member; however they can only elect a scheduled caste member from the constituency.

About delay, I said in my opening speech that the Union Territories Act was enacted only in 1963. The scheduled castes and scheduled tribes were notified in Goa, Daman and Diu only in 1968. It was in 1971 that census was there. It cannot be said that the rights of scheduled castes were denied. In fact, in the last Assembly, Government exercised their power of nomination to nominate a scheduled caste member In Goa a scheduled caste member Shri Kamble was nominated for the last Assembly in Goa. About Pondicherry we have reserved this Of the total population of 4,71,707, the scheduled caste population is 72,921. There is not a single scheduled tribe. So we thought, when there is not even a single scheduled tribe, it is no use to provide a seat for the scheduled tribe That is all. For scheduled castes we have provided seats Out of 30 members there, 5 scheduled caste members were elected to the Pondicherry Assembly and we are seeing to it that the rights of scheduled castes and scheduled tribes are looked after properly I request that this Bill may be passed.

MR CHAIRMAN: The question is.

"That the Bill further to amend the Government of Union Territories Act, 1963, be taken into consideration."

The motion was adopted

MR. CHAIRMAN: We now take up clause by clause consideration. There are no amendments to clauses 2 and 3. The question is:

"That clause 2 stand part of the Bill".

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

MR. CHAIRMAN: The question is:

"That Clause 1, the Enacting Formula and the Title stand part of the Bill".

The motion was adopted.

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

SHRI OM MEHTA Sir, I move:

"That the Bill be passed."

MR CHAIRMAN. The question is:

"That the Bill be passed."

The motion was adopted.

16.11 hrs.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

MR. CHAIRMAN. Now we take up the next item—the Code of Civil Procedure (Amendment) Bill. Dr. Seyid Muhammad.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DR V. A. SEYID MUHAMMAD): Sir, I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, as reported by the Joint Committee, be taken into consideration"

Sir, you are aware that the Code of Civil Procedure (Amendment) Bill, 1974, as introduced in this hon'ble House, was referred to a Joint Committee of both Houses of Parliament. After examination of the Bill in depth in the light of the memoranda and the evidence received by it, the Joint Committee have suggested certain changes in the Bill.

Sir, you are aware that there has been persistent demand for judicial reforms with a view to expediting the disposal of suits and proceedings. The matter was considered by the Law Commission in its 14th Report, but in

[Dr. V. A. Seyid Muhammad]

that Report no specific amendment was recommended by the Law Commission. Subsequently, in its 27th Report, the Law Commission made specific recommendations for the amendment of the Code of Civil Procedure and a Bill to amend the Code on the lines suggested by the Law Commission was introduced in Parliament and was referred to a Joint Committee. But the Bill lapsed on the dissolution of the Fourth Lok Sabha. It was felt that while the recommendations made by the Law Commission in its 27th Report were weighty they did not go far enough Consequently, the matter was once again referred to the Law Commission and the Law Commission, in its 54th Report, suggested comprehensive amendments in the Code. The Bill which is before this hon'ble House seeks to give effect, as far as practicable to the recommendations made by the Law Commission in its 27th and 54th Reports Some other recommendations on specific topics were also made by the Law Commission in its 40th and 55th Reports. The Bill also seeks to give effect to the recommendations made in those Reports

In suggesting amendments to the Bill the Joint Committee kept in view the twin objects of ensuring a fair trial and expediting the disposal of suits and proceedings. The question of costs was also considered by the Joint Committee

As you know, Sir, court fee constitutes one of the major components of costs of litigation The Committee felt that provisions should be made for reducing the court fees and making the scales of court fees uniform throughout India. Sir, as you are aware, 'court fee' being a State subject and the Code of Civil Procedure being a legislation providing for the procedure of suits and proceedings, no provision could be included in the Bill with regard to the reduction of court fees. The Committee have, however, made a separate recommendation requesting the Government to take effective steps to ensure that there is a uniformity in the rates of court fees all over the country and that the rates of court fees all over the country are brought down to such a level as to enable a poor person to get a redress of his grievance from a court of law. The Committee have further recommended that the Central Government may ensure that in case the amount received by the State Government by way of court fees exceeds the expenditure incurred by the State Government on the administration of civil justice, such excess is spent in providing amenities to the litigant public

While it has not been possible to provide for the reduction of court fees, endeavour has been made to provide in the Bill for the reduction of costs of litigation by eliminating delays, wherever possible

Some hon Members of the Joint Committee felt that provisions should be made for pre-trial conciliation proceedings or for pre trial conferences as they exist in some foreign countries These suggestions were specifically considered by the Law Commission in its 14th Report and the Law Commission felt that the object of pre-trial conciliation or pre-trial conferences can be achieved by the proper implementation of the existing provisions of the Code of Civil Procedure, 1908. The Law Commission further pointed out that it is not the law which is deficient, the deficiency is in the human material which is available for giving effect to the law Hence unless there is a qualitative improvement in the human material entrusted with the administration of justice in the subordinate courts the provisions of the Code, which have been very well conceived, will not yield the desired results

While the Government were in agreement with the views of the Law Commission expressed in its 14th Report, the Government felt that the recommendation made by Law Commission, in its 54th Report, with regard to suits

concerning a family should be given effect to. Accordingly, the principles of pre-trial conferences have been, to a limited extent, included in Order XXXII-A.

Sir, as you are aware, in the Bill as introduced in this Hon. House, section 80, 115 and 132 were proposed to be omitted. After considering the matter in depth, the Committee have suggested that these sections should be retained in the Code, but sections 80 and 115 should be modified so as to ensure that justice is not denied to the deserving parties.

The considerations which had prompted the Law Commission to suggest the omission of section 80 were broadly as follows:—

(i) in a democratic country there should be no distinction between the citizen and the State, and

(ii) in many cases just claims of citizens are defeated by the Government by taking technical defences. The Committee did not, however, agree with the views expressed by the Law Commission in support of the proposal for the omission of section 80. The Committee were of opinion that there is a distinction between a citizen and the Government machinery and, as such, the provisions of section 80 may be regarded as making a reasonable classification. The Committee further felt that if section 80 were omitted, it might prompt people to file suits against the Government to prevent it from undertaking any measure for the benefit of the society. The Committee therefore suggested that section 80 should be retained in the Code subject to certain modifications. The modifications seek to ensure that the just claims of a citizen are not defeated by reason merely of any technical defect in the notice served on the Government or a public officer. The Committee have, therefore, recommended that no suit shall be dismissed merely by reason of any technical defect in the notice or in the manner of service thereof if the following conditions are fulfilled, namely:—

(i) the name, description and residence of the plaintiff have been so given in the notice as to enable the appropriate authority or public officer to identify the person giving the notice and the notice had been delivered or left at the office of the appropriate authority; and

(ii) the cause of action and the relief claimed have been substantially indicated in the notice.

Sir, there was a persistent demand before the Committee for the relaxation of the provisions of section 80 in relation to suits for injunction. It was represented before the Committee that the purposes of suits are often defeated by reason of the provisions of section 80. It was pointed out, by way of example that a person, who is threatened with illegal deportation within 15 days, cannot get relief by a suit on account of the provisions of section 80. The Committee therefore, felt that there is a case for relaxation of the provisions of section 80 in the case of a person who intends to file a suit to obtain an immediate or urgent relief. Accordingly, the Committee have recommended that where urgent or immediate relief is needed a suit may be filed against the Government or a public officer without serving a notice under section 80; but in such a case, no relief shall be granted by the court except after giving to the Government or the public officer a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

Omission of section 115 was recommended by the Law Commission on the ground that an alternative remedy exists in article 227 of the Constitution. It was represented before the Committee that the scope of article 227 is wider than the scope of section 115 and that a remedy under article 227, being a constitutional remedy, is costlier and dilatory. Further, in view of the existence of article 227, the purpose of avoiding delays cannot be achieved by omitting section 115 from the Code. Hence no useful purpose would be served by omitting section 115.

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On the contrary, the retention of section 116 in the Code would take away many cases from the ambit of art. 227 and would thus afford a speedy and cheaper remedy. The Committee therefore, recommended the retention of sec. 115 in the Code.

