, just because the bench has been abolished. I want to ask: where is this consideration that weighed with the Law Commission of the administration of justice? Administration of justice for whom? For lumps of earth or for

human beings? That is what I wanted to know.

My hon. friend, Shri Ram Krishan Gupta just now told us that justice should be cheap and justice should be easy. How is justice going to be cheap and how is justice going to be easy when from my constituency it takes more than 24 hours to reach Jodhpur? And it is not an exaggeration to say that it is easier to go from Delhi to London or New York than from my constituency to go to Jodhpur to file a writ application And it is on record that 50 per cent of ordinary cases and 75 per cent of the writ petitions have fallen because of this So far as these questions are concerned, I will take a little more time but now I want to touch on another point, and that is this

When I was arguing the question of the Law Commission's recommendations with reference to the States Reorganisation Act, at that very time the Law Commission was aware of the fact that Parliament was of this view because the States Reorganisation Bill had clearly stated, and they were aware of this fact, that Parliament was going to be of this view that benches had to be established and created And what happened? In spite of that, they hurried it And you will be pleased to see that the report of the Law Commission, the fourth report, was submitted on the 1st of August 1956 and on the 1st of August 1956 the report was not even signed What does it show? Shri Setalvad, who was the Chairman of the Law Commission, says:

> "In view of the proposal being under the active consideration of Parliament and the urgency of the matter, the report is being forwarded, though it has not been formally signed"

And we are surprised why the Law Commission was anxious to impose and impinge its view on this august body, this supreme Parliament, when by that time they were aware of the fact that Parliament was of the view that we had to take into consideration the question of the establishment and creation of new benches. Still, the Law Commission set its face against the creation and constitution of benches. I do not want to say anything more. I had been a lawyer and still may be a lawyer again one of these days, though now I have given it up And I have great respect for eminent judges. But I want to ask this House one thing When they themselves have set their face against the constitution and creation of benches, what have they got in their face now?

Another point which had come up before the Capital Enquiry Committee was that the Jaipur Bench was not really a permanent bench in any sense, in the sense that it had not the imprimatur of the President, which it should have received under section 51(2) of the States Reorganisation Act For that I want to give a few facts when it will become clear to this House and to you, Sir, that so far as this question is concerned, it could never have arisen, because the Jaipur Bench was a permanent bench in every respect

Here I want to place before you in brief just a few facts The Union of Rajasthan came into being by inauguration by the late Sardar Patel in 1949 In the same year the Rajasthan High Court Ordinance was passed, authorising the Rajpramukh 'to establish a High Court and to create, permanently or otherwise, for a specific period, such benches as he may deem fit' The Rajasthan High Court was created in Jodhpur and four more benches had been created in Jaipur, Udaipur, Bikaner and one in Kotah On 8th May 1950, that is to say, within one year, three benches were abolished The Udaipur, Kotah and Bikaner benches were abolished, but the Jaipur bench continued to function On the 26th of November 1952, the Chief Justice of Rajasthan, Shri Wanchoo, issued a notification directing that the High Court sitting at Jodhpur was to serve the revenue divisions of Jodhpur, Udaipur and

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Bikaner and that the High Court at Jaipur was to serve the revenue divisions of Jaipur and Kotah. He further directed that in Jaipur four judges were to sit and in Jodhpur two judges were to sit and that the Chief Justice would partly function in Jaipur and partly in Jodhpur. In 1954 the State Government took a Cabinet decision in which they said—it is very interesting and I want to read the Cabinet decision, because even the Chief Justice who later resiled from this, who later took the view that there should be no benches, was of the opinion that there should be a bench, so I want to read it

Mr Deputy-Speaker: The hon Member should conclude

Shri Kasliwal: I will conclude in a few minutes

Mr Deputy-Speaker: He has at least well begun

Shri Kasliwal: It reads

> "The Memorandum of the Chief Secretary (embodying Chief Justice's suggestions) was considered by the Cabinet on the 9th December, 1954, and it was decided that the High Court should be situated at Jodhpur with a permanent Bench at Jaipur"

Not only that The State Government proceeded to allot Rs 10 lakhs for the construction of a High Court building That High Court building was inaugurated by no less a person than our hon Home Minister on the 18th of September 1955 And, Sir, what did he say? He said

> "At present the High Court functions in two places, the main wing is in Jodhpur and a Bench, I think permanently located here to look after the cases which belong to this territorial area."

