

Clause 1

2. That at page 1,—
 - (i) in line 3, omit "(1)";
 - (ii) omit line 8.
3. That at page 1, line 4,—

for "1958" substitute "1959"."

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

THIRTY-EIGHTH REPORT

Sardar Hukam Singh (Bhatinda): I beg to present the Thirty-eighth Report of the Committee on Private Members' Bills and Resolutions

PUBLIC ACCOUNTS COMMITTEE

THIRTEENTH REPORT

Shri A. C. Guha (Barasat): I beg to present the Thirteenth Report of the Public Accounts Committee on the Appropriation Accounts of the Government of Delhi for the year 1954-55 and 1955-56 and Finance Accounts for the year 1954-55 and Audit Reports thereon

ESTIMATES COMMITTEE

FORTY-SECOND REPORT

Shri Thirumala Rao (Kakinda): I beg to present the Forty-second Report of the Estimates Committee on the action taken by Government on the recommendations contained in the Fifty-fifth Report of the Estimates Committee (First Lok Sabha) on the Ministry of Defence—Ordnance Factories (Staff Matters and Training).

12.45 hrs.

*DEMANDS FOR GRANTS (contd).

Ministry of Law

Mr Speaker: The House will now take up discussion and voting on Demands Nos. 70 and 71 relating to the Ministry of Law for which five hours have been allotted.

Members desirous of moving cut motions may hand over at the Table within 15 minutes the numbers of the selected cut motions. I shall treat them as moved, if the Members in whose names those cut motions stand are present in the House and the motions are otherwise in order.

Shri Khadilkar (Ahmednagar): rose—

Mr. Speaker: Is the hon. Member a practising lawyer?

Shri Khadilkar: No I am really thankful to you for giving me an opportunity—a common man—to express my point of view regarding the Ministry of Law

Mr Speaker: I do not think it is a disqualification if he is not a lawyer, only, I just wanted to know

Shri Khadilkar: I happen to be a law graduate; I practised only for six months. Unfortunately I was prevented from practising any further and from entering the precincts of the courts

Mr. Speaker: I believe once a lawyer, always a lawyer

Shri Khadilkar: Yes, in that sense—

श्री खुश बख्त राय : मैंने कोई कट मोशन तो नहीं दिया, लेकिन बोलना चाहता हूँ।

*Moved with the recommendation of the President.

DEMAND No 70—MINISTRY OF LAW

Mr. Speaker: Motion moved:

"That a sum not exceeding Rs. 23,70,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1960, in respect of 'Ministry of Law' "

DEMAND No. 71—ELECTION

Mr. Speaker: Motion moved

"That a sum not exceeding Rs. 83,35,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1960, in respect of 'Elections' "

Shri Braj Raj Sing rose—

Mr. Speaker: I will give them all an opportunity next time

Shri Khadilkar: When discussing the Ministry of Law, naturally, the recent report of the Law Commission will have to be referred to. When I got that document I was really puzzled because, after nearly 80 years, and after more than ten years of freedom, an opportunity was given to eminent jurists of this land to review the whole position of law and law administration.

As we well know, in Europe, after the French revolution, the Napoleonic Code, as it is called, was enacted because, after a political change, the necessity for a change in the law administration arises, for, the law administration then becomes outmoded all over the world. The same thing happened so far as the Soviet Union is concerned. In the Soviet Union, after the revolution, they had to give very serious thought to the institution of law and law administration, to both.

Now, this Law Commission which seems to be very much concerned with the appointment of judges, their age of retirement, tenure of office, pension benefits and the code of social conduct, has unfortunately completely ignored this basic aspect which is absolutely essential for any social reform or if we want to implement our social objective. Though we had not experience of the French revolution fortunately, nor of the Russian revolution, still, a big change has taken place. The alien colonial rule has ended and when a new rule, a representative Government, was established in this land, it was expected of the Law Commission to give some thought to the changed circumstances and apply their mind to them, instead of applying their mind in a narrow groove and suggesting some remedies which are not going to help the administration of law or the administration of justice. Unfortunately, it is found in the report itself that the Commission consider that some sort of basic approach would prove disastrous. It is in the report itself.

Therefore, my submission is this. The Ministry of Law must now consider one thing that after the foreign domination has come to an end, a change has taken place, how are they going to meet the situation from the point of view of the common man? The population of the common man, in that sense, in this country is two crores or five per cent of the total population and the common man is engaged in some way or other in litigation, which is the most unproductive aspect of his labour. When such a vast population is engaged in litigation, it is absolutely essential to provide a machinery of law administration which will give them quick justice and justice at not much cost, because justice delayed in the final analysis is justice denied. In several cases, because one party does not happen to have enough means, it cannot go into the juridical hierarchy of all the courts and expect to get justice at the highest level.

They have suggested some reforms of a superficial nature. They also feel that something is wrong, but they have not given enough thought as to what is the malady or the main disease. According to me, the main thing is that there is a big hiatus or a big gulf between the changing dynamic pattern of our society and social objective and the old colonial British law system that is still persisting here. What is our law system here, I would like to ask the hon. Law Minister. Fortunately, he is a young man and he can apply his fresh mind to the whole problem. In this land, he would be considered most immature even to sit along with the Cabinet colleagues where for the cabinet the age of eligibility and maturity is 60 or more, but he has been fortunate enough to get a place along with them. I congratulate him for that.

Mr. Speaker: Let there be no discussion of age.

Shri Khadilkar: I just mentioned it in passing. In the given situation, what is the position of the Indian law? Foreign domination has gone, but whatever traditions of law, method of administration of law, codified and procedural law, the main trunk remains. We are drafting some type of legislation here and there, but the main trunk remains. And, the question is whether that main body of statute law and procedural law is really meeting the needs of the people.

While laying down the foundation stone of the new building of the Supreme Court, the President of the Indian Republic had to observe that the High Courts and especially the Supreme Court still function in an atmosphere of British precedents, although in many matters, light has to be sought from other sources. I am not giving the full quotation. But the Law Commission did not care to look at that observation also. They have recognised that something is wrong somewhere and some radical change

the Commission would abhor the use of that word—word 'radical'—some change must be brought about. But let us examine the decisions they have come to.

First and foremost, they considered that the appointment of judges must be entirely left to the Chief Justices of the High Courts and of the Supreme Court and the Government should be a sort of advisory capacity. I do not subscribe to this suggestion. For one thing, we can hold the Law Minister or the Home Minister responsible for anything happening anywhere in the administration of justice if they are before us. The spirit of the Indian Constitution is that judiciary will be subordinate to the legislature. Let that be understood once and for all. This is a wrong notion. They have not got enough time to look to their own performance.

I may give an instance. Look at the labour tribunals, the bank award and the decision of the Supreme Court; look at the wage board award regarding the journalists. A good volume of legislation regarding labour matters is taking place in this country. There is an attempt to bring round labour, to eliminate strife and settle-disputes through arbitration. If it were by negotiation and settlement on the spot, they have got some finality. In arbitration matters, it goes on and ultimately some point arises and somebody goes to the Supreme Court.

I do not doubt the integrity, the judicial acumen, etc., of the Supreme Court judges. But they have never seen that unless these matters are expeditiously decided, the workers or those who are seeking relief through arbitration, would not benefit by it. Look at the decision regarding the bank award. On technical grounds—one man was absent—the whole award was upset. Is it proper? Is it meeting the needs of the situation? Let us consider this aspect. When they consider their tenure, their retirement benefits and other things,

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they ought to take into consideration the social objective of the State while delivering their judgement. I do not question their integrity, honesty and learning; I do admit all that, but unfortunately, the Indian judiciary, with a few exceptions, has never shown that social outlook, not shared that common experience with other people which they ought to share. Of course, they have laid down their code of conduct; they should remain in aloofness and isolation.

Mr. Speaker: The hon. Member has rightly said just now that any organ including the judiciary ought to be subordinate to the legislature. If that is so, it is for the legislature to lay down the law and for the judges to interpret it. Does he want to clothe the judges with the authority to make law incidentally by adapting or adjusting themselves to social environments and conditions. The hon. Member is able to reflect and react; does he want the judges also to react like that?

Shri Khadilkar: I will explain. The courts have a right to interpret whether we have transgressed the limits of legislation or the fundamentals of the Constitution. In that way, they are sentinels of law; that I do concede. I would like to make a positive suggestion and I have made it on the floor of the House. The time has come when Government and the Law Minister should give serious thought whether this purview of social legislation should be excluded from the purview of the jurisdiction of the Supreme Court or the High Court.

Mr. Speaker: That is another matter altogether. Therefore, to say that they are not reacting to what is happening, etc., is not relevant. Does he say that in theory, they should also become politicians and react to what is happening?

Shri Khadilkar: I do not mean that. I am referring to aloofness, etc. On reading the report, I was puzzled—they should not mix with the people

and so on. In England, the judiciary, the high dignitaries meet in a particular club; they are supposed to keep themselves aloof.

Mr. Speaker: Even the Speaker of the House of Commons does not move as freely as the Speaker here.

Shri Khadilkar: There is that seclusiveness. Are they not to keep themselves abreast of the social changes that are taking place? That does not affect their integrity.

Shri P. E. Patel (Mahsana): It is for the Legislature to pass the law, not for the courts.

Shri Khadilkar: Therefore, all these concepts of exclusiveness are borrowed from the British tradition, unfortunately. They have laid down a code of conduct for the judges. But there I find there is no mention of *pan*, whether they should smoke or they should indulge in temperate drinking. But there is no prohibition like Britain if they meet in a club where they discuss social gossip or social scandal, as happens in England. I have read about this in a very good lawyer's biography and that is why I am mentioning it.

Apart from this, what I would like to urge upon the Law Minister is regarding appointments after retirement, that is, whether they should accept political office. Now it is very unfortunate that a man like Shri Chagla, who was a member of the Commission, has, before that was recommended in the Law Commission's Report, accepted one office. Of course, he never aspired for any office. He accepted it in the national cause, and I am very happy that he has been posted in America. But still it contradicts his own recommendation. I am very sorry. I sometimes feel: "what has happened to our public life?" when men who say one thing, advocate one morality do not act up to that. They have not acted up to it. I can give you one instance:

Shri Achar (Mangalore): They are exceptions to the general rule

Shri Khadlikar: I would like to give you one instance, and that would throw some light on this

Shri C. R. Pattabhi Raman (Kumbakonam): May I point out that while the hon. Member is perfectly entitled to say that even before the report was placed on the Table of the House a person who was a signatory to the report has himself accepted an office, to say that he aspired for it is hitting below the belt. He did not aspire for it

Shri Khadlikar: Excuse me, I did not say

Shri C. R. Pattabhi Raman: He is not present here to defend himself

Shri Khadlikar: So far as accepting a particular office is concerned, it is a call of national duty, and he is rightly serving our country, to which I have already made a remark. But I was speaking in a general vein

Here I would like to draw the attention of the Law Minister to the firing that took place in Bombay. The All India Civil Liberties Union, with a distinguished lawyer as Chairman, Shri Das, tried to appoint a judicial enquiry committee, and the Secretary of the Civil Liberties Union went round all over the country. Every retired High Court judge was approached and nobody was prepared to undertake the task. Why? Because, all of them had something dangling before them—some committee, some appointment. That was the conclusion reached by the heads of the Civil Liberty Union. Is it a good state of affairs, I want to ask the Law Minister. Under the British regime many people used to come forward if there was injustice. If there was firing people used to come forward and offer their services. Today they are not prepared to take that attitude, because perhaps their chances might be spoiled.

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Mr. Speaker: What about the lawyers? There are thousands of lawyers

Shri Khadlikar: We wanted a judicial enquiry and we wanted an ex-judge of the High Court to preside over the enquiry.

Mr. Speaker: The hon. Member should conclude

Shri Khadlikar: I will very briefly refer to some other points. As regards the All India Judicial Service, I think that is a good recommendation. As regards the procedure, there was a specific term of reference that they should try to simplify the procedure. Now, what is the experience of the common people? What is the experience of people living in the villages and small places? They come in contact with only the local criminal court or revenue court where there is such an amount of delay. The delay under the present procedure is so much that one cannot imagine how many days are wasted, how much valuable time and money are wasted

Recently, the Law Minister had been to the Soviet Union. He has seen how soon justice is administered there. I do not think there is a wrong impression here that there is no system of administration of justice there. Here, according to the Commission, the normal time we take is 18 months. I understand that in the Soviet Union when there are no complicated matters the decision is given in 15 days. I hope if I am not right, the hon. Minister will correct me. I have ascertained that this is the position there. Why should we not adopt a similar procedure which will simplify everything and will cause less burden to the poor litigants?

Shri M. P. Mishra (Begusarai): Is there any law in the Soviet Union?

Shri Khadlikar: You have not studied their law system. Do you mean to say that 20 crores of people are just living without any legal system? You are mistaken.

Shri M. P. Mishra: Then you have not read Mr. Khrushchev's statement.

Shri Khadilkar: I have enough books with me on the subject.

Then I want to refer to another thing. The Commission has stated that we should get talent from the bar, that is, Bombay and Calcutta. Here, I want to point out one thing. There are many districts where there are very good lawyers. They should not be completely excluded from recruitment, because my experience is....

Mr. Speaker: For High Court judgeship?

Shri Khadilkar: Yes. There are good lawyers at the districts. Unfortunately, they do not come to the limelight. My experience is that in Poona, there are at least half a dozen lawyers. They will stand anywhere in competition with any of the High Court Judges that are now being appointed. I entirely agree that the caste consideration or communal or regional consideration should not be brought in. But, situated as we are, whatever we do, some type of political consideration is bound to creep in. But the important thing is that under the Constitution, they are free once they are appointed. Then it is a test whether they resist political pressure or not. It is their duty to resist political pressure. They should be above all pressures, including social pressures, and they should see that justice is done.

Then, I will skip over one or two points and refer to one point. In the small places what we find is that under the new legislation, particularly revenue legislation, lawyers are not permitted to appear. Some of the lawyer friends have reported that really the litigants are at a disadvantage because the *mamlatdar* or the revenue officials are supposed to dispose of all the cases. So, I would like to draw the attention of the Law Minister to this point. Is it good to have a provision like this? Or, should the lawyers be permitted to appear in such cases also? That is one impor-

tant aspect which I would like to bring to his notice.

So far as the administration of law is concerned, I would like to observe in conclusion one or two things. As I said in the beginning, this Commission was appointed after 80 years to investigate and lay down the law for a society which is dynamic with a definite social objective, welfare State or socialism or whatever it is. They have not done that. So, it is the duty of the Law Minister, while giving his careful thought to the recommendations regarding bar, All India service, appointment, recruitment, tenure of office, pensions and all that to look into this aspect also. As I said earlier, I would repeat that out of a political upheaval like the French Revolution the Napoleonic Code became the statute law. In the Soviet Union, after the early period of 1925, all the old jurists were called and all the procedural matters, evidence law and all the other aspects of law, were studied and they have evolved a law system. Whatever we might feel about that law system, I would like to point out to my friend that it is attuned to their political objectives. That must be taken into consideration. The political objective, the law system is bound to serve and must serve. If it lags behind, it is a drag on progress. That must be clearly understood. Therefore, the system of law has a social objective. Of course, it is said that law is conservative, it is static. Therefore, it is very important that the Minister of Law takes note of this fact and attunes the system with the changing phenomenon. I hope and trust that the Minister of Law will take note of this aspect while giving his thought to the Commission's report.

I once again thank you for giving me a commoner an opportunity to express the reactions of commoner to the legal system.

Shri H. N. Mukerjee (Calcutta—Central) Mr. Speaker, Sir, it is with

much pleasure that I participate somewhat accidentally in the discussion of the Demands for Grants in respect of the Ministry of Law. My pleasure is enhanced by the fact that it gives me an opportunity of reviving, so to speak, an almost faded relationship with the profession which I had at one time joined. It also gives me an opportunity in this House to cross swords.

Mr. Speaker: Why not say, the honour to belong? The hon. Member said, I had the pleasure to join. He might easily say, the honour to belong. The profession is such

Shri Nath Pai (Rajapur): The amendment should be accepted

Shri H. N. Mukerjee: We all know, you and I perhaps have a soft corner for the profession of Law in spite of whatever criticisms we might utter against it in this House from time to time. I am sure you will appreciate my feelings when I say that I am happy that I have this opportunity of crossing swords with my hon. friend the Minister of Law. But, I say crossing swords in a very metaphorical sense. My real object is to help him as far as I can in the very onerous job which he has got.

The importance of this occasion is increased by the fact that we have recently had the Law Commission producing its voluminous reports. Perhaps we shall have a further opportunity of discussing the detailed recommendations of the Law Commission. But, since we are now discussing the Ministry of Law's Demands for grants, perhaps a few observations in regard to the Law Commission's report may not be out of place.

There are certain matters which I feel the Ministry of Law should bear in mind, particularly, because the times through which we are passing are of a dynamic character and social transformation is professedly being sought to be achieved in our country and our law must keep pace with the development of that social change. My feeling is that what we require very urgently today is an approach towards law and also a new attempt to simp-

lify the law which our country will have to put into effect. I say this because the entire approach to law as we have learnt it so far has been the approach of the men of property. If I may quote the late Mr. Justice Holmes of the U.S.A., he said at one time in a classic judgment that there was an inarticulate major premise behind the back of the mind of every lawyer, so to speak, and that was the divine right of the men of property. That is to say, the law that we know so far has a bias in favour of the rights of property. When we are going over to a socialist pattern of society, what happens is that the right of property has got to be adjusted with the rights of citizens and the inter-relation between men of property and those who have not got property in the present state of things. Therefore, it is very important that we bring to bear upon the task of legal reform something of a revolutionary concept. I fear the Law Commission has not approached its task with that idea at all.

On the country, the Law Commission has tried to bring about a few reforms here and there, to tabulate so to speak whatever laws and regulations we have inherited from the British times, with a few accretions which we have had in the period of Independence, and more or less left it at that, by adding only a few comments in regard to the manner in which we may improve upon the functioning of law and the substance of law in the period which is ahead. I fear that it is not the right approach. It is very important that the Government comes out with a very clear pronouncement in regard to the necessity of relating our law to the new social norms which are developing. It is very important, therefore, that we try to simplify the law. After all, in a socialist society much of the accretions which have made our law such a cumbrous and complicated matter would be absolutely unnecessary. When a basic change happens in our history, we find that simplification of law has actually taken place. In the

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case of the French Revolution, the Code Napoleon came into the picture because it was possible to simply the substantive and adjective law. It was possible at that time to bring about changes in the matter of the law and in the manner of the administration of the law. In Kamal's Turkey, even though in many ways it was not exactly a revolutionary change, all the same, it was something of a revolutionary alteration which came in Kamal's Turkey. In that case, we also saw that an adaptation of the Code Napoleon was made for the purpose of Turkish legislation.

I do not say let us take something from some other country or that sort of thing. On the contrary, I say that we in this country have a great tradition of legal talent. In our country, perhaps, the subtleties of jurisprudential thought reached a certain stature of which we can certainly be proud. The Anglo-saxon jurisprudence could be adapted, so to speak, to the conditions of our country because in this country also we had a legal tradition of very great substance and very great subtlety. We have succeeded in bringing about a kind of co-ordination between Anglo-Saxon concepts of jurisprudence and our own ideas in regard to law. So, I do not say that we do without the tradition which we have inherited as well as the result of the impact of the British in this country. But, I say at the same time, that since we are now going to have a complete sociological transformation, it is necessary to bring about such changes in the law, such simplification and such basic alterations as would fit in with the new forms of society that we are trying to achieve. I say also that now we wish that justice should go to the people rather than that people should have to run after justice to find by way of litigation and adjudication of their claims. Justice has got to be administered in the language of the people.

A few weeks later, perhaps, in this House, we shall have an opportunity of discussing as to what exactly the

position of Hindi is going to be. Hindi and the other Indian languages surely will have to be employed for the purpose of law, for the purpose of legislation, for the purpose of administration, for the purpose of judicial determination. If we are going to have our Indian languages for this purpose—we surely could have the Indian languages sooner rather than later—it is very necessary to do away with many of these forms of judicial procedure to which we have become so accustomed that we cannot even imagine the absence of them. We have today, for example, the idea of citation, of quoting precedents from judgments given many hundred years ago and any good lawyer like my friend the Law Minister has a library which includes volumes including English reports which start with Bracton, Lyttleton, Fortescue and God knows who else and they come to the present day. Every good lawyer has to go through, mug up a great deal, and study a number of precedents. The whole bias of English administration in regard to law was in favour of authority in favour of quoting precedents. This idea of quoting precedents which is only judge made law may have had some kind of validity at one time. But, I wonder if in the present set up, when we are going to have our law formulated in our Indian languages and administered through the medium of Indian languages, we can afford the intellectual luxury of that kind of citation which has taken place almost automatically because we could accept and adapt to our needs to the English system of jurisprudence. I feel sure, if we are serious about the change over from English to our Indian languages, Hindi and other national languages of this country, it is very necessary that we go ahead as fast as we can with the task of simplification of the law, with the task of moving away those cobwebs and unnecessary subtlety and sophistication which have entered into the very corpus of our law and to start so to speak, on almost a clean slate.

I say these things with great respect as far as the legal thinking of our country is concerned. But, I fear that our legal thinking has not been very sharp, very courageous and very original so far. In regard to jurisprudence, our country's scholars have not, unfortunately, contributed very much in the modern period, and in regard to legal teaching also, we are more or less imitative in our approach and this whole thing has got to be changed, so that our law may stand now in a very different category from what it has been before.

From this I wish to turn to the idea of the separation of the judiciary and the executive which has been emphasized in several cut motions presented before the House, and I feel that in spite of whatever the Home Ministry might say in regard to this matter,—and I fear that perhaps occasionally the Home Ministry is more of a hurdle than the Law Minister is perhaps prepared to concede—whatever the views of the Home Ministry might be in regard to the separation of the judiciary and the executive, the Law Ministry has to put its foot down and see to it that this concept which is absolutely in conformity with the highest judicial thought is actually translated into practice in our country with the least avoidable delay. And this is something to which I wish the Law Minister applies his mind very carefully.

Many of the cut motions have referred to the idea that there is a kind of suspicion—maybe not justified, but even so, the fact is there—that the judiciary at the moment is not perhaps as free from executive influences as it ought to be. I say this with very great respect to our judiciary, but I do feel that, as the famous maxim of law suggests that law should not only be administered but it also should seem that it is being properly administered, our judiciary has got to behave so that it is really, like Caesar's wife completely above suspicion.

Now, what happens is that actually we have encountered instances of what appears to be the likely contamination of the judiciary by executive influence. I will refer only to one example. I would not mention any particular name. After the last general elections were over, there was a Minister who was defeated in the elections. He is a very good friend of mine. My relations with him are of a particularly affectionate character, I may even say that, but has defeated and perhaps I also had a hand in his defeat because his constituency was in my area, but almost immediately after his defeat—he was a lawyer—he was appointed a High Court Judge. I do not take exception to the appointment at all. It was an unexceptionable appointment as far as the man was concerned, as far as his qualifications were concerned, but it looked rather odd that a person who stood for election, had been a Minister, and who was defeated at the elections, was appointed straightway to the position of a High Court Judge. I do not wish to go on amplifying this matter, but this kind of incident leaves a sour taste in the mouth and it is for the Law Ministry to make up its mind and to plead with the Home Ministry, if pleading becomes necessary, to make sure that these things do not happen. But they have happened, and that is why so many Members appear to be keen on making sure that the judiciary is absolutely free from executive interference.

The Law Commission has made certain remarks in regard to the appointment of Judges. I am sure those remarks are going to be quoted. I am afraid, not having the chance of preparing my speech, properly speaking, I could not get hold of the volumes of the Law Commission's Report from which I could have given quotations about the manner in which judicial appointments appear to have been made. I am sure those quotations are going to be put forward before the House but in any case these appointments are very important because the trust the confidence of our people in

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the judiciary, it is absolutely essential to maintain, especially when we have a written constitution, when a law passed by even a sovereign body like this Parliament is subject to be declared *ultra vires* by the Supreme Court, and therefore we should make sure that the respect of our people for the Judges is not jeopardised by any action on the part of the executive

In regard to the Supreme Court, for instance, I feel, as the Law Commission also has pointed out, that appointments should not be made almost on the basis of seniority, or perhaps on *even some less unexceptionable principle*, from among High Court Judges. Appointments might very well be made from among members of the bar, practising members of the bar, who might not be attracted to a High Court Judgeship, but who might very well be attracted to a Supreme Court Judgeship because of certain differentiations which exist as between a High Court Judge and a Supreme Court Judge. It is very necessary that we take very careful steps in order to maintain the purity of the Supreme Court.

Talking about the Supreme Court, I feel that in recent years there has been a multiplication of labour cases which go on appeal especially because the employers have a lot of money which they can throw about, and they can employ very fashionable counsel and spend a lot of money over them. As a result of this there is multiplication of labour cases even before the Supreme Court. If the Supreme Court is going to exercise its jurisdiction in regard to the labour cases, and I think that in the present circumstances, the Supreme Court ought to exercise its jurisdiction in labour cases, I feel there should be a special Industrial Bench. I feel that there should be special provision in the Supreme Court for the adjudication of these particular cases and I feel that there should be also a special central agency for conducting these cases before the Supreme Court.

I say this because I have noticed what to my way of thinking is an anomaly, and that is the appearance of our Attorney-General on behalf of employers in these labour cases before the Supreme Court. I say nothing against the Attorney-General who is a very eminent individual, and I say that professionally and from any other point of view he is certainly entitled to accept briefs from employers and appear for them before the Supreme Court. I have nothing against him in particular, but I do say that the appearance of the Attorney-General who is the principal legal official of this country, a country which is wedded to the socialist pattern of society, a country whose Government says it wants workers' participation in the management of industry, a country whose Government says it wants equalisation of opportunity for all, a country whose Government says that the ostentation and vulgarity of the inequality of incomes has got to be fought out and rooted out altogether when the Attorney-General is appointed by that country, we should certainly expect that the Attorney-General being the symbol, so to speak of the judicial character of the State should not take such briefs as appear to be partial towards a section of the community whose vested interests it is our purpose to subvert. That is the only sense in having a socialist pattern of society, and therefore, I feel that Government should carefully consider the feasibility, the desirability, the ethicality of the Attorney-General appearing on behalf of employers in labour cases. And on the whole, Government should apply its mind to the idea of having a central agency for conducting cases, particularly labour cases, before the Supreme Court.

We have noticed also from time to time that the question of the All-India Bar is hanging fire for so long and the Law Commission has made certain observations in that regard. I fear, there again, it is on account of the

position of English, it is on account of the position of Anglo-Saxon jurisprudence and adjective Anglo-Saxon law, it is on account of the hierarchy of position, of prestige, which we have inherited from the British days, that we are unable to have an All-India Bar. It is because we have not got a simplified procedure and simplified substantive law that we cannot evolve really an All-India Bar as soon as ever that is possible. But we have to apply our mind to it, and I go back to my first point, namely, simplification of the law which alone will make it possible for an All-India Bar functioning through Indian languages to appear on the scene and to be a really effective proposition.

There is another matter to which I wish to make a reference, and that is that I feel that the Law Ministry has not been very careful in regard to the subordinate legislation activities performed by the different Ministries of the Government of India. In the last Parliament I happened to have been a Member of the Subordinate Legislation Committee, and even now from time to time I do try to take some interest in the work of the Subordinate Legislation Committee, and I find that the Subordinate Legislation Committee in its reports has pointed out many a time how different Government departments do not look upon the authority of Parliament with that respect which is due to it. The different Ministries of the Government of India formulate regulations and by-laws and all that sort of thing without real respect having been paid to the intention of Parliament. These Ministries of the Government of India occasionally do not even abide by the directions of Parliament in regard to the laying of the rules on the Table of the House in time. Many such instances have happened from time to time, as far as I know from my experience as a member of the Subordinate Legislation Committee in the past, and I feel that the Law Ministry should try to consider this matter very carefully. The Law Ministry should insist that the different Ministries, when they

try to have these by-laws and regulations under the Act, should refer the matter to the Law Ministry, and the Law Ministry should make sure that every single step which is necessitated in the interests of the authority of Parliament is really and truly observed.