The Committee, however, felt that in addition to the restrictions contained in sec. 115, an overall restriction on the applicability of sec. 115 to interlocutory orders should be imposed. The Committee, therefore, elected to accept the recommendation made by the Law Commission in its 27th Report. Accordingly, sec. 115 has been retained in the Code subject to the modification suggested by the Law Commission in its 27th Report.

The Committee felt that the omission of sec. 132 would offend against the social custom and would also help unscrupulous litigants to compel the personal appearance in court of innocent and ignorant ladies who are not accustomed to appear in public. Accordingly, the Committee have recommended the retention of sec. 132 in the Code.

With a view to eliminating delays in the disposal of suits and proceedings, the provisions of the Code with regard to the following matters have been streamlined, namely: (i) service of summons on the defendants; (ii) appearance and filing of written statement by the defendants; (iii) examination of parties; (iv) filing of documents by parties; (v) summoning and enforcing the attendance of withnesses; (vi) examination of witnesses on commission; (vii) adjournments, and (viii) temporary injunctions. Further, the categories of suits which may be tried by a court in a summary manner have also been enlarged.

With a view to discouraging adjournments, a specific provision has been made in the Bill to the effect that if no step is taken on the due date or if an adjournment is taken without sufficient reason, the defaulting party may be saddled with compensatory costs. Such costs will not be costs in the suit and payment of such costs will be a condition precedent to the further prosecution of the suit or defence, as the case may be, by the defaulting party.

It was felt by some hon. members of the Committee that inordinate delay is caused in the delivery of judgments. Some of them were strongly of the view that a rigid timelimit should be fixed for the delivery of judgments. While sentiments of the hon. members were appreciated, it was felt that fixation of a rigid timelimit will not be a practical one because the time taken in preparing and delivering judgments would vary from case to case, depending on the complexity of the case. The Committee have, therefore, recommended that if the judgment is not delivered at once after the conclusion of the hearing, it should ordinarily be delivered within 15 days from the date of conclusion of the hearing or if the judgment is not ready by that time, it should be delivered within 30 days from the date of conclusion of the hearing. But if the judgment is not ready even within 30 days, reasons for the delay should be recorded and a specific date should be fixed for the delivery of the judgment and notice of the date so fixed should be given to the parties concerned.

It is hoped that these provisions, if enacted, would go a long way to eliminate delays in the delivery of judgments.

With a view to eliminating delays, restrictions are proposed to be imposed on the right of appeal. The Bill, therefore, provides that there will be no first appeal in cases where the value of the subject matter does not exceed Rs. 3,000 except in cases, which involve any question of law. Similarly, the Bill provides that second appeals will not be allowed in

cases triable by the Court of Small Causes unless the value of the subject matter exceeds Rs. 2000. The Bill also seeks to restrict second appeals to cases involving substantial questions of law. Letters Patent appeals have also been proposed to be abolished. The Committee have also recommended that, as far as practicable, preliminary hearing of second appeals should be completed within 60 days from the date on which the appeal was filed so that second appeals, once filed, may not remain pending for an indefinite period without being admitted. Power of the court to grant stay of execution of the decree on the filing of appeal is also proposed to be restricted.

Sir, as you are aware, there is a saying that the trouble of the decree-holder begins from the date on which he obtains his decree.

SHRI SOMNATH CHATTERJEE (Burdwan): The Privy Council has said that

DR. V. A. SEYID MUHAMMAD: This is due to the elaborate procedure provided in the Code for the execution of decrees. The Bill seeks to streamline the said procedure. Another source of delay in the execution of decrees is sec. 47 of the Code. According to the definition of 'decree', an order under sec 47 relating to execution, discharge or satisfaction of a decree has the force of a decree, and, as such, an appeal and a second appeal lies against an order made under that section. It is, therefore, possible for the judgment-debtor to defeat or delay the just claims of the decree-holder by filing successive applications under section 47. It is, therefore, one of the major weapons by which execution of decrees is delayed or defeated. The Committee have, therefore, recommended the amendment of the definition of 'decree' so as to provide that an order made under section 47 relating to execution, discharge or satisfaction of the decree will not have the force of a decree. It is hoped that this salutary recommendation of the Committee would enable decree-holders to reap the fruits of the decree obtained by them without any unreasonable delay.

Sir, with a view to ensuring that the poorer sections of the community, who do not have the means to engage pleaders to defend their cases, may get a fair deal, a new rule, namely, rule 9A, is proposed to be inserted in order XXXIII to provide that where a person, who has been permitted to sue as an indigent person, is not represented by a pleader, the court may, if the circumstances so require, assign a pleader to him.

Further, with a view to ensuring that the poorer sections of the community are not harassed by arrest and detention for the recovery of petty amounts, the Committee have recommended that no person shall be detained in civil prison in execution of a decree if the amount of the decree does not exceed Rs. 500/-.

With a view to ensuring that the salaried employees are not harassed by continuous attachment of their salaries and that a larger amount of the salary may not become attachable in execution of a decree by reason of the merger of dearness allowance in the pay, the Committee have recommended that the first Rs. 400/- of the salary and two-thirds of the remainder shall be exempt from attachment and that the entire salary would be finally exempt from attachment after it has been subjected to an attachment for a continuous period of two years.

Sir, other details of the Bill have been explained in the Notes on Clauses as well as in the Report of the Joint Committee. I hope the provisions of the Bill, as modified by the Joint Committee, would go a long way in ensuring fair justice to the litigants and in eliminating delays.

[Dr. V. A. Seyid Muhammad]

Having regard to the objects sought to be achieved by the Bill, I hope the Bill would receive whole-hearted support of all the members of this hon. House.

With these words, I commend the Bill to the House for its acceptance.

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, as reported by the Joint Committee, be taken into consideration."

SHRI S. M. BANERJEE (Kanpur): The business advisory committee was to meet yesterday but it did not meet. Today also it has not met. I want to know what time has been fixed for this Bill?

MR. CHAIRMAN: The time recommended by the Government is 3 hours.

SHRI S. M. BANERJEE: There are 98 clauses. Time has to be allotted for the first, second and third reading stages. The Minister has read for about half an hour. Let us have 5 hours at least for this Bill.

MR. CHAIRMAN: It is 4.30 now and 3 hours are more than enough for today. Let us start and then see. I hope this will be communicated to the Government, Shri Chatterjee.

SHRI SOMNATH CHATTERJEE (Burdwan): Sir, I wish I could share the hopes expressed by the Minister that this is a Bill which will go a long way towards the elimination of the causes of delay in hearing the suits or making justice available to the large numbers of litigants who have to take recourse to courts of law or that it will result in a speedier disposal of cases.

Sir, I believe merely by changing the law of procedure simpliciter you cannot obtain proper administration of justice. What has been sought to be done here, what I call dealing with the law of procedure, or the Code of Procedure, which was enacted in 1908, in driblets, and tinkering with the provisions here and that is not the real approach to make structural alterations. We cannot get rid of the basic problem by making charges only, so far as procedural justice is concerned. I can assure my hon. friend, the Minister, with the little experience that I have got in the profession, from the subordinate courts to the Supreme Court—I am sure the hon. Minister's experience is still greater, because he has held high offices—that this will not solve the problem.

We talk of law's delays, but law's delays do not take place only because of the law of procedure. It is a misconcept. Law's delays in the matter of procedure is no doubt relevant, but we have to have a proper judiciary. Inefficient judges will take a longer time; a weak bar takes a longer time. Then there is the question of adequate number of judges and the facilities available to the judges. I have heard subordinate judges complaining in open courts that there is no place even to keep the records, with the result that it takes hours to find the records. In the Alipore Court, which is perhaps one of the biggest district courts in the whole of India, numerous records are piled up with nobody to take care of them. The result is that it is difficult to find out the records. Getting even an ordinary certified copy will take months because of the simple reason that the records are not easily traceable. I have seen in the Alipore court myself that some rooms are leaking in one-storeyed buildings, even though it is the biggest district court in India. Of course, I am not saying that there is delay because of the leaking roofs. But that shows that you have to make proper facilities available to them. They do not want air-conditioned rooms, as the Ministers require. But

even the subordinate judges want a little proper place to sit and do their duty They also want proper staff They cannot work only with a chaprasi. At present they have got inadequate staff. Apart from the quality of Judges, to which I will soon come, they should be provided with the minimum facilities.