An Hon. Member: "I think" is there.

Shri Harish Chandra Mathur (Pali): He never knew the position.

Shri Kasliwal: He knew the position. Then he further goes to say:

> "It is a matter of gratification to me to be called upon to lay the foundation stone of this High Court building"

The Chief Justice, who welcomed him, also said in his speech.

> "I am, therefore, very happy that we are now constructing a new building, suitable and sufficient for our needs and located in calm surroundings for the work of the Bench"

I want to ask whether this bench was a permanent bench or whether it was a temporary bench I go even further and say that even supposing it was a temporary bench, the Capital Enquiry Committee could not, nor was it authorised to, make such a recommendation that the Jaipur Bench should be abolished They had only one particular object, and that particular object was to make a recommendation about the location of the capital of Rajasthan and they had nothing to do, they had no terms of reference, so far as the question of abolition or otherwise of the Jaipur Bench was concerned

What has been the effect of the abolition of the Jaipur Bench, I have already referred to this in brief. With the abolition of that bench people have been deprived of their fundamental rights. It is impossible for them to go more than 200 to 250 miles just to file a writ petition in the High Court And as I have said, the work has fallen by 50 per cent. Today the majority of the people in Rajasthan are not happy because of the abolition of this bench So, I only suggest, I request and I appeal to the Home Minister—he is here as also the Law Minister—to accept my amendment and see that the recommendation of the Law Commission,

so far as this matter is concerned, is rejected.

Shri Narayanankutty Menon: I do not think the House expects to have a full-scale discussion on both the volumes of the report, because it is so lengthy and covers such an enormous variety of subjects relating to judicial administration. I, therefore, will confine myself to the general aspects of the re-organisation of judicial administration and will not go into the particular aspects and the recommendations made by the Law Commission on them

Ever since independence the constant need for a thorough research and enquiry into the judicial system in India and the necessity for overall re-organisation was felt by many people in this country and ultimately this House passed a resolution whereby the Law Commission was appointed for certain specific purpose Now that the Law Commission has come out with a voluminous report containing certain observations regarding the existing system and making certain other recommendations regarding the new state of affairs that has to come and now that the Government is not in a position to tell the House as to what are the decisions that the Government has taken regarding these recommendations—and it will take a pretty long time more for the Government to make up its mind regarding these recommendations—I submit that the Government should be benefited by the general nature of the discussion that is there when we are discussing these two volumes of the report now and that the specific matters pertaining thereto need not be gone into now because the discussion will be unfruitful in the absence of the determination of the Government regarding the specific aspects of the recommendations

Even though the Law Commission has gone into the character of the judiciary in India it should be emphasised by this House now that there should be a thorough overhaul in the outlook of the judiciary specially when the social, economic and political background of the country is fast changing. You know, Sir, that in a peaceful and democratic transformation of a social order, from a social order of pure colonialism to a socialistic pattern of society, whenever in a particular social order the rights of property and other social rights which are vested in certain sections of the people are to be taken away by peaceful transformation, from colonialism and feudalism to socialistic pattern of society, history has taught us so far that that transformation and taking away of the rights accrued to them only by forceful means It is only in the later periods that it has been found out that by skilful and forceful usage of the judicial process and enactment of laws this transformation could take place in a more peaceful way You will find that the rights of the society and the rights of the individuals could be taken away and distributed in the society by the skilful administration of the judicial process and also by enacting laws by the sovereign legislatures When a transformation from such a backward society into a new type of society is to take place, when resistances and the cry of alarm is raised from sections of the people to whom the rights have accrued, the administration of the law takes on supreme importance and the way in which the law is interpreted and administered plays a vital and definite role in this peaceful transformation of society This aspect of administration of justice and also interpretation of the laws should weigh supreme in the minds of the judges today when they are interpreting laws passed by the sovereign Parliament, looking solely upon the intention of the Parliament, the policy of the Parliament and how that policy is to be interpreted

I am very sorry to say that the judicial system in India, even though by and large it is beyond complete criticism, in the administration of certain laws and the interpretation of

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certain laws has completely and miserably failed to understand the real spirit of those laws as also the intention of Parliament. Every day we are finding that when laws are taken to certain courts, very strict and outmoded interpretations are given to certain provisions of the laws whereby the sole intention of the Parliament, which is to adiminster the country, is on the spot defeated and the State itself is put to enormous loss. I have got only one appeal to make through this House to the supreme judges of this country *viz.* they should understand the laws that are made. I am submitting it most humbly.