I wish also to refer to another matter, and that is that a question has been raised in this House from time to time regarding the appointment of former judges of the High Court and of the Supreme Court to other kinds of jobs. We have, for example, a very eminent judge of our country who is now functioning as an Ambassador—rightly or wrongly, I do not know—abroad. There have been criticisms in this House as well as outside in regard to the appointment of former judges of the High Court and of the Supreme Court as Governors or Ambassadors or anything of that sort.

I do feel that a principle should be laid down that High Court judges or Supreme Court judges, after they retire, might occasionally be requisitioned because their services are important, but their services may be requisitioned only for purposes of a judicial or a quasi-judicial character. Any job which is even remotely smacking of a political character should not be touched with a pair of tongs by former judges of the High Court or of the Supreme Court.

But the condition of things in our country is such that—I am ashamed to have to say it—that I have myself noticed how ex-judges thrown out, so to speak, at the age of sixty have made a practice of frequenting the corridors of certain Ministries in order to make sure that they get some kind of job. This is terrible; this kind of moral pressure which is being indirectly put upon the judiciary is something which goes against the grain. And that is why I feel that you can easily raise the retiring age of the High Court judges from sixty to sixty-five. You can easily give some kind of relief to people who at sixty are perfectly fit and ache for some kind of job to do, and you can easily make such

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provision as would be making it impossible for former judges of the High Court or of the Supreme Court to be going about sometimes with a beggar's bowl in their hands for political assignments of different sorts

This is a matter to which very serious attention ought to be paid by the Law Ministry, and in conjunction with the Home Ministry it should immediately as soon as ever that is possible, lay down a principle and announce it before Parliament that former judges after retirement should accept only jobs of a judicial or quasi-judicial character

I shall finish now I shall only make a reference to the demand made in some of the cut motions regarding the provision of legal aid, especially for the poor to minimise costs of litigation I know myself how the Law Minister, when he was practising very eminently in the Calcutta High Court had himself taken part in an effort to bring about the provision of legal aid to people who could not themselves command such aid And, therefore, I feel that Government should come forward with a well thought-out scheme The Law Minister and some of his friends have been abroad lately, they have been to socialist countries, I am happy to say, to countries like the Soviet Union and Poland, and they have noticed how in those countries, in spite of the complicated nature of their economy, they have succeeded in simplifying law and procedure, and they have succeeded in making sure that nobody is handicapped on account of not having enough money to prosecute one's defence in court Therefore, I feel that after his visit to the socialist countries in particular, he should draw upon that experience and collate that with his own wide experience in this country and help to bring about a method of securing ample and adequate legal aid so that the poor litigants of our country might get some relief

There are some other points, but I feel I have not got much time to dilate on them Besides, there are other Members who are very likely to speak with much greater professional capability than I can muster after so many years of absence from the Bar

I thank you for the opportunity you have given me for taking part in this discussion.

Shri Nath Pai. In the rather dull report presented by the Law Ministry there are two aspects which deserve very special mention, namely the magnificent work done and being done continuously for this country by the Election Commission, which comes within the purview of the Law Ministry, and the monumental work done by the Law Commission I do not know if the recent promotion given to the Law Minister was a mark of appreciation of his undoubted talents, on the part of the Union Government, or an appreciation on the part of the Government of the role that the Law Ministry is to play in this country in enforcing the rule of law I trust that it is the latter that was the main criterion in this new promotion

I do feel, and there would not be any dispute in this House on this point, that the rule of law is the major distinguishing mark of a democracy, the one characteristic feature which distinguishes it and separates it from other forms of government If we want to see that it is established in this country, then the heavy hand of the Home Ministry should be lifted as quickly as possible and as effectively as possible from everything that has to do even remotely with the administration of justice in this country I am not likely to be misunderstood that I was wanting to cast any aspersions on the holder of the Home Minister's office right now it is the principle with which I am concerned

Having agreed that it is the rule of law that will have to be enforced and upheld in this country, perhaps, it will be in the fitness of things that

I define what I mean by the rule of law. I am very sorry that my hon friend Shri Khadlikar is not in the House, because I would have liked to bring to his notice the very sinister implications of what he has said regarding the judiciary being required to conform to the requirements of the executive. Shri H N Mukerjee perhaps has stated the case much better and more effectively when he said that a law should be framed to embody the new social ideals of the society, but to suggest that the judiciary should be subordinated and should conform to the executive is a very highly pernicious and sinister doctrine to be promulgated in a democracy.

I shall be pointing out what we mean by the rule of law.

It is the body of precepts of fundamental individual legal rights, permeating institutions of Government which are vested with appropriate power of enforcement, and those procedures by which such precepts may be applied to make those rights effective."

I think that rather than going on just having this humdrum duty of making drafts of Bills to be introduced in this House, the Law Ministry of the Union Government will be more and more and in progressive stages charged with the responsibility of efficient judicial administration in this country, because, let us remember that to ensure efficient, expeditious and inexpensive enforcement of the rule of law is to strengthen the foundations of the edifice of our democracy. The faith in democracy depends to the extent that you are able to instil and inspire faith in the average citizen that justice will be done to him. It is, therefore, in this wider perspective, that the role of the judiciary becomes of paramount importance in all our consideration.

Under our Constitution, the Supreme Court is established to safeguard the fundamental rights and liberties of the people. An independent Supreme Court as shown by the working of such Courts in other democratic

countries will have far-reaching influence on the constitutional history and progress of the Union of India. Is this consideration all the while borne by those who are charged with the heavy responsibility?

This court, let us remember, is constituted as the protector and guardian of the fundamental rights, not only when the dispute is between one citizen and another, but more important is its role when it arbitrates on a dispute which concerns a citizen and the executive. It is, therefore, of vital importance that the integrity, the dignity and the impartiality of the Supreme Court is all the while ensured. And I should like to point out what is happening in this country with regard to that. What has the Law Commission to say with regard to this? Can we say that such a course has been followed? And what a scathing criticism comes in!

It is widely felt that communal and regional considerations have prevailed in making the selection of the judges. This has prevented the Court from being looked upon by the subordinate Courts and the public generally with that respect, and, indeed, the reverence to which it is by its status entitled."

Sir, it is not with pleasure that I am trying to read this. But it is a very serious thing which we cannot easily look over and pass. Judgments like that, passed by some of the best juridical minds in the country, I hope will not be meeting the usual fate, which reports in this country are normally in the habit of being meted out, that is, being pigeon-holed. This is a very serious thing.

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The whole fabric of our democracy will be tottering if this is what is to happen to that one body which we have created to see that the judiciary functions properly checking the

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executive when it shows any tendency to exceed in its enthusiasm. What is happening at this level, Sir? Considerations not based on merit, extraneous considerations, are coming in. It is not only at the Supreme Court level that this is happening. This is perhaps the worst indictment of the present regime, perhaps an indictment which cannot be easily lived down, which the Law Commission had to track and put before the nation in such clear, crystal terms. What has been the normal practice in the appointment of Judges in the High Courts too? It has been felt by our Chief Ministers that this is a bounty which they can go on conferring, taking into consideration what? Not the merit of the individual concerned, but in many cases, his caste, his community and even his political affiliation. Where shall we descend to if this is to be followed? This is not a conjecture that I am referring to. It is the finding of the body which this nation had asked to look into the whole question

"The selection of a person on considerations other than of merit has far-reaching repercussions"

Only yesterday, we were told by the Prime Minister that the rule of seniority very often leads to the survival of the mediocre. How dangerous it is when it is applied to the judiciary?

The first point I should like to make is that the Chief Justice of India holds a post which will be, for some time to come, till our Constitution is finally interpreted and the functions of the State legislatures and Parliament are decided and the rights of the citizen and the executive are finally defined, vital in the determination of these matters. It will go on gradually improving as we progress. If, therefore, we are not very careful in dealing with such a body, if we go by the considerations of caste, community and political affiliation, and even this minor consideration of seniority, the

Supreme Court will never be having the benefit of such personnel of independence and sturdy character and judgment who alone can take this onerous responsibility of acting as the guardians of the rights of the citizens and interpreting the Constitution.

This is what the Law Commission has to say on the selection of a Judge on considerations other than that of merit

"Such a Judge would naturally not receive from members of the Bar, who would be no strangers to his capacity, the full measure of co-operation which is needed for the proper administration of justice, nor would a Judge so appointed generally have the amount of confidence in himself which alone can contribute to the efficient discharge of his duties. These circumstances are bound to affect adversely the quantity and the quality of the work turned out by such a Judge"

On a subsequent page, we are told the High Court is burdened with personnel whose only qualification turned out to be that the Judge had succeeded in getting the goodwill of the Chief Minister

I will not be labouring this point, but, as I have already said, this is a sinister tendency that has grown. The Commission says that the observations made by Justice Kania that 'merit alone should be the basis for selection of the High Court Judges seems to have been completely overlooked'. What an indictment in a single sentence is embodied against those who have indulged in this very dangerous game of undermining the independence, dignity and authority of the judiciary? The selection of a person on considerations other than those of merit will have far-reaching consequences, so far as liberty in this country is concerned.

There is this thing at the technical level—where shall we look for a

Judge? Reference has been made to the fact that we should not confine our eyes only to the Benches of the High Court. There is enough judicial talent in the Bar too. It is an outdated consideration that the man who is young should not be given any thought in making appointments. Some very archaic ideas are very often very heavily weighted, more heavily weighted than they should be permitted to be so, against young talent. We have to be convinced that to be appointed to the Bench, he must be 50. Look at the experience of other countries which have a grand record in judicial history. Is it necessary to have a declining age to be an efficient and great Judge? It will be far from me to cast aspersions on age. But youth should not be made a liability where merit should be the only criterion.

Reference should also be made to another point. It is a sad spectacle—and perhaps a sadder comment on our life—that Judges of the High Courts and Supreme Court have to stoop down to practice after retirement. It is not enough to condemn this practice and make the necessary constitutional changes; it is important that we should see that we do not treat them as miserly and meanly as we do. Let us have austerity and economy, wherever it is necessary. But let us not be mean and miserly and trying to be economic at the cost of the liberty of the citizen, at the cost of the independence of the judiciary. Rs 800 after a life-long service is not a pension that can keep a man in the necessary comfort and dignity to which he is entitled after having done such a vital service in so important an aspect of our life. The pensions of the High Court Judges and of the Supreme Court Judges will have to be radically changed when we introduce this amendment to the Constitution to the effect that no Judge shall be allowed to practice after his retirement.

I should now like to turn my attention to another very important aspect

which is often overlooked. It is of the separation of the judiciary from the executive. This morning there is a reference in one of the national dailies to what is happening in UP, because there has been a failure to separate the judiciary from the executive. I had requisitioned that daily, but I am sorry it has not been supplied to me, because somebody was reading it. It has happened in Uttar Pradesh. Somebody had said 'India, that is Bharat, that is Uttar Pradesh'. If this is the pattern in UP, what must be happening in other parts of the country? It is leading to disastrous consequences. A Magistrate went to the extent of re-trying a case. A Magistrate can overrule his own judgment, call back the case and re-try the whole case at the instance of the prosecution! It is a pernicious thing. Article 50 of the Constitution directs you, makes it incumbent on you, to take immediate steps to separate the judiciary completely and immediately from the executive. This leads not only to better justice, but the expeditious justice, as the Law Commission has very cogently and conveniently brought to our notice. Some say that it will cost us more. But is it really too heavy a cost to have better justice, efficient justice, ready justice and reliable justice? I do not think that the cost will be heavy.

It is in this connection that I should like to endorse the suggestion for establishing an All India Judicial Service. To the extent that we take active steps to establish this Service, we shall be ensuring that we provide the entire judicial system beginning with the lowest judicial magistracy to the Supreme Court with the requisite type of personnel having the necessary training and—very important—having the necessary calibre too.

Having said this, I should now like to turn my attention to another point, that is, of the methods of investigation that are being followed. Only day before yesterday, the House was

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pleased to vote a very handsome sum for atomic energy. The reason is that we want to remain abreast of the world, on a par with other countries in scientific methods. Then why employ these medieval methods in the matter of investigation in a very ordinary thing which we experience, the detection of crime? You as a lawyer must have known, Sir, the tragedy of the accused in the districts and taluks. The only method the police, by and large, employ is, not the laboratory, nor the telescope nor the microscope and all the amenities and equipment which science has made available, which modern and civilised countries are taking pride in employing, the only method the police employ is that of the baton, that of the torture chamber. The Law Ministry must see that we reform totally this tragic aspect of crime detection.

Recently, I have received a letter. A man was arrested. This is not my experience alone. Both the Law Minister and his Deputy have been eminent lawyers in their respective States and know this tragic aspect of our life—the torture method, the third degree method. The sooner we do away with it the better it is not only for those unfortunate individuals; but it will tone up our life; it will bring a higher dignity in our life if we discard these archaic and medieval methods.

I should like to point out in this connection the methods that have been recommended by them. There is a very important aspect that it is tried, it is common, it is hackneyed to go on repeating that justice delayed is justice denied. I do not want to do that. But how true it is in this country! It has been pointed out what it means, in terms of delays. I have some concrete suggestions to make about these delays. It is this:

On page 68 of the Volume it is pointed out

"The loss of working strength of the High Court by reason of

the delays in roughly equivalent to the absence of 12 Judges for 12 months."

This is in U.P., India's biggest State. In Punjab, "There was a loss of 2 Judges for over one year."

In Bihar—"The loss was roughly equivalent to the absence of 5 Judges for one whole year"

The result of this is that there is accumulation of work, there is delay in work and we feel—the average citizen feels—and we know that there is a greater delay . . .

An Hon. Member: What about Bombay?

Shri Nath Pai: This is the common experience. Everywhere it is so. I just quoted this because it is documented. Otherwise, I would be appearing as quoting from personal experience. This is unimpeachable evidence. That is why I quoted it. Why does it happen so?

We come to the point again. It is because of delays in appointing Judges, because of the faulty methods in deciding the strength of the courts and the other considerations to which I do not want to make a reference, which weigh in making these appointments. There is delay—unreasonable delay. We do not have sufficient strength. Why do we not have sufficient strength? It is because of the faulty methods in deciding how many judges we require. If any decision is reached as to how many judges we require, we do not take the necessary steps to proceed with the appointment because those ulterior considerations come in the way of getting the necessary type of judges that the country requires.

I would like to make one or two more observations. It was sad to hear this kind of disparaging remarks against the Supreme Court. I am a

student of law; I pretend to be no more than that. But, our Supreme Court, by and large, has done a magnificent job and I feel proud of it. It will not be for the Supreme Court to try to implement, of course, what we have in mind. We have to frame the law adequately. Let Mr. Sen and his department take care when he comes with his drafts here. Let them be more careful and let not another Gounder be called upon to say that the necessary care was not there; let not another Naushir Bharucha be called upon to point it out. Let the drafts be properly put up.

There is another point which I would like to make. We shall have to see that the jurisdiction in criminal cases is very very sparingly employed. There by we will be seeing that the Supreme Court has more time. Of course the dignity of the High Court will be maintained. It is this thing, I will say, that the Supreme Court should not have anything to do with labour disputes. I would like here the Law Minister to think of institutions which can relieve the Supreme Court of those labour disputes. There are about 518 appeals pending. We had Labour Appellate Tribunals. We should get them back. If we had labour tribunals with competent people who know their job as to how to deal with these there would not be inordinate delay in the discharge of the work of the Supreme Court.

Before I conclude I would like to point out one or two small things. In this country the civil servants, the government employees do not always have the right to go to the court. There is a very good suggestion coming which, perhaps, the Law Minister will be good enough to take into consideration. A Tribunal presided over by a retired Judge, with, of course, eminent retired civil servants can be constituted to look into all these cases to remove this anomaly that there are sections of the community who have no avenue for

redressing a wrong under which they are suffering.

Finally I would like to bring this to the attention of the House before concluding. Somebody had said that every Indian, everybody who is lucky enough to be born in this country must have this thing. 'Wherever my rights shall be infringed, I will have justice done to me and my rights upheld.' How can we do it? It will not be that every man can come to the level of the Supreme Court unless we see that legal aid is made available on the scale which the Criminal Justice Act of 1948 has made available to the average Briton.

In this, one thing can be done. We will have to give serious thought to seeing that the Nyaya Panchayats do a good job. Cases in which the fine does not exceed Rs. 50/- and the total value perhaps a few hundreds—I would not be dogmatic on that—can be dealt with by these courts. To that extent we will be seeing that there is speedy justice, immediate justice and justice within the reach of the average man. Shri Patanjali Shastri may be a fine arbitrator of law, an ornament of the judiciary but how will the average man know? How will he judge? He will judge by what justice he gets at his own level. Therefore, it is that these panchayat courts will have to be constituted, care being taken, of course, that they are not a replica of the village panchayats which today we are having, ridden with communal considerations. But, of course, one consideration should be that they will be charged with the duty of doing justice.

If we do find some of these suggestions reflected in the attitude and the actions of the Law Ministry, then, perhaps, there will be some justification for granting to them the amounts for which they have come to the House.

Shri C. R. Pattabhi Raman: Mr Speaker, Sir, it is gratifying to note and it is but proper that from all parts of the House the rule of law should

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be upheld, and encomia should be paid to the rule of law and to the role of the judiciary as such. In a written Constitution where you have the guaranteed rights, the judiciary has a definite role to play. It is the repository of the freedoms of all the people. Without exaggeration I would claim that perhaps the most popular institution in the whole of India today is the judiciary headed by the Supreme Court of India. Most people feel that there is a heaven where they will get justice.

I was rather shocked when I heard my esteemed friend, Shri Khadilkar refer to the judiciary being subordinate to the executive (*Interruptions*). He almost expressed the feeling

Mr. Speaker: I understood him to say that even the judiciary must be subordinate to the legislature in the sense

Shri C. R. Pattabhi Raman: At a later stage he said that

Mr. Speaker: In the legislatures, of course, we make the law. There is no question of subordination. The legislature is entitled to make the law. The judiciary is bound to give effect to that law. That is what I thought he meant originally. Subsequently I did not follow him.

Shri C. R. Pattabhi Raman: I gathered there was a bias so far as he was concerned. He was more or less

Mr. Speaker: I am sure he will change his views if he is called by the executive

Shri C. R. Pattabhi Raman: Even in England where the Parliament is supreme, the judiciary has a very important role to perform. It is not lightly that the Parliament will interfere with any of the rights of the people, nor will it do anything which will affect the judiciary, in England. Much more so is the case here where

we have a written Constitution where it has a definite role. It is the third limb. The judiciary has to protect the guaranteed rights, of course, governed by the Directive Principles envisaged in Chapter IV of our Constitution. Therefore, I would like to say that I am very happy to hear my talented friend, Shri Mukerjee talk about the rule of law. I know what regard he has for it. He will be interested to know what Mr. LaVe, the Secretary-General of the International Commission of Jurists said. He came down to Madras and I was asked to interview him. He had just then returned from Kerala. I asked him deliberately, "What do you think of the rule of law in Kerala?" He said something very interesting. The Chief Minister, in all humility, went before the court and apologized for a contempt. There is the rule of law in Kerala. And that is a great compliment, I am sure, not only to the Communist Party but also to the administration in Kerala. Such is the rule of law.

The Law Commission to which frequent reference has been made says this with regard to the upsurge in India. With your permission I will quote

"The upsurge of national consciousness which led to Independence has to a great extent altered the psychology of the citizen. The change of his status from a subject in a dependency to a citizen of a democratic republic has reacted largely on the citizen's social, economic and political life. He is proudly conscious of the rights guaranteed to him by the Constitution, of his right to social and economic justice, and of his claim to equality of status and opportunity."

I cannot improve upon that language. The vital role of the court has been put very tersely in Bamesh Thapar's case

"This court is thus constituted the protector and guarantor of"

Fundamental Rights and it cannot consistently with the responsibilities so laid upon it refuse to entertain applications seeking protection against the infringements of such rights"

That was the observation of the court in Romesh Thapar's case. It is rather embarrassing for me; I had the honour and privilege of appearing for Romesh Thapar in that case. The plea was put that Romesh Thapar could not straightaway run to the Supreme Court because in that case the Madras (Maintenance of Public) Order Act was affected. But the Supreme Court said "No. His right to come to the Supreme Court is a Fundamental Right and they said they were not going to jettison him and direct him to go to Madras first."

It was frequently mentioned that the Judges they are not getting up with socialist ideas. They say that the Judges are blocking social progress. I may say that they are not doing it. They have got to administer the law as they find it. You can always change the law and they will dutifully implement it. In V. G. Row's case where again I had the honour and privilege to appear, Chief Justice Patanjali Sastri has said

"If, then the Courts in this country face up to such an important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the 'fundamental rights' as to which this Court has been assigned the role of a sentinel on the *qui vive*."

The Law Commission has said that the lawyer has not been playing a very important role in recent years. It is rather tragic. The Father of the Nation was a great lawyer in South Africa and he came here with all the training and background and he led us to freedom. Our Prime Minister

has been a lawyer and our Home Minister, a distinguished lawyer in UP. You, Sir, have been a lawyer of eminence in Andhra Pradesh. (An Hon. Member You too) In that distinguished company, it is like comparing mouse to an elephant, I am a small man. (Interruptions) In view of the great role played by the lawyers, I have no doubt that they are not going to be mere technicians in future. The lawyer realises that Motilal Nehru, C. R. Das and people like them were not mere technicians; they were not merely drafting pleas or appearing in courts. There was a lot of social work and national work done by them. I am sure that the lawyer will catch up with the spirit of the times and will not merely be adding to his bank balance. He will have some social duty to perform and I am sure he will perform it. Otherwise the whole Constitution will crack up. The third limb of the Constitution is the judiciary—law. And the strength of the chain, as you know, is that of the weakest link. The moment you drag down the lawyer, you are destroying the democratic way of life. If anything is done to bring down the law and permit arbitrary interference by the executive, there is no democracy; there will not be any democracy in India.

With regard to the separation of judiciary from the executive it is a very important thing that should be carried out in all haste. I am glad in my State of Madras, it is practically complete but not yet fully complete. Unless you separate judiciary you cannot have that independence of judiciary which is essential for the administration of justice. (Interruptions) The old collector used to be the Sessions Judge. But now the collector is a mere revenue collector and is also a person who does some jobs like community development and all that. He is really a much smaller man. (Interruptions)

Mr. Speaker: The District Magistrate is himself under the High Court and there is also a Collector. Formerly

[Mr Speaker]

the District Magistrate and the Collector was one and the same person. But the present District Magistrate is a separate person dealing with cases. They are all subordinate to the High Court whereas the Collector is under the Revenue Minister. (Interruptions) All right. Whatever the hon. Members have in their minds when they speak of the separation of judiciary from the execution it has been done in the States of Andhra Pradesh and Madras.

Shri C. R. Pattabhi Raman: May I with your leave elaborate?

Mr Speaker: It is not necessary. Whatever they have in their minds has been done there.

Shri C. R. Pattabhi Raman: If I may with respect, add to what has fallen from you, I may say that they are under the High Court. That is one thing. Secondly, the appointment, in most cases, is done by the Public Service Commission, with a Judge sitting along with them. (An Hon. Member appointed by whom?) I take it finally the Governor appoints and so the executive always appoints. But the subordinate Judges are appointed only on the recommendation of the Public Service Commission where a Judge sits along with the others. There is something, at any rate, we have gone some distance and we are not stagnating. That should be the rule all over India. Let us make a beginning and let us start. I am sure once the start is made, you cannot go back to the bad old days.

Now, I wish to refer to the Minister of Law. I am glad a reference has been made to the distinguished lawyer heading it. Last time I pleaded that he should bear a Cabinet rank and I am glad he bears that rank. It is a compliment to the legal profession and law. But I find that their functions are really rudimentary if I may use that word. In a Government of this magnitude, they have got two sections: Legal Affairs and Legislation. Apart from drafting enact-

ments, giving the opinions and drafting treaties and perhaps suggesting something to the President, I find that they have not much of a function. As Shri Mukerjee has pointed, this has been the back-wash from the bad old days. I am sorry I have to use that word. In the olden days the view of the Government was that there may be an Indian Law Member but the Home Member must be an Englishman. Because of that dichotomy, the Law Member was a mere drafting man with legislative jobs and the Home Member was the person who dealt with security, police, appointment of Judges and all that. I am not now suggesting straightway anything drastic and I am not saying that the whole Home Ministry has to be changed to Ministry of Justice. But I say that a beginning must be made and the Law Minister should be consulted at least in the appointment of Judges.

Shri Nath Pai: He is the only one to be consulted.

Shri C. R. Pattabhi Raman: I would say this. We have now changed. I am not seeking anything high. But the Law Minister should be consulted in the appointment of Judges in various States and also in the appointment of the Judges of the Supreme Court. He is after all a lawyer and knows what his job is.

Shri Hem Barua: It must be left entirely to the charge of the Law Minister.

Shri C. R. Pattabhi Raman: I would plead again, as I did on a former occasion for the creation of an All India Bar. It has been put very well, by Macaulay. There have been four Law Commissions so far and from the earliest times the principle is simply this:

"Uniformity when you can have it, Diversity when you must have it but in all cases certainty."

I feel that they can have a definite legislation with regard to an All India Bar and an All India Bar Council.

Sir, I am glad that recommendations have been made with regard to having a judicial service similar to the Indian Administrative Service on an all-India basis. So far as the administration of Justice is concerned, from Cape Comorin to Kashmir, from Gujerat to West Bengal, there must be some uniformity. There must be an all-Indian outlook in the judges. There should be regular examination by a Commission similar to the Public Service Commission and the subordinate judges should be chosen by a Selection Committee with a judge of the High Court also on it. That is quite proper, Sir, and that will have a unifying effect. I would also like to stress that at least a portion of the judges of various High Courts should be transferred from one State to another. I know some States are not agreeable to this. It is very essential to have unbiased judges. What happens today is this. We are just carrying on with our old ideas, but we do not know what will happen in about ten or fifteen years. Fissiparous tendencies show their heads up and if there is no uniformity in quality and equipment it will spell tragedy.

Then, Sir, I have referred to the All-India Bar. I would like to plead that there must be a panel of junior lawyers in every State who will appear for the Union Government and the State Government in tax cases, railway cases, etc. I am handicapped to speak much on this because I appeared recently in a Railway case. So, I cannot give more details. But I wish to state this, Sir, that the lawyers are chosen by the Railways merely by patronage. If the Manager of the Railways likes a person he is chosen although that person may be sometimes poorly equipped. There are so many good and deserving juniors, well-equipped persons, in various States. You can have ten or twelve of them in a panel in each State. Let

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them appear in the tax cases, in the railway cases etc. They will acquit themselves very creditably. I hope this suggestion will meet with the approval of the Law Ministry.

With regard to stamps, Sir, it is a crying shame that we have *ad valorem* duty on stamps in some States. It is seven and a half per cent in Madras. What happens is this. Suppose there is a dispute in a case relating to over ten grounds of land in a city and the value is a lakh of rupees. You will have to pay something like seven or eight thousands of rupees for stamps alone. That is hardly proper. It prevents what are called border cases from being filed at all.

With regard to that aspect of the matter, the Law Commission, at page 494, say this:

"However, even if the view were taken that the cost of the administration of civil justice should fall on the civil litigant it is obviously unjust that he should be made to pay not only such cost but also the cost of the administration of justice as a whole including justice administered in the criminal Courts. Such a view is obviously unsustainable. That, however, as we shall point out later appears to be the view accepted in most of the States. Some States like Uttar Pradesh seem to go even further and add to the general revenues from the proceeds of the administration of justice."

We find, Sir, that this forms such a huge income in the case of the State Governments and they thrive on it. "To no one will we sell Justice"—is an axiom that is as old as the *Magna Carta*. They are clubbing administration of criminal justice along with the administration of civil justice. I am glad that the Law Commission have pointed this out.

13.24 hrs.