I am sure the hon. Minister knows—whether he can admit it or not, whether it reaches his ears or not, I do not know—that there is a standing complaint, at least in the subordinate courts that the vacancies are not filled up. I know the Minister will say that it is a State subject, but has he got any statistics as to how many vacancies are there in the courts of the subordinate judges

Merely saying that the lawyers are responsible for the law's delay is not correct. In some cases, the lawyers are responsible. I am not saying that all lawyers are angels; in some cases they are responsible for the delay But some judges are also responsible. You cannot single out a particular item and say this is the reason for the law's delay

If you go through the provisions of the Bill, you will find that some of the provisions are a little better than what they were. But that will not solve any of the major problems which we face. Therefore, I want to know whether the Government has got any particulars, any statistics and what is their thinking in the matter. I know that the hon. Minister will say, and he is entitled to take that stand, that we cannot interfere too much in State matters and that the States do not have enough budgetary facilities

What about the vacancies of Judges? If I am not mistaken, the other day we were informed that there were about 65 vacancies in High Courts. For how long have these vacancies been pending? The date of retirement of a High Court Judge is known, unless you change it Therefore, if a Judge is to retire at 62, why should not the process start well in time so that there may not be a day's gap in appointing his successor? This used to be done during the British days I have been asking senior lawyers in Calcutta, and they say this never happened during the British days, that a Judge retires and there is no successor for one or 1½ years It was unthinkable.

SHRI VASANT SATHE (Akola): They say they do not get competent lawyers.

SHRI SOMNATH CHATTERJEE: Then abolish the system By this you will not get rid of the problem. Will you solve the problem by making amendments like this? Does it talk about filling up of vacancies? We are hearing about the fundamental duties of citizens, but is there no fundamental duty of the Government? The Government has to arrange for the proper administration of justice Has the Government no duty to fill up the vacancies of Judges? How do we compel them? We ask questions and they say that they are looking into it, that the process has started and that it is continuing I am fed up I have been putting questions and I get the same reply Even in the Consultative Committee the other day, the same stock answer was given. Not one word has been said by the Minister about that In the Calcutta High Court, subject to correction, at least six vacancies are there From time to time inspired news items are put up trying to say that in the Calcutta High Court there is so much of arrears, that the Judges are not working, the lawyers do not work etc

SHRI S M BANERJEE: Allahabad.

SHRI SOMNATH CHATTERJEE: Mr. Banerjee's State perhaps has the greatest distinction in this respect. This is giving an incomplete and unreal picture to people who do not possess the facts.

[Shri Somnath Chatterjee]

If you can get good people only on better salaries, then formulate some such thing. Or, if you cannot attract good people because of the service conditions or because of the threat of transfer which you have now imposed, it is your own choosing. If good people are not available, how do you wish to run this system of the administration of justice? These are matters which have to be looked into from a practical point of view. Do not always bring in politics These things I am saying from personal experience

Then there is another thing which should not be forgotten Look at the output of laws We are passing so many laws in this Parliament every year, and in the State legislatures also a huge number of laws are passed—not only legislations but subordinate legislations. Every day hundreds of statutory orders are passed affecting the daily lives of the people. I am not saying always prejudicially affecting, but they are concerning the ordinary people's daily affairs, their assets, property, living etc There are larger areas of—if I may use the expression—conflicts between the citizens and the State, apart from conflicts between citizen and citizen which is there

Now, for this, if somebody goes to the court and makes an application under article 226, there is nothing wrong. If I genuinely feel that I have been affected prejudicially by an order I can go to court People are not always acting *mala fide*. It is not a fun to go to court: everybody cannot afford to go to court for the sake of the fun of it, for the luxury of litigation. This is a misconception. Only certain sections of the people who have enough money to spare and squander can go to litigation for the sake of the luxury of it. Certainly there are people who can control; if the judges are competent, they can control such litigation. There are, a larger number of cases today are coming before the court. Do not forget that today the State has rightly—I am not saying, wrongly—entered into commercial ventures. We welcome that; we support it and we would support many more things which Government should do in the public sector So far as the commercial transactions of the State are concerned, so many statutory corporations have been set up; they are entering into ordinary, normal trading transactions which are giving rise to disputes. There are innumerable cases where contracts entered into between the Government and the ordinary contractor give rise to disputes Government says, 'I forfeit your security deposit because you have failed to carry out the contract' If the other party feels that it is being wrongly done, should it not have the opportunity to go to the court or get an adjudication through arbitration or some such procedure? You cannot blame him for trying to have an adjudication on the question of his rights *vis-a-vis* the Government or the statutory corporation as you would have the right to go against any private party. Therefore, cases are bound to increase, apart from the rise in population with the rise in the number and diversification of normal, human activities in this country which give rise to what are known as legal disputes. You can say that nobody can go to court That is a different thing. I am talking of normal disputes. I am not talking about land disputes and all that, I shall come to them later; they are very important If you do not shut the doors of the courts these ordinary disputes will go on Even the small businessman will try to come and protect his rights Do not impute motives to everybody, whosoever goes and files a suit against Government. Government does not always do things right I wish I could take that view, but they do not do it. Now, with the larger number of litigation cases, with reduced facilities available, the number of vacancies going up, not being

filled up for months and years, how do you solve it? By making a few amendments here and there in the Code of Civil Procedure? You cannot do it without changing the very basic approach towards litigation or the method of settlement. If you have a court of law, then you have plaints, written statements, discovery, inspection, followed by interrogatories, oral evidence, written evidence and what not and then appeal, revision and all that; the whole gamut is there except that wonderful thing—I am sorry for saying this—that even the lawyer's illness is no ground for adjournment—this is a new innovation that you have thought of in reducing delay.

I wish I could agree with the hon. Minister that the passage of this Bill would bring about revolutionary changes in the legal procedure in the country or in the administration of justice. That will not happen—take it from me—in spite of the best wishes of the judges. I can tell you, judges are changing their attitude these days. I have said that earlier in this House. Some of them are getting views that some entities can do no wrong. Even then, with their best efforts, it is not possible to dispose of a case speedily with the present system of procedure, given the other things or the other loopholes being plugged. Therefore, my sincere view in this matter is this. The way these amendments have been brought about will not solve the crying problems of administration of justice in this country. It will not. Law's delays cannot be remedied in the manner it has been done. Law's delays are not necessarily deliberate. I want this to be placed before the hon. Members. It is not always deliberate. It is involved in the very process of the administration of justice that has been evolved in this country for years and it has been followed. Therefore, what is necessary is a complete structural alternation and Village Panchayats, People's courts, village courts and District Courts and ouster of jurisdiction of the courts in certain cases. It has to be done from the overall point of view. You cannot have it like this.

SHRI VASANT SATHE: Let us go back to the age-old Panchayat system. I think that way we will get justice, quicker and cheaper.

SHRI SOMNATH CHATTERJEE: To-day we are discussing unfortunately this Amending Bill and I am only referring to the great hopes which the hon. Minister has thrice expressed in the course of his speech, namely, the hopes that this Amendment Bill is expected to revolutionise the entire administration of justice. That is too much. Nothing like that will happen and I want the hon. Minister to tell us what the Government is seeking to do. This is the aspect on which I want a categorical answer from the Government. Please do not always make the judges or the lawers or the litigants, unscrupulous litigants as they are called, scapegoats. It is very easy to find scapegoats. I do not want to but I can also make the government a scapegoat. I do make it, not a scapegoat but I say that you are also very much a party to it. You are very much a party to it. Therefore, you also have to accept your share of responsibility in the matter and answer to the people of this country. I want to know. Does the Central Government which is responsible for passage of Bills like this consult the State Governments as to how to expedite the disposal of cases consistent with the sense of jutice? One of our former Chief Justices used to say, 'The tendency sometimes is to dispose of cases but not to decide it.' I think nothing better has been said of the attitude of some of the persons who are very keen to merely show a record that 'I have disposed of 100 cases to-day. Therefore, in Delhi my marking will be better.' Therefore, that is not the proper barometer for

[Shri Somnath Chatterjee]

deciding whether you are administering justice. The question is: are you deciding consistent with the principles of fair-play and justice? Are you giving a fair opportunity to the people to come to the court and get adjudication of the disputes which have unfortunately arisen? At least I can say it with confidence that 90 per cent of the litigants do not like litigation but they are forced to go to courts Therefore, are you doing anything? Have you provided something for them so that they will have not only faith in your justice but they will have it cheaper and speedily and when they come out of the court they have a feeling that they have at least a proper decision by efficient persons. This should be the attitude. So long as you are maintaining the present system and, for that matter, I think in any system of admmistration of justice, when I am forced to take recourse to the court, at least I must know that I am getting proper opportunity. There should not by any undue delay. There should not be any undue costs. There should be speedy disposal and what is foremost is that I shall get a proper approach that justice is at least sought to be done. These are the basic matters, I submit, in the basic context of our system of administration of justice which has to be assured to the people, but nothing has been done

When we are hearing about .