Mr. Deputy-Speaker: He shall have to be very careful so far as the judiciary is concerned. Already he has trespassed certain limits. He has trespassed those limits which perhaps was not allowed. When we impute motives and say that their interpretation is outmoded, that they are not meeting the ends of justice and these things, certainly we are not entitled to say these things. There might be laws that might be laws that might be outmoded. They have only to put an interpretation on the laws that we pass. The fault would not lie with the interpreters perhaps. They have only to interpret the language that we use and the phraseology that we employ. He might certainly say what he wants to say but I would request that he should be careful lest we cast aspersions so far as our judiciary is concerned.

Shri Narayanankutty Menon: I will be very careful. I was only dealing with certain recommendations and certain observations made by the Law Commission. When I will quote some of the observations made by the learned members of the Law Commission, I will even go out of order. I will be found too mild in describing the way judiciary is functioning in this country. Apart from substituting my own words, which are too mild, I would come to the quotations of the Law Commission's report. My only appeal is that while interpreting the motives of the Parliament, the broad policies laid down by Parliament, how the society is to be transformed, why the laws are enacted and what an important part law is to play in this peaceful transformation of society, they should bear that in mind. If they bear that in mind, certainly in interpreting these laws they could help us and help the administration of the country as well.

The second point is regarding the appointment of the judiciary. I am raising this point today because a lot has been said by the Commission about the appointment of the judiciary. On the question of the appointment of the judiciary, every part of this House is agreed that in order that the rule of law may be maintained in this country, in order that the democratic rule may take root in this country, the utmost and unquestioned respect should be given to the judiciary in this country. That sort of respect to the judiciary, I submit, cannot be created by means of a statute or legislation or even by extending the law of contempt. The respect that we demand and we expect and desire for the judiciary could be built first of all only by taking a little care in selecting the judiciary so that the selection will be confined to those sets of people who unquestionably command the respect not only of certain sections of the people but of the entire population or the broad sections of the people. In many cases it has been found by the Commission that the executive had a direct hand in appointing and in influencing the appointments to the appointments to the judiciary. When eminent judges and eminent legal luminaries of India, who had nothing as far as this side or that side is concerned, when they make a relevant observation that the executive in the last ten years in certain instances at least had a direct hand in the appointments to the judiciary and the normal rule that had to be followed there,

that is, impartiality, had to be done away with, that is a castigation that the highest legal body appointed by the Government itself could throw on it. I am pointing this out because in many instances I could have directly pointed out that real merit has been ignored and extraneous considerations have weighed with the Government as far as appointments to the judiciary are concerned. I entirely agree with the hon. Mover of the Resolution that political prejudices and political considerations should not weigh as far as the executive or the Supreme Court is concerned in the matter of appointment to the judiciary because when political polarisation takes place, when each man stands committed to his political party, there cannot be any presumption of impartiality at all.

Shri C. K. Bhattacharya (West Dinajpur): The hon. Member just now said that political prejudices should not weigh with the Government or with Supreme Court. How can the Supreme Court be influenced by political prejudices? The Government might.

Shri Narayanankutty Menon: The Supreme Court in its administrative jurisdiction of appointment of judges and not in its judicial jurisdiction of interpreting the laws, because ultimately, the Chief Justice of the Supreme Court of India to make the final recommendation to the President. That is why I referred to that policy. Therefore, my only point is that politics should not at all come into play with the appointment of judges.

A lot of criticism has been there for so many years that politics is playing some of the worst games in appointments to the judiciary. I will point out certain instances It might be possible that a certain gentleman in the bar, having enough practice and enough legal training, might belong to a particular political party and might already have taken sides in politics. In spite of the fact that that man is a qualified man, when he is appointed to the supreme judicial body, certainly it will be impossible in the present state of affairs for him to command the unquestioned respect of all sections of the people. It might also be possible that certain political convictions that weigh with him, may also weigh with his judgments.

Mr. Deputy-Speaker: Again, the hon. Member goes into prohibited quarters.

Pandit K. C. Sharma (Hapur): This has been discussed.