[Mr. DEPUTY-SPEAKER in the Chair]

So far as the Union Government is concerned, we have had the decision

[Shri C. R. Pattabhi Raman]

writ against Election Commission Vs. Saka Venkata Rao (A.I.R. 1953 S.C. 210). There, the Supreme Court has held that the jurisdiction under article 226 can be exercised only if the authority against whom the order or direction is sought to be obtained is located within the territorial jurisdiction of the High Court. I would like to amplify this. What happens is this. If a man from the State of Madras wants to file a writ against the Union Government, he has to come to Delhi and file it perhaps before a Division Bench of the Punjab High Court in Delhi. The Parlakimedi case analogy has been stretched. I hope suitable legislation will be introduced to see that the writ jurisdiction under Article 226 in these cases is extended to the State High Courts also.

Then, Sir, I would like to say something about the Benevolent Fund. The lawyer is an unfortunate person. He has to work very very hard. There is no provision of any kind to help him by way of pension. I am glad to say that there is a Benevolent Fund in Madras of nearly half a lakh of rupees and that five or six lawyers are helped with a few hundreds of rupees every month. I would like to say something about the position obtaining even in Moscow where the lawyer is not very important. I was there in November with the Lawyers' Delegation. What happens there is this. Out of the person's fee, twenty per cent is taken back by the Presidium or Collegium of various lawyers. That is preserved and that is given to them with a holiday at the expense of the Collegium. Now, I feel that something like that should be done for the lawyers in India.

With regard to legal aid, the Commission has something very definite to say. This appears in page 568. Seven clauses have been mentioned there. They recommend that:

"(1) Representation by a lawyer should be made available at Government expense to accused persons without means in all cases tried by a court of session;

(2) Representation by a lawyer should be made available at Government expense to applicants without means in proceedings under section 498 of the Criminal Procedure Code;

(3) Representation by a lawyer should be made available at Government expense to an accused person without means at the time of the final hearing of a jail appeal which has been admitted...."

and so on and so forth. Now, I need not take the time of the House detailing those clauses. I have no doubt that necessary legislation will be effected so far as that matter is concerned.

The lawyer has played a very great role not only in our freedom struggle but later on as a defender of Fundamental Rights. He is perhaps sometimes treading on corns and I know, Sir, sometimes he even becomes unpopular. He is not worth his salt if he refuses to accept a case; he must accept any case whenever he is approached. But, Sir, the moment any lowering of the status of the lawyer and the courts of law takes place, that moment democracy will collapse in India. Thank you, Sir.

Mr. Deputy-Speaker: The following are the selected out motions relating to the Demands under the Ministry of Law which will be treated as having been moved subject to their being otherwise admissible:—

Demand No.	No. of Out Motion
70	321, 322, 323, 361, 241, 312, 338, 400, 510, 511, 512, 513, 656.

71	657, 658, 659, 660.
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Codification and revision of Statute Laws, Civil and Criminal

Shri Warier (Trichur): I beg to move:

"That the demand under the head 'Ministry of Law' be reduced to Rs. 1."

Need to reform the judicial system

Shri Warler: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced to Re. 1."

Constitution of Central Agency for conducting cases before the Supreme Court

Shri Warler: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced to Re. 1."

Free legal aid to the poor in judicial processes

Shri Warler: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced to Re. 1."

Need to implement the recommendations of the Law Commission

Shri Supakar (Sambalpur): I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Working of the Law Commission and the inordinate delay in submitting its reports

Shri Kediyan (Quilon—Reserved—Sch. Castes): I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Need for appointment of full-time members for the Law Commission for expeditious working of statute revision

Shri Kediyan: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Failure to provide simple, cheap and speedy justice to the poor

Shri M. B. Thakore (Patna): I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Question of appointments to the judiciary

Shri P. E. Patel: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Failure to keep the judiciary free from executive influence

Shri P. E. Patel: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Need to minimise the cost of litigation before the Supreme Court

Shri P. E. Patel: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Need to appoint a permanent Commission to revise Acts and Rules

Shri P. E. Patel: I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Failure to provide a cheap, simple, and quick legal procedure for the people

Shri B. Das Gupta (Purulia): I beg to move:

"That the demand under the head Ministry of 'Law' be reduced by Rs. 100."

Need for speedy disposal of election cases by the Election Commission

Shri B. Das Gupta: I beg to move:

"That the demand under the head 'Elections' be reduced by Rs. 100."

Failure to prepare correct electoral rolls

Shri B. Das Gupta: I beg to move:

"That the demand under the head 'Elections' be reduced by Rs. 100."

Need to prepare electoral rolls in Bengali for the districts of Dhanbad, Singhbhum and Santhal Parganas

Shri B. Das Gupta: I beg to move:

"That the demand under the head 'Elections' be reduced by Rs. 100."

Failure to provide suitable arrangements for electors in polling booths during elections in rural areas

Shri B. Dasgupta: I beg to move:

"That the demand under the head 'Elections' be reduced by Rs. 100."

Mr. Deputy-Speaker: These cut motions are before the House.

Shri Khadilkar: I am given to understand that some hon. members who spoke after me have referred to my speech and said that I had made a reference that the judiciary should be subordinate to the executive. I never made that statement. What I said was that the judiciary in the context of our Constitution is subordinate to the final sovereign authority of this Parliament. That is all.

The Minister of Law (Shri A. K. Sen): That is true. That is what the hon. Member had said.

Shri Raghbir Sahai (Badaun): Mr. Deputy-Speaker, Sir, I take this opportunity for offering my congratulations to the eminent members of the Law Commission who have

produced a very admirable report. I consider that that report is well worth consideration by the hon. Members of this House.

Sir, the reading of that report discloses a number of disquieting features in the administration of justice in our country. There are no two opinions in this country that the independence of judiciary should be maintained and the respect in which it is held should also be maintained. But, as I just remarked, certain disquieting features in our administration of justice have been pointed out by the hon. Members of the Law Commission.

One of them is the falling of standards in our courts, and what is being talked about by every man in the street, by lawyers in every Bar room has now got the stamp of the authority of the Commission's opinion. The Commission has pointed out that the judges have become very accessible to the public and they can be entertained by any and everybody. I just listened to the remarks of my hon. friend, Shri Khadilkar, who said that everything should not be borrowed from England but at least good traditions and good points from British Administration of Justice should be borrowed by us. The Commission has pointed out:

"It appears to us that such behaviour by the judges must lead to a loss of high respect in which the judges should be held by the community. If the public is to give profound respect to the judges, the judges should by their conduct try and deserve it. It appears to us that not only in the performance of his duties but outside the court as well a judge has to maintain an aloofness amounting to almost self-imposed isolation."

I do not think that anybody who has had any connection with the profession of law and with these courts

would join issue with these remarks. There is a noticeable deterioration in the quality of the work done by some of our judges. Not only that judges have become so easily accessible to the public and people can talk to them anything they like, the quality of their work has deteriorated very much.

Sir, there are some deplorable trends that we ought to take notice of in our law courts and for which we should feel anxious. Even in lower courts where the rulings of some of the judges of the High Courts are being quoted and where formerly these rulings were regarded with very great esteem, I am sorry to say that in some cases even the Presiding Officers of lower courts just pass remarks that because a certain ruling is coming from a certain judge no notice need be taken of that. I do not think that under the present rules and regulations, under the present discipline such remarks can be tolerated. I am stating a fact that such remarks are being made, and that shows in what esteem the Presiding Officers of lower courts hold some of the judges of our High Courts.

Sir, recently a Bill for amending Criminal Procedure Code standing in my name was ordered to be circulated by this House for eliciting public opinion. Three volumes of opinions on that Bill have already been received, and one of them will be circulated within the next two or three days. When that Bill comes up we will go in detail about the various opinions that have been received, but, Sir, allow me to say that I have been astounded by some of the opinions that have been mentioned in those volumes given by some of the High Court judges. They have simply astounded me, and all that I can say at the present moment is that that shows confusion of thought, confusion on law and confusion on jurisprudence by those honourable persons.

Now, all these things lead to loss of faith in the system of justice—thank

God, the loss of faith has not been entirely taken place. But there are trends going in that direction, and if we do not take note of that, perhaps we might repent.

One of the causes of the deterioration in our administration of justice is, as has been pointed out by the Law Commission, the system of the appointment of judges. The Law Commission has pointed out that the appointment of these High Court judges should be entirely left to the Chief Justice of the particular High Court who should make that appointment in consultation with the Chief Justice of India. I entirely agree with that. The present provision laid down in article 217 of the Constitution says that the consultation with the Governor of a State is necessary which means that the Chief Minister should be consulted. That is certainly responsible for this deterioration, and I am one of those who agree with the recommendations of the Law Commission that article 217 of the Constitution should be suitably modified.

There is another factor that is responsible for the deterioration in the administration of justice and also for the diminution of the respect in which our judges are to be held. That is, they are allowed private practice after their retirement. This practice has been deprecated by the Law Commission. Even High Court judges after retirement are prone to take up practice, not in the particular High Court from which they have retired but in other High Courts. The District Judges who have retired after the age of 55 or 56 take up practice in their own districts, and they even visit the courts of honorary magistrates and benches thereof. All that diminishes the respect in which a judge ought to be held.

I entirely agree with the remarks that have been made by some of my hon. friends on the opposite side that a judge should not be given a further appointment ordinarily by the Government after his retirement. The

[Shri Raghuraj Sahai]

instance was quoted of Mr. Justice Chagla who has been recently appointed as our Ambassador. He is doing very admirable work as an ambassador. His qualifications are not in question. But the fact is that the particular judge, who sitting on the Law Commission has subscribed to this recommendation that a judge after retirement should not be given any further appointment, has accepted the appointment given by the Government. I hold Government responsible for this and also the particular person who has accepted that office. He should have guts enough, even though the offer was made by the Government, to refuse it in order to maintain the high traditions of the judiciary.

Sir, one point that I have missed in this admirable report is about the falling of standards in the case of lawyers. The members of the Commission have only offered one or two remarks about the fall in efficiency of the Bar, but they have not gone deeply into that problem. Sir, one the one hand we deprecate or deplore the fall in efficiency of the judges. We take objection to some of their appointments and the manner in which they are appointed. On the other hand, we should be equally anxious to see that there should be no fall in the standard of lawyers. There is tourism prevailing in almost every court. There is corruption prevailing almost everywhere in the precincts of the courts. There is nepotism going on. Fawning on officials has become a daily practice. All these points should have been noticed by the Law Commission, and they should have pointed out some remedy for them. The Law Commission has pointed out that there is overcrowding in courts and the talents that are coming to the Bar are not of the requisite type, and that the lawyers are eking out their existence. All that is true, but that is no justification for the fall in their standards.

With your permission, I can give one example which will illustrate this point. There was a judicial officer in my own district. He was not a permanent appointee. The entire Bar of that place had a grievance against him to the effect that he was taking illegal gratification. Although I am not a practising lawyer I keep company with lawyers. When I happened to go to that place, those lawyers pointed out to me complaints against this particular judicial officer and I said, "Well, I can espouse your cause, and take your grievance to the proper authorities". Alongwith those people, I saw the District Magistrate. I wrote a representation to the Chief Minister, and it so happened that within a very few days, as the officer was not a permanent appointee, his services were dispensed with. That man was all along staying at that very particular place. The next day, after the orders had been received, that particular judicial officer called on me. He saw me and told me that he has been rightly served with punishment for his faults, but asked me what punishment was going to be meted out to those lawyer friends of mine who were privy in securing illegal gratification for him. I had no reply. This is a very deplorable and a very pitiable aspect. I am sorry that the Law Commission has not said one word about it. If we are anxious and if we are jealous that the standard of judiciary should be high, we are equally anxious that the standard of the Bar should be high.

In this connection, I would also point out that it is an accepted maxim that justice should be free, justice should be cheap and justice should be swift. But here in India things are just the reverse. The honourable members of the Law Commission have deprecated this practice of selling justice at a price, and they have said that the court-fees that we charge are extortionate. They say:

".....the fee that we charge is so excessive that the civil litigant seeking to enforce his legal rights pays not only the entire cost of administration of civil justice but also the cost incurred by the State in prosecuting and punishing criminals for crimes with which the civil litigant has no concern".

This is a very serious state of affairs that we should look into. They have quoted the remarks of a former Chief Justice of the Madras High Court who has said that "he was amazed at the high court-fees charged in India" Such high court-fees are not charged in England. We have not copied that. We have copied many other things from England but we have not copied this reduction of court-fees from there.

These are some of the important points that I wanted to bring to light at the present moment. I feel that the report is of a very important character, and considerable time should be permitted for its threadbare discussion. That opportunity may be given either during this session or some time after. But this report is well worth consideration.

। पंडित ठाकुर दास भार्गव (हिसार)
जगज्योति लीकर साहब

Mr. Deputy-Speaker: The hon Member may sit and speak.

पंडित ठाकुर दास भार्गव भाषकी बहुत नेहुरानी । भाषकी एडवाइस के मुताबिक और साधियों की एडवाइस के मुताबिक मैं अब हाउस में बहुत कम बोलता हूँ और भाज भी बिरा बोलने का इरादा नहीं बा . . .

उपज्योति लीकर : [हमारी एडवाइस तो यही थी ।

जी सचराज सिंह (फिरोजाबाद) :
सब की इच्छा यही है कि भाज भी भाष
ज्यादा न बोलें ।

पंडित ठाकुर दास भार्गव : मैं इतना ज्यादा नहीं बोलूंगा जिस से कि उस एडवाइस की अवहेलना हो ।

जिस तरह से ला मिनिसट्री की डिमांड्स पर पहा पर बहस हो रही है उसे देखकर मुझे हैरानी होती है । ला मिनिसट्री का काम आज तक इस देश में इतना अधिक घोर इतना बढ़ा नहीं रहा है जिसके ऊपर कि क्रिटिसिज्म किया जा सके । ला कमिशन की रिपोर्ट हमारे सामने आई है और उसके अन्दर बहुत सी ऐसी बातें लिखी हुई हैं जिन को पढ़ कर के हमें शर्म आती है । लेकिन इस में ला मिनिसटर साहब का या ला मिनिसट्री का क्या कसूर है । ला मिनिसट्री का तो यह काम नहीं है कि कहीं पर बह एग्जाइटेमेंट घाफ हाई कोर्ट जस्टिस में हिस्ता ले, ला मिनिसटर साहब का काम नहीं है कि जस्टिस के ऊपर ऐसे बोलें जैसे कि सुप्रीम कोर्ट के जजिस बोलते हैं या हाई कोर्ट के जजिस बोलते हैं । उसका काम उस तरह का भी नहीं है जिस तरह का कि दूसरी मिनिसट्रीस का है । उसका काम सिवाय एक दो चीजों के बहुत छोटा सा है और उसका बिज इस रिपोर्ट में किया गया है और कहा गया है —

"The main functions of the Ministry of Law are to advise other Ministries and Departments of Government on legal matters including conveyancing and litigation, to draft Central Bills, Ordinances and Regulations and follow them up in their various stages up to their enactment or promulgation, to draft Bills and Ordinances for States, whenever necessary, to scrutinize statutory rules and orders from the legal and drafting points of view and to make arrangements for the publication of Central enactments as and when necessary in a convenient form."

इसके अलावा उसका बोझ सा कम ला कमिशन के सम्बन्ध में और साथ ही साथ

[संक्षिप्त आक्षेप प्राप्त मार्ग]

इनका टैक्स एप्लिकेट डिफरेंसियल के अन्वय में है। इन कुछ एक कार्यों के असावा वा मिनिस्ट्री का कोई और ऐसा काम नहीं है जिसकी जिम्मेदारी उसके ऊपर बोयी जा सके वा जिन के लिये उसको आयुक्त करार दिया जा सके।

मेरे दोस्तों ने कहा है कि वा मिनिस्ट्री का काम ज्यादा बढ़ा किया जावा चाहिये और वा मिनिस्ट्री को असाधारण दिया जाना चाहिये कि सारे साध के मुतात्मिक वह अपनी रायकनी कर सके। ऐसे वा बनाने की इजाजत नहीं होनी चाहिये जिनको कि वा मिनिस्ट्री पास न करे और चन्व उच्चकों के मुतात्मिक उन साध को यहां पर देवा ही नहीं किया जावा चाहिये। मैं समझता हू कि ऐसा रोल प्राज वा मिनिस्ट्री का नहीं है और न ही उस रोल को भया करने के वह काबिल है क्योंकि ये सब उसकी जुरिसडिक्शन में नहीं आते हैं। प्राज मे सब चीजें उसकी जुरिसडिक्शन में होती तो मैं समझता हू कि बहुत से कानून जो इस हाउस के अन्दर आते हैं और जो कि उन उच्चकों के खिलाफ होते हैं जिन उच्चकों को कि हमने अपनी कांस्टीट्यूशन में रखा है, वे कभी भी न आते और उनको पेश करने की वा उनको पास करने की वा मिनिस्ट्र साहब इजाजत न देते। मैं इस बात में शामिल होना चाहता हू कि हमारी सुझकिस्मती है कि हमारे वा मिनिस्ट्र साहब नौजवान और कानूनवा हैं और अन्दर उनकी नजरों से वे कानून गुजरते— जैसे कि गुजरने चाहिये वे—और उनके अन्दर उनका दखल होता और वह वह कहते कि वह कांस्टीट्यूशन के खिलाफ है वा कानून के खिलाफ है तो वे कानून इस हाउस के अन्दर आने नहीं चाहिये वे मुझे डर है कि अभी तक उनके इस फंक्शन को न दूसरी मिनिस्ट्री मालती है और न ही वह खुद ही मालते हैं। अन्दर वह बीच प्राज हो जाने तो मुझे ज्यादा खुश कोई नहीं होगा क्योंकि मैं चाहता हू कि वा मिनिस्ट्री और वा मिनिस्ट्र साहब

इस देश के उच्च तरह से पासवान होने चाहिये वित्त तरह से कि सुप्रीम कोर्ट एडि-मेंटस राइटस की पासवान है। इसी तरह से डायरेक्टिव प्रिंसिपलस की और सुप्रीमी पीठों की पासवान वा मिनिस्ट्री और वा मिनिस्ट्र साहब होने चाहिये और कोई भी कानून इस हाउस में ऐसा नहीं आना चाहिये—साथ ही साथ इस देश के अन्दर भी— जो कि कांस्टीट्यूशन के मुतात्मिक न हो। लेकिन हम हर रोज देखते हैं कि कांस्टीट्यूशन के खिलाफ जो कानून होते हैं वे भी यहां आते हैं, उसमें वा मिनिस्ट्र साहब का कोई दखल नहीं है, उनको दूसरे मिनिस्ट्र खुद ही लाते हैं और बही झगडा करते हैं। हम तो वा मिनिस्ट्र साहब की वा डिप्टी वा मिनिस्ट्र साहब की शक्स यहां चन्व मौको पर ही देखते हैं और वह भी उन मौकों पर जब कोई कानूनी मुद्दा पेश होता है। इस बास्ते मैं चाहता हू कि वा मिनिस्ट्री का काम जतना ही नहीं रहना चाहिये जितना कि प्राज है और उससे बहुत ज्यादा होना चाहिये।

वा कमिशन की रिपोर्ट का भी यहां जिक्र किया गया है। उसकी बाबत मैं यह कहना चाहता हू कि मुझे अफसोस है कि इस रिपोर्ट को पढ़ कर जितना डिक्लैरेट इस हाउस में जाहिर किया गया है; उससे कहीं ज्यादा इस देश के अन्दर हुआ है। मुझे कहना यह चाहिये कि अन्दर कोई मुझसे पूछे कि इस देश के अन्दर क्यों नेपाटिज्म है, क्यों इस देश के अन्दर कम्युनलिज्म है, क्यों इस देश के अन्दर कराबिबा है, क्यों करप्शन है, तो इस रिपोर्ट को पढ़ने के बाद मुझे कहने में जरा की ताम्मुन नहीं होगा कि :

“गर कुछ प्राज कावा अर जेअर, मुजा अबद मुसलमानी”

सुप्रीम कोर्ट और हाई कोर्टस कलेज के अन्वयमेंट में कम्युनलिज्म, पोपुलिज्म इन्फ्लुएंस और टैकनलिज्म बाकिम होवे

हुने में पूछना चाहता हूँ कि किसने भी मिनिस्टर्स और चीफ मिनिस्टर्स स्टेट्स के हैं वह क्यों न बनवाना कम्प्यूलिज्म करें, क्यों न वह सारे काम ऐसे करें जो उस नमूने के मुताबिक हों जिसमें इस वक्त हिन्दुस्तान पर्य है? नीता में कहा है :

“यथाचारति श्रेष्ठस्तत्तदेवोतरा जनः ।

स यत्रनाथं कुर्वते लोकस्तदनुवर्तते ॥

14 Jan.

सुप्रीम कोर्ट और हाई कोर्ट्स के जजेज किस तरह मुकर्रर किये गये हैं यह मैं इस किताब में से पढ़ कर सुनजंभा बिसे कि सा कमिश्नर ने लिखा है । वे जजेज मुकर्रर तो प्रेजिडेंट के नाम से होते हैं लेकिन मुकर्रर करने वाले फसल में कैबिनेट के मिनिस्टर साहबान होंगे, जो कि हमारे प्रेजिडेंट साहब को एडवाइस करते हैं । अगर यह दुस्त है तो मैं पूछना चाहता हूँ कि किसने कम्प्यूलिज्म किया है ? किसने पोलिटिकल इम्प्लूएंस को राखिल किया ? आज हाई कोर्ट के और सुप्रीम कोर्ट के जजेज क्यों इंसफ नहीं कर सकते ? क्योंकि वह पार्लिटिकल के मीबर हैं, क्योंकि उनके अप्वाइंटमेंट में कम्प्यूलिज्म को राखिल किया गया । मुझे याद है सन् १९४७ में जिस वक्त पार्लिसन हुआ उसके पहले क्या हालत थी । जब पुराने पंचाय के हाई कोर्ट में जजेज फसला करते थे तो यह होता था कि अगर मुसलिम मुसलमान है और जज भी मुसलमान है तो मुसलिम बरी हो जाता था, अगर मुसलिम हिन्दू है और जज भी हिन्दू है तो भी मुसलिम बरी हो जाता था । यह हालत आज नहीं उस वक्त भी जब कि यहाँ पर ब्रिटिश गवर्नमेंट थी । क्योंकि किसने भी अप्वाइंटमेंट्स होते थे वह कम्प्यूलर बेसिस पर होते थे । पुराने जमाने में एक बड़े चीफ जस्टिस साहब हिन्दार तथरीफ में गये क्योंकि वह अर्बनियों और मुहर्रियों की बी कपये की रिक्कत बन्द करना चाहते थे । बार ऐलोकिएशन में सीटिंग हुई । उस सीटिंग

में लेफ्टर देने के बाद उन्होंने कहा कोई बकील अगर कुछ कहना चाहे तो कह सकता है । मैं उस वक्त अलेम्बनी का मेम्बर रह चुका था और मुझे मुहर्रत भी कि जो फसल बात हो उसे कहूँ । मैंने पूछा कि आप अर्बनियों और मुहर्रियों की बी कपये की रिक्कत बन्द करने या रहे हैं, लेकिन कुछ और सुनने की हिम्मत है ? उन्होंने कहा कि मैं जो कुछ कहूँगा वे सुनेंगे । मैंने कहा कि सुनिये । आप के सुपरिन्टेण्डेंट पुलिस रिक्कत लेते हैं, वह मंत्रेय हैं, उन को पकड़िये । मैंने डिप्टी कमिश्नर के लिये कहा कि वह रिक्कत जेते हैं । एक-एक घाने से २१, २१ हजार कपया बंवा हुआ है । क्या आप यह सब सुनने के लिये तैयार हैं ? उन्होंने जवान धवा सी और कुछ नहीं बोले । मैंने कहा कि एक और बात कहनी है । आप का सारा सिस्टम ५६ परसेन्ट सिविल पोस्ट्स मुसलमानों को देता है, इतनी सिबों को देता है, इतनी हिन्दूओं को देता है, तब क्या आप उम्मीद करते हैं कि सारे क सारे लोम कम्प्यूलर नहीं बनेंगे ? यह इस का कुछ जवाब नहीं दे सें । घाम को वह मुझे एक जवाफत में मिले और कहा कि तुम ने मुझ से बड़े-बड़े सवाल किये । मैं ने कहा कि सवाल तो बड़े किये पर उनका जवाब मुझे नहीं मिला । उन्होंने कहा कि जवाब कुछ नहीं है । जवाब यह है कि हिन्दुस्तान का जो पुराना सिस्टम था वह बड़ा धाला था, जिस में जो हावेस्ट घाववी होता था वह इूनिया से बिरकत होता था, किसी को रियायत मंनूर नहीं करता था । लेकिन बूकि हम जजेज इस तरह से बनाते हैं तो फिर उस का मतीबा यही निकलेगा । जिस वक्त हमारा कांस्टिट्यूशन बन रहा था उस वक्त मैंने अर्ज किया था—उस वक्त कांस्टिट्यूशन के मुताबिक सुप्रीम कोर्ट में सात जजेज थे, सत्ताधरि की तरह से होंगे, अथवाघाल टेम्प्टेशनस, अथवाघाल इम्प्लुएन्स होंगे । जो कि परसाह

[पंक्ति ठाकुर दास भार्गव]

नहीं करेंगे एग्जिक्यूटिव की धीर पूरी तरह से इन्साफ करने। सुप्रीम कोर्ट के जजेज बनाते वकत एक्स्ट्रेनिक्स कंसिडरेशन रखे जाते हैं। जिस वकत यहाँ पर सुप्रीम कोर्ट धीर हाई कोर्ट्स के जजेज की कंसिडरेशन थाफ सर्विसऐड पेन्शन का बिल धाया उस वकत मैं ने कहा था कि मुझे माज़ूम है कि सुप्रीम कोर्ट में किस तरह से जज बनाये जाते हैं। वे धीर किसी भी कंसिडरेशन के अग्वारंट होते हैं लेकिन कम से कम मेरिट्स पर नहीं धाते हैं। मैंने जो कहा था वह अपनी प्राइवेट नालेज की बिना पर कहा था। मैं कम से कम पंजाब हाई कोर्ट के जजेज के बारे में जानता हूँ। अभी चन्द अग्वारंट्स हुये। मैं हाई कोर्ट के सीनो के पास गया, बार में गया, जजेज से मिला, बार एसोसिएशन के मेम्बरस से मिला। मैं उन साहबान से बाकिब नहीं था जो जब मुकर्रर किये गये। एक साहब ने कहा कि एक शकस जो टाउटिज्ज का सब से बड़ा एक्स्पोनेन्ट है, वह हाई कोर्ट का जज बनाया गया है। एक धीर शकस को हर तरह के इन्फ्लुएंस को मानता है, जिस की प्रैक्टिस ऐट दि बार कुछ नहीं थी, वह अग्वारंट किया गया। मैं सुन कर धर्म के मारे गड़ गया। यहा जब बिल धाया तो मैंने धर्म किया, होम मिनिस्टर साहब के सामने धर्म किया कि ऐसी धिकायतें ह्यारे सामने धाई हैं धीर वह दूबस्त हैं। इसी वास्ते कि० ऐन्वनी ने चन्द जजेज के बारे में जो कुछ कहा उस को सुन कर मुझे बड़ा रंज हुआ। की धिकायत थी उस की ताईद ह्यारे ला कमिशन थाफ इंडिया ने जो किताब लिखी है उस से पूरी की पूरी होती है। जिन अलफ़ाज में उन्होंने कंठेन्वोशन किया वह हायेस्ट कंठेन्वोशन थाफ दि गवर्नमेंट है। इससे ज्वाबा कोई कंठेन्वोशन नहीं हो सकता। इस देश से कम्यूनलिज्ज कमी नहीं हट सकता जब तक सुप्रीम कोर्ट धीर

हाई कोर्ट के जजेज के अग्वारंटमेंट में, जैसा कि ला कमिशन ने कहा है, इन्फ्लुएंस काय करता है।

धमी एक साधी ने पूछा कि एक मजिस्ट्रेट को हटाया गया। धीर जो वकील मैजिस्ट्रेट को रिरक्त हिलवाते थे उन को हटाया गया था नहीं। मैं पूछना चाहता हूँ कि उन होम मिनिस्टरस को या धीर जो मिनिस्टरस थे जिन्होंने सिफ़रिषों धा कर की धीर उन धीर मिनिस्टरस को जिन्होंने जजेज को मुकर्रर कराया, उन को कोई सजा बी जायगी? उन के साथ कोई इस तरह का बर्ताव किया जायगा कि क्यों उन्होंने इस देश के अन्दर इस धोस धाक जस्टिस को नंदा कर दिया, जिस की बजह से सारे देश के अन्दर सिधा गन्दगी धाप के दुसरी धीर चलेगी नहीं? क्यों एक छोटे धावनी को पकड़ते हैं, क्यों एक मुसिक को पकड़ते हैं जो किसी के साथ रियायत करता है, क्यों एक छोटे से जज को पकड़ते हैं जब कि सारे देश का ह्याम यह है? मैं इस किताब को पढ़ना चाहता हूँ। सफ़ा ६१ पर जो लिखा है उस को पढ़ कर हर एक वैडिगट को सिधा रोने के कुछ दिबाई नहीं देता। सफ़ा ६१ पर जो कुछ लिखा हुआ है वह किन अलफ़ाज में लिखा जायगा? मोल्डेन अलफ़ाज में नहीं वह डार्क नेटर्स में लिखने के काबिल है। यही नहीं वह ३० करोड़ वरीय हिन्दूस्तानियों के खून से लिखे जाने के काबिल है जिन की किस्मत पर यह कैबिनेट बैठी है। उस में लिखा हुआ है कि ह्यारे प्रेजिडेंट के नाम पर किताब अग्वारंट किया गया है। इसमें लिखा हुआ है :

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

expediency or regional or communal sentiments. Some of the members of the Bar appointed to the Bench did not occupy the front rank in the profession, either in the matter of legal equipment or of the volume of their practice at the Bar. A number of more capable and deserving persons appear to have been ignored for reasons that can stem only from political or communal or similar grounds. Equally forceful or even more unfavourable comments have been made in respect of persons selected from the services. We are convinced that the views expressed to us show a well-founded and acute public dissatisfaction at these appointments. The observations made by Chief Justice Kania referred to by us elsewhere that merit alone should be the basis for selection to the High Court judiciary seems to have been completely overlooked."