MR. CHAIRMAN: The hon. Member's time is over.

SOME HON. MEMBERS: Let him speak.

MR CHAIRMAN: No question of 'let him'. The time allotted for the Bill is 3 hours. Their quota is only 8 minutes but I have given him 20 minutes. I should know how much time he will take.

SHRI SOMNATH CHATTERJEE: This will be a denial of justice without proper hearing. A Bill like this coming up after so many months years and after having gone through various processes...

SHRI VASANT SATHE: Let him take another 15 minutes

SHRI SOMNATH CHATTERJEE: Here is another Co-Chairman who has come to my help.

MR. CHAIRMAN: No Co-Chairman. He is just a Member there. I will give you ten minutes more and you please finish.

SHRI SOMNATH CHATTERJEE: But subject to another extension.

Mr Chairman, I am very much obliged to you for kindly extending the time.

It is our concern that the citizens should not be deprived of obtaining remedy against the Government. Regarding this particular matter which has been recommended by the Law Commission, which has been accepted by the Law Ministry in its good sense, which has been included in the draft Bill for due consideration, it has now been resurrected in a more unworkable form. Please see Section 80. This is the bone of contention for everybody. We are talking of commercial activities, trading activities and so on These days the emphasis is on speed. Even prejudicial activities are carried on speedily against the citizens Prejudicial activities are not against the State alone. Prejudicial activities can be there against the citizens too. Here it says that suits may be instituted with notice but it can be dispensed with in case of urgent and immediate relief. Then no notice need be given with the leave of the court But what follows that completely nullifies everything. It says that the courts shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer as the case may be, reasonable opportunity.

What is reasonable opportunity here? The minimum time for Government is three weeks. Whenever Government asks for time for filling affidavits in writ proceedings, the minimum time is 3 to 6 weeks. They say, we will have to send this to Delhi. Take the case of a demolition order. Not all orders of demolition are good orders; not all orders of punishments or dismissals are good orders. What can I do? I cannot do anything. You are reducing the scope of Art 226 and you are taking away Art. 227. That is why section 115 has been inserted. You say, no no, you cannot ask for any immediate or urgent relief. If a suit is filed in Kerala against the Central Government which is in Delhi, how long time will the Minister's lawyer ask in Kerala, to contact Delhi and file an affidavit etc? So, they are making a mockery of it Therefore, three or four weeks time will be taken and in the meantime other methods will be applied.

The second thing is very important. How many notices under Section 80 till today have been considered by the Government? Two months' time is given to them so that public money may not be wasted in fruitless litigation. The principle behind it is this. If there is any genuine ground, the Government ought to consider within 2 months and take a decision

This is the principle behind it. In how many cases, section 80 notices were taken note of? Has anything been done? No, not even 0001 per cent. Therefore, the very basis is that Government should not be caught unawares; an opportunity should be given so to say for the settlement procedure being involved. Those who want to settle settle it before the notices are given. They have got their own methods to settle with the Government—I do not know that; we only hear. Therefore, those who decide to go to the court, give notice under Section 80 and Government takes notice of that. This is a mockery of procedure, trying to give relief to the ordinary citizens of the country against the mighty State. The State has got much better resources nowadays to resist the claim. They have got ample panels of lawyers—eminent lawyers—and they can engage the; they have got all the wherewithal. They can get somebody from Calcutta to Delhi in a few hours or somebody from here to Calcutta. There is no dearth of resources and funds. But, so far as the ordinary citizens are concerned, they do not get any protection from anybody.

You have given me very short time.

MR CHAIRMAN: I have given you 20 minutes.

SHRI SOMNATH CHATTEJEE: Every moment I am expressing my thanks. So many things have to be said about legal aid We are saturated with the Committees and recommendations which are either not published or even if they are published, are not considered by the appropriate authority; if considered, no decision is taken. Then what happens? What is the provision in this bulky volume for really helping or reducing the cost of litigation or dismissing the people or those who have been ousted from their lands—*burgedars* of the lands or ordinary people, small grocers and traders who are being floundered by the self-syled authorities and other authorities? There are ample cases of small business. If somebody goes there and makes an attempt that he cannot meet, then notices are given. This is what is happening. What is the provision that you have made? You are talking of so many programmes. If you believe in justice being afforded to the common citizens or poor people of this country, you have abjectly failed. In this provision instead of calling them as paupers, you are calling the paupers under the provisions of the existing Code as indigent. It is just a joke; I call it a joke because there is no change in the procedure by calling the people whom you used to describe as paupers as

[Shri Somnath Chatterjee]

indigent. You may say that you are taking such a bold step that the indigent litigants may be helped by the lawyers. There is nothing new in this. Everyday in the court it is happening that if somebody appears as a pauper, some lawyer is readily available to help him without the Government's letting anyone to help him. This is nothing new. Government has failed to provide either speedy justice to the ordinary people or to make justice cheap in the sense that it is less expensive or justice is meaningful to the ordinary people.

The other day we were told in some other place that over Justice Krishna Iyer Committee another Committee has been appointed headed by Mr. Justice Bhagwati Mr. Justice Bhagwati and Mr. Justice Krishna Iyer will consider the earlier report. Now, there would be a five-judge Bench to consider this Division Bench Report which will come up. But, there would be no legal aid for anybody. Legal aid under the Cr. P C is less than an apology! Here there is not even an attempt made. The only good thing that you have said is about the pious wish expressed by the Joint Committee. You only hope that a sort of uniform code will be adopted by the different high courts.

16.59 hrs.

[Shri Vasant Sathe in the Chair]

So many emergency pieces of legislations are being made applicable to the States. Why cannot court fees be reduced by the exercise of your emergency powers? Why can't you give a little direction here and there? If this were done, then the ordinary people of this country would have appreciated that emergency powers have been taken for the good of the people of this country.

17.00 hrs.

Therefore, Sir, my submission before the hon. Minister is that he should give us a plausible answer as to how immediate and urgent relief can be obtained by retaining Section 80 in the manner you have done.

Then a word about the second appeal and the revision. What has been provided is that the right for second appeal will be taken away. Supposing a single Judge decides a matter of constitutional importance or a question of law which has never been decided earlier you want to make it final and no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal. So far as Section 100 is concerned it is against the decree involving substantial question of law. There are so many criterions laid down and I do not know how it will be applicable in reality.

With regard to caveat a new system has been evolved which is applicable in Supreme Court The Supreme Court does not deal with day to day litigation Section 148A reads:

> "Whereas caveat has been lodged under sub-section (1),..... shall serve a notice of the caveat".

What will happen if caveat is lodged? Can appropriate orders be passed? How long they will wait for notice to be given! This is wholly unworkable. In appropriate cases by just filing a caveat and not accepting notice for some time a real urgent matter can be stifled.

Sir, regarding adjournment please see how mechanically things are intended to be done. I quote from page 39:

> "where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time."

Supposing, Sir, while getting ready for the court I get unwell and decide that I should not attend the court then how shall my client satisfy the court between 10 A.M. to 10.30 A.M. that the lawyer is unwell at home. Here it makes a mandatory provision that he shall not grant an adjournment. Judges are treated as ordinary administrative agencies. Why don't you leave it to their good sense to decide. By this an impression is sought to be given that the lawyers are responsible for delaying the cases whereas the Government is very much concerned over it and is with the ordinary man. The Government wants the matters to be decided but the lawyers—these sharks—are responsible for taking adjournments.