Shri Datar: May I point out, Sir, so far as this question is concerned, after the Report was laid on the Table of the House, there was a specific discussion of this particular question during the debate on the Home Minister's Demands? A number of hon. Members raised certain points and they were exhaustively answered by the Home Minister. I am just pointing this out to you as to whether we should again have the same discussion here on this point.

Mr. Narayanankutty Menon: That point I only raised *inter alia*.

Mr Deputy-Speaker: Because there is a reference to it in the report, I cannot shut it out absolutely.

Shri Narayanankutty Menon: That should be taken into account.

Mr. Deputy-Speaker: I would appeal to hon. Members, because already we had had a discussion on it, a brief reference might be made. I agree that I cannot prohibit them from referring to it because it is in the report. Again, what I was requesting the hon. Member was that we have certain limits within which we can criticise and comment upon the judiciary, particularly the Supreme Court. He has again, in my opinion, trespassed certain limits. He ought to be more careful.

Shri Narayanankutty Menon: I appreciate that. My understanding was that at least we could go to the

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limit to which the Law Commission has gone. At least Parliament has got that liberty.

Mr. Deputy-Speaker: Now, he has directly said that because he had certain pre-possessions or he belonged to a certain party or was such and such a man, and he has been appointed a Judge of the Supreme Court, he cannot command that much respect and then in the interpretation of the statutes also, those would weigh with him. When he has once been appointed, we have to respect him and we do expect of him that so long as he sits there, whoever he was before his appointment, he would certainly discharge his duties conscientiously and impartially

Shri Narayanankutty Menon. I will only just refer to a part of the observations made by the Law Commission

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

This is what the Law Commission reported and this is what they found in every part of the country they went My only submission is that when the Law Commission has found such a deplorable state of affairs as far as appointment to the judiciary is concerned the Government should be very careful hereafter to avoid the mistakes that they have already committed. Mistakes have been committed on the lines that have been recommended by the Commission I hope, in the interests of building up that respect which the judiciary should command, the Government should avoid committing these mistakes.

Another thing which I would point out regarding interference of the executive in the judiciary is a matter which has not been referred to so far. The hon Prime Minister, in his Press Conference in June last made a comment regarding the recommendations made by the Bose Committee. Justice Vivian Bose was appointed Chairman of the Committee and he made,—whether right or wrong, that is left to the Government to decide,—certain recommendations on the specific terms of reference that had been given to him Unfortunately, Justice Vivian Bose found that the Mundhra deal and the connected things that he was asked to enquire had been directly motivated by a sum of Rs 2½ lakhs that Mr Mundhra gave to the U P Congress

Pandit K. C Sharma: He did not find He said, it might be

Shri Narayanankutty Menon: It might be

Pandit K. C. Sharma: There was no fact finding You have not read it.

Shri Narayanankutty Menon: It might be possible that Justice Vivian Bose has gone wrong on that point I am coming to the point where only the point where only the Prime Minister spoke in the Press Conference about the findings of Justice Vivian Bose This is what he said

> "If you believe that for this Rs 2½ lakhs from Mr Mundhra the deal has been put through, the person who suggests it is lacking in intelligence, even if he is a judge, I would say the same thing"

I have not gone to that extent My only submission regarding that is this

Shri Hajarnavis: Would it be fair that he should refer to this quotation without also referring to the letter which he subsequently wrote to the Calcutta Bar Association?

Shri Narayanankutty Menon: This he has mentioned in the Press Conference which received international publicity. As far as the letter is concerned, some papers printed it, some papers did not. I was saying . . .

Mr. Deputy-Speaker: Is the hon. Member doubtful whether he said it or not? When he knows that at Calcutta he has given out what he meant, that should also be referred to along with it. This is what the hon. Minister says.

Shri Narayanankutty Menon: Afterwards, he wrote a letter to the Calcutta Bar Association in pursuance of a protest resolution passed by that Association. But, that letter was not published by the Prime Minister also. My only point was that even when the Prime Minister makes certain statements, that certainly goes to degrade that respect that we should owe to the judiciary. That tendency of taking judicial decisions in such a particular manner, if the Prime Minister should say this, that, in all its proportion and grace slowly goes down to the juniors and other officers.

Mr. Deputy-Speaker: And also to the Members of the House?

Shri Narayanankutty Menon: Of that party. Of course, certainly they should share it.

Shri C. K. Bhattacharya: For the time being. It is on my right side.