इस के अलावा और ज्यादा बक्त में कोर्टवर्क को बढ़ कर हाउस में नहीं लेना चाहता लेकिन एक बात जनता की विदमत्त में बढ़ कर सुनाया चाहता हूँ :

"A Judge of a High Court has said:

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

इसके अन्वय बहुत सी और बातें भी लिखी हुई हैं जो कि इससे भी अत्यन्त सत्य हैं। एक चीफ जस्टिस प्राफ इन्डिया का कोर्टवर्क है जिस को बढ़ कर नामुब होता है कि यजब

हो गया। चिक एक्विपमेंट के अन्वय नहीं, जूडिशियरी के अन्वय भी जो इन्डियन किया गया है। चीफ जस्टिस प्राफ इन्डिया कोर्ट्स का वह भी इतना सत्य है कि उसे बढ़ कर घर्म घाती है। वह कहते हैं कि इस सिस्टम की बजह से जो अप्पॉइन्टमेंट की रिक्मेन्डेशन है वह पहले निकलती है चीफ जस्टिस प्राफ इन्डिया कोर्ट से, फिर जाती है चीफ मिनिस्टर और स्टेट के गवर्नर के पास, फिर चीफ मिनिस्टर कई दफा अपने प्राप डाइरेक्ट होम मिनिस्टर के पास रिक्मेन्डेशन भेजता है। हाई कोर्ट को पता भी नहीं लगता कि किस की रिक्मेन्डेशन है और वह प्रादमी मुकर्र हो जाता है। इस की बजह से कई चीफ जस्टिस बहुत सोच विचार करके रिक्मेन्डेशन करते हैं कि कहीं ऐसा न हो कि कोई ऐसा जज उस के सिर पर घोष दिया जाय जो उस की मंशा के मुताबिक न हो और हान कराव हो जाय। इस तरह से चीफ जस्टिस अपनी राय वह बनाते हैं जो कि चीफ मिनिस्टर की है। इसके माने सीधे यह है कि इन हाईकोर्ट्स और सुप्रीम कोर्ट को बंद करो और यहाँ पर डिप्टेड्स क्लस और प्राविटेरी क्लस होना चाहिये अन्वय हमारे जजों की यही क्वालिटी है। मुझे यह कहते हुये घर्म घाती है। मैंने ५० वर्ष से ज्यादा इन प्रदासतों में प्रैक्टिस की है और मैंने दो तीन वर्ष से पहले यह कभी नहीं सुना था कि हाईकोर्ट्स के जजों के पास सिफारिशें पड़ती हैं और एम्प्लुएमेंट बर्क करते हैं। लेकिन मुझे अब इस बात का यकीन हो गया है कि हाई कोर्ट्स में इतना बिटीरियेशन हो गया है कि लोग वहाँ पर जाकर सिफारिश वगैरह करने की जुरत करने लगे हैं। अब यह तो कहना मुश्किल है कि उन सिफारिशों का अन्वय कितना होता है लेकिन अब चूक यह चीजें चलने लगी हैं और लोगों को पता है तो वे यह कहे वगैर नहीं रह सकते कि उन चीजों का अन्वय भी होता है।

[पंजाब सरकार का स बजट]

एग्जीक्यूटिव और चीफ मिनिस्टर की जो हासल है वह मैं आपके सामने भर्ष नहीं करना चाहता। मैं अपने हार्डकोर्ट्स की बुराई नहीं करना चाहता लेकिन यह मेरे इल्म में थाया है और मुझे मालूम हुआ है कि किस तरह चीफ मिनिस्टर का बिग मुकदमों से बास्ता हो उसकी सुनवाई की तारीख बढ़ा दी जाती है। ताकि कलाने जब के सामने उनकी एग्जीक्यूशन सुनी जा सके। कहने का मतलब यह है कि इतना डिटोरियेशन हमारे अन्दर आ गया है। इस देश के अन्दर जो स्टैन्डर्ड सिटिस बस्टिस का या भाव यह कायम नहीं है वह मुझे बहुत अकसोस के साथ कहना पड़ता है। भाव अवर हार्डकोर्ट्स और सुप्रीम कोर्ट पर से लोगों का कॉन्फिडेंस जाता रहा तो इस देश की सीलिवरी के अन्दर एक स्त्रीय पैदा हो जायेगी, एक दरार पड़ जायेगी। धायन्दा के बास्ते जो भी कोई यहां पर होम मिनिस्टर हों, जो भी कोई यहां पर प्राइम मिनिस्टर हों, या प्रेसीडेंट साहब हों, मैं बहुत अक्ब के साथ भर्ष करना कि ऐसी सिकायत फिर हाउस के अन्दर कभी नहीं आनी चाहिये। धायन्दा कभी किसी या कमिशन को यह कहने का मौका नहीं होना चाहिये कि वह यह कह सके कि सिबाय मेरिट के और कोई चीज कंसिडरेशन में आई। मेरिट कंसिडरेशन पर ही कोई सफ्त हार्ड कोर्ट्स या सुप्रीम कोर्ट का जब मुकदर किया जाये। मैंने अनाब की सपञ्चह इस तरह दिनाई। हो सकता है कि मैंने अपने फुस्टेशन में सायब कुछ अकरत से ज्यादा सफ्त सपञ्च इस्तेमाल किये हों। मैं महसूस करता हूं कि मेरे पास और सफ्त अल्काब नहीं है बिनाकी कि मैं इस चीज को कंडेम और डिफिक्ट करने के बास्ते इस्तेमाल कर सकूं कि इन एग्जाम्प्लेंट्स में सिबाय मेरिट के कोई और कंसिडरेशन इंटर करता है। अब बिच तरह के कि

नजकतक नाके की संघी के बिली के सिधे पीने वाला पानी मन्दा और अम्लीय ही क्या और उसको पी कर लोगों में बीमारियां फैलीं उसी तरह हमारी बुडिसिएरी में से बचि नेपोटिज्म, कम्युनलिज्म और प्रेबरेटिज्म की मन्धी नहीं जायेगी तो हमारे देश के लोगों का सिस्वास बुडिसिएरी से उठ जायेगा और यह देश के बास्ते और डेमोक्रेसी के बास्ते बढ़ा बाराब होना। अब मैं देखता हूं कि हमारी कैबिनेट और सारे बोब सुबह से शाम तक सिबाय मिपोटिज्म और करप्शन को कंडेम करने अलावा कोई दूसरा काम नहीं करते तो यही कहना पड़ेगा कि "कीबलर मेंड टाई सब"।

इसके अलावा अनाब मुलाहिजा क्रमाई कि हमारे कांस्टीट्यूशन के ५० वें सैक्शन में लिखा हुआ है कि प्रेसिडिरी के और एग्जीक्यूटिव के कंसंस अमहिदा होंगे, सीप्रेट होंगे लेकिन मैं देखता हूं कि जिस बक्त यहां पर कानून बनाते आते हैं उस बक्त वह चीज नहीं देखी जाती। मैं धानरेबुन ला मिनिस्टर की सिबमत में भर्ष करना... मुझे अकसोस है कि वह ऐम मीके पर उठ कर जा रहे हैं, और जो मैं भर्ष करने अला हूं उसको उनके डिप्टी साहब नोट कर लेंगे।

(बिचि मंत्री सवन् के बाहर न जा कर अपनी जगह पर बैठे रहे)

भाप हिन्दुस्तान के एमिनेंट लार्जर्स में से हैं और हमें सबको इस बात का अज्ज है कि हम में के एक ला मेम्बर है और हम धायसे यह उम्मीद करते हैं और हम यह चाहते हैं कि कोई भी बिग इस हाउस के अन्दर न आये और उसके अन्दर ऐसी चीज न आनी चाहिये जिससे सीप्रेसन याक बुडिसिएरी और एग्जीक्यूटिव न हो के अज्ज पर अक्ब हो।

इस हाउस के अन्दर कितने ही वर्षों से मैं यह झगड़ता बना आया हूँ कि यहाँ तक एन्जिनियरिंग का का सवाल है यहाँ पर यह जो एपेलेट कमिशन बनता है, उसके ट्रान्साफर में, उनके एनॉयन्समेंट में और उनकी सरकारी में भाग हमारी एन्जिनियरिंग को कलम न हो। पहिले छोटा सा रिफार्म है। मैं इस बरस से झगड़ता बना आया हूँ जी सी० जी० वेल्मुन्न से, एक बिल की कमेटी के नीचे पर, बिल का मैं बेधरमीन था, मैं ने झगड़ा किया। उन्होंने इस को देखा लेकिन पार्लियमेंट में यह इस को न कर सके। मैं हर मौके पर बिलने बिल आपके भावे हैं, हमेशा झगड़ा करता रहा हूँ कि यह मामूनासिब है कि जो सक्ल अतीर जब फैसला करे वह एन्जिनियरिंग के नीचे हो। लेकिन यह जरा सा रिफार्म आप नहीं कर सकते। इनकम टैक्स ट्राइब्यूनल के अन्दर आप का खास अरखवार है, इस किताब में लिखा है कि आप उस के खास इन्चार्ज हैं। मैं एक चीज नहीं कई चीज बता सकता हूँ जिस के लिये इस हाउस के अन्दर झगड़ा हुआ, दरअसल मैं आप से यह परसनल तौर से नहीं कह रहा हूँ। सा मिनिस्टर के बोहदे का जूरिजिडक्शन होना चाहिये। जो जी बिल आप की कलम से निकला, उसके अन्दर हमारे कान्स्टिट्यूशन में जो उसूल दिये हुये हैं उन के बलिसाफ इस हाउस के अन्दर कुछ नहीं माने पावे। अगर आप ऐसा करेंगे तो मुझे उम्मीद है कि इस देश के अन्दर कान्स्टिट्यूशन की भी इज्जत होगी और देश के अन्दर इन्साफ अब दः बड़ेगा।

जनाब के स्वरूप जायदाद के बारे में बहुत कुछ कहा गया। जायदाद के बारे में कोर्ट्स ही फैसले कर सकते हैं और कोर्ट्स को ही फैसले ठीक देने चाहिये और उन के अन्दर इतना शर्ष भी होता है। मैं पूछना चाहता हूँ कि पार्लियमेंट इस जायदाद का हिन्दुस्तान में क्या बनेगा? सुबह से शाम

तक पिछले बस बरसों से किसी जायदादी की शर्ष के इन्क के मुतालिक कोई सर्टेन्टी नहीं रही है कि कब तक वह जमीन उस के पास रहेगी या कब खाल होगी। सारी जायदादों जो हिन्दुस्तान के अन्दर है, सारी की सारी शर्ष अक्सर्टेन्टी की शर्ष में पड़ी हुई हैं। पंचायत के लक्ष रिफार्म के मुतालिक मैं बीकेम्ब करता हूँ कि यहाँ छोटा हुआ कोई मिनिस्टर या कोई जब मुझ को बतला दे कि आप सा की क्या हालत है। कोई भी नहीं जानता, न मिनिस्टर जानते हैं, न डिस्ट्रिक्ट मैजिस्ट्रेट जानते हैं और न वकील जानते हैं कि सा की क्या हालत है और कितने बीघा जमीन एक जायदादी रख सकता है और कितन हासाल में रख सकता है। कौन सा सा बैलिट है और कौन सा सा शीलिट नहीं है। जमीन की तकसीम, हमारे ग्राइम मिनिस्टर साहब कहते हैं नीगल और शारल है। मैं कहता हूँ कि यह गलत है और उसे गलत समझा जाना चाहिये। क्योंकि जब सब चीज अक्सर्टेन्टी में है तो कोर्ट्स क्या करेंगे? कोर्ट्स को कोई अरखवार नहीं है। कोर्ट्स को एन्जिनियरिंग ने अपने नीचे दबा रक्खा है। सारे रेवेन्यू कोर्ट्स में सा की रेन नहीं है। नये-नये कोर्ट्स बना दिये जाते हैं ताकि वे अक्सप-असल फैसला करें और इस तरह के पार्लियमेंटी कोर्ट्स के बिलने इन्क है वे सलब किये जाते हैं। मुझे अक्सोस से कहना पड़ता है कि यहाँ हम ऐसी अक्सर्टेन्टी में पड़े हुये हैं जिस का ठिकाना नहीं है। प्रापर्टी का कानून सर्टेन नहीं है।

यहाँ पर मैं क्रिमिसल सा का बिक करूँ तो जनाबवाला हैरान हो जायेंगे। अभी तक किरोनपुर के अन्दर वह बाल गम्बर १ मौजूद है जिस में ऐक्जुड की पिटाई की जाती थी और यह चीज हर एक शेखन जब, डिस्ट्रिक्ट मैजिस्ट्रेट और हाई कोर्ट सब जानते हैं। बर्ड रेट मेबइस आज भी मौजूद है। यह झलत है हालांकि ऐसा सा नहीं है। मैंने सा कमिशन की

का जितना कि प्रायः सुप्रीमकोर्ट और हाईकोर्ट्स में होता है। इस बाबूदे में धर्म कर्मका कि जहां तक इन चीजों का संबंध है मैं धर्म करना चाहता हूं कि यहां पर जिक्र सामा कि कानून का तरीका गंभीरा है वा सस्ता है। क्या मैं जनाब की तबज्जह कांस्टिट्यूशन की बका १३४ की तरफ दिसा सकता हूं और हाईकोर्ट्स के सब स्लस की तरफ दिसा सकता हूं वा जितने पब्लिशड डिसीजन्स हैं उन की तरफ दिसा सकता हूं कि अगर लिटिगेशन की जितनी प्रापटी है उस की कीमत ५०० ६० वा पांच हजार में ज्यादा होती है तो वह हाईकोर्ट और सुप्रीमकोर्ट में कमेन्स आफ फीसट बन जाना है। सिविलकोर्ट के अन्दर दूसरे अपील में अदालत दरअस्ल फीसट की अदालत नहीं रहती है। कोई ऐसा मुकदमा जिस की मालिमत २० हजार ६० वा उससे ऊपर की हो तो उसे सुप्रीमकोर्ट में ले जाये जाने का हक है अगर कानून का सवाल हो बरना अपील सुप्रीमकोर्ट में जा ही नहीं सकती।

मैं अदब से धर्म करना चाहता हूं कि एक आदमी को हाईकोर्ट से और सुप्रीमकोर्ट से इन्साफ तभी मिल सकता है जबकि उसकी इतनी प्रापटी इनबाल्ड हो। इसके मानी तो यह होंगे कि जिसकी बोड़ी प्रापटी है उसको सुप्रीमकोर्ट और हाईकोर्ट से इन्साफ मिल ही नहीं सकता। जिसका मामला छोटा है वह उसको हाईकोर्ट और सुप्रीमकोर्ट तक ले ही नहीं जा सकता। इसके अलावा वहां का सर्वा इतना है कि किसी की हिम्मत नहीं कि हाईकोर्ट तक पहुंचे। हमने अपने कांस्टिट्यूशन की बका १४ में यह लिखा है कि सब को इन्साल प्राप्रीबुमिटी होगी। लेकिन जिस आदमी का बोड़ी आकदार का मामला है, उसकी तो वहां तक पहुंच हो ही नहीं सकती। यह बहुत मायावक चीज है।

इसी तरह से मैं एक लम्बे क्रियनस लक के बारे में धर्म करना चाहता हूं। कितने ही

ऐसे केसेज हुए हैं, हालांकि वे रेकर हैं, जिनमें कि एक बेगुनाह आदमी को फांसी का हुकम होता है। ऐसे केसेज में वह मुकदमा बतौर हक के सुप्रीमकोर्ट नहीं जा सकता। फांसी का सिर्फ वही मुकदमा बतौर अपील के हक के सुप्रीमकोर्ट जा सकता है जिसमें हाईकोर्ट ने कालेपानी की सजा को फांसी की सजा में बदल दिया हो। ऐसे केसेज के सिवा और दूसरे फांसी के केस बतौर हक के सुप्रीमकोर्ट नहीं जा सकते। यह ठीक नहीं है। मैं धर्म करना चाहता हूं कि इन्मानी कमजोरी के लिहाज से ऐसे सारे केस जिनमें फांसी की सजा दी गयी हो बतौर हक के सुप्रीमकोर्ट तक जाने चाहिये। मैं जानता हूं कि इसका असर यह होगा कि सुप्रीमकोर्ट फ्लेड हो जायेगी क्योंकि ऐसे केसेज की तादाद ज्यादा होती है। लेकिन मैं धर्म करना चाहता हूं कि मेरे इल्म में ऐसे केसेज हैं कि जिनमें बेगुनाह आदमी को फांसी की सजा हो गयी और वह सुप्रीमकोर्ट में इन्साफ हासिल नहीं कर सका क्योंकि वह बतौर हक के सुप्रीमकोर्ट तक नहीं जा सकता था। एक केस नहीं कितने ही ऐसे केसेज मेरे इल्म में हैं। जहां तक इंसानी ताकत का ताल्लुक है डैय को रिक्वाल नहीं किया जा सकता है। इसलिये मैं धर्म करना चाहता हूं कि चाहे जितना भी सर्वा हो, इस तरह के केसेज को जरूर बतौर हक के सुप्रीमकोर्ट जाना चाहिए।

श्री अजराम सिंह : उपाध्यक्ष महोदय, वा कमीशन की रिपोर्ट के बाद यह निश्चितता समता है कि कानून मन्त्रालय का जो अधिकार लेन है उसे बढ़ाना चाहिए। अभी तक कानून मन्त्रालय का अधिकार लेन अस्विड बचाने वाले जैसा, एक मुहरिर के काम का रहा है, और जहां तक नीति सम्बन्धी बातों का सवाल है उनसे उसका कोई सम्बन्ध नहीं रहा है। वा कमीशन की रिपोर्ट के बाद यह मन्त्रालय का वह सारा का सारा कार्य जो कानून से सम्बन्ध रखता है वह कानून मन्त्रालय के जिम्मे किया जाना चाहिए,

[श्री अशोक सिंह]

में ऐसा महसूस करता हूँ। सदन में सुप्रीम कोर्ट और हाईकोर्टों के लिए बहुत ही प्रतिष्ठा के शब्द कहे गये हैं। मैं उन शब्दों के साथ अपने को जोड़ता हूँ।

लेकिन यह धासंका प्रकट की गयी है कि देश के ऐसे कितने नागरिक हैं जिनमें हाईकोर्ट और सुप्रीम कोर्ट तक जाने की क्षमता है। यह ऐसी बात है जिस पर कि गम्भीरतापूर्वक विचार करने की आवश्यकता है। अक्सर मैं अगल हूँ हिन्दुस्तान की जनता को निष्पक्ष और सस्ता न्याय दिलवाना चाहते हैं तो जो परम्परा सुप्रीम कोर्ट और हाईकोर्ट की हमारे देश में रही है, उसको हमें नीचे बिना और सहूलियत तक लाना होगा, बल्कि मैं तो कहूँगा कि हमें उस परम्परा को अपनी पंचायतों में लाना होगा। हम जो पंचायतें चालू करने जा रहे हैं उनमें हमको यह परम्परा लानी होगी।

इस सिलसिले में ना कमीशन ने जो अखिल भारतीय जुडीशियल सर्विस की सिफारिश की है मैं उसका स्वागत करता हूँ अपनी तक क्या होता था? हमारे वहाँ मजिस्ट्रेट होते हैं। उन मजिस्ट्रेटों की नियुक्ति उनकी पदोन्नति और उनके कार्य की देखभाल एग्जीक्यूटिव करती है। इसलिये उनको यह आश्वासन नहीं रहता था, उनको यह विश्वास नहीं रहता था कि अगर वह कानून के मुताबिक अपना काम, अपनी ज़ाबतों के अनुसार अपना काम करने तो उनका अधिकार सुरक्षित रह सकेगा। इसलिये इस संदर्भ में यह भी बहुत आवश्यक है कि जहाँ पर आज इंडिया जुडीशियल सर्विस का गठन हो, उसके साथ ही साथ विविध रूप से एग्जीक्यूटिव और जुडीशियरी का अलगाव भी होना चाहिए जब तक यह अलगाव नहीं होया तब तक हिन्दुस्तान के नागरिकों को न सस्ता न्याय मिल सकता है और न उनको यह विश्वास ही सकता

है कि उनको न्याय मिलेगा। अधिकार था होता क्या है? जब भी जनता की माँगों को लेकर धासंका लाने की सरकार से लड़ते हैं, तो बल की सरकार के लोग, भूमि जमी बुद्धिबंदी और एग्जीक्यूटिव का सेपरेशन नहीं हुआ है, अतएव कम से, या उनको काम में यह कह कर इस तरह के काम कराया करते हैं कि जिनसे कानून की हत्या हो जाती है। मैं आपको इसका उदाहरण देना चाहता हूँ। मेरे वहाँ उत्तर प्रदेश में १९५७ में अन्धकार के खिलाफ सत्याग्रह बना। उस सत्याग्रह के खिलाफ जायदादारी के दफा १०७ और ११७ का प्रयोग इस तरह से किया गया कि कोई भी धारणी अगर दिल्ली से वहाँ अपने क्षेत्र को जा रहा है तो उसको अपने क्षेत्र में चुनने से पहले ही गिरफ्तार कर लिया गया यह कह कर कि वहाँ तुम्हारे रहने से शान्ति को खतरा पैदा हो सकता है। इस तरह की हालत में कोई जन आन्दोलन कैसे पनप सकता है। लोगों को सरकार से शिकायतें हो सकती हैं। पर प्रशासन और न्याय का सेपरेशन न होने के कारण इस तरह से काम किया जाता है कि जिससे बल की सरकार को मदद मिले और इस कारण जो लोग जन आन्दोलन को उठाना चाहते हैं उनको न्याय की धासा नहीं रहती। यह सेपरेशन केवल इरीलिये आवश्यक नहीं है कि हमको निष्पक्ष और सस्ता न्याय मिले बल्कि इसलिये भी कि अगर कोई लोग जनसमन में विश्वास रखने वाले हों और जो अहिंसक तरीकों से, महात्मा गांधी के तरीकों से बल की सरकार को बदलना चाहते हों, उनके विभाग में यह धासंका न रहे कि जो मजिस्ट्रेट बैठे हैं, जो हर्षिकम परगना बैठे हैं वे उनकी धासंका का अपहरण कर लेंगे। हमारे मुल्क में इसी अयन द्वारा पारित विचारक निरोध कानून है। उसके अनुसार अगर किसी की कारबाहियों से देश को खतरा की धासंका होती है तो उसको बिना मुकदमा चलाने के बन्द कर दिया जाता है। लेकिन हम देखते हैं कि ऐसे मामलों में

हैं कि इस कानून के होते हुए भी लोगों को जायदा कीजदारी की दफा १०७ और ११७ के अनुसार बन्द कर दिया जाता है।

इसलिये मैं निवेदन करना चाहता हूँ कि यह बहुत ही आवश्यक है कि प्रशासनिक सेवाओं का और न्याय सेवाओं का, एग्जिक्यूटिव और ज्यूडिशरी का तुरन्त ही प्रसंग कर दिया जाए। जब तक यह प्रसंग नहीं होता है तब तक न्याय मिलने पर हमारी आस्था नहीं हो सकती है। आज हमें यह भाषा रहती है कि हमें सुप्रीम कोर्ट से, हाईकोर्ट से न्याय मिल जायगा और यह प्रशंसा की बात है कि लोगों का सुप्रीम कोर्ट और हाईकोर्ट में विषवास बना हुआ है और वे समझते हैं कि कम से कम वहाँ तो न्याय मिलने की भाषा प्रबन्ध रहती है। यह दूसरी बात है कि लोग हाईकोर्ट तक या सुप्रीम कोर्ट तक पहुँच नहीं पाते हैं, या वहाँ तक पहुँचने की उनमें क्षमता नहीं होती है, उनके पास साधन नहीं होने हैं लेकिन न्याय मिलने की भाषा जरूर रहती है। मैं चाहता हूँ कि यह चीज नीचे से नीचे तक की कोर्ट में होनी चाहिए। अगर हमें हर नागरिक को न्याय देना है, अगर हमें हर नागरिक के दिल में यह भावना पैदा करनी है कि उसे न्याय मिल सकेगा तो इसके लिए हमें नीचे उतरना होगा और लोगों को यह विश्वास दिलाना होगा कि मैजिस्ट्रेट की अदालत में और उसमें भी नीचे की अदालत है, छोटी से छोटी जो अदालत है, वहाँ पर भी उसे न्याय मिल सकता है और निष्पक्ष न्याय मिल सकता है और कोई खतरे वाली बात नहीं है। अगर कोई व्यक्ति किसी चीफ मिनिस्टर के खिलाफ कोई बात कहता है, किसी मिनिस्टर के खिलाफ कोई बात कहता है, सत्तारूढ़ पार्टी के खिलाफ कोई बात कहता है तो उसको विश्वास होना चाहिये कि अगर उसके खिलाफ कोई कार्रवाई हुई तो उसे न्याय मिल सकेगा। जब इस तरह की भावना मुक्त में पैदा होगी, तब जो हमारा जनतन्त्र है, वह मजबूत हो सकेगा। इस देश में जनतन्त्र को मजबूत करने

का जिम्मा किसी एक पार्टी या किसी एक व्यक्ति या किसी एक संस्था ने नहीं ले रखा है, इसे मजबूत करने का जिम्मा हर नागरिक का है। भले ही यह जिम्मेदारी किसी जमाने में जबकि हिन्दुस्तान की भ्रष्टाचारी लड़ी जा रही थी, किसी एक पार्टी ने लिए रखी हो लेकिन आज यह हर नागरिक की जिम्मेदारी है कि वह देखे कि किस तरह से हमारे देश में जनतन्त्र मजबूत हो सकता है। जनतन्त्र तभी मजबूत हो सकेगा। जबकि हम लोगों को यह विश्वास दिलायेंगे कि वे चाहे किसी तरह का काम भी करें, चाहे सरकार की मुखातिफत करें, उन्हें न्याय मिल सकेगा। इसलिये यह जरूरी है कि एग्जिक्यूटिव और ज्यूडिशरी का सेपरेशन करने की दिशा में तेजी से कदम उठाये जायेंगे।