This sort of attempt I am resisting. As I said earlier, I do not say that all the lawyers are faultless. Everybody has got his own faults. But I want to say that these are some of the matters which require much deeper consideration.

I would like to know from the hon. Minister what is the proposal regarding legal aid. At least let the House be told about it. They must formulate it. Instead of the vague answers that we are used to in the past, let us have some categorical reply. What is the nature of the thinking of the Government? How do you propose to formulate it? How do you propose to implement it? Who are the persons who will be benefited?

We have known of industrial tribunal cases where the awards are challenged in High Courts What is happening? The company engages a big lawyer. What is the fate of the dismissed employees? Nobody thinks of them. At least you do not think of them. What have you provided for them? Now, even if an award is in favour of the employee, he does not get any benefit. Matters are kept pending and are argued for days. Up to the Supreme Court, it is an easy passage for the company. How many instances do you want? I can give you hundreds of them, but this is not the place.

So far as dismissal cases are concerned, so far as 226 proceedings are concerned, how many cases are there? Do the Government think of these? things? They do not get any benefit.

What about the rural people? What about the land problems which are cropping up every day? Bhagchasis or sharecroppers are being driven out; burghedars have been evicted. Who is protecting them? Even in the district courts in the subordinate courts, they have no protection. Even before the statutory authorities, they have no protection. They do not even quite appreciate the notices sent to them.

AN HON. MEMBER: So far as land problems are concerned, revenue courts are there.

SHRI SOMNATH CHATTERJEE: They can go to revenue courts raising questions about title and all that. Even in revenue courts, have you made any provision for them?

What is the position with regard to people below the poverty line? I am reading the answer of Government: in 1970-71, 74 per cent of the rural population were below the poverty line. When I had a question today, the written answer they have given is that they have no statistics. You have not even the statistics of the people below the poverty line. You are talking of national plans, you are talking of so many points of programmes. If you do not know how many poor people are there in your country, what sort of plan are you going to evolve? I can understand you can easily formulate plans for the rich people because you know how many rich people are there.

MR. CHAIRMAN: You could have got the answer to your question this morning. You were absent.

SHRI SOMNATH CHATTERJEE: They have not got the data. I am very sorry; if was beyond my control This was the position. Therefore, I gave authority to Shri Dinen Bhattacharya. They say they have not got a survey made. Therefore, you are formulating plans, programmes and ideas of legal aid and all that with out knowing how many poor people you have got in this country. This is your performance.

They say 'After a long time, we find the Civil Procedure Code has not been amended substantially. Therefore, let us take it up, and at least try to show that we have bestowed a lot of thought to that. We want to simplify the procedure and we are trying to do the best for you, but these vested interests like the judiciary, the lawyers etc are not allowing us to do good to you'. This is the impression sought to be created and I am opposing it I say this will not meet any of the burning problems. This will not make justice readily available the people. It does not even conto the people It does not even conof this country. They are nobody's child so far as this Government are concerned.

श्री भूल चन्द डागा (पाली) : सभापति जी, मैं सौभाग्य से इस कमेटी का सदस्य था और मैं गर्व के साथ कह सकता हू कि जो मौजूदा कानून था उस मे काफी तबदीली की गई और इसलिये की गई कि किस प्रकार से न्याय जल्दी मिल सके । माननीय सोमनाथ जी ने ला कमीशन की रिपोर्ट को कोट किया, लेकिन दूसरी जगह उसी ला कमीशन ने क्या कहा वह भी मैं पढ कर सुनाना हू

"Grant of adjournment for the convenience of a counsel is a practical and not a legal problem Civil work is generally concentrated among a few leading lawyers There is always a desire for the members of the Bar to accommodate each other. Although under the law a judge can refuse an adjournment on the ground of convenience of a counsel, in practice he rarely does so. A judge becomes unpopular if he refuses adjournment on such grounds. The remedy for this evil, however, lies in the hands of the Bar and a strong judiciary"

अक्सर बडे बडे वकील होते हैं जो बहुत ज्यादा मुकदमे ले लेते हैं, सभापतिजी, शायद आप को भी इसका अनुभव होगा, और वह कोर्ट्स से ऐडजोर्नमेंट ले लेते हैं । तो जोइट कमेटी ने यह उचित समझा कि या तो कनविन्स करे कोर्ट को कि इस कारण से वकील हाजिर नही हुआ, नही तो जजेज खुले मोटो ऐडजोर्नमेंट न दें क्योंकि इस प्रकार जजेज अनपोपुलर हो जाते हैं । ला कमीशन की भी यही सिफारिश थी कि जजेज को पोपुलर होना चाहिये, न कि अनपोपुलर । अभी यह होता था कि बडे बडे वकील मुकदमो की ठेकेदारी ले लेते हैं, अलग अलग हाई कोर्ट्स मे, और वह कोर्ट मे नही आते हैं । इसलिये यह रखा गया है कि जब तक कनविन्सिंग रीजन्स न हों तब तक ऐडजोर्नमेंट नही दिया जायगा । अगर कोई वकील बीमार पड जाय तो मेडिकल सर्टिफिकेट पेश करे और वह कसीडर किया जायगा ।

सेक्शन 80 के बारे मे ला कमीशन ने बार बार कहा अपनी 27वी रिपोर्ट मे जिस से एक पैराग्राफ मे पढना चाहता हू

"When section 80 was originally enacted, India was a dependency under foreign rule and the main function of the government was maintenance of law and order. India is now a free country and a Welfare State It engages in trade and business like any other individual. A Welfare State should have no such privileges in the matter of litigation as against a citizen, and should have no higher status than an ordinary litigant in this respect. Experience

has also shown that the provision of this section has worked great hardship, particularly in suits relating to injunctions. For these reasons, we have recommended omission of the section. While recommending the omission of the section, the Fourteenth Report suggested the insertion of a provision in the Code of the effect that if a suit against the Government or a public officer is filed without reasonable notice, the plantiff should be deprived of his costs in the event of a settlement of the claim by the Government or public officer before the date fixed for the settlement of issue We do not think that such a statutory provision is necessary. In another place, the Fourteenth Report contains the following passage:

"Generally the filing of suit is preceded by an advocate's or solicitor's notice demanding redress, and these notices from the foundation of the suit which is filed subsequently."

एक वैलफेयर स्टेट के अन्दर एक व्यक्ति का जो स्टेटस है और स्टेट के स्टेटस में फर्क क्यों किया गया और इसलिये सेक्शन 80 रिकमेन्ड किया और ला कमीशन ने अपनी 54वी रिपोर्ट मे कहा है :

"One of the most important sections in this part is section 80. We fully concur with the recommendation made in the earlier report for the repeal of section 80."

अब आप ने ला कमीशन की एक सिफारिश को मन्जूर किया और दूसरी को किया, और सेक्शन 80 की क्या हालत हुई ?

स्टेट को हजारों नोटिस देने के बाद भी जवाब नहीं दिया जाता है, फिर भी मिनिस्टर साहब चाहते हैं कि सैक्शन 80 को रखना चाहिये । पहले अमेंडमेंट में सैक्शन 80 को ओमिट किया गया था । अगर कलैक्टर मेरे मकान को लेना चाहता है और मैं उसको स्टे करवाना चाहता हूं, तो कहा जाता है कि अब तक आप नोटिस नहीं देंगे, तब तक आपको इंटरिम आर्डर नहीं दिया जा सकता है । इस तरह मेरा परपज फ्रस्ट्रेट हो जायेगा ।

हम लोगों की राय है कि सैक्शन 80 को ओमिट कर दिया जाये और मुझे आशा है कि मिनिस्टर साहब इस पर एक बार फिर विचार करेंगे ।

अगर मैं रेलवे पर कोई दावा करना चाहता हूं तो सैक्शन 78 के मुताबिक मुझे 2 महीने का नोटिस देना पड़ेगा । इसी तरह सिविल प्रोसीजर कोड के सैक्शन 80 में नोटिस देने की बात कही गई है । मैं कहना चाहता हूं कि एक वैलफेयर स्टेट में नोटिस का मामला हट जाना चाहिये ।

यहां पर कहा गया है कि इतना बड़ा सिविल प्रोसीजर कोड लागू करने के बाद ही लोगों को सस्ता न्याय मिलेगा । ला कमीशन ने कहा है कि जब तक कोर्ट-फीस है, तब तक लोगों को सस्ता न्याय नहीं मिल सकता है ।

The Recommendation of Law Commission in the 27th Report says:

"It is one of the primary duties of the State to provide the machinery for the administration of justice, and on principle it is not proper for the State to charge fees from the suitors in court."