Shri Narayanankutty Menon: What I am pointing out is, it should be the concern of every one of us to build up that confidence that is required and build up the judiciary. And, the Members of the Government, in view of these recommendations made, should certainly take care to see that that confidence is built up in the judiciary.

I shall finish with one more point and I shall take only one minute, that is, regarding the legal education part of the recommendations. I agree fully with the recommendation made by the Law Commission regarding legal education. It is a pity that during the last 12 years, in spite of the fact that many reports have been submitted regarding University education, the whole approach of the study of law has not been correctly understood by the Universities. Because, in our system, only the procedural aspect of law is emphasised very much and a person is only trained to plead in a court of law. As a result of that, we find that that standard and that scholarship that a nation expects from its judicial section is not being found in India today, because of the complete lack of academic and research approach in the legal education of the country today. That part of the recommendation should be very seriously considered. Apart from the Law Ministry, every University should take it up in order to see that the fundamental principles of law have been emphasised, research facilities are given, academic approach to the legal studies is more emphasised, and only after that, professional training is given so that a lawyer who is sent to a court of law will develop into a real legal luminary and there will not be any dearth of legal scholars from the bar.

I close my submissions by pointing out to the Law Ministry that all the observations made by the Law Commission should be carefully studied along with the recommendations made by the States. While implementing these reports, Government should also consider whether this autonomous way of dealing with things regarding investigation and also trial of crimes should be left to the States alone and whether it is not desirable that a Ministry of Justice should be constituted in the Centre along with a Director Public prosecutions, so that, there shall be a coordination of investigations and all the knowledge and benefits of international standards being raised in investigation shall be available to the States. Through the Ministry of Justice, a Directorate of Public prosecutions should be constituted in the Central Government which would act

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as a co-ordinating agent of all the States' investigation and judicial branches.

Shri C. K. Bhattacharya: Mr. Deputy-Speaker, the report of the Law Commission came up for discussion during the last debate over the Demands for Grants of the Ministry of Law in March last. In that debate, the following matters came up for discussion: appointment of Judges, a simplification of law and law administration, speedy and inexpensive justice, minimisation of cost of litigation, exclusion of social legislation from the purview of the jurisdiction of the Supreme Court or High Court or the need to have a special Industrial Bench of the Supreme Court and a special central agency for conducting them or the revival of Labour Appellate Tribunals, adoption of law and jurisprudence to the special conditions of our country, administration of justice in the language of the people, provision of legal aid, proper working of the *nyaya* panchayats, and benevolent fund for lawyers All these matters came up for discussion in the last debate. That is what I find when I go through the pages of the report again. Of these, I find that a major portion was devoted to the question of appointment of judges and the need for amending article 217 which states that the President has to consult not only the Chief Justice of India but also the Governor in the matter of appointment of judges That was the matter which took up a lot of time in the debate that we had in March last

In the discussion that we are having today, certain further matters have been raised and referred to. I shall try to confine myself, as far as possible, to the matters that are now under discussion and have been raised.

The first of them is the question of reduction of appeals to the High Court. I believe this can be done only by checking at the initial stage of the appeal. That should be the principal factor. A preliminary hearing should be insisted upon before admission of appeals, and worthless cases eliminated at that stage. Only if cases are sifted like this will there be a reduction of appeals, and not otherwise. In fact, there is already provision in our Civil Procedure Code for such a preliminary hearing, and the report of the Law Commission refers to this, in chapters 15 and 16. Chapter 15 deals with civil appeals, while chapter 16 deals with civil appellate procedure. In para 7 of chapter 16, the Commission refer to the existing provision for checking at the initial stage What we do now is that the memorandum of appeal is automatically accepted by the court, whenever it is submitted. But the preliminary hearing for which there is provision in the Civil Procedure Code should be insisted upon now The Commission state,

> "The power to admit or dismiss an appeal is conferred by rule 11 of Order XLI of Civil Procedure Code The appeal should be posted for preliminary hearing under this rule This rule is not limited to second appeals only First appeals to the district courts and High Courts can also be posted for preliminary hearing under this rule."