मझे अफसोस है कि वे लोग जो कि भ्रष्टाचारी मिलने से पहले बार-बार इस तरह की बात करते थे कि एग्जिक्यूटिव और ज्यूडिशरी का सेपरेशन होना चाहिये आज बहुतेकबाजी करते हैं कि यह इसलिये नहीं हो पा रहा है कि इससे लर्चा बढ़ेगा। मैं निवेदन करना चाहता हूँ कि यह जो दलील दी जाती है इस में कोई बज्र नहीं है। हमारे यहाँ उत्तर प्रदेश में जो हाकिम परगना होता है वह ज्यूडिशरी और एग्जिक्यूटिव दोनों के ही काम करता है। इस को मैं चाहता हूँ कि सेपरेट कर दिया जाय। करीब-करीब हर तहसील में वहाँ पर न्याय डिबेलेपमेंट आफिसर होने हैं। अब अगर आप वहाँ पर चाहें तो ये दोनों काम अलग हो सकते हैं। जो एग्जिक्यूटिव नेचर के काम हाकिम परगना के होते हैं उन को बी० डी० प्रो० के सुपुर्द किया जा सकता है और जो न्याय का काम है उस को वह खुद कर सकता है। इसी तरह से न्याय के काम को दूसरे मैजिस्ट्रेट्स से भी बाँटा जा सकता है। ऐसा करने से लर्चों से कोई बड़ोतरी

[श्री इजरायल सिंह]

नहीं होगी। यह दलील कि यह सेपरेशन इस वास्ते नहीं हो रहा है कि सर्वा बढ़ेगा बेबुनियाद है। यह दलील कोई बखन नहीं रखती है। इन दोनों चीजों को सेपरेट में समझता हूँ इसलिये नहीं किया जा रहा है कि प्राय जो सामाजिक व्यवस्था है उस में जो लोग परिवर्तन लाना चाहते हैं, शान्ति-पूर्वक तरीकों से परिवर्तन लाना चाहते हैं, प्राक्सिक उपार्यों द्वारा परिवर्तन लाना चाहते हैं, उन को किसी तरह से पनपने न दिया जाय, उन को बढ़ने न दिया जाय, उन को बनाना आवश्यक है। इस सदन में जब निवारक नखरबन्दी कानून प्राया था उस समय बहस के दौरान में यह बताया गया था कि इतने प्रादमी इस के अन्तर्गत जैसे में बन्द है। लेकिन मैं पूछना चाहता हूँ कि दफा १०७ और दफा ११७ के अन्तर्गत जो हजारी प्रादमी बन्द पड़े हैं, उन को क्यों बन्द रखा गया है? उन की जो हालत है वह निवारक नखरबन्दी कानून के अन्तर्गत नखरबन्द लोगों से कम बुरी नहीं है। मैं समझता हूँ कि यह ऐसी चीज है जिस के पीछे कि कोई अन्धा उद्देश्य नहीं है। इस वास्ते मैं निवेदन करना कि ज्यूडिसरी और एग्जेक्टिव के सेपरेशन का तुरन्त ही निर्णय हो जाना चाहिये। जहाँ पर निष्पक्ष न्याय दिया जाना जरूरी है वहाँ पर एक और बात भी जरूरी है जोकि इस के साथ जुड़ी हुई है और जिस की तरफ कई माननीय सदस्यों ने इशारा किया है और ला कमिशन ने भी इशारा किया है। मैं कहना चाहता हूँ कि जब तक हाई कोर्ट के जजिस की नियुक्तियाँ चीफ मिनिस्टर की इच्छा पर होती रहेंगी तब तक कैसे यह कहा जा सकता है कि लोगों को प्रागे चल कर निष्पक्ष न्याय मिल सकेगा या न्याय व्यवस्था निष्पक्ष रह सकेगी। कुछ लोग निष्पक्ष रहेंगे भी तो यह रूल के एक्सेपशन की बात होगी। नियम के अपवाद की बात होगी लेकिन अन्ततोगत्वा, प्राखिर में जा कर, वे निष्पक्ष नहीं रह सकेंगे। इस-

लिये यह बहुत ही प्रावश्यक हो जाता है कि जहाँ तक हाई कोर्ट के जजिस के एग्जाईट-मेंट्स का सम्बन्ध है, उस को एग्जेक्टिव से, चीफ मिनिस्टर के प्राधिकार क्षेत्र से हटा दिया जाय। मैं तो यहाँ तक कहना चाहूँगा कि भारत सरकार के होम मिनिस्टर से भी इस का कोई सम्बन्ध नहीं रहना चाहिये, जहाँ तक उन की नियुक्तियों का तात्पर्य है। केवल चीफ जस्टिस के ही हाथ में यह चीज रहनी चाहिये, हिन्दुस्तान के चीफ जस्टिस के प्राधिकार क्षेत्र में रहे, हाई कोर्ट के चीफ जस्टिस के प्राधिकार क्षेत्र में रहे। जब इस तरह की बात होगी तभी जा कर हाई कोर्ट के जजिस में यह भावना प्रा सकती है, उन में यह विश्वास हो सकता है कि वे प्रागर किसी चीफ मिनिस्टर के खिलाफ किसी रिट पेटिशन में कोई स्टिचकर प्रा करेंगे, कोई कानूनी व्यवस्था देंगे, कोई क्लिंग देंगे, जिस में किसी की मान-हानि हो सकती है, तो कोई खतरे वाली बात नहीं होगी। मुझे खतरा है कि जो प्राज व्यवस्था है उस से प्रागे चल कर इस तरह की बात हो सकती है, इस तरह का खतरा पैदा हो सकता है कि जिस तरह से वहाँ निष्पक्ष न्याय हम को प्राब तक मिलता रहा है, जिस निष्पक्ष न्याय की हम प्राशा करते रहे हैं, वह भविष्य में नहीं मिल सकेगा। ला कमिशन की इस सिफारिस का मैं स्वागत करता हूँ कि हाई कोर्ट और सुप्रीम कोर्ट के जजिस की नियुक्तियों में चीफ मिनिस्टर की राय नहीं ली जानी चाहिये या उन के द्वारा नहीं होनी चाहिये।

इस के साथ ही साथ मैं यह भी कहना चाहता हूँ कि यदि हमें जनता के लिये कुछ करना है, उस की भलाई सोचनी है, तो कब तक अंग्रेजी भाषा के अरिये से हमारा काम चल सकता है। बहुत कोशिश करने के बाद ब्रिटिश हुकूमत के शासन के डेढ़ सौ वर्षों के बाद भी एक परसेंट से प्राधिक लोग अंग्रेजी को पढ़

धीर समझ नहीं सकते हैं। मैं निवेदन करना चाहूंगा कि एक परसेंट लोगों के लिये अंग्रेजी भाषा में अपनी न्याय व्यवस्था को, उस की प्रोसीडिंग्स को, उस की जजमेंट्स को धाप कब तक चलाते रह सकते हैं। आज कानून की सारी कार्रवाई अंग्रेजी में होती है। क्या इस तरह से हम हिन्दुस्तान के लोगों को न्याय दे सकेंगे, क्या उन में विश्वास की भावना पैदा कर सकेंगे कि उन को न्याय मिल सकेगा ? मैं समझता हूँ कि हम देश में आदर्श स्थिति यह होगी कि अगर कोई व्यक्ति थोड़ा सा कानून भी अपनी भाषा में जानता है, तो उसे इस स्थिति में होना चाहिये कि वह बिना किसी वकील की राय लिये हुए या बिना वकील को किये हुए अदालत के सामने अपनी बात को रख सके। आज स्थिति यह है कि बहुत से ऐसे लोग जोकि प्रादेशिक भाषाओं को जानते हैं, बगला जानते हैं, कन्नड़ जानते हैं, तेलगू जानते हैं हिन्दी जानते हैं, कानून का ज्ञान उन्हें है लेकिन क्योंकि अदालत में सारी कार्रवाई अंग्रेजी में चलती है, अंग्रेजी में दलील दी जाती है, अंग्रेजी में जजमेंट्स लिखे जाते हैं उसी में सारा कार्य होता है, इस वास्ते वे अपने धाप जा नहीं सकते हैं और इस के लिये उन के लिये वकीलों का सहारा लेना जरूरी हो जाती है। यह भयावह स्थिति है और इस का अन्त होना चाहिये और जितनी जल्दी यह हो उतना ही अच्छा होगा। अगर इस का अन्त ही अन्त नहीं होता है तो इस के बहुत बुरे नतीजे निकलने वाले हैं। करोड़ों नागरिकों के दिलों व दिमागों में कभी भी ऐसी सुरत में यह विश्वास नहीं भर सकता है कि उन्हें न्याय मिल सकता है बिना वकीलों के जरिये। वकीलों के बारे में इस को कहने से मेरा यह तात्पर्य नहीं है कि जो वकीलों का बर्ष है वह ऐसा है जोकि समाज में कोई भी किसी भी तरह का परिवर्तन नहीं चाहता है। इस के विपरीत में यह कहना चाहूंगा कि वकील बर्ष ने बहुत ही कामि-

कारी काम किये हैं। आकादी की ज़रूरत में उस न बहुत महत्वपूर्ण भाग लिया है। जहाँ तक समाज की व्यवस्था में परिवर्तन लाने का सवाल है अगर कानून लोगों पर जान बूझ कर कोई असंवैधानिक बंधिषा लगाते हैं, तो उन में परिवर्तन करने के बारे में जो आन्दोलन होते हैं, उन का ये नेतृत्व करते हैं। लेकिन इस का मतलब यह नहीं है कि हमें हिन्दुस्तान के नागरिकों को पंगु बना देना है और उन को ऐसा बना देना है कि वे हमेशा के लिये अपना काम धाप न कर सकें।

इस वास्ते मैं कहना चाहता हूँ कि जो अंग्रेजी का मोह है उसे हमें त्यागना होगा। आज यह दलील दी जाती है कि हिन्दी भाषा में या अन्य भारतीय भाषाओं में कानूनी शब्द कोष नहीं है, कानूनी शब्द नहीं हैं। मेरी समझ में नहीं आता कि यह कौन सी दलील है। यह कहना कि पहले कानून का शब्द कोष बना लिया जाना चाहिये और उस के बाद हम अदालतों में हिन्दी तथा अन्य भारतीय भाषाओं का प्रयोग करेंगे, मेरे विचार में लचर दलील है, ऐसी दलील है जिस का कभी भी कोई महत्व नहीं हो सकता है। भाषा का हमेशा ही यह काम होता है कि वह तथ्यों को प्रकट करे और जब तथ्य होते हैं तब भाषा बनती है। अगर तथ्य ही नहीं हैं तो भाषा का महत्व ही नहीं होगा। जब फ़ैट्स होंगे तो न उन के एक्सप्रेसन के लिये लैंग्वेज की आवश्यकता होगी। अगर हमारे पास शब्द नहीं हैं तो शब्द अपने धाप बन जायेंगे। इस की फिक्र किये बगैर कि हमारे पास शब्द नहीं हैं, हम को धाबे बठना चाहिये। मैं चाहता हूँ कि न सिर्फ़ विद्यालय की अदालत की, मुसिक और मैजिस्ट्रेट की अदालत की बल्कि हाई कोर्ट की कार्रवाई और सुप्रीम कोर्ट की कार्रवाई भी अंग्रेजी में नहीं होनी चाहिये और उन की सारी कार्रवाई

[श्री बजर राज सिंह]

हिन्दुस्तान की अपनी ज़बानों में होनी चाहिये। हाई कोर्ट और उस के नीचे की जो अदालतें हैं उन की जो कार्रवाई होनी चाहिये वह प्रादेशिक भाषाओं में होनी चाहिये और सुप्रीम कोर्ट की जो कार्रवाई है वह हिन्दुस्तान के विधान के मुताबिक राष्ट्रभाषा सरकारी भाषा हिन्दी में होनी चाहिये।

श्राज अंग्रेजी हकूमत यहां पर नहीं है और हमें अंग्रेजी से इतना मोह भी नहीं होना चाहिये। जब मैं यह बात कहता हूँ तो इस का यह मतलब नहीं है कि अंग्रेजी भाषा के मैं घृणा करता हूँ। ऐसी कोई भावना अंग्रेजी के प्रति मैं प्रकट करना नहीं चाहता। जहां तक नालेज के उपार्जन का सवाल है, जहां तक ज्ञान हासिल करने का सवाल है, उस का अपना महत्व हो सकता है और है। लेकिन हम जानते हैं कि कल जो अंग्रेजी भाषा का महत्व था वह श्राज नहीं है। श्राज उसी भाषा का भी महत्व बढ़ गया है और अन्य भाषाओं का भी महत्व बढ़ गया है। कोई जमाना था जबकि यह कहा जाता था कि उन का सूरज कभी डूबता नहीं था जिन का राज हिन्दुस्तान पर था और साथ ही साथ दूसरे कई मुल्को पर था। उन की भाषा का महत्व हो सकता है लेकिन दूसरी भाषाओं का महत्व भी कम नहीं है और हो रहा है और उन में टैकनालाजी और तरह तरह की दूसरी चीजें हो रही हैं। इस वास्ते मैं निवेदन करना चाहता हूँ कि इस मामले पर गम्भीरतापूर्वक विचार किया जाये और कानून तथा न्याय की व्यवस्था जब तक हमारी अपनी भाषाओं में नहीं होती है तब तक लोगों में यह विश्वास पैदा नहीं हो सकता है कि बिना खर्च किये हुए भी उन्हें न्याय मिल सकता है। जूकि ला मिनिस्ट्री की डिमान्ड पर यह बहस हो रही है और एलेक्शन

कमिशन का भी उस के सम्बन्ध जुड़ा हुआ है इसलिये उस के सम्बन्ध में भी दो एक शब्द कहना चाहता हूँ। पिछले चुनाव में एलेक्शन कमिशन की तरफ से एक व्यवस्था दी गई। देश में कुछ मान्यता प्राप्त पार्टियाँ हैं। उस मान्यता प्राप्त पार्टियों को कुछ सुविधायें मिलेंगी। कुछ दूसरे लोग हैं जो मान्यता प्राप्त पार्टी के नहीं हैं। एलेक्शन के वक्त जो मान्यता प्राप्त पार्टी नहीं है उन को कुछ सुविधायें नहीं मिलेंगी। जो मान्यता प्राप्त पार्टी है उन को निवान मिलेगा, उन के लिये मतदाता सूचियाँ बिना पैसे के मिलेंगी और इस तरह से उन को मुल्क की सयासत में कम खर्च पर अपना हिस्सा अदा करने का मौका मिलेगा। मैं निवेदन करना चाहता हूँ कि चुनाव कमिशन को इस पर गम्भीरतापूर्वक विचार करना चाहिये कि क्या यह अच्छी बात है। इस में एक नागरिक और दूसरे नागरिक के बीच में कोई पक्षपात का बानावरण पैदा होता है या नहीं? मैं चाहूँगा कि कानून में इस तरह की व्यवस्था की जाय कि जो भी नागरिक किसी चुनाव में खड़ा होना चाहे उस के साथ और दूसरे नागरिक के साथ, जो किसी मान्यता प्राप्त पार्टी का उम्मीदवार हो, कोई पक्षपातपूर्ण व्यवहार न हो। अगर ऐसी व्यवस्था आप कर सकते हैं तो हर एक के वास्ते कीजिये कि उस का मतदाता सूचियाँ मुफ्त दे। इस के साथ ही मैं यह बात चाहूँगा कि अपने इस गरीब मुल्क के गरीब लोगों को समझ में और विधान सभाओं में ध्यान का मौका मिले इसलिये यह व्यवस्था होनी चाहिये कि उन को अपनी तरफ से ज्यादा खर्च करने के लिये मजबूर न होना पड़े। यह तभी हो सकता है जब इस तरह की व्यवस्था हो कि अपने चुनाव के लिये वे अपनी पिट्टी पत्री को अपने बोटर्स तक बिना कुछ खर्च किये पहुँचा सके। बिना पैसे के ही वे अपना सन्देश अपने बोटर्स तक पहुँचा सकें।

इस के साथ ही मुझे यह भी निवेदन करना है कि यहां पर चुनाव पद्धति में परिवर्तन करने की बात बार बार आती है। सिनाक्सी कार्ड चलाने की बात आया करती है। इसी सदन में कानून मंत्री महोदय ने यह फोटो वाली बात कही है कि किन्हीं क्षेत्रों में फोटो दे कर वोट डलवाये जायेंगे। मैं कहूंगा कि यह इस तरह का तर्जुमा है जो कि बहुत ही खतरनाक साबित हो सकता है। हम इस के जरिये कुछ लोगों को वोट डालने से रोक सकते हैं। मैं निवेदन करूंगा कि इस पर बहुत गम्भीरता पूर्वक विचार करने की जरूरत है कि हम कहीं अपनी चुनाव पद्धति में कोई इस प्रकार का परिवर्तन करने तो नहीं जा रहे हैं जिस से देश के संविधान के जरिये जो मौलिक अधिकार हमें मिले हुए हैं उन का हनन होता हो। अगर उन का हनन होता है तो हम संविधान की भावना की इस कार्रवाई से बेहज्जती करते हैं, हम संविधान को ठेस लगाते हैं। हमारा फर्ज है कि जिस संविधान को हम ने बड़ी कुर्बानी के साथ बनाया है उस की खास इज्जत और प्रतिष्ठा करे। यह तभी सम्भव है जब हम उस की भावना के विरुद्ध कोई काम न करे। जो कानून हम बनाते हैं उस के जरिये ही अगर संविधान की प्रतिष्ठा के टूटने का सवाल आये तो यह कोई अच्छी बात नहीं होगी।

जहां तक कानून मंत्रालय को रुपया देने का सवाल है मैं कहूंगा कि दूसरे मंत्रालयों के मुकाबले इस में बहुत कम काम हुआ है। इस के सामने बहुत काम है। जैसा मैं ने कहा कि इस का काम बढ़ना चाहिये। लेकिन इस के साथ ही साथ यह भी कहना चाहता हूँ कि हालांकि कोई चुनाव इस वक्त नहीं हो रहे हैं लेकिन चुनाव कमिशन में भी दूसरे मंत्रालयों की तरह अधिकारियों के बढ़ाने की प्रवृत्ति बढ़ती जा रही है। पिछले साल जहां पर कि सुपरिस्टेंडेंट्स, प्रसिस्टेंट सुपरिस्टेंडेंट्स और प्राइवेट सेक्रेटरीज केवल पांच थे, उसी एलेक्शन कमिशन में इस साल ६ अधिकारी

हो गये हैं। पता नहीं वह क्यों और कैसे होता जा रहा है। यदि अफसर बढ़ेंगे तो उन के साथ ही प्राइवेट सेक्रेटरी बढ़ेंगे, दूसरा इस्टैब्लिशमेंट भी बढ़ेगा, आफिसर्स का खर्च भी बढ़ेगा। मैं निवेदन करता हूँ कि जब काम न हो उस वक्त यह सब चले, यह मुनासिब नहीं है।

Shri Ajit Singh Sarhadl (Ludhiana): In the debate on the Demands for Grants relating to the Ministry of Law, the recent report of the Law Commission must come in for discussion, particularly, when it is a document of very great importance in the recent history of the administration of justice in the country. It not only covers all aspects of the administration of justice in the country and the application of the rule of law, but it deals with certain features which are most important.

I certainly endorse what my hon. friend Pandit Thakur Das Bhargava has said that the Law Minister as a representative of this House is certainly the guardian of not only the elementary rights but also the Directive Principles of State Policy laid down in the Constitution.

The first and foremost thing for consideration before the Law Commission was whether the present system of the administration of justice in the country is in accordance with the genius of the people and the experiment we have had in these few years after attaining Independence. I am glad that the Law Commission has come to the conclusion that except for need of reform here and there, the administration of justice under the present system is quite in consonance with the genius of the people of this country, and particularly, when, in the Constitution Parliament in its wisdom has enshrined certain fundamental rights for the citizen, to protect which there should be a machinery, I am glad that the recent history of the country shows that the judiciary has stood the test and has been able to safeguard the fundamental rights of the people.

[Shri Ajit Singh Sarhadi]

But I must say that in one aspect, the Directive Principle of State Policy laid down in the Constitution has not been implemented in any of the States in the country except, of course, in Madras. Here, I am referring to the Directive Principle of State Policy laid down in article 50 of the Constitution of India where it is said that the judiciary and the executive should be separated.

You are aware, Sir, that at one time, it was thought that three years would be the maximum period within which the executive and the judiciary had to be separated in this country. It was not made a statutory provision because it was thought that this might be done early. But it is painful to see that now, when we are in the eighth or ninth year after the commencement of the Constitution, still we are at the same place wherefrom we started, and the Directive Principle of State Policy is still to be implemented, and still the executive and the judiciary is to be separated. I am sure the Law Minister will pay attention to this aspect.

I was really surprised to see that the State Governments should raise such hurdles in the implementation of this Directive Principle. You know, Sir, very well that in the PEPSU area of the Punjab, the executive and the judiciary were absolutely separated before their merger in 1956. Though it was not by statute, and it was by an executive order, yet the experiment of separation of judiciary from the executive was working successfully in the PEPSU area. Instead of applying the principle of separation of the executive from the judiciary to the whole of Punjab after merger, the thing has been made otherwise, and the merger of the executive and the judiciary has been made applicable to those areas of PEPSU even.

In this connection, I was really surprised to see the opinion of the Chief

Secretary of the Punjab Government, while he gave evidence before the Law Commission, representing the Punjab Government's viewpoint. I am sure that opinion is not an isolated case, but that is a thing which is equally applicable to the rest of the States. What he said while opposing the separation of the executive from the judiciary, is, I believe, the view of those States which have not as yet followed that policy laid down in the Directive Principle in the Constitution.

We find from the Law Commission's report

"The Chief Secretary of the Punjab Government who purported to represent the views of his Government stated that 'in the context of the situation that obtains in the Punjab, taking into consideration the incidence of crime and the nature of crime, the communal atmosphere, the constant law and order problem, Government are naturally keen to have as effective a machinery under their disposal as possible for dealing with different types of situations and that Government's view is that if there is complete separation probably the Government's hands would not be as strong in dealing with crimes or dealing with law and order problem as they would be without separation'."

It means—and it is an admission of fact—that the executive also wants to use the judiciary for the purpose of administration of justice and for the purpose of administration and maintenance of law and order. This is a wrong approach to the case. This is also the view with which the Law Commission has concurred. The Commission has condemned this practice.

I had just now said that the view of the Chief Secretary of the Punjab Government representing that Government is not an isolated view:

believe it is also the view of the rest of the States in the country which are not implementing the directive principle of separation of the executive from the judiciary. I need not labour this point further except to quote the words of a Member of Parliament who gave evidence before the Law Commission, who wanted to contest the view of the Punjab Government. I am glad that that person is in a very exalted position now. This is what he said:

"If the Punjab Government still thinks that they cannot control the law and order situation with separation, all that I can say is that the Government is not taking correct view of the situation. If there is any difficulty, it has to be crossed over. The main thing is that the executive do not want to part with their power. Do they mean that they can control the law and order situation better if they can secure the punishment for the crimes as they want? If they want to maintain law and order at that cost, then better abolish the judiciary"

Shri D. C. Sharma (Gurdaspur):
Who was that Member of Parliament?

Shri Ajit Singh Sarhali: So the object is this, that the law and order situation should be handled in the proper way, not at the behest of the executive. Therefore, I would submit at the outset that the most essential is that the directive principle must be implemented, and the executive and judiciary must be separated. Unfortunately, what existed by way of separation of the judiciary from the executive in the PEPSU area of the Punjab before the merger has to some extent been eliminated and PEPSU brought on to a level with the rest of the Punjab, rather than the rest of the Punjab being brought on to the level of PEPSU.

The second point which I want to place before the Law Ministry for their consideration relates to article 40 of the Constitution. This article

lays down another directive principle. A village or group of villages should be made self-sufficient units and endowed with all the powers, both executive as well as judicial. Here too we have been very much remiss. You will find from the report of the Law Commission—they have examined figures upto 1954—that there are about 10 lakhs of cases of a civil nature pending in different courts of the country. 90 per cent of the cases are of the value less than Rs 1000 value. That is, a lakhs of cases are of value less than Rs 1000 value. Now, the volume of civil litigation has certainly increased, and the delay in the administration of justice is partly due to the increase in the volume of civil litigation. In order to lessen this, the suggestion is that there should be decentralisation of justice, taking into view efficiency and also the correct way of meting out justice. Unfortunately, attention has not been paid to that side.

As far as a generation back, the Civil Justice Committee recommended that there should be decentralisation of justice and the *panchayats* should be endowed with powers to decide both criminal and civil cases. They said

"Everywhere except Bombay it is accepted that village *panchayats* with judicial functions should be used for the disposal of small cases upto Rs 25 to Rs 200."

They further recommended

"An endeavour should be made to develop this system so as to withdraw all money suits of smaller value from the *munsifs* and small cause courts, thereby relieving these courts of large amounts of petty work and making it possible for them to cope with the larger duties we think may be given to them".

This recommendation of the Civil Justice Committee was implemented by having legislation in the different States by having gram *panchayats* and endowing them with the power

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to administer justice. Now, we have got throughout the States panchayats which are endowed with powers to decide cases, both civil and criminal. About the working of that, the considered opinion of the Law Commission is that it has been satisfactory. They have said:

"In most of the provinces where these courts have been introduced, they seem to have been popular disposing a large number of suits and relieving the regular courts of the burden of deciding petty disputes".

They have further said:

"We have reached a stage in our development when the village should be given more emphasis in the dispensation of justice".

If that is the basic thing, that in the decentralisation of justice the *panchayats* are to be endowed with larger powers to decide both civil and criminal cases, then I cannot understand why the Law Commission makes a recommendation that cases of a petty value up to Rs. 250 should be entrusted with the *panchayats*, and in special cases upto Rs. 500 with the approval of the High Court.

As I said at an earlier stage, the Civil Justice Committee recommended this a generation back. They put the target at Rs. 200. The Law Commission also makes a recommendation to the same effect, only raising the amount by Rs. 50. That looks rather anomalous. We have gained some experience of these *panchayats* and their working. Reports from different States definitely show—and this has been considered by the Law Commission—that the figures of cases decided and reserved show that only a very small percentage of the decisions of these *panchayat* courts were taken to the superior court, and that out of those that were taken, only a small proportion was reserved. It means that the Law Commission in its

wisdom certifies that the *Panchayats* are being run so far very efficiently, that few cases have gone in revision to higher authorities and a very small number of them have been reversed—which shows the capacity of the *panchayats* to decide cases of a smaller nature, civil as well as criminal.

Therefore, I cannot possibly understand why the powers of the *panchayats* should not be increased. I would submit that the powers of the *panchayats* should be to decide cases upto Rs. 1000 value. Of course, the method which the Law Commission has suggested of having a collection of villages and nomination out of them for the purpose of administration of justice, is one with which I do not disagree. But I would certainly submit that the power should be given to the *panchayats* to decide cases like that. Not only this. I will go further. The Law Commission itself has discussed that in certain countries there are conciliation boards, there is a sort of pre-trial conciliation. They have, of course, not accepted it here in principle. They have only recommended that the trial judge himself should be the conciliator before trial, and he should try to effect a compromise between the parties. So far so good. But I cannot possibly understand why this principle of conciliation, compromise and stoppage of litigation should not be taken further, and these *panchayats* made the conciliators and agencies of compromise, if not adjudicators and deciders. They should be given powers to conciliate in cases up to a certain value, say, Rs. 2000. They should see that conciliation takes place. After that, if necessary, the case should come to the courts of law. This is my second point.

My third point is about the recommendation of the Law Commission for the creation of a cadre of All India Judicial Service.

15 hrs.

There has been criticism from some quarters; there has been appreciation

from some other quarters of this recommendation. I personally feel that it would not be a healthy thing to have an All India cadre of judicial services and I have got three objections to this.

The first objection is this. That has also been taken in the Law Commission's Report. That objection is this; that it would be a sort of creating a cadre of young men at the top whose pay would be higher than that of the rest of the judiciary—the subordinate judiciary—and thereby a lot of disparity between the two both in status and pay.