बाद में ला-कमीशन ने फिर रिकमेंड किया कि कोर्ट-फीस बहुत हैवी हो गई है, उसको कम कर दिया जाये, वरना कोई गरीब आदमी अदालत में न्याय नही ले सकता है ।

[श्री मूल चन्द डागा]

The Law Commission in their 54th Report say:

> "It is one of the primary duties of the State to provide the machinery for the administration of justice, and on principle it is not proper for the State to charge fees from the suitors in court."

The same recommendation has been repeated after 15 years.

ला-कमीशन ने 15 साल के बाद अपनी बात को फिर दोहराया है । अगर एक आदमी कचहरी में जाता है, तो उसको कोर्ट फीस के लिए 200 रुपए और वकील के लिए 500 रुपए अर्थात् कुल 700 रुपए खर्च करने पड़ेंगे ।

आप जब कहते हैं गरीबों को न्याय दिलाना है तो गरीब आदमी तो न्याय पा नहीं सकता है । यह ला कमीशन की रिपोर्टस में किया है और ज्वाइंट कमेटी ने अपनी रिपोर्ट में रेकमेंडेशन किया है, गवर्नमेंट से कहा कि सारे हिन्दुस्तान में एक यूनिफार्म ला होना चाहिए जिस के आधार पर कोर्ट फीस कम होनी चाहिए । यह नहीं होना चाहिए कि कोर्ट फीस के जरिए आप आमदनी पैदा करें । लोगों को हजारों रुपया कोर्ट फीस में देना पड़ता है । एक रेकमेंडेशन यह भी है कि अगर अपील सकसेसफुल हो जाती है तो कोर्ट फीस लौटानी चाहिए । उन्होंने यह रेकमेंडेशन किया है कि सस्ता न्याय तब होगा जब कोर्ट फीस आप कम कर देंगे । आज अदालतों में एक तरफ तो कोर्ट फीस इतनी बढ गई है दूसरी तरफ वकील लिखते तो हैं 500 रुपया और लेते हैं 2000 रुपया । पावर आफ एटार्नी में गलत लिखते हैं । फिर आफिसेंज का पैसा, इंसपेक्शन का पैसा . . (व्यवधान) . . मैं यह कहता हूं कि आप कोर्ट में जाते हैं इंसपेक्शन के लिए तो पहले आप को उस के लिए पैसा देना पड़ता है । चेयरमेन साहब तो जानते हैं, उन्होंने यह सब काम किया हुआ है । किसी अर्जेंट काम के लिए इंसपेक्शन करना हो तो पांच रुपया फीस लगानी पड़ेगी । गरीब आदमी का पैसा लगा कर फिर आप इंसपेक्शन कर सकते हैं । और ऊपर की जो कार्यवाही होती है वह तो आप जानते ही हैं । वह मैं कहना नहीं चाहता । एक सर्टिफाइड कापी लेना चाहते हैं तो उस के लिए फीस देनी पड़ेगी । मेरा कहना है कि जब कभी कोर्ट में बयान हो तो उस की तीन काकी निकलनी चाहिए । एक कापी प्लैंटिफ को मिलनी चाहिए एक डिफेंडेंट को । आज कोर्टस के अन्दर जो हालत है मैं तो ताज्जुब करता हूं, किस तरह किसी को न्याय मिल सकता है ? नया प्रोसीजर जो दिया है वह मैं पेश करूगा । आज एक कोर्ट होती है उस में दो काले कपड़े पहने हुए वकील दो तरफ खड़े होते हैं, उधर जज होता है और इधर एक गांव का आदमी आता है, अमरावती का बिलकुल ठेठ, वह बेचारा कहता है यह कौन खड़ा है चश्मा लगाए हुए और टाई पहने हुए, वह घबरा जाता है । उधर जज साहब अपना चश्मा बदलते रहते हैं और कलम से लिखते जाते हैं । गांव वाला कहता है क्या है यह सब । यह न्याय नहीं है । वह कोर्ट जहां वह कभी अपीयर नहीं हुआ वहां उस की विटनस होती है । उस के लिए मैं आप के सामने अभी कोट करता हूं , किस तरह से ये कोर्टस् एक मजाक हैं । इन के अन्दर जाते हुए आदमी किस तरह से हिचकिचाता है । हमारे राम सहाय पांडे जी बहुत ज्यादा बोलते हैं । इन को कभी कोर्ट में खड़ा किया जाए तो इन की आवाज नहीं निकलेगी . . .

श्री राम सहाय पांडेय (राजनंदगांव) : श्रीमन्, मैं दो जगह नहीं जाना चाहता एक कोर्ट और एक श्मशान ।

श्री मूल चन्द डागा : आप देखें न्याय के घर के बारे में एक संसद सदस्य आज यह कह रहे हैं कि मैं न्याय के घर में नहीं जाना पसंद करता । यह इस बात का संकेत करता है कि वहां न्याय किस तरह से मिलता है . . .

श्री राम सहाय पांडेय : मिलता ही नहीं ।

सभापति महोदय, आपने यह जानते हैं कि ये दोनों चीजें टल नहीं सकतीं।

श्री मूल चन्द डागा: अब मैं कोट करता हूं।

I am quoting from "Law, Justice and Politics" by Gavin Drewry, Lecturer in Government Bedford College, University of London. The Chapter on "Courts and Lawyers" opens with these quotations:

"The first thing we do, let's kill all the lawyers."

William Shakespeare, Henry VI, Part II.

"A broad doorway leads into a fake-medieval hall, like a stripped-down cathedral, adorned with big black-letter notices announcing 'Lord Chief Justice's Court', or 'Wash and Brush Up'. Dark-suited men carrying blue or red bags walk into a room by the netrance, and emerge a few minutes later solemnly wearing gowns, tabs and horse-hair or nylon wigs."

Anthony Sampson, describing the Royal Courts of Justice.

कोर्ट में जो एक साधारण आदमी जाता है वह बड़ी तकलीफ में पड़ जाता है। चेयरमैन साहब जब यहां बैठे थे तो उन्होंने भी एक बात कही, वह कहने लगे कि इन की जगह तो हमें पंचायतों में जाना होगा। इस का कारण क्या है? इस का कारण यह है कि हमें अच्छे और ईमानदार जजेज नहीं मिलते। ये मुंसिफ और जितने लोग ये हैं इन को जब तक अच्छा पैसा नहीं देंगे तब तक अच्छे जजेज और अच्छे मुंसिफ नहीं मिलेंगे। आज सबसे बड़ी बात यह है कि न्याय सस्ता भी नहीं है और न्याय इसलिए भी नहीं मिलता जैसा कि आप अभी कह रहे थे कि अच्छे और ईमानदार लोग नहीं मिलते, काबिल जजेज नहीं मिलते हैं क्योंकि आप उनको थोड़ा पैसा देते हैं। इस सम्बन्ध में ला कमीशन ने रिकमेंड किया है:

"Before parting with the topic of delay, we would again emphasize the part which the human factor plays in the efficient and impartial administration of justice. It need hardly be stated that the success or failure of any procedural law depends upon the men who administer it. A law of procedure, however perfect, will fail in its purpose unless the men who administer it are men of ability and are imbued with a missionary zeal for doing justice, and unless they receive in this task the cooperation of members of the Bar."