If that were to be done, that would be one way of reduction of appeals to the High Court, and the second would be extension of jurisdiction of the district courts That way also, the chances of appeals coming to the High Courts in large numbers may be eliminated

But, after having said all this, I should say that finality at a lower stage of appeal can be allowed only on a question of fact; on a question of law, the door should be left open for approaching the High Court and even the Supreme Court, because it is at the High Court level or at the Supreme Court level that there is a greater and higher judicial appreciation of cases on points of law than at the lower stage. This is particularly necessary, because we have a Constitution of a federal type; some sort of

Centralisation must be there, because otherwise, a state of things will come about which would be akin to anarchy. The Constitution emphasises that there should be uniformity of law, and uniformity of law cannot be achieved, unless there is Central control over these judicial procedures.

The next question is lowering of expenses in cases filed in the High Court. The expenses incurred in High Courts by litigants come under two heads. On the one hand, there are the expenses incurred on account of payment to legal practitioners; on the other, there are the expenses incurred on account of court fees and stamp duties. Of these, the question of fees paid to the legal practitioners cannot be regulated; these are beyond the control of Government. But what Government can do is that they may reduce the expenses on court fees and stamp duties. There is one more suggestion in this respect. At present, in the original cases filed in the High Court, there is a compulsion upon litigants to employ two sets of lawyers, one for acting and the other for pleading. This compulsion should be done away with. There should be no compulsion on a litigant to have two sets of lawyers. This should be left to be done by one lawyer, if possible, and this can be done only by legislation.

Shri Subiman Ghose (Burdwan): I suppose the hon. Member means the attorney system.

Shri C. K. Bhattacharya: I refer to cases where they employ a solicitor and a counsel. The counsel cannot act, and the solicitor cannot plead. That creates difficulty for a litigant, because he has to pay through the nose when he goes to the High Court for filing an original case. And counsels in the High Courts do not work on scales or fees allowed by the taxation rules. It may be stated that the rules of taxation are there to look to the expenses incurred by the litigants and see that they are not excessive But everybody knows that the counsels are not bound by the taxation rules. They charge as fancy fees even such fees as "sticking fees," which are not taxed.

An Hon. Member: Sticking fee?

Shri C. K. Bhattacharya: They stick to a case and charge fees for that. The taxation rules are no protection against these fees that are charged on the litigants. Therefore, they are no protection to a litigant against inflating costs Therefore, the only way of reduction of expenses in the higher courts lies in Government agreeing to give up the profit that they are making out of the stamps and court fees. That is the only way that I find open, and it is no good talking in the air about reduction of costs in the High Court.

In this connection, I might state that simplification of law and simplification of legal procedures might also help the litigants to have their suits judged at rather moderate costs.

My suggestion to Government today to give up their claim to court fees and stamp duties is nothing new in India. It was never our custom to sell justice. Dispensation of justice was a part of the duty of Government. It was the duty of Government; it was an obligation placed on Government. That is the reason why when a king ruled from his seat of authority, when he administered, his seat was known as the *'sinhasan'*; but when he dispensed justice, his seat was known as *'dharmasan'* and it was not *'sinhasan'* then. The use of this word in this context is found in the Sanskrit literature:

धर्मासनात् विशति वासगृह नरेन्द्र

which means that the king is now retiring to his own apartment from his seat of judgment. It is not for nothing that the seat of judgment was given that particular epithet *'dharmasan'*. It is the *dharma* of Government to dispense justice to the people. This may be further extended; the Ministry of Law in the Indian tradition was described as *'dharmadhikar'*; a court

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of law was described as *'dharmadhikaran'*, and a judge was described as *'dharmavatar'*, which means the embodiment of *dharma*. If this view is adopted, I believe, Government will be persuaded to act according to the Indian tradition and give up this system of selling justice which we have inherited from the British who were here According to that system, the justice a man can expect to have is proportionate to the amount of money that he is prepared to spend in a court. I want this particular vicious thing to be abolished

There is the question of restricting references to the High Courts and the Supreme Court This was raised in the last debate also Also, there has been reference to administrative tribunals and domestic tribunals Regarding administrative tribunals the law, as you kindly stated a little while ago, is itself defective It is a case of defect in the laws, not a fault of the High Courts or the Supreme Court The Judges there administer the law as they get it These labour laws were framed during the British regime. After that, they have not been revised If we want that these laws should be administered in a particular way, Parliament must state so very clearly and its intention must be made clear in the body of the law itself, so that the Judges may have no difficulty in administering them according to the intention of Parliament

Regarding domestic tribunals, like the Medical Council, Bar Council University Council etc these usually consist of laymen The scope of interference by courts in their decisions is very narrow But this little scope should be maintained It is necessary in the interest of the rules of natural justice that this may not be dispensed with So I believe the question of restricting the powers of the court in these matters does not arise.