The object of the Law Commission is that there should be two cadres of All India Judicial Service One is class I and the other is class II. To the class I cadre of the Judicial Service in State there should be recruitment of 40 per cent from the All India judicial service. This means that the rest of the 60 per cent will be recruited from the subordinate judicial service, class II. There will be 40 per cent of young people with a disparity in pay and in status, naturally. In the present Administrative Service you find a lot of annoyance, in the minds of those who are promoted from the Provincial Civil Service A young man becomes a Deputy Commissioner in 8 or 9 years. I do not think it is very suitable. Therefore, I would draw the attention to this one aspect that this would not be healthy.

The other objection is this. There will be a kind of language difficulty too. Every State has got its own language, the regional language. What will be the future state of the regional language is yet to be decided. We may come to the conclusion that the language of the State shall be the regional language up to the High Court. Then, because this is an all India cadre of Judicial Service having people from different States, when you transfer them, it will create a lot of difficulty in the judicial service of the State in the matter of language.

Thirdly, there will be a trespass on the sphere of provincial autonomy also. I say that there should be oneness in the country; there should be co-operation; there should be integration. Certainly. But, it is a Union of States. We have got a Union of different States. The States should have provincial autonomy. I personally feel that this would be a trespass on the States' jurisdiction so far as the judiciary is concerned.

I would agree with the Law Commission that so far as the appointment is concerned it should be by the Public Service Commission and the standard should be such that the supervision of the High Court is there.

Mr. Deputy-Speaker: The hon. Member's time is up.

Shri Ajit Singh Sarhadi: With your permission, Sir, I will take some time more I have not taken 15 minutes.

Mr. Deputy-Speaker: More than 20.

Shri Ajit Singh Sarhadi: The last point I am taking is about the appointment of judges. My hon. friend Pandit Thakur Das Bhargava had much to say on that point. He criticised certain recent appointments. I have nothing more to say on that matter. The Law Commission in its wisdom say that there had been communal and political consideration in the matter of such appointments. So far as my State is concerned, such appointments have been from one particular community and there has been no appointment from other community. I cannot say whether this was on any political considerations. I would certainly say that the State authorities must have a voice in the matter.

We are just on the threshold of freedom. Ten years is not a long period in the history of any country. Emotional integration has yet to take place. We have yet to become one nation. All interests ought to be represented; all interests ought to be

[Shri Ajit Singh Serhadi]

secured. I concede that merit and efficiency and capability must be the primary consideration. Not only the primary consideration, but be the main consideration. But both in the south as well as in the north, there are other considerations. You cannot have merit unless you give a chance to the individual. Therefore, to say that the power should entirely vest in the hands of the Chief Justice of India and the Chief Justices of the States is not good. We have got complete faith in them. But yet for some years to come at least the views of the State also have to be taken into consideration. They have to take into consideration many things. They have got to see that there is due representation in the judiciary so that it may inspire confidence among the people. Therefore, for the purpose of the efficiency of the judiciary and for its integrity too and that it should inspire confidence, I submit that the advice of State authorities should count. There should be some formula evolved that the state should not be entirely in an advisory capacity and they should have an important voice though not the last word.

Pandit M. B. Bhargava (Ajmer)
Mr Deputy-Speaker, Sir, we have been considering the Demands for Grants for the Ministry of Law. So far the debate has been concentrated on the 14th report of the Law Commission. Prior to this report there have been 13 other reports. In the report of the Ministry of Law that has been circulated among the Members, we find that reports 8 to 13 concern the revision of law in the domain of contracts, specific relief and acquisition of property and others. But we have not the slightest indication as to what attitude the Ministry of Law proposes to take in respect of the earlier reports made by the Law Commission, which were submitted as far back as September 1956.

In that report this distinguished body has laid great emphasis upon the

aspect of a unified High Court in the different States of India. I would ask in all humility what is the policy of the Government of India on that important recommendation of the distinguished and expert body, whether it is proposed to shelve that report and put it into cold storage. And, if it is so, what sin have the people of the State of Rajasthan committed so that, with stubbornness, in spite of agitation and widespread protests and resentment, the Bench at Jaipur was abolished and a unified seat of the High Court was set up at Jodhpur? I would ask, if that is the policy which the Government of India has accepted, then where is the reason for this discrimination against one particular State and in not implementing that policy in respect of other States.

15.08 hrs

[SHRI C R PATTABHAI RAMAN in the Chair]

I, personally, am fully in accord with the unanimous decision of the distinguished body to establish, in the interests of efficiency of judicial administration, a unified High Court in every State. But the question arises, where is the seat of that unified High Court to be located? Is it to be located on the ground that there are parochial and regional considerations in a nook or corner of a vast and extensive State like Rajasthan? Or is it to be located in some central place where everybody, every litigant has equal access, where the dispensation of justice can be made cheapest? This policy has to be clarified.

I would request the hon Law Minister to please clarify the position of the Government of India in respect of this recommendation of the distinguished Commission.

So far as the genesis of the appointment of this Law Commission is con-

cerned, I would respectfully invite the attention of the hon. House to the announcement made by the Ministry of Law on 5th December, 1955, whereby it announced the personnel of the Commission and also the terms of reference of this distinguished Commission. I respectfully submit irrespective of whatever may be said of the Ministry of Home Affairs, the primary responsibility to the House is upon the shoulders of the Law Ministry to give us categorical assurances as to how far it is proposed to implement the recommendations. The last report is in a way a great thought-provoking and epoch-making document in the judicial history of our country. It is regrettable that some of the speakers have spoken of our judiciary in a disparaging manner. In their opinion, judiciary in our Constitution has a subordinate position to the legislature. With all the emphasis at my command I repudiate that insinuation. It is based upon a misconception and misreading of our magnificent Constitution. The three organs of the State, the executive, legislature and judiciary, have got, within the fold of our splendid Constitution. Duties and responsibilities to discharge and the provisions of our magnificent Constitution place a heavy responsibility upon the shoulders of our judiciary. It is not only our protector but also the guarantor of the Fundamental Rights of the citizen. The splendid Preamble of the Constitution says that by constituting India into a sovereign democratic republic we enter into a pledge to secure to all its citizens, justice, social, political and economic and freedom of thought and expression, belief, faith and worship and also to secure to all the citizens equality of opportunity and status. Above all, we also pledge to preserve the dignity of the individual in the sphere of the ever-increasing social activities. It is a difficult and significant role that our judiciary has to discharge; it is a very notice task. It has to protect against encroachment by the executive upon the liberties of the people of India. It has also

the duty of giving a liberal and enlightened construction and interpretation on the provisions of our Constitution so as not to retard the onward march of the country towards the establishment of the socialist pattern of society and the establishment of a welfare State.

It has been said during the course of the debate by some speakers that our learned Judges are far behind the urge of the time. I repudiate that insinuation. The pronouncements of the Supreme Court and the High Courts in recent years, during the last decade since coming into force of our Constitution, have been characterised by clarity of thought, lucidity of expression and profundity of learning. They have shown consummate skill and analytical consideration and a liberalised thought so as to advance the march of the country towards the establishment of the welfare State. If they could not, they will not be doing the splendid duty assigned to them under the Constitution. And they do not stick to the letter of law. While making use of a liberality of thought, they are bound to interpret the different pieces of legislation that had been carelessly passed either by the State, legislatures or by the Central Legislature and test the validity and constitutionality of these laws. They may find that some of these laws have infringed the provisions of the Constitution; and if they find that the limits placed upon the legislative powers of State and the Central Governments are transgressed, the duty of the Judge is plain. My respectful submission is that it was an arduous task and the way in which it has been discharged consciously by our judiciary is a matter of pride to every citizen in this country. That is why the distinguished Commission in its report has said that there should be no executive interference in the matter of the appointment of the Judges of the High Court or the Supreme Court.

[Pandit M. B. Bhargava]

The Constitution-makers and those of us who were associated with the noble task of 'Constitution-making, when article 217 was enacted never thought that it would be abused in the manner it had been abused during the last ten years so that most of the Judges appointed not only in the High Courts but in the Supreme Court are more or less nominees of the Chief Minister or of other executive heads. This is a state of affairs which had been condemned in a very strong language by the Law Commission. I ask the hon. Law Minister in all humility whether the Government has any intention to implement the recommendation of this distinguished Commission and alter the wording of article 217 so as to make it clear beyond doubt that it will be the duty, sole and exclusive duty, and responsibility of the Chief Justice of the High Courts to make appointments of the Judges, solely on the basis of merits and this is a duty which he has to discharge with the concurrence only of the Chief Justice of India.

It has been said that the Chief Minister must have a say in the matter. Yes. The Commission itself has considered that point and it has recommended that the only voice that can legitimately be given to a Chief Minister in this matter is merely a negative voice but he could not and must not be given a positive voice—negative voice in the sense that a certain proposal may be made and then that proposal must be sent to the Chief Minister who has the liberty to express his opinion about that person. But he could not insist upon the substitution of that person by a nominee of his choice. That right, if it exists within the fold of the present Constitution, must be taken away in the interest of the independence of the judiciary.

The next point which I would like to refer to is the recommendation re-

lating to the upgrading of the age limits of the Judges that adorn the High Court and the Supreme Court. The proposal is that the limit must be raised in the case of High Court from 60 to 65 and in the case of the Judges of the Supreme Court from 65 to 70. In America and other advanced countries, there is no age-limit upon the Judge. So far as he is physically capable of discharging his own work, he is at liberty to occupy that great office. But in India, if we are to have recourse to age-limit, the recommendations of the Commission are moderate and it will be necessary in the interest of the high degree of work expected of the judges that the age-limit of the judges be raised in the manner suggested. They have also suggested that the age-limit in the subordinate judiciary be also raised to 60.

In the matter of salary, the Chief Justice of the Supreme Court in America gets 20,000 dollars which has recently been raised to 25,500 dollars. The Commission says that in view of the economic conditions the salary of our judges cannot be recommended to be raised. But, Sir, so far as the allowances, pension, leave and other things are concerned, they have made important suggestions and they should be considered.

Lastly, I would call upon the Ministry of Law to accept and implement the recommendations of the Law Commission in respect of the undertaking of an All-India legislation on the model of the Bombay Separation of Judiciary and Executive Functions Act, Act 23 of 1951, and to make an all-India legislation for the immediate separation of judiciary from executive functions.

Shri P. E. Patel (Mehsana): Mr. Chairman, Sir, I thank you for giving

me time to participate in this debate. I submit that we appreciate the intelligent labour put by the Law Commission. The report is a very valuable document. It has come at a proper time when it was required in this country. We know that the tendency of the executive to usurp the powers of the judiciary has been on the increase in our country. In every legislation that we had—no doubt, we are also responsible to some extent—the proposal was to give more powers to the executive usurping the powers of the judiciary. And, in the name of tribunals we excluded the jurisdiction of the judiciary.

The Law Commission has made certain recommendations, and I think this Government will implement them. I personally feel that whatever tribunal it may be—labour tribunal, income-tax tribunal or any other tribunal—that tribunal should be under the High Court and members of the tribunal should be nominated or appointed by the High Court. The Government should have nothing to do with the appointment of the personnel of such tribunals.

*What is happening today? No doubt, some of my hon. friends referred here to the separation of judiciary and executive in the Bombay State. It is true we have separated judiciary from the executive. But, what is the trend? In the Police Act and in other Acts the powers have been given to the executive and the judiciary has been debarred from it. I can give some instances. A man can be externed even by a police officer. A man can be externed by the executive, and there is no appeal or revision to the High Court or any other judicial court. In the Panchayat Act and even in the Local Boards Act there is a clause that if there be any dispute regarding the election of the President or Vice President the final authority is the Collector and none else, the man cannot go to the judicial court. Therefore, the ten-

dency was to usurp the powers of the judiciary and centralise all the powers in the executive. At this time the report has come, and there are very good suggestions in the report.

A very good suggestion that I like is the creation of an all-India judicial service. It is necessary that we create this service on an all-India basis. We know that a strong judiciary, an independent judiciary is the backbone of democracy. Ours is an infant democracy, and in the infancy of our democracy the tendency of the executive was to usurp powers day by day. Under the circumstances we require to safeguard the democracy for which the judiciary should be independent and strong.

A right suggestion also has been made by the Commission in regard to the appointment of High Court Judges and appointment of Supreme Court Judges. They have said that this should not rest with the executive. I think that is a very proper suggestion to keep our judiciary independent of the executive. I think the appointments, promotion etc. should be at the discretion of the High Court Chief Justice and the Supreme Court Chief Justice.

Sir, I go further and submit that the whole judicial department should be under the High Court. What is happening today? For their appointments, prospects etc. they go to the executive. Therefore, naturally they are to be on good and friendly terms with the executive. The result is that with the ten years working of the judiciary people have been losing respect which the judiciary deserve. So far as appointments are concerned, that has been done on a communal, regional and political basis. That has also, rather, decreased the reputation of our judiciary. I would submit that the recommendations of the Law

[Shri P. R. Patel]

Commission be accepted and implemented.

A suggestion has been made by my hon friend that the judicial courts should work in the regional languages. I absolutely agree with that suggestion I am coming from a former State of Baroda There we had all law books in Gujarati The plaints and appeals were also submitted in Gujarati The arguments were done in Gujarati My experience is that we worked well. I think if we adopt regional language in our courts, at least up to sessions courts and district courts, it is not bad. After all, the clients who sit nearby must understand what the advocate does Now the advocate is arguing in English and the client does not know anything. What happened in Baroda? Upto the time of merger, we were practising in Gujarati. Afterwards we had to practice in English On one side we got rid of the Baroda rule hut on the other side we got the English rule I think in our country we should adopt our regional languages up to the district level.

I wish to say something about the appointment of Government pleaders and prosecutors In Baroda, the Police Prosecutors were conducting the cases on behalf of the Government They were not under the Police but they were under the Judicial Department before 1949 and that was the case in Baroda for years together. We find the suggestion now in this direction in the Law Commission's Report, but this is a suggestion which had been implemented years ago in Baroda territory. It is desirable that this should be done because the duty of the Police Prosecutor is to get justice and not to get conviction Today, the Police Prosecutor feels that he must secure conviction and does not care for justice

I would like to mention one other matter relating to the pay scales of the judiciary. Much has been said

regarding the low salary of the High Court judges and Supreme Court judges. I am of opinion that the magistrate should be paid at least 50 per cent more than his present emoluments We expect something more from the judiciary than the executive. We know, Sir, that the executive officer gets so many things done and he is not expected to be so honest as a person serving in the judiciary. We expect much more from a person in a magistracy

Mr. Chairman: This is the first time I hear of any degree of honesty!

Shri P. R. Patel: We expect something more, Sir, and I think, the salary should be a little bit more Today we are paying them meagre salaries and we expect so many things from them I would suggest that the Government should look into the matter

Lastly, I would submit that after retirement, the High Court judge or the Supreme Court judge should not be allowed to have any job under the Government Otherwise, at the time befor his retirement he would just try to please persons in the executive so that he may get a job after retirement. I may refer to the story that was referred to by other hon. friends about a Chief justice going to an Embassy I think that it was wrong on the part of the Government to have selected a person who has served as judge of the High Court and it was also wrong on the part of the person to agree to serve in that capacity

Therefore, I feel that there must be a law in this country that the man retiring from the judiciary may not take any job under the Government. We should give sufficient amounts of pension to the persons in the judicial services. There are very good, honest persons in the judicial department; and they die as paupers, while, as we know, some persons serving in the executive, especially in the Police

Department, leave a lot of money after them when they die. So many stories are also said regarding the political workers. When they die they also leave behind them a very good fortune. So, I am of opinion that the High Court Judge, the Supreme Court Judge and the District Judge should be given a good amount of pension.

Shri Jaganatha Rao (Koraput): Mr. Chairman, Sir, I have a feeling that the Ministry of Law does not occupy a proper place that it should occupy in the Central Government. In 1957, we find, the Minister of Law did not even have Cabinet rank. I pointed out in 1957—speaking on the Demands of this Ministry—that a Ministry of Justice should be created. The Ministry should be responsible for appointments of judiciary and also for the administration of justice in the whole country. I am glad that the hands of the Law Minister are now strengthened by the report of the Law Commission. The Commission have stated that a Ministry of Justice should be appointed at the Centre. When I say this, I do not want to suggest that the Ministry which is now in charge of the appointment of judges is not acting properly, or that it is not acting in collaboration or in coordination with the Ministry of Law. I do not want to suggest that. However, I would say this that it ought to be the duty and the responsibility of the Ministry of Law to look to the appointment of judges and also to see that the administration of justice is carried on properly in the country.

Much has been said about the report of the Law Commission. I am sure the Government considering the report and that they would come forward very soon with necessary legislative changes to implement their recommendations. It has been suggested by Shri H. N. Mukerjee that the Law Commission did not deal with the problems of revision of laws according to the needs of the society. He

means to suggest that our society is based on the concept of private ownership of property which has come down from Anglo-Saxon jurisprudence. True, it is. We cannot prevent a man's thinking; nor could we compel any of our communities to think in the Communist way of thinking. Our society is based on certain principles which are guaranteed under the Constitution. Our constitution guarantees such freedoms to every citizen of the country.

Sir, it has been suggested by him that we are having too much reliance on precedents. How can we ignore the judicial precedents in the conduct of our judicial administration? It is the judicial precedents that have been responsible for the type of justice that we are having today.

Sir, it has been suggested that retired judges of the High Court and Supreme Court should not be appointed to any other jobs; more especially, political appointments. Some hon. members have cited the case of Mr Justice Chagla. One of the hon. members on the other side mentioned that he went to the corridors of the Ministers' residence. I would like to state that it was the Government that had to seek his services. A man of outstanding ability had to be secured and so it was he that was requested—I would put it that way—to accept the appointment in the United States.

Shri Narasimhan (Krishnagiri): Rather, the office.

Shri Jaganatha Rao: Therefore, it is not correct to say that every Judge is appointed to a political job or post when he runs after the Ministers or he walks along the corridors of Ministers' bungalows. It is not correct to say that. We cannot generalise on such flimsy grounds.

We cannot also lay down an inflexible rule or law that no High court Judge or Supreme Court Judge should be eligible for any other appointment.

[Shri Jaganath Rao]

If a Judge is suitable for any job, certainly he should be appointed. I see no reason why the prospect of a judge, after retirement, being appointed to a job to which he may be best suited should be deprived. I think it would be a dangerous move if we accepted that proposition.

I am not going to deal with all the recommendations of the Law Commission as several hon. Members have already spoken about them, and I am sure that the Government will come forward soon with suitable legislative amendments. But there are some matters which do not require any legislative amendments and I think the Ministry of Law should implement those recommendations of the Law Commission as early as possible.

One of the recommendations is the separation of the judiciary from the executive. It is a very salutary recommendation and Article 50 of our Constitution also envisages this. It is a pity that even nine years after the Constitution came into force, nothing has been done in several States regarding this matter. I know that in Madras and Andhra they have done it. The system there is, the functions of the collector are separate from the functions of the district magistrate, and the district magistrate and the district judge are interchangeable offices, and they are directly under the jurisdiction of the High court. The collector and district magistrate, however, has the power to take action in certain cases of emergency under sections 144 and 107 of the Criminal Procedure Code. There are also cases where the munsiffs also are invested with first-class magisterial powers. I think that every State should be asked to implement these measures as early as possible. I do not know why the Central Government has not even been very keen on the implementation of this necessary and salutary change which the Constitution envisages.

Another far-reaching recommendation is the legal aid to the poor. Our

Constitution says that every man shall have equal protection, equal freedom, justice and all that. But how is it that in every State it is very difficult for the poor man to go to the court and seek relief, not to speak of the High Court and the Supreme Court? So, in such cases, I see no reason why the Governments of the States concerned should not take up this issue in right earnest.

As the procedure now stands, litigation is very costly. It is not meant for the poor. But is only the rich that they can go to the courts and vindicate their rights. So, what has to be done? Should not anything be done to safeguard the interests of the poor and the less privileged sections of the society? I think the Law Ministry, on the strength of the recommendations of the Law Commission, will now do well to goad the State Governments to proceed with the necessary legislation in this regard. Of course, I should say that there must be more voluntary effort on behalf of the members of the Bar. They should also cooperate and try to serve the society as well.

Another recommendation which I would deal with is about the creation of an all-India judicial cadre and the creation of an All-India Bar. I see no satisfactory explanation is given by the Government to show why this has not been done. The legal profession in the country has been agitating for a very long time that there should be an All-India Bar, and that has not been taken note of. Similarly, the creation of an All-India Judicial Service would be very helpful and would create a healthier atmosphere in the country. Judges can be transferred from one State to another and from one High Court to the other, and we can be sure of getting impartial justice. If the judge of a High Court—I do not mean to say a word against their integrity or honesty—happens to occupy the post in a State for a long number of years, naturally he would develop some likes and dislikes. So, it is better, as is done in other Government

services, that the judges also are transferred, after they had been for a certain period of time in one place, to another place.

When the appointment of judges is also left to the responsibility of the Ministry of Justice or the Ministry of Law, as it is called now, without the interference of the Government of the State, I think a day will come when we shall be proud of our judiciary in the country

Another matter which has not been referred to by the hon. Members so far is about the Income-tax Appellate Tribunal. The members of the Tribunal are appointed on a contract basis for five years, and some of them are also re-appointed after the expiry of the term, but they are not entitled to any pension or gratuity or anything like that. But they deal with very important matters involving lakhs and crores of rupees. They should have some sense of security so that they can discharge their functions more sincerely and with greater care. So, something has to be done in this regard.

I was speaking about making justice cheap and speedy. I said that just as it is administered today is not meant for the poor and is not within the reach of the poor man. Take, for instance, the court-fee that is payable. The court-fee is a State revenue, and the States nowadays have been increasing the court-fee by even double the rate. I know that in Madras they have practically doubled the value of court-fee payable. In some other States, the rate of court-fee has been increased by 50 per cent, so much so that it is difficult for poor men to go to court. What was suggested by the Law Commission is that in appeals, only half the court-fee payable by the client may be ordered to be paid so that poor people can afford to go to a court of appeal against a decision which goes against them.

About the Administrative Tribunals, I have a few words to say. In a wel-

fare State the activities of the Governments of the States are expanding in several directions. It is but natural that there should be tribunals, but the jurisdiction of the High Court, the powers of the High Courts to review the decision of the tribunals, should be maintained. The Law Commission has accordingly recommended to that effect. I think the Government should straightaway accept the recommendation so that the powers of the High court under articles 226 and 227 are not taken away.

Under article 226 there is another snag. Unless the officer or authority against whom a writ is sought stays within the territorial jurisdiction of the court, no writ can be issued. The Government of India has the headquarters at Delhi, and supposing an officer has no headquarters within the territorial jurisdiction of the High court, the high court concerned cannot issue a writ. Section 226 has, therefore, to be amended suitably.

I would say a few words about the election law, because election law also comes within the purview of the Ministry of Law. I would request my friend the Minister of Law to simplify the election law. Of course we have amended the Representation of the People Act recently, but I am afraid we have hurried through the process and not given a serious and careful thought to it. Of late, it has become the tendency of the Government—I am sure I would not be misunderstood—to rush through every legislation without giving thought to it. When it is struck down by the High Courts or the Supreme Court the Government come forward with a validating ordinance and a validating law. I request the Government to devote greater attention to this, so that when it comes forward with pieces of legislation the difficulties can be avoided.

Shri Narasimhan: Mr. Chairman, firstly regarding the Law Commission's report, all of us, whether in the administration, judiciary or the legislature, should be very grateful to those emi-

[Shri Narasimhan]

nent men for having brought out such an eminent document and set people thinking. I hope Government will seriously consider the report in detail. They should divide the report into three or four categories, points which may be attended to immediately, etc. They should divide the report into various kinds of subjects and start implementing them in quick instalments. Otherwise, since the Commission is becoming more or less a continuing body, they will come forward with further reports and you will be caught napping. You would not be able to cope up with the reports of the Commission. So, it is better that we take quick action.

Mr. Chairman: The Commission will now deal with statute law.

Shri Narasimhan: That will be equally important. So, the sooner you do things, the better it will be. One of the most inoffensive of the recommendations of the Law Commission is the one that a special officer should be appointed to implement the report. I would not be surprised if Government have already done something about it, because it is such a simple and natural recommendation. If they have not already done it, I hope they will do it as the first step towards implementing the recommendations. They should have a special division to implement the report. This is contained in the classified summary of recommendations, Part I, page 3.

You yourself, Mr. Chairman, and Mr. Jaganatha Rao have already referred to the need for changing article 226 in order to facilitate writ applications before all the courts, instead of confining it to a particular court and making it a privilege of that court, thereby depriving the privilege of the common man to seek redress in all courts.

The Law Commission have naturally thought about many matters. They have given advice on matters pertain-

ing to the Centre, the States, amendments to the Constitution, etc. There are one or two recommendations which we in this House should also attend to. There are certain recommendations to be attended to by the Cabinet as such. There is a suggestion to the department dealing with drafting of Bills. They are very interesting and that is why I want to read them. For instance, it says:

"All fresh proposals for legislation, unless of emergent nature, should be submitted to the permanent Commission for detailed examination before enactment."

"All important Bills should be circulated to the public courts and the Bar associations for inviting opinion."

We have come across cases where there have been mistakes because they were not referred to State Governments. Though the mistakes have not come to prominence now, I am sure they will come later on. I am referring to some provisions in the Representation of the People Act where certain village officers and revenue officers of one State were referred to. It was not enquired whether similar officers were there in other places or not, whether they are also to be brought in the same category or not, etc. So, due opinion of the State Governments should be taken before we take the final step.

There is another advice:

"All important rules should be submitted for prior scrutiny to the permanent Commission assisted by an officer of the concerned administrative department."

"Legislative programme should be adequately planned in advance; full and adequate instructions should be given to draftsmen and sufficient time should be given to them for scrutinising and reshaping the amendments moved and

accepted in Parliament or the State Legislatures."

This is very necessary. When I go to the mofussil, even in small districts, I come across lawyers saying, "Your legislation creates great difficulty; it does not seem to have been well thought out". They almost blame the legislators, but I know for certain how things have happened. None is to blame in particular. The policy is evolved by the Cabinet and the draftsmen are directed to draft the Bills and the Bills come before the House. The House is a huge body representing various shades of opinion. Being in a large number, they are capable of yielding to certain emotional appeal and so, the whole concept of the law is changed and legislation becomes contradictory. Therefore, Government will do well to invite Members of Parliament unofficially and find out what they think about it; legislation should be directed towards that end. If that is done, last minute changes brought about by the House and the inability of the Government draftsmen to cope with the situation immediately can be avoided. That will add to the correctness of legislation.

Regarding election tribunals, I have one point. I have found out from personal experience that their needs are not looked after. Sometimes they do not have typewriters. In the course of a trial at one time, I found that the typewriter went out of order. Even copies of proceedings, certain papers, rules, etc. are sometimes rather difficult to get. I would not be surprised if they have improved later, but there were such difficulties. Apart from election tribunals, there may be other tribunals as well. I hope this aspect of the matter will also be remembered.

Finally, the burden of legislation has come very heavily on the Law Ministry and they have been doing their best about it. I congratulate them on their achievements all these years. I hope they will bestow great attention whenever legislation is made and see that all our laws are foolproof.

Shri Supakar: Mr. Chairman, many speakers have dealt at length on the corroding influence of politics on our judiciary. It is unfortunate that in India politicians are swayed more by passion than by reason and we are apt to think that those who differ from us are reactionaries. That is perhaps the reason why, when Mr. Khadilkar made his speech, he said that judiciary should be subordinate to the sovereign body of our country, the Parliament, thereby laying undue emphasis on the sovereign character of this Parliament and underestimating the responsibility that is given to the Supreme Court and the High Courts by the Constitution of our country.

16 hrs.

I shall not deal with the influence that politics has come to play on judiciary during the last ten years. There have been people in much higher circles than Shri Khadilkar who have not hesitated to say that the judges are living in an "ivory tower" and that their job is to "keep sitting wearing wigs and gowns for a number of hours a day and look very learned." That is one aspect of the picture. The other aspect is that of influencing our judiciary. Our judiciary has been well characterised, as has been quoted by Pandit Thakur Das Bhargava, in the statement of a Judge of a High Court, which says:

"If the States Ministry continues to have a powerful voice in the matter, in my opinion, in ten years' time or so the last of the judges appointed under the old system will disappear and the independence of the judiciary will have disappeared and the High Courts will be full with judges who owe their appointment to politicians."