कितनी ही जील हो मिशनरी, स्पिरिट हो लेकिन जब तक यह नहीं होगा तब तक आप कितने ही कानून बना दीजिए, कोई फायदा नहीं होगा।

"If the judges are high-minded, able and fearless and if the members of the Bar also share their zeal, we have no doubt that the problem of delay, which now threatens to bring the entire administration of justice into disrepute, will be solved to the satisfaction of the litigating public and the community at large."

आज कोर्टस की हालत क्या है? वहां पर किताबें नहीं हैं, बैठने की जगह नहीं है। वहां पर वकीलों के खड़े होने की जगह नहीं है। कोर्टस् में स्टेनो नहीं हैं। हाई कोर्टस् की मांग रहती है ज्यादा केसेज डिस्पोज करो। वे कहते हैं ठीक है, हम जल्दी जल्दी केसेज डिस्पोज आफ कर रहे हैं। आपको ईमानदार आदमी तभी मिलेंगे जब आप उनको पूरी तनख्वाह देंगे। आज कोई वकील नहीं चाहता कि मैं मजिस्ट्रेट या मुंसिफ मजिस्ट्रेट बन जाऊं क्योंकि आप उनको ज्यादा से ज्यादा दो हजार रुपया देंगे जबकि वे 5 और 10 हजार महीने में कमाते हैं। आप कितने भी कानून बनाय, कानून को

[श्री मूलचन्द डागा]

चलाने वाले होशियार होने चाहिएं—यह एक फंडामेंटल बात है ।

अब मैं ने जो एक नई बात कही है उस पर आप गौर फर्मायें । मैं ने कहा किस तरह से आप कोर्टस से सस्ता न्याय दिला सकते हैं । मैंने इनकी सेवा में एक सजेशन दिया था जिसको माना नहीं । फिर भी मैंने जो सजेशन दिया है उसको मैं सपोर्ट करूंगा । मैंने प्री ट्रायल कान्फ्रेंस का सजेशन दिया है ।

"Unless the Procedure is simple, expeditious and inexpensive, the subsequent laws, however good, are bound to fail in heir purpose and object Hence, I suggest for pre-trial conferences in the following terms:

'In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider—the simplification of the issues; the necessity or desirability of amendments to the pleadings, the possibility of obtaining admission of fact and of documents which will avoid unnecessary proof; the limitation of the number of expert witnesses; the advisability of a preliminary reference of the issues to a master for findings to be used in evidence when the trial is to be by jury; and such other matters as may aid in the disposition of the action'."

जब फेमिली मैटर्स हो तो वहां पर जज दोनों पार्टीज को बुलाकर एक साथ खड़ा करे और उनसे पूछे क्या झगड़ा है, क्यों झगड़ा है, क्या कारण हैं, आप किस तरह से नजदीक आ सकते हैं, क्या आपका प्वाइंट आफ व्यू है और कौन से डाक्यूमेंटस् हैं । मैंने कहा जिस कोर्ट में कोई दावा करे, रिटेन स्टेटमेंट दायर हो तो दोनों पार्टीज को बुलाकर जब उनसे बात करे । उस को पिन-प्वाइंट करे कि तुम्हारा झगड़ा क्या है । जब वह कहें कि हम फलां दस्तावेज को मानते हैं तो उसको लेकर बयान लिये जायें । इस तरह से जज मामले को बहुत आसानी से समझ जायेगा । लेकिन दिक्कत यह है कि जज के पास इतने केसेज होते हैं कि वह केसेज पर पूरी तरह से ध्यान ही नहीं दे पाता है । रीडर आवाज लगवाता है—"वकील आर० एस० पाण्डेय हाजिर हो", इसके बाद जवाब दावा पेश हुआ, फिर कह दिया जाता है—"वास्ते तनकियात फलां तारीख को पेश हो।" ईसूज के लिये फलां तारीख को आओ । उस तारीख पर गये, जज साहब बीमार हैं, फिर आगे की पेशी लग जाती है । इस तरह से तीन-तीन पेशियां लग जाती हैं, मुकदमा शुरू ही नहीं हो पाता है । इसीलिए मैंने यह कहा है कि पहले ही दिन दोनों पार्टीज को हाजिर करो और उस दिन जज साहब को प्री-ट्रायल-कान्फ्रेंस करनी चाहिये ।

SHRI N. E. HORO (Khunti): But can they have their lawyers?

SHRI M C DAGA: They can come even with their lawyers We have no objection.

पहले दिन लायर्स के बिना आयें तो अच्छा है ताकि उनके दिमाग का शार्ट-डाउन करके मामले की तह पर पहुंचा जा सके, इस तरह से काफी फायदा होगा । इसके लिए ला-कमीशन ने भी रिकमेण्ड किया है और इस बात को माना है कि इस तरह से काम करने से कुछ फायदा हो सकता है । इसलिये अब आपकी इच्छा है, इसको मानें या न मानें । मैं आपको यह भी बतला दूं कि इस चीज पर अमरीका में एक्सपेरिमेन्ट हुआ है और उन्होंने यह नतीजा निकाला है कि इस तरह प्री-ट्रायल-कान्फ्रेंस कर के मुकदमों को जल्दी निबटाया जा सकता है ।

इसलिये मैं आपसे अर्ज करूंगा कि इस चीज को लागू करें, इसको लागू करने से जरूर लाभ होगा । आपने इसमें ऐसा कहा है

कि कोर्ट एन्डीवर करेगा—दोनों पार्टीज को बुला कर सुनेगा । मेरा यह कहना है कि उनको उसी दिन बुलाया जाय और उनके साथ डिस्कशन हो—दोनों पार्टीज के लिए इस में मैन्डेटरी प्रावीजन होना चाहिये । उनको बुला कर उनको पूछा जाय, बयान लिये जावें कि झगड़ा क्या है । एक चीज मैं यह चाहता हूं कि अगर किसी जमीन का झगड़ा हो तो जज वहां जाकर मौके को देखे और साइट-इंस्पेक्शन के बाद बयान ले । अगर ऐसा नहीं होगा तो केस बहुत लम्बा चलता रहेगा ।

अब थोड़ा सा मैं सैक्शन 80 के बारे में कहना चाहता हूं । इजंक्शन के बारे में सिविल प्रोसीजर कोड मे कुछ अच्छे क्लाजेज रखे गये हैं, मैं उनकी तरफ आपका ध्यान दिलाना चाहता हूं। अकसर कोर्ट मे जो पैसेवाले होते हैं, वे जाते हैं, सूट फाइल करने के बाद वे परमानेन्ट इंजंक्शन लेने की कोशिश करते हैं और कई दफा उनको एक्स-पार्टी टम्पेरेरी इंजंक्शन मिल जाता है । इसके बारे में जब सिविल प्रोसीजर कोड में एक टाइम लिमिट रख दी है कि दूसरी पार्टी को सुनकर ही कोर्ट फैसला करेगा—यह मेरे ख्याल में एक बहुत अच्छा प्रावीजन है । एक सब से बड़ी बात यह है पहले किसी भी आदमी को जेल में रखा जा सकता था । कोई बड़ा आदमी आकर बयान दे दे कि इसके पास बहुत साधन हैं, बस उस को जेल भेज दिया जाता था । अब ऐसा नही है— कोर्ट अब किसी भी ऐसे आदमी को जेल में नही रखेगा जिसकी आमदनी हजार रुपये से कम हो । एक दूसरी बात यह है—कि किसी आदमी से पैसा तब लिया जायगा, जब उसके अन्दर देने की ताकत हो, लेकिन पैसा न होने के कारण उसको जेल में नहीं रखा जाएगा । अब टैम्परेरी इंजंक्शन को लेकर मुकदमे सालों तक नहीं चलेंगे और जब मुकदमा शुरू होगा तो उस की डे-टू-डे हीयरिंग होगी । एक दफा गवाहियां शुरू हो गईं तो डे-टू-डे हीयरिंग होगी और तब तक चलती रहेगी जब तक वे समाप्त न हो जाएं । अब तक ऐसा होता था कि ऐसा लिख दिया जाता था कि जज साहब को समय नही है इस वास्ते दो महीने बाद पेशी होगी । फैक्ट्स की जज साहब को जानकारी ही नहीं होती थी । डे-टू-डे हीयरिंग रख कर आपने बहुत अच्छा काम किया है ।