On the question of establishing temporary or permanent Benches of the High Courts—the suggestion here is for having them in different districts—I am afraid neither the dignity of the High Court nor its efficiency will permit its breaking up into so many fragments Neither will it be cheap to the people, nor is it necessary when there is also the suggestion of extending the jurisdiction of the district court in order to reduce the chances of appeal to the High Court. When that suggestion is there, where is the necessity of having High Court Benches in the districts? Automatically, the chances of appeals coming to the High Courts are being restricted at the district level Again, appeals in the High Court are concerned with dispensation of extraordinary justice, there is little scope for that in the districts Then again, the expenses that will be incurred in tour etc will be too much even for the system, if we adopt it

There are two important chapters in Vol I, chapters 25 and 29, to which I wish to make a short reference. Chapter 25 deals with legal education and Chapter 29 concerns the language of law In Chapter 25, paragraph 6, the Commission makes a very serious observation, that legal education has deteriorated during the last ten years. That should be a matter for serious consideration for Government, because it is during the last ten years that we have our own Government The Commission has suggested not only improvement of the study of law but also of the system of teaching and examination It is also in favour of the abolition of the part-time teaching system, which one of our leading journalists in Calcutta, the late Shri Ramananda Chatterjee, characterised as 'teaching by High Court half-timers'

Regarding language, there should be uniformity of language in the matter of dispensation of justice throughout India Of the good things that were achieved during the British

period, this is one; we have achieved uniformity of law, uniformity of legal procedure and uniformity of the language of laws. That should be maintained. When there is a suggestion or proposal to disturb that unity, extending from one end of India to the other, extending from the district court at the lowest level to the Supreme Court at the highest, we should be careful. The Commission has, of course, suggested that Hindi may be adopted in place of English, but it has also cautioned us by saying that this may not be done within the next 25 or 30 years. If it were left to me, I should say that the precision, the exactitude and the capacity to convey fine shades of difference in its expressions that are found in English may be found in only one Indian language, and that is Sanskrit. History will say that Sanskrit has all along been the language of the judiciary and the language of law in India. Thank you

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15.55 hrs.

ARREST AND RELEASE OF TWO MEMBERS

Mr. Deputy-Speaker: I have to inform the House that I have received the following telegram dated the 25th August 1959, from the Sub-Divisional Magistrate, Chinsurah, Hooghly:—

> "Sarvashri Prabhat Kar and K T. K Tangamam, Members, Lok Sabha, arrested under section 11, West Bengal Security Act Produced before me today, the 25th August, at 5 30 p m They were discharged and released from custody at once on police report"

15.56 hrs.

MOTION RE FOURTEENTH REPORT OF LAW COMMISSION—*contd.*

Shri Subiman Ghose (Burdwan): Mr. Deputy-Speaker, the Law Commission was formed for the purpose of recommending dispensation of justice which will be simple, speedy, cheap, effective and substantial. That is the language that has been used by the Commission

Mr. Deputy-Speaker: There is one thing that I might point out. In such motions, specific points on which discussion is sought to be raised are given in the notice. In this motion also, the sponsors gave certain points on which they want to have discussion There are four points: reduction of appeals to High Courts and lowering of expenses of cases filed in High Courts, need to restrict interference by High Courts and the Supreme Court in the decisions of administrative and domestic tribunals, need to establish temporary or permanent Benches of High Courts in different districts of a State, and, deterioration in the standard of legal education. I hope hon Members will keep these four points before them when they speak.

Shri Harish Chandra Mathur: Were no more points given subsequently?

Mr. Deputy-Speaker: I have none.

Shri Raghubir Sahai (Budaun): I would like to know if you will not be prepared to allow discussion of other points This is a very comprehensive Report and one cannot deal with almost all points

Mr. Deputy-Speaker: There is one other provision; under these discussions, particularly when such motions are discussed, the same points that were urged on the Home Ministry's Demands for Grants not long ago, as in this case, are not allowed, though I will not strictly bar brief references to them But these are the main points on which attention should be focussed.

Shri M. C. Jain (Kaithal) The four points stressed were only for the purpose of admission of the motion by the Speaker. The motion was admitted and it is now for the House to discuss any point the House likes.