That will be an evil bad day and that may, in the opinion of some of the Members, might help the development of socialism but in that process democracy will be killed.

[Shri Supakar]

Now I will deal with some of the aspects in which the Law Ministry is directly concerned. You know, Sir, that the Law Commission has submitted several reports regarding the revision of legislation on subjects like partnership, limitation, registration etc. Though some of these reports have been submitted as long ago as three years ago, no action has been taken as yet. This is one aspect of the responsibility of the Law Ministry that is being discharged in a very unsatisfactory and very slow manner.

There is another aspect of the problem which is cropping up with the development of our public sector which needs the attention of the Law Ministry more than the other Ministries of the Government of India. As the public sector develops, we have to go in for more and more new types of contracts regarding different kinds of business in our public sector like steel, shipping, housing and other subjects. Those contracts have to be scrutinised by the Law Ministry. It is a sad experience that in the past we have undergone a huge amount of loss, delay and other difficulties on account of our not being very strict in our scrutiny of these contracts and by letting many loopholes in our contracts with the various concerns who have come forward to develop our public sector.

These matters have to be looked into very carefully. I am afraid that the Law Ministry, as it is constituted at present and the staff that goes to man it are probably not sufficiently active or numerous enough to look into these matters. But unless the draftsmen and other persons are more active and their strength is added up, we shall not be able to cope with the newer and newer responsibilities that are devolving on the Government of India.

In this connection, I will say that there should be proper co-ordination between the Ministry of Law and the other Ministries which are concerned

with the nation-building activities, especially the Ministries which are engaged in the development of the public sector.

One aspect to which I wish to lay emphasis is the legislation that we are having from time to time. It is a painful experience that in many of the enactments, both in the Centre as well as in the States, there is what is known as the "Henry VIII clause" which excludes the jurisdiction of the law courts on that legislation. That is a most unsatisfactory state of affairs. The Ministry should always take care to guard zealously the rights of the citizens to take recourse to a court of law when their rights and privileges are infringed.

Another point which needs emphasis is the legislation in Hindi. The Supreme Court and the High Courts probably will be asked in the future, if not in the very near future, to conduct the arguments and to have the judgments in Hindi.

16.08 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

The Committee which was appointed to look into the report of the Official Language Commission has given its report. In the mean while, if we realise the responsibility and if at all we intend to change English from being the official language of Supreme Court and the High Courts, even if the change is to take place after 20 years, we have to take steps now to have our laws translated, either into Hindi or the local State languages and we have to use less and less of English. Also, the reporting of law, the judgments, arguments in and so on in other languages have to be looked into. In these matters I think the Law Ministry has a big responsibility.

Then another point which I wish to raise is the delay in the disposal of cases. Though the Government of

India may not be directly responsible in these matters, I specially draw the attention of the Government to those cases in which the Government is a party, specially the Government of India and in some cases the State Governments. It is a well-known fact that when an ordinary case between two private parties takes a year or two to be disposed of, it takes nearly twice as long for a case to be disposed of in a case in which the Government is a party and in which the Government has to pay some money. There is absolutely no excuse whatsoever for the Government, which enjoys a very much more privileged position than an ordinary citizen of the State, to permit the case to be delayed so long. I believe the Government will take all steps to see that it does not claim any special indulgence from courts so far as these cases where the Government is a party are concerned.

Now I will refer to a small point before I finish, and that is about the All India Services. We have some bitter experience from the All India Administrative Service. This matter has been referred to by some previous speaker, where junior officers without sufficient experience become heads of districts and their administration is not sufficiently satisfactory and not sufficiently able. Consequently, the administrative standard throughout India in different parts of the States is gradually going down. I wish the same story may not be repeated in the establishment of the All India Judicial Service. I believe the Government will think twice or thrice before they give serious thought to the establishment of an All India Judicial Service.

श्री सुशबल राय उपाध्यक्ष महोदय,
आज प्रातः काल से इस विधि मंत्रालय के सर्च
के अनुदानों पर विचार हो रहा है।

Mr. Deputy-Speaker: Hon Members who want to speak should give some indication that they are ready to speak. When I was looking this side, they gave no indication.

Shri Khushwaqt Rai: I was looking that side, unfortunately I have been waiting so long. I thought I would not get a chance.

Mr. Deputy-Speaker: All right.

श्री सुशबल राय प्रातः काल से जो वादविवाद हो रहा है वह इस बात पर होता रहा है कि ला कमिशन का जो प्रतिवेदन आया है, उसकी जो सिफारिशें हैं उन पर कोई प्रमल किया जा सकता है या नहीं किया जा सकता है। मेरी समझ में जैसे पहिल ठाकुर दास भार्गव ने कहा कि अगर हम यह चाहते हैं कि ला कमिशन ने जो सिफारिशें की हैं उन पर प्रमल किया जाय तो हमको सेंटर में एक मिनिस्टर आफ जस्टिस बनाना चाहिये और जब तक मिनिस्टर आफ जस्टिस नहीं बनता है तब तक ला कमिशन की जो मुख्य मुख्य सिफारिशें हैं उन पर प्रमल नहीं होगा।

आप श्रीमान् जानते हैं कि बहुत सी बातें यहाँ तक कि ऐडमिनिस्ट्रेशन आफ जस्टिस की जो बात है उसका ताल्लुक राज्य सरकार में होता है और बहुत सी बातें ऐसी हैं जिनका कि सम्बन्ध होम मिनिस्टर से रहता है।

अभी थोड़ी देर पहले हमारे एक साथी बोल रहे थे। उन्होंने इस बात की सर्च की कि अग्रेजी के जमाने से यह परम्परा चली आई है कि होम मिनिस्टर का कार्य अलग और ला मिनिस्टर का कार्य अलग होता है। उन्होंने यह भी कहा कि यह इसलिए कि ला मिनिस्टर को मस्विदे और ड्रैफ्टिंग का कार्य दिया जाता था और चूँकि होम मिनिस्टर अग्रेज होता था इसलिए उसको जजज के ऐपायन्टमेंट्स का कार्य दिया जाता था। अगर यह बात कि उसका आयन्दा प्रतिफल क्या हो इस बात पर उन्होंने प्रकाश नहीं डाला। तो इसका तो एक ही परिणाम निकलता है और वह यह है कि सेंटर में मिनिस्टर आफ जस्टिस होना चाहिये और उसके ताल्लुक वह सब बातें हो जिससे कि वह स्टेट में जिस

[श्री सुधावन्त राय]

तरीके के न्याय होता है उसको भी देख सके और उसको कोर्टाडिनेट कर सके और उनको डाइरेक्शन दे सके और तब यह हो सकेगा कि ला कमिशन में जो रिपोर्ट दी है उसकी जो सिफारिशें हैं उन पर अमल हो सकेगा। लेकिन एक बात में उसके बारे में बहुत ही मझतापूर्व विधि मन्त्रालय से और उनके जरिए गृह मन्त्रालय का ध्यान दिलाना चाहता हूँ और वह सिफारिश यह है कि जहां पर ला कमिशन ने यह कहा है कि जजों की नियुक्ति में चाहे वह सुप्रीम कोर्ट के हो अथवा हाई कोर्ट्स के हो, पोलिटिकल, रीज्नेल और कम्युनल कंसिडरेशन्स काम करते हैं। मैं समझता हूँ कि इस बात को तुरन्त ही बन्द कर देना चाहिये। अगर हम चाहते हैं कि हमारे देश में प्रजातन्त्र फैले, हमारे देश में डिमाक्रेसी फैले और उसकी उन्नति हो तो यह आवश्यक है कि जज ऐसे होने चाहिए कि जिन में जनता का विश्वास हो, और जनता का विश्वास तभी हो सकता है जब जज ऐसे हो जिनकी नियुक्ति जो मैंने कंसीडरेशन्स बताये हैं उन पर न की गयी हो। अभी थोड़े दिन पहले की बात है। मैं सुप्रीम कोर्ट गया हुआ था। वहां मैं एक अदालत में बैठा था और वहां पर एक राज्य का मामला पेश हुआ और उसके सम्बन्ध में वहां जो बहस हुई और जा नोर्षों में बान हुई उनसे मुझे यह मालूम हुआ कि उस राज्य के एक जज की नियुक्ति वहां के चीफ जस्टिस की मर्जी के खिलाफ सिर्फ इसलिए कर दी गयी कि वहां के चीफ मिनिस्टर चाहते थे कि इस जज की नियुक्ति हो। और उसका फल क्या हुआ? उसका फल यह हुआ कि जब उसी राज्य द्वारा जारी किय गये एक आर्डिनेन्स पर बहस हो रही थी और उसी जज के सामने थी पर उस जज का उससे कोई मतलब नहीं था, वह मामला चीफ जस्टिस के सामने था, तो उन्होंने राय दे दी कि आर्डिनेन्स बनाने का अधिकार उस राज्य को था। इससे चीफ जस्टिस को परेशानी हुई और उन्होंने उस फैसले में कहा है कि ऐसी बातें हमारे बदर

जज को नहीं कहनी चाहिए थी जिनसे हमें परेशानी हो, लासवन् जब कि उनकी कोई आवश्यकता नहीं थी कि वह कोई ऐसी बात कहें। तो मेरे आपके जरिये से विधि मंत्री को और विधि मंत्री के जरिये गृह मंत्री जी से यह सिफारिश करना चाहता हूँ कि इस तरह की नियुक्तियां हमारे देश में जो प्रजातन्त्र है उसको बक्का पड़ना नहीं है। ऐसी नियुक्तियों को खत्म हो जाना चाहिए। मैं यह जानता हूँ कि विधि मंत्री का इस में बहुत हाथ नहीं है, लेकिन मैं जानता हूँ कि विधि मंत्री कैबिनेट रेक के हैं तो उनकी बात गृह मंत्री अवश्य स्वीकार करेगा। इसलिए मैंने उनसे बरखास्त की है कि वह इस मन्त्र विभाग करे।

अब मैं कुछ बातें इस मन्त्रालय की कार्य-वाहियों के बारे में कहना चाहता हूँ और मैं समझता हूँ कि मुझे उन पर प्रकाश डालने का अधिकार है।

पहली बात जो मुझे कहनी है वह यह है कि जब मिनिस्ट्री की तरफ से डिमांड्स पेश की जाती हैं तो साधारणतया यह होता है कि जो उनके जो माइन्टर हैं इस होते हैं वह एक ही जगह पर दिये जाते हैं। पर इसमें आप देखेंगे कि डिपार्टमेंट आफ लीगल एफेअर्स की जो डिमांड दी गयी है उसकी डिटेल्स वहां पर नहीं रखी गयी हैं बल्कि आगे चल कर लेजिस्लेटिव डिपार्टमेंट के बाद उनकी डिटेल्स दी गयी हैं। इस वजह से जो भी इस डिमांड का पढ़ना है उसका डिटेल्स के जानने के बारे में परेशानी होती है और मुझे भी यह परेशानी हुई। मैं न यही के एक महायक में उनके बारे में पूछा तो वह भी नहीं समझ पाये। फिर उन्होंने विधि मन्त्रालय के किसी अधिकारी से पूछा और उन्होंने बताया। ता मैं समझता हूँ कि जब डिमांड्स पेश की जाये और उनकी जो किताबें बनायी जायें उनमें इस बात का ख्याल रखा जाये कि इस तरह की परेशानी न हो।

इसी तरह से मैं दूसरी बात यह कहना चाहता हूँ कि इस में प्राबेबुल सेविन्स दिव्वाणी गयी है। मैं समझता हूँ कि सेविन्स का जिक्र डिमांड में नहीं होना चाहिए। जब आप आमतो है कि हम को इतनी सेविन्स होनी हैं तो उतना कम करके आप डिमांड पेश करे। यह जो प्राबेबुल सेविन्स हैं इनको रिवाइज्ड बजट एस्टीमेट्स में दिखाना चाहिए। मैं समझता हूँ कि इन सेविन्स को इस तरह में डिमांड में नहीं दिखाना चाहिए।

तीसरी बात में इस अनुदानों को पुस्तक के बारे में यह कहना चाहता हूँ कि इसमें एक्सपेंडीचर भ्रान यूनिवर्सिटी टैरीटरीज की डिमांड नम्बर ७१ के नीचे ४,३०,७०० रुपया दिखाया गया है। उनका सविस्तार विवरण पृष्ठ ६ पर दिया गया है लेकिन उसमें केवल ३,०६,७०० का विवरण दिया गया है। बाकी रुपया कहा जाता है, उनका कोई विवरण नहीं दिया गया है। यह मेरी समझ में नहीं आता कि ऐसा क्यों किया गया है।

यं बानें मुझे डिमांड के बारे में कहनी थी। अब मैं मंत्रालय के धीरे कामों के बारे में कहना चाहता हूँ।

मुझ से पहले बालन वाले माननीय सदस्य ने कट्टेक्ट्स के बारे में जिक्र किया। मुझफिन है कि मैं गलती पर हाऊ, लेकिन मेरा खयाल है कि जो पब्लिक अडरटैकिंग्स के साथ सरकार के कट्टेक्ट होते हैं उनके बारे में इस मंत्रालय में परामर्श नहीं किया जाता। प्रक्सर प्रश्नों में यह बात सामने आती है कि बहुत से कट्टेक्ट्स ऐसे होते हैं जिनमें पीनाल्टी क्लॉज नहीं होता। अगर कोर्ट कानून को जानने वाला एधीमेंट के ड्राफ्ट को देखेगा तो जरूर कहेगा कि इस में पीनाल्टी क्लॉज का होना जरूरी है। इसको तो वही लोग नजर बन्दाज कर सकते हैं जिनका कानून की जानकारी न हो। रिपोर्ट में यह कहा गया है कि इस तरह के कट्टेक्ट्स के बारे में जो सेट्टल

गवर्नमेंट के द्वारा किये जाते हैं इस मंत्रालय का मध्यविरा लिया जाता है। अगर ऐसा है तो मैं जानना चाहूंगा कि फिर यह कैसे होता है कि इन एधीमेंट्स में पीनाल्टी क्लॉज नहीं होता।

दूसरी बात यह है कि बहुत से कट्टेक्ट्स दूस्ते मुल्को में कर लिये जाते हैं। मेरी समझ में नहीं आता कि ऐसा क्यों किया जाता है। हम जानने हैं कि जो कट्टेक्ट हमारे देश में होगा उस पर हमारा कानून लागू होगा धीरे जो दूसरे देश में होगा उस पर उस देश का कानून लागू होगा। इस प्रकार के मामले प्रक्सर पब्लिक एकाउन्ट्स कमेटी में हमारे सामने आते रहते हैं जिनमें यह कहा जाता है कि चूकि यह कट्टेक्ट्स दूसरे देश में हुआ है इसलिये हम इसमें कोई कार्रवाई नहीं कर सकते।

दूसरी बात जो मैं कहना चाहता हूँ कि वह यह है कि जो आपने रिपोर्ट दी है उसमें आपने कहा है कि आप राज्य सरकारों को मनाह देते हैं कि वह कौन से व्यक्तियों को नियुक्त करे। अभी जम्मू काश्मीर में एक पोलिटीकल मामला चल रहा है। उसमें आपका जो मीनिशर वकील है उसकी फीस आप देते हैं। वहा पर पहले एक वकील आपने मुकर्रेर किया, उसके बाद आप बिहार से एक वकील लाये जिनके बारे में कहा गया कि यह एस ह ई कोर्ट जज ह धीरे उनकी क्रिमिनल ला को जानकारी बहुत अच्छी है। मगर उनके बाद आप एक धीरे दूस्ते वकील को फेब्रुस फीस देकर लाये क्योंकि उन्होंने कुछ काबेस मत्रियो के मुकदमों में इलाहाबाद में पंरबी की थी। अगर आप किसी अच्छे क्रिमिनल लायर को लाना चाहते थे तो ऐसे किसी लायर को लाते जैसे कि हमारे पडिन जी बेटे हुए हैं। मगर उनका खयाल न कर आप ऐसे एक वकील को लाये जिसने कभी क्रिमिनल कोर्ट में प्रैक्टिस नहीं की और न हाई कोर्ट में प्रैक्टिस की।

उपरोक्त महोदय आपने भी इन्तिफाज किया। पंडित जी के बारे में तो कहा पर जो साहब पंडित जी के पास बैठे हैं उनके बारे में नहीं कहा।

श्री सुशबल राय' उनकी सिफारिस में किसी मामले में करूंगा दूसरी बात मैं यह कहना चाहता हूँ कि सन् १९५७ में एक ला मिनिस्टर्स की कानफरेंस हुई थी और उसका जिक्र भी इसमें किया गया है। उनकी जो सिफारिसें हैं उनके बारे में कहा गया कि उनकी प्रामेसिग हो रही है। मैं तो यह जानना चाहता था कि जो वह कानफरेंस हुई क्या उसकी सिफारिसों को इम्प्लीमेंट किया गया। बाहिर सी बात है कि जब आप एक ला मिनिस्टर्स की कानफरेंस बुलाने हैं जिसमें सारे राज्यों के विधि मंत्री भाते हैं और जिसमें आप भी शामिल होते हैं उसके जो फैसले होने हैं उनको कार्यान्वित नहीं किया गया। यह बड़े दख की बात है। उसका एक फैसला तो यह है

Checking of corruption in the administrative machinery of courts

दूसरे मैपरेगन आफ ज्यूडिशरी फ्राम दी एग्जिक्यूटिव और नीमरे लीगल एंड टू पूअर पीपल। ये आपने फैसले किये थे और मुझे वेद के साथ कहना पड़ता है कि इन फैसलों पर आज तक प्रमल नहीं हुआ है जहां तक मुझे मालूम है। मेरी समझ में यह बात नहीं आती है कि जब आप ही फैसल करते हैं तो क्यों नहीं इन फैसलों को आप प्रमल में लाने हैं। मैं मानता हूँ कि लीगल एंड टू दी पूअर देने में काफी दिक्कतें हैं, काफी कठिनाइयां हैं लेकिन मैं यह कहना चाहता हूँ कि अगर आप सभी मामलों में यह नहीं कर सकते हैं तो कम से कम घाग ३२ जो हमारे मविधान की है, जिसमें अगर किसी मिटिजन के फेडमेंटल राइट्स इन्फ्रिज होने हैं, उसमें तो आप यह कर ही सकते हैं। आप दिल्ली में रहते हैं और दिल्ली में रहते हुए यह सहायता प्रदान नहीं कर सकते हैं, यह बड़े आश्चर्य की बात

है। गरीब आदमी जिसके फेडमेंटल राइट्स होने हैं, और जो अपनी गत सुप्रीम कोर्ट तक ले जाना चाहता है लेकिन से जा नहीं सकता है, उसको तो कम से कम मुफ्त लीगल एड दे ही सकते हैं। इसका क्या जस्टिफिकेशन है कि आप फैसले करते हैं और अच्छे फैसले करते हैं, उनके पीछे अच्छी भावना रहती है, परन्तु जब उन फैसलों को प्रमल में लाने की बात आती है, तो आप हिचकिचाते हैं। आप कहते हैं कि आप स्टेट्स को लिखते हैं लेकिन स्टेट्स को लिखने के बाद भी तो आपको इस पर विचार करना चाहिये कि प्रागे क्या कार्रवाई हो सकती है। केवल केरल राज्य ही एक ऐसा राज्य है जहां पर यह चीज की गई है और उसको छोड़ कर किसी भी राज्य में इस पर विचार नहीं हुआ है। मैं समझता हूँ अगर स्टेट्स से आप यह नहीं करवा सकते हैं, तो कम से कम मीटर में ही आप इस चीज को करवायें।

मुझे दो तीन बातें और कहनी हैं और विस्तार में न कह कर मैं केवल प्वाइंट्स ही बयान करूंगा। आपने यहां पर एक अनुवाद विभाग है ट्रान्सेलेशन विभाग है। मैं जानना चाहता हूँ कि इस विभाग की क्या कार्रगुजारिया है। सन् १९५० में हमारा मविधान बना था और उस समय उसका हिन्दी मस्करण प्रकाशित हुआ था। उसके बाद उसका मशोधित हिन्दी मस्करण आज सन् १९५६ में प्रकाशित किया गया है और यह भी तब जब मैंने इसके बारे में कई बार मवाव किये। दस बरस बाद हिन्दी मस्करण प्रकाशित किया गया। नौ सालों में वह हिन्दी का मस्करण ही प्रकाशित नहीं कर सका और इस बीच में उसमें सान मशोधन हो चुके हैं। आज भी आप हिन्दी भाषा भाषियों के ऊपर दूसरी जवान लादे हुए हैं जिसको कि वे पढ़ नहीं सकते हैं और जो चाहते हैं कि उनको हिन्दी में किताबें पढ़ने को मिलें, लेकिन मिलनी नहीं है। जब संविधान के अनुवाद में इतनी देरी हो सकती

है तो वो दूसरे कानून हैं उनका तो कहना ही क्या ।

धन में इलैक्शन कमिशन के बारे में कुछ कहना चाहता हूँ । वह भी आपसे सम्बद्ध है । इलैक्शन कमिशन को ऐसी कोई बात नहीं करनी चाहिये जिस से कि पेटिशनर को या रिसपाइंट को अधिक खर्चा करना पड़े या उनका खर्चा बढ़े । जितनी भी इलैक्शन पेटिशनर हुई है, उनमें इलैक्शन कमिशन ने सिव्योरिटी के मामले में इतना पूरा दिया और एक रिमार्क किया कि एक एक करके देश की बहुत सी अदालतों ने माना और उन मामलों को आन्विर में हाई कोर्ट और सुप्रीम कोर्ट में जाना पड़ा और बहुत से पेटिशनर ऐसे थे कि जो चाहे वे बहा जाना भी चाहते थे लेकिन चूकि उनके पास पैसा नहीं था, पैसे की कमी थी, वे जा नहीं सके । इस मामले में कहना चाहता हूँ कि इस तरह की बात नहीं होनी चाहिये ।

धन में रिमूवल आफ डिस्कवालिफिकेशन के बारे में कुछ कहना चाहता हूँ । मैं जानता हूँ कि जो नया मशौधन मन् १९४६ में हुआ है उसके द्वारा आपने इलैक्शन कमिशन को यह अधिकार दे दिया है कि वह १४० (ए) के मानदण्ड किमी भी डिस्कवालिफिकेशन को रिमूव कर सकता है । परन्तु डिस्कवालिफिकेशन में कई फर्क होते हैं । एक डिस्कवालिफिकेशन वह है जो कि इलैक्शन ट्रिब्यूनल की फाउंडिंग से होती है । मैं यह चाहता हूँ कि इसके बारे में आपकी कुछ हिदायत होनी चाहिये । इसका कारण यह है कि इलैक्शन ट्रिब्यूनल ने जब फाउंडिंग दे दी कि हमने कोरप्ट प्रैक्टिस की है और उस प्रैक्टिस के लिये अगर वह डिस्कवालिफाई हो गया है तो उसकी डिस्कवालिफिकेशन जल्दी ही रिमूव नहीं किया जाना चाहिये ।

एक बात मैं यह भी कहना चाहता हूँ कि इलैक्शन कमिशन की ओर से गज्यो

को कुछ अनुदान दिये जाते हैं कि वे मनुवाता सूचियों को ठीक रख सकें, उनको छपवा सकें, उनमें शुद्धि कर सकें । मुझे यह देख कर आश्चर्य हुआ कि बहुत से जो अनुदान दिये जाते हैं, उनमें राज्य की जो आबादी होती है, उसका कोई हिसाब नहीं रखा जाता है, कोई उसका ध्यान नहीं किया जाता है । एक राज्य है जिसकी आबादी छ साठे छ करोड़ है, उसको एक लाख का अनुदान दिया गया है । पिछले साल उसे बीस लाख दिया गया था और बीस लाख के करीब वह खर्चा भी कर रहा है लेकिन धन उसको घटा दिया गया है और आबादी का कोई लिहाज नहीं रखा गया है, यह क्यों नहीं रखा जाता है, यह बात मेरी समझ में नहीं आती है ।

उपाध्यक्ष महोदय, कहने के लिए तो मेरे पाम और भी बातें थी लेकिन चूकि समय नहीं है, इस वास्ते में अपना भाषण समाप्त करता हूँ ।

Mr. Deputy-Speaker: Now, Shri Subman Ghose

Shri Warior. I made a submission that I wanted to speak it has become almost a lawyers' day today Why not call a layman who has experience of the dock?

Mr Deputy-Speaker: We have actually started with a layman

Shri Subiman Ghose (Burdwan): If a layman is allowed to speak, he will make the judiciary subordinate to the executive

Shri Warior No

Shri Khadiikar. This is not fair

Mr Deputy-Speaker: The hon. Member may now pull it out in as short a time as possible

Shri Subiman Ghose. The Law Commission was appointed presumably, I think, to reform the law and

[Shri Subiman Ghose]

the law courts after Independence, according to the changed circumstances and in consonance with our training and culture and social needs. Undoubtedly, the Law Commission has done a Herculean task, but one thing that strikes me, and which perhaps has not been noticed by the Law Commission, is in regard to addressing the law courts

I do not know why after the attainment of Independence, when we are living in a republic, the address in law courts should be as 'My lord', or 'Your honour', or 'Huzur' or 'Dharmavatar', and we should continue these things. It makes the judges assume an overbearing attitude and makes them touchy. I do not know whether it has actually happened or it is only a figment of imagination, but there is a story which is current which is this. One very big lawyer was arguing a case before a High Court Judge, and in this feeling he said 'Then gentleman' That touched the Judge and he flew into a rage and said 'You must address the court very properly. You must not say like that'. The lawyer answered 'My lord I am sincerely sorry I called Your Lordship a gentleman'

I think the time has come when this mode of address should be discontinued. Now practically it makes the business of the lawyer to eulogise and the Judges think that their business is to be eulogised. I request the Law Minister to take steps so that this form of address may be discontinued. Nowhere in the republican countries—I speak subject to correction—are the Judges addressed in such a way. We have continued with this because it is the system in vogue in England because the Judge there is thought to be the representative of the Majesty and therefore the Majesty is addressed through the Judge. Therefore, he is called 'My Lord' or 'Your Lordship'. But I think this is a medieval system in a republican country. I request the

Law Minister to take steps so that he might discontinue it.

The second point I want to urge is this. My hon friend was taking exception and saying that they will make the judiciary subordinate to the executive. I do not want to draw a distinction between the Law Ministry and the judges. Comparisons are always very odious. There may be very great men in the Law Ministry and there may be very great men among the judges. But the fact remains that if we give a blank cheque to the Ministry, we shall find that the High Courts will be filled up by party men. We have learnt by this time by bitter experience that defeated candidates in elections have been appointed Judges. That will be done, if this blank cheque is given to the executive. It is said often and on that the defeated candidate possesses the requisite qualification, that he is a B.L. and is a lawyer of some years standing, therefore, there is no harm in appointing him as a High Court Judge. But my submission is that that should not be done. However great he might be, he has chosen a career, he has taken to the life of a politician and if he is defeated in election, that shows that he is not wanted by the people. But then he becomes the people's Judge. That is an absolutely anomalous position.

I tried in the last session—I do not know whether you remember it or not—to bring forward a Bill for amending the Constitution regarding the appointment of Judges so far as article 217 of the Constitution is concerned but my misfortune was that I could not carry conviction with you and I ultimately withdrew it.

Shri Hem Barua (Gauhati) Con-
viction of the House

Mr Deputy-Speaker: He is talking of what happened in the Committee on Private Members' Bills and Resolutions.

Shri Subhman Ghose: I think in the fitness of things the Governor should not have any hand in the appointment of Judges. It is the business of the Chief Justice of the respective High Court in consultation with the Chief Justice of India. To ensure real justice and fairplay, this rule should be followed, and the Ministers should not be given any power—the executive should not be given any power—to appoint Judges.

In this connection, I want to say that even in district courts, the munsif may be promoted as Sub-Judge. Once a person begins his career as a munsif, he becomes a Sub-Judge. I think that should be stoppage after that because it has been found from experience that promoted servicemen are not according to the needs of the country, or, if I may be excused for saying that, they are not efficient persons. If District Judges have to be appointed, they have to be chosen from among the lawyers of at least ten years' standing. They should be recruited invariably from among the lawyers and there should not be any promoted men from the promoted service brought into that post.

Secondly, I submit that in the Constitution there is article 222. But, what for is it there? It is almost a dead letter to all intents and purposes. We do not find that any right has been exercised under article 222 of the Constitution. If this article is applied it will prove two things: one, the oneness of India, if judges are transferred from one State to another. By remaining in one place for all time to come, there might be some sort of vested interests growing, if I may be permitted to say so. There may be some likes and dislikes of the judges towards some lawyers and towards some litigants. To ensure justice and fairplay my suggestion is that it will be better if the lawyers of one State are appointed judges in another State, not in the same State. That will ensure confidence of the lawyers and the litigant public.

Then, I come to another point, law's proverbial delay. There is delay everywhere and the law's proverbial delay is there. One thing that strikes me—one which has not been mended till now—is that we find the cases pending in the High Courts for such a long time and the rule itself becomes ineffective. I will give one concrete example.

One man was granted a permit for a motor route. Against that the aggrieved party made an appeal. He won the appeal. Then, it was carried on further appeal and this appellant won again. Then the defeated man, the man who originally got the permit for three years carried the matter on appeal to the High Court under article 226 of the Constitution of India. That remained pending in the High Court for more than three years and when the case was taken up it was found that the permission granted had expired and so the rule was infructuous.

If there is shortage of personnel, why not appoint more persons who can dispense quick justice? If it is found that the rule is infructuous, it will not inspire the confidence of the people or the litigant public.

I would like to submit one thing about the amendment of the Criminal Procedure Code. We are told that the Criminal Procedure Code was amended for speedy justice. My bitter experience is this. The Law Minister had been to my district on the 5th or 6th of February. He went to the law courts. I expected that he would go to the criminal courts. If he had, he would have found and would have been convinced that if a case is filed before a sub-divisional magistrate, the next date for appearance is fixed after 3 months.

Shri A. K. Sen: I did go there.

Mr. Deputy-Speaker: Learnt this also?

Shri A. K. Sen: I learnt it long ago.

Shri Subiman Ghose: The time at my disposal is very short and you have rung the bell. Naturally, I cannot discuss the Criminal Procedure Code now. But if the situation that has arisen as a result of the amendment of the Criminal Procedure Code is considered, I submit it has changed for the worse and not for the better. Practically, trials have been delayed by the amendment of the Criminal Procedure Code and I am ready to prove that. There has been delay in the trial. Moreover some of the things which should not escape the notice of the Law Minister, but which do are so very important, yet they are very minor and they do not speak well of the administration. I give one example. When the value of the stolen property is worth Rs 250 it is compoundable with the permission of the Court according to section 379 after the amendment of the Cr P C. It is a theft case. But the offence of receiver of stolen property has not been made compoundable according to section 411. It is possible that in one trial a thief and the receiver may both stand. The thief can compromise the case but not the receiver. I fail to understand how that is possible. Yet that has been passed by this Parliament in that amendment. The thief can go scot-free but not the receiver. I do not know who is the worst offender. He can compromise the case if he steals but if I receive the property from the thief I cannot.

I submit only one thing and that is my experience in this law-making body and I say that without meaning any disrespect. It has been said that in a war truth is the first casualty. If in this law making body there is any casualty, it is law. I request the Law Minister to take steps so that law may take its rightful position in this House.

Shri A. K. Sen: Mr Deputy-Speaker I must at the outset express my sincere appreciation for the remarks and constructive suggestions which have come from all corners of the House. The Law Ministry Demands came up for discussion in 1957 and this

is the second time that they have come up again before Parliament during my tenure of office. I noticed it then as I notice it today that it is our good luck that they were not discussed with any bitterness and it shows that we are functioning beyond the pale of controversy, whether it is this side of the House or the Opposition. Whenever matters pertaining to Law Ministry come up for discussion we are very glad to find that dispassionate and unprejudiced discussion is always brought to bear when the debate takes place in this House.

Mr Deputy-Speaker. Because law is no respecter of personalities.

Shri A. K. Sen. Law is not allied to any party nor is it fastened to the apron strings of any group. It was really very entertaining when I listened to Shri Khadilkar whom I always listened to with attention and respect and Professor Mukerjee. I really admire the speech of Professor Mukerjee because it is one which I really find completely divorced from passion and prejudice and all the other bias. I must say that he rose to very great height today when he dealt with the subject which he claims to have bidden good-bye to long long years ago. I must say that from all sides of the House we have had a very fruitful discussion and our Ministry is really obliged for the contributions made by everyone.

Let me at once clear some ground so that there may be no mistake about our functions and our responsibilities. My esteemed friend Pandit Thakur Das Bhargava rightly pointed out that it is not the responsibility of the Law Ministry to appoint Judges of the High Courts or of the Supreme Court. Nevertheless, we share the responsibility as Members of the Government and I do not think that we need feel ashamed about the way our Judges have been appointed ever since Independence in the High Courts or in the Supreme Court.

I do not for a moment acknowledge the criticism or the validity of the criticism which has been levelled here, partly based on certain odd observations here and there from the report of the Law Commission, that the party in power used its influence in the appointments of judges either of the High Court or of the Supreme Court. It was pointed out to the Law Commission, and it is my due to point it out here once again, that never during the last eight or nine years has the Government imposed any nominee of its own either in the High Court or in the Supreme Court. Invariably the recommendation of the Chief Justices has been accepted, excepting where there has been a divergence of opinion between the Chief Justice of a particular High Court and the Chief Justice of India, and it is only on one occasion, as far as I remember if my recollection is not wrong, that the Government accepted the nomination of the Chief Justice of India in preference to that made by the local Chief Justice. If there is such a divergence, the Government have to accept one in preference to the other, as it must, and, therefore, though our Ministry is not responsible for this appointment directly under the rules of business framed under the Constitution, yet, as one sharing the responsibility generally for all acts of Government, it is my duty to emphatically deny that there has been any irregularity or any impropriety in the matter of appointment of High Court Judges or Supreme Court Judges.

Reference has been made by my hon. friend, Shri Subiman Ghose and also by Shri Mukerjee to the appointment of a particular person, whom they have described as an "ex-judicial Minister and a defeated Congress candidate." Shri Mukerjee was very charitable in his reference to that gentleman because he knows him personally—a very honourable man, an able lawyer, who was not appointed by the Government but who was nominated by the Chief Justice of the local High Court. The Government

have no reason to veto the nomination of the Chief Justice, as it never does in a normal case.

I must say that I listened with great regret when Shri Subiman Ghose said that if appointments were left in the hands of the Government as it is now under the Constitution, we shall pack the Benches with Congress nominees. I think he used the expression 'party-men', I suppose he meant Congressmen. I think it stands to the great credit of this Government that it has never tried to do so, and not even its worst enemy has levelled that charge or has been able to substantiate that charge.

Shri Supakar: But there is a reference to that in the Law Commission's report.

Shri A. K. Sen: Whether there is any reference there or anywhere else, it is my duty to emphatically deny the validity of any such reference.

Shri Supakar: It is also alleged there it is the statement of a Judge of a High Court—it is on page 73.

Shri A. K. Sen: Without referring to any personality which may form the source of a particular allegation, and without casting any reflection on this source, it is my duty, again, to state before the House that any such allegation is not based on fact.

Shri Nath Pai: May I point out to him, Sir, because the Law Commission we appointed also will not be able to answer, that the way he is proceeding to reply shows that what they have said has no authority. In fact, I would say, we should see that their honour is also defended. He says "Whosoever may have said it, I deny." If he denies it he must conclusively establish in this House that these remarks to which we made pointed reference are wrong, unwarranted, by facts. Otherwise, may I point out the voice of the Chief Justice?

Mr. Deputy-Speaker: Let the Minister now substantiate his stand.

Shri A. K. Sen: That is exactly what I am trying to do, in answering what may have appeared in odd passages in the report. It is certainly not for me to brush aside or try to ignore those allegations because they are allegations which really merit an answer, and it is that answer that I am going to give. I have no doubt that the Home Minister, when his Demands for Grants come up before the House, will reply further.

But as I was telling the House—and that fact may be accepted without any doubt—never has an occasion arisen when the Government has imposed a person on either the high courts or on the Supreme Court against the nomination of the local Chief Justice or of the Chief Justice of India. There is no such instance.

Shri Nath Pal: I only wanted to read one sentence from the report. It says:

“Instances are known where the recommendation of the Chief Justice has been ignored and over-ruled and that of the Chief Minister prevailed”

This is a quotation from the Law Commission's report

Mr. Deputy-Speaker: Let us hear the Minister

Shri A. K. Sen: Unfortunately these instances are not given. Otherwise we could have said that those instances were either right or wrong. All that I can say is that never has an occasion arisen—I have said it once and I repeat it with the full authority that I have and with the facts I have at my disposal—when the Government have chosen to ignore the nomination of a Chief Justice in preference to one of its own. Only in one case, when there was a divergence of opinion between the Chief Justice of India and the Chief Jus-

... tice of a local high court has the nomination of the Chief Justice of India been accepted in preference to that of the local Chief Justice. That is a fact. It is for the hon. Member to accept or not or to point out facts which prove to the contrary.

Shri Nath Pal: He is only repeating himself.

Shri R. D. Misra: (Bulandshahr): Can the hon. Member give any instance when there is no instance?

Shri Nath Pal: Can you confute what I have read now? This is a contradiction which should be substantiated.

Mr. Deputy-Speaker: It is quite right that there is a recommendation or, I should say, a finding by the Law Commission. But there is the right of the Government to accept it or differ from it. They have the right to differ.

Shri A. K. Sen: We shall be very glad and we shall certainly be prepared to correct ourselves—(Interruptions)

Mr. Deputy-Speaker: He is trying to give the answer. He complains that no instances have been given, and he says there are none. So, the hon. Members should cite one example at least to show that it was done

Shri Nath Pal: I cited the sources

Shri Braj Raj Singh: They might put their case before the Law Commission.

Shri Naushir Bharucha: May I know from the hon. Law Minister whether, when his attention was drawn to this passage, a clarification was sought from the Law Commission as to why this allegation was made? He would have been justified in doing so.

Mr. Deputy-Speaker: The hon. Minister is not yielding to anybody. Therefore, I hope there would be no interruption.

Shri A. K. Sen: Perhaps if I had consulted the hon. Member earlier I might have taken that step. Unfortunately it did not occur to me then that I might have consulted Shri Naushir Bharucha. In any event, in the absence of any concrete instances where such an unfortunate thing may have happened, it is difficult to contradict specifically, and the contradiction must be in general terms as the allegation is. But, as I said, it is rather an unfortunate allegation and we should have been happier if any concrete instance was given illustrating that allegation, because a concrete illustration would have admitted of either no proof or disproof.

Shri Nath Pal: We remain totally unconvinced.

Shri Naushir Bharucha: Can I bring in personalities?

Shri A. K. Sen: If they are unconvinced, that is my misfortune. As I said, when the Home Ministry's Demands come here, they will be at liberty to mention such instances as they have in their possession, if any, in order to substantiate the allegations which have been made or supposed to have been made in the report.

Mr. Khadilkar: said that no basic approach has been really indicated in the report. I cannot brush aside that remark very lightly. It is true, it must be admitted as such, that the Law Commission has not recommended any sharp departure from our rules of procedure or from the constitutional structure of our judiciary.

An Hon. Member: It is possible.

Shri A. K. Sen: Whether it is possible or not is a different matter. The fact is that no radical departure from

our traditional rules of procedure or from our traditional judicial structure has been indicated by the report of the Law Commission. According to them, it is for the House or for the Government, when firm decisions are taken on this report, to determine on this recommendation whether the traditional structure, traditional procedural laws modified as recommended by the report, are enough to guarantee for us a system of law and a system of justice which will bring to the door of the common man justice speedily and without considerable expenses. That, after all, is the aim of any society which seeks to cater to the welfare of the common man.

I readily concede that a system of justice which does not bring justice to the door of the common man and make the rights, liberties and the benefits conferred by our Constitution and our system of Government available to the common man without much effort cannot possibly endear itself to the public at large and it must be regarded as having failed in its primary objective. So, it must be the aim of any democratic society to see that the people living under it enjoy a system of justice which makes justice available to the common man. That must be our aim and the aim of Parliament, Government and everybody interested in the system of justice obtaining in our country. It is precisely for that reason that soon after our independence, this Commission was constituted to report on the entire judicial administration of the country and to recommend such measures as they would think necessary to be implemented for the purpose of making this benefit of justice available to the common man.

It is true that we may draw from the experience of many other countries in this field. Prof. Mukerjee had referred to the system obtaining in the socialist countries. I may submit that there are many things which may be learnt from there, but I must

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emphasise that our system of justice is basically sound and our judges, whether in the district or in the High Courts or in the Supreme Court have by and large contributed fruitfully to the development of a just social system and the development of a democratic society, which is guaranteed by our Constitution

I do not agree, if there be any suggestion to this effect, or if I have understood it rightly, I had possibly detected in certain quarters a suggestion that the quality of our judiciary has suffered a deterioration compared to the British days. One of the speakers had said that during the British days, justice was possibly better administered than it is today. I am afraid I cannot accept that suggestion at all

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I am afraid, I cannot accept the suggestion that the quality of our judges has suffered any deterioration. What has happened is that after independence, as a result of the many rights that the Constitution has conferred on the citizen as a result of many of the laws which had passed at the Centre and in the States, striving to create a Welfare State a new pattern of litigation had started, involving a great increase in the work, not only of the High Courts but also of the district courts. And yet we tried to achieve all that with the same number of judges which we had during the British days. I had seen in my own experience how during the Defence of India Act days, in the High Court and in the other courts, there was a terrific congestion of cases. Normal cases could not be disposed of and in many of the High Courts we have a legacy of those days even now. I have seen the judges of those days. I had appeared before them myself, some of them good judges, good English judges. I have also appeared before our judges

before and after independence. I am happy to say that even today our judges in the High Courts and in the Supreme Court, quality for quality, standard for standard, education for education and erudition for erudition, are equal to, if not superior to their compeers in those days. They have done a magnificent job in the Supreme Court and in the High Courts. They have upheld the principles of liberty, fundamental rights, democratic rights constitutionally guaranteed, they have restrained the executive from over-stepping its limit and they have, by and large, distributed justice equally, sternly and fairly.

Shri Braj Raj Singh: Nobody has disputed that.

Shri Panigrahi: He said "by and large".

Shri A. K. Sen: I am glad to hear that. I have pleasure to hear that because I was trying to impress that

Shri Hem Barua (Gauhati): You were labouring under a misapprehension.

Shri A. K. Sen: I am very glad to hear that. If it is a misapprehension, I am glad to know that. But I thought some such doubt was expressed from some quarter. Even outside Parliament I have heard it said. Even the members of the Bar have often said that the judges during British days were better.

Now, with regard to the suggestions made by Shri Mukerjee, I agree with most of them. He says that our law needs simplification. There is no doubt about that. That is precisely the reason why a permanent Law Commission has been appointed to keep on revising our laws regularly so that old laws may be made up to date, laws which are cumbersome may be made more simple. I also agree with him that our laws should be related to the social norms which we have accepted for ourselves. Otherwise, our laws will become antiquated and

will not serve the purpose for which they are made. But that is the function of our Parliament and our local legislatures. It is not the function of the judiciary to create laws or to adapt laws to changing circumstances. The function of the judiciary here, as in other countries, is only to enforce and interpret the laws as are passed by the Parliament. It will be a very precarious precedent if we allow our judges to make laws. That will be overriding Parliament or usurping the functions of the legislature. And it has been, on the whole, a healthy precedent, here and elsewhere, that judges should not be legislators but are only to interpret the laws and enforce them.

Shri Hem Barua: After they retire?

Shri A. K. Sen: After they retire, if they are asked to interpret, they will do so, if they are given jurisdiction they will do so.

I agree also with Shri Mukerjee that our traditions should not be snapped completely. But too much traditionalism will tend to fetter our legal progress. We are obsessed by our traditional outlook. We are traditional by nature as a race. Whatever has been there in the field in olden days casts a halo over us. It is not only here, but in other fields also. It sometimes tends to blind our vision and fetter our receptive capacity in receiving ideas from abroad, or incorporating healthy precedents and healthy experiments in other lands in our own system.

As I said before, this country has proved beyond doubt in the 19th and 20th centuries how an alien system can blossom with all its beauty on a foreign soil, and the history of the plantation of the Anglo-saxon legal tree in this land is a very fascinating history.

Shri Hem Barua: They have planted tea shrubs as well.

Shri A. K. Sen: In your part

Shri Hem Barua: In your part too.

Shri A. K. Sen: They thrive very well. I do not think we should have any regret for that.

It is really a fascinating history to see how the English legal system flourished in this country, how we produced a galaxy of legal luminaries who can rank in stature with any other legal luminaries in any other country. In fact, students of legal history have really marvelled at the way our country received and gave new vigour and life to an alien system. Today, nobody thinks that it is an alien system. Today, from South East Asia up to the heart of Africa, the Indian Contract Act, the Indian Evidence Act, the Indian Penal Code, the Indian Criminal Procedure Code, the Indian Sale of Goods Act, various other Indian Acts are the laws in those countries. When the history of the journey of English law outside England, comes to be written in that perspective it will really make fascinating reading. But, however much we may be proud of our achievements in this historical growth of our legal system, we cannot afford to shut our eyes and ears to experiments outside and under other systems for the purpose of seeing that our system of justice really conforms to the social norms as pointed out by Shri H. N. Mukerjee.

Something has been said about Judges being appointed after their retirement or during their tenure. I think reference was made by a few Members to Chief Justice Chagla relinquishing his office and accepting the office of Ambassador for India to the United States. That fact proved, if proof is necessary, that in making such appointments, the Government certainly, does not look for favourites. The history and antecedents of Chief Justice Chagla are well known to all who are lawyers. He was a fearless Judge and sometime, the Government rightly or wrongly felt that some of his attacks

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on Government were not justified. He had rarely missed an opportunity of hitting at the Government.

Shri Nath Pal: Sometimes, promotion is a clever way of getting rid of an inconvenient person.

Shri A. K. Sen: Anyway, he certainly was not one who bowed down before the Government at any stage.

Shri Hem Barua: That may indirectly mellow down the temper of the judiciary.

Shri A. K. Sen: Yet it shows that the discretion of the Government in appointing suitable men for suitable jobs should not be barred. It is a question of preventing the Government from making improper use of its power of appointment; it is not a question of barring legally the right of appointing proper men.

Today, for instance, we have appointed a retired Judge of the Supreme Court as the Chairman of the permanent Law Commission. If the recommendation of the Law Commission is to be accepted literally, then we should not have made this appointment.

Shri Nath Pal: It is a judicial job you have given him, a quasi-judicial job.

Shri A. K. Sen: It is not a judicial appointment, certainly not.

Shri Nath Pal: What does he do as Chairman?

Shri A. K. Sen: He certainly does not adjudicate upon the rights of persons.

Shri Nath Pal: Certainly it is not executive.

Shri A. K. Sen: He certainly does not adjudicate upon people's rights. A sweeping generalisation that no Judge should be appointed to any post cannot be accepted.

Shri Hem Barua: But what about mellowing down the temper of the judiciary? This sort of appointment might indirectly mellow down the temper of the Judges also.

Shri A. K. Sen: The very fact that one of the authors of that recommendation felt that it does prejudice the independence of the judiciary by accepting an appointment himself, disproves any such suggestion. I must say the strength and validity of that recommendation are, to a large extent shaken by the author himself taking a different course.

Shri Nath Pal: But even you will not say there are Chaglas in every High Court who can resist it

Shri A. K. Sen: There are not many posts of Ambassadors of that description either

Shri Subiman Ghose: But posts of Governors are there Shri Fazl Ali is Governor.

Shri A. K. Sen: Yes, but it must be said to the credit of Shri Fazl Ali that there have been very few Judges like him in the Supreme Court, and he has done a very good job as Governor. Let us not drag in personalities I refuse to believe that a good Judge, if a selection is made, will only look for promotion to this kind of job. In fact, Shri Fazl Ali is one of the Judges who condemned the Preventive Detention Act. He was in a minority in the Supreme Court in that case.

Shri Subiman Ghose: I do not doubt for a moment his ability, but what I want to ask is: is this the reward to be given to him for his ability?

Shri A. K. Sen: We do not accept it. That was your suggestion.

Shri Hem Barua: Then you vitiate the temper.

Shri A. K. Sen: Our case is that it is only merit, merit and suitability for the particular job, that determine the Government's decision in the appointment of a retired High Court Judge or a Supreme Court Judge to particular offices, and nothing else weighs with the Government. I think it will be a very bad thing if we legally bar the possibility of using the talents and aptitudes of our good Judges in directions where we might employ them most fruitfully for the good of the country. I do not think anybody suggests for a moment that the choice of Shri Chagla was a bad choice. In fact, his work in the country where he has been assigned has been admirable.

Shri Hem Barua: Not a bad choice, but might have a bad effect.

Shri A. K. Sen: Nothing much need be said in reply to this demand for a Ministry of Justice based on the recommendation of the Law Commission. It is not for me to answer that. It is really for the Prime Minister to answer that.

Shri Nath Pai: What will be your recommendation?

Shri A. K. Sen: I cannot recommend anything because personalities are involved in the matter, and any opinion on such a matter would be odious, and any undertaking for that purpose will be equally odious. Therefore, this demand, if at all, must be addressed to the Prime Minister. It might form the subject of discussion when the matter is debated in the House after decisions are arrived at by the Government on the recommendations of the Law Commission.

Only one thing more, and I shall resume my seat. That is in defence of a very dear friend of ours and a great lawyer who has served the Government of India very well, whose name was unfortunately mentioned by my hon friend Shri Khushwaqt Rai.

Shri Khushwaqt Rai: I did not mention any name.

Shri A. K. Sen: The description was so specific that all of us knew who he was. Reference was made to the senior counsel engaged in the Kashmir conspiracy case. I think in these matters enough reliance should be placed on Government in choosing proper men for the job. That case is of such great importance for the State of Kashmir and for India as a whole that I can assure the hon Member that nothing but the interests of the case weighed with the Government in the choice of the counsel.

An Hon Member: Hear, hear.

Shri A. K. Sen: His selection does not mean in any way that we place or we are going to place less reliance on the other counsel whom we have engaged. In fact, the case is of such a big dimension and of such a great importance that two good lawyers were necessary. I would only point out to hon Members that these are such delicate points that they cannot be answered because then I shall have to unfold a good many of the details relating to that case which it would not be either in the interest of the security of this country or in the interests of the country generally to disclose. In these matters, I think Government's bona fides could be relied upon and it can as well be disclosed that Government would in such cases act on the best advice that is available to it, because it is not a case which can be run on patronage.

Shri Subiman Ghose: But his is not the first appointment.

Shri A. K. Sen: Even then, the time of appointment, the place of appointment, and everything must be left to Government. It cannot be disclosed why he was appointed at a particular time or why he was not appointed at a particular time. In fact, it is not so. He was appointed from the very

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beginning, if the information is needed, he drafted the complaint. Then, he went to the United Nations, he was not in this country. I mean, these matters should be left to the discretion of Government. After all, Government is run not by half-wits but at least by people with some commonsense and some responsibility.

With these words, I once again express my deep gratitude to the Members who have contributed to this discussion.

Shri Nath Pai: May I bring to your notice one serious thing? I know that it will be far from Shri A K Sen's mind for more reasons than one to cast aspersions on the Chief Justice of India. But, unfortunately, that is the sum total of what he has done today, when he tried to reply to me on this point.

The quotation I gave was not the finding of the Law Commission, and that is a very serious point for this House, and for him as a constitutional lawyer, to consider. The quotation which I gave was from the Chief Justice of India. It is a very serious matter. Are we to go on spreading an impression in the country that the Chief Justice of India was lying? Before you give your ruling, I want to quote the words. I want to say that the explanation perhaps lies in what has been given to us by the Chief Justice of India. And the words that I quoted, when he challenged me to give an instance are his words. And these are his words.

"Indeed, instances are known where the recommendation of the Chief Justice has been ignored and overruled and that of the Chief Minister has prevailed. This unedifying prospect has brought about some demoralisation in the minds of the Chief Justices."

I know that the hon. Minister perhaps did not have it in mind, but I think in scoring perhaps a debating point,

and perhaps being loyal to the Home Ministry's practice, a very serious thing has occurred, and we want your guidance, Sir, in this matter, because the words challenge categorically that this is not so, not so, that has been a rebuttal without any kind of deference to the authority which has given this in testimony, who should know better what he was saying. I think the Chief Justice of India was aware of the responsibility and the heavy onus he carried with him when he made these remarks.

Shri A. K. Sen: May I say a word? There was no reflection on the Chief Justice. As for inference, an erroneous inference is not the monopoly of laymen only.

Shri Subiman Ghose: It may be that of the Law Minister also.

Shri A K Sen: An erroneous inference may be drawn by the highest also.

Mr. Deputy-Speaker: This was not a judgment in a case of a judicial pronouncement against which any reflection has been made.

Shri A. K. Sen: Even judicial pronouncements.

Mr. Deputy-Speaker: Then too, we can have a difference of opinion from the one that is held by the Chief Justice. There too, we can say that 'I am not of that opinion', though we have to submit to that pronouncement. That is the only thing. I do not think there is any reflection against the Chief Justice in this matter.

Shri Nath Pai: By implication.

Mr. Deputy-Speaker: This was only an observation by the Chief Justice. If the Law Minister feels differently, there is no harm in it.

Shri Hem Barua: There was an implication there.

Shri Nath Pal: I won't quarrel with your explanation. The Chief Justice knew it better when he said it.

Mr. Deputy-Speaker: The hon Member is entitled to that opinion, that the Chief Justice knew it better, and when the Law Minister says that about the facts that he has got and puts forward his opinion, there is no harm. I suppose that no reflection has been cast.

As regards these cut motions, may I know if any cut motion is desired to be put to vote or all these cut motions are being withdrawn by leave of the House?—I take it that all cut motions are being withdrawn by leave of the House

The Cut Motions were, by leave withdrawn

Mr. Deputy-Speaker: The question is—

"That the respective sums not exceeding the amounts shown in the fourth column of the order paper, be granted to the President, to complete the sums necessary to defray the charges that will come in course of payment during the year ending the 31st day of March 1960, in respect of the heads of demands entered in the second column thereof against Demands Nos 70 and 71 relating to the Ministry of Law"

The motion was adopted

Mr. Deputy-Speaker: Now, would hon. Members like to start discussion on the Home Ministry's Demands or proceed with the half-hour discussion, so that the Demands of the Home Ministry are taken up tomorrow?

Some Hon. Members: Tomorrow

Mr. Deputy-Speaker: Then we shall proceed with the half-hour discussion.

*Half-an-hour discussion.

17.22 hrs.

***PRICES OF PADDY IN MADHYA PRADESH**

Shri Supakar (Sambalpur): Before I make a reference to the Starred Question No. 731, I want to make a very brief reference to the background of the situation

You know that in the month of November 1958, the National Development Council took a decision that the State would now go in for State-trading. That was widely publicised throughout the country, just before the harvesting time. After harvest, the cultivator has to sell his paddy and rice. But strangely enough, no precautionary measure was taken to see that this does not create any scare in the minds of the public. When a question about State trading in food-grains was discussed in the House on 12th March, 1959, the Government told us that they were not ready with a full scheme. At that time, apprehension was expressed by some of the Members in the form of a question I will particularly refer first of all to a question by Dr Ram Subhag Singh

"The scheme was announced in November 1958, and the hon. Minister himself admitted just now that the most effective way of controlling the prices is the prompt finalisation of this scheme. Assuming that he knows all these things, may I know why the finalisation of the scheme is being kept in abeyance?"

The Government's answer was that the time-lag was due to the paper being prepared and being circulated among the States, their opinions being received; he said then the Cabinet would take a decision and the matter would then be put before the House. By the time the matter comes before the House, the necessity of protecting the interest either of the purchaser or of the producer will, I believe, have gone; by that time, I believe, the next sowing season will have commenced.