इंटरेस्ट के बारे में भी बहुत अच्छी बात की है । कांट्रेक्ट जब होता था पहले तो उसके आधार पर ब्याज लिया जाता था । आप तो जानते ही हैं कि मनी लैण्डर्ज की क्या हालत होती थी । जो ब्याज लिख दिया जाता था उसको सही मान लिया जाता था । अब आपने यह कहा है कि नेशनलाइज्ड बैंक का जो रेट है उससे ज्यादा ब्याज किसी भी सूरत में नही दिया जाएगा, फिर चाहे काट्रेक्ट कुछ भी क्यों न हो । यह भी ठीक बात है । यह नया कदम सराहनीय कदम है ।

वकील साहब दूसरी कोर्ट मे लगे हुए हैं इस वास्ते उनके पास समय नहीं हैं इस कारण से जो केसिस लटकते रह जाते हैं थे, इस चीज को हटा कर आपने अच्छा काम किया है । जब तक सफिसेंट काज न हो तब तक इस चीज को माना नही जाएगा इस चीज को रख कर एक सराहनीय काम किया गया है ।

अब आप प्रिलिमिनरी और फाइनल डिक्री को लें । प्रिलिमिनरी और फाइनल

[श्री मूलचन्द डागा]

डिक्री के केसिस कई वर्षों तक चलते रहते थे। मार्टगेज के सूट हैं। उन में पहले प्रिलिमिनरी डिक्री होती थी और उसके बाद फाइनल। इस चीज को भी हटा कर एक अच्छा काम आपने किया है ।

सब से बड़ा फायदा आपने सैक्शन 11 में किया है और वह रेस ज्यूडिकेटा के मामले में है । इससे हजारों मुकदमे बहुत जल्दी खत्म हो जाएंगे । मान लें एग्जक्टिव कोर्ट में केस चल रहा है । उसमें कोई हार गया है । वह चीज रेम ज्यूडिकेटा मानी जाएगी । पहले कहा जाता था कि कोई कोर्ट प्रापर कोर्ट नहीं है, कम्पीटेंट कोर्ट नहीं है । अब यह कहा गया है कि हम इस चीज को नहीं मानते है । रेस ज्यूडिकेटा के मामले में किसी दूसरी कोर्ट में एग्जैक्टिव कोर्ट में भी अगर फैसला हो गया है तो उसको सदा के लिए मान लिया जाएगा और यह समझ लिया जाएगा कि इशू तय हो गया है । उस इशू को तब फाइनल इशू मान लिया जाएगा । गरीब आदमी छोटी कोर्ट में या पंचायत कोर्ट में जाता है और फैसला करवा लेता है तो कह दिया जाता था कि वह कोर्ट कम्पीटेंट कोर्ट नहीं है । कमेटी ने बहुत मेहनत इस पर की है और सोचा है कि सैक्शन 11 को किस प्रकार से कम किया जा सकता है । एक बार यह चीज तय हो गई तो उस इशू को माना जाएगा कि वह फाइनल डिसिजन है ।

रिव्यू के बारे में होता यह था कि जब चाहे कोर्ट में कोई चला जाता था । हाई कोर्ट में सैकिंड अपील फैक्ट्स और ला दोनों पर कर दी जाती थी । एक कोर्ट एप्रिशिएट कर ले तो फस्ट अपील हो जाती है । अब सैक्शन 101 में नई बात की है । यह अच्छा आपने किया है। हमने प्वायंट कमेटी में फिगर्स मंगाए थे कि किस प्रकार के केसिस पेंडिंग हैं। एक बार कोर्ट ने फैक्ट ऐप्रीशियेट कर लिया, अपील में हो गया और फिर दूसरे कोर्ट में गये कि इस में बहुत बड़ा सवाल है ।

"An appeal may lie under this section from an appellate decree passed *ex parte*.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal."

इस में फैक्ट मिक्स क्वेश्चन बता कर के हाई कोर्ट में अपील में चले जाते हैं । अब सेकेन्ड अपील में एक रेस्ट्रिकशन लगाया गया है :

You will have to satisfy the high court that there is question of substantial law involved.

"(4) where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question."

कितना जरुरी पौइंट इन्हों ने किया है कि वकीलों की जो पैसा कमाने की तरकीब थी उस पर एक बड़ा चैक हुआ है । और मैं कहूंगा कि सेक्शन 100 का जो अमेंडमेंट किया :

"Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question".

यों नहीं कि कोई वकील चला गया और अपना काम बना लिया ।

अब इन्होंने समन की सर्विस को बहुत कम कर दिया । पहले क्या होता था कि किसी ऐडल्ट मेम्बर पर भी सर्विस आफ़ समन नहीं

सकती थी। अब बहुत अच्छा संशोधन कर दिया। इन्होंने कहा कि सर्विस करने का तरीका क्या होना चाहिये :

Not only by persons....

अगर पोस्ट के जरिये भी भेज दे तो भी सर्विस मानी जायगी।

"or any member whoever decides."

तो इस में समय कम हो गया; सर्विस मानी जायगी और तुम जवाब दो। और जब कभी समन जायगा उस के साथ प्लेन्ट जायगी और प्लेन्ट जाने के बाद उस को दूसरी पेशी पर हाजिर होना पड़ेगा बिद रिटन स्टेटमेंट/ पहले यह नहीं था। पहले आर्डर 8 रुल 1 के अन्दर अपील होती थी और सफीशियेंट काज होता था। अब इन्होंने यह किया है कि सारे डाकूमेंट देख कर के रिटन स्टेटमेंट के लिये समन का प्रोसीजर बहुत करटेल कर दिया है और कोई आदमी नहीं बच सकता।

एक इन्होंने काज आफ़ ऐक्शन का बड़ा अच्छा किया है। इस में आदमी को काफ़ी सुविधा दी गई है, वह कहीं भी दावा पेश कर सकता है और लिटिगेंट को तकलीफ नहीं होगी। इसलिये सेक्शन 60 के अन्दर जो जो नये कदम उठाये हैं वह अच्छे हैं।

सब से बड़ी बात यह है कि गरीब की क्या जांच है ? पहले उस को ऐबीडेंस देनी होती थी। लेकिन अब रेवेन्यू रेकोर्ड दिखा सकता है और तहसीलदार अगर कह देता है कि वह पुअर है तो मान लिया जायगा। तो यह जो इन्हों ने डेफ़ीनीशन ली है अच्छी है। मैं यह नहीं कहता कि गरीब को पूरी मदद दी जायगी, लेकिन इन्होंने कोशिश की है कि गरीब कोई अवश्य अदालत में आता है तो आसान प्रूफ दे कर के अपना काम कर सकता है।

श्री राम सहाय वर्मा (बांदा) : प्रूफ ऐबीडेंस ऐक्ट में आयेगा, सी० पी० सी० में नहीं आयेगा।

श्री बाल कृष्ण शर्मा : सेक्शन 33 में पहले काफ़ी ऐबीडेंस देनी होती थी और दूसरे आदमी को रिबट करने का चांस होता था। और रिबटल के बाद तय किया जाता था कि आया वह पुअर है कि नहीं। अब रीबट करने का कोई चांस नहीं रहेगा। अब गरीब आदमी आसानी से अदालत में जा सकेगा:। सिविल प्रोसीजर कोड में यह एक बहुत अच्छी बात रखी गई है।

जहां तक पार्लियामेंट के मेम्बरों का सवाल है, क्लाज 45 में कहा गया है :

"(1) No person shall be liable to arrest or detention in prison under civil process—

(a) if he is a member of—

(i) either House of Parliament, or

(ii) the Legislative Assembly or Legislative Council of State, or

(iii) a Legislative Assembly of a Union territory,

during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(b) if he is a member of any committee of—

(i) either House of Parliament, etc. etc.

during the continuance of any meeting of such committee;

and during the forty days before and after such meeting, sitting or conference."

इस का मतलब यह है कि हाउस या किसी कमेटी की मिटिंग से चालीस दिन पहले और उस के चालीस दिन बाद तक पार्लियामेंट के मेम्बर को कोई भी हाथ नहीं लगा सकता है—उस को गिरफ्तार नहीं किया जा सकता

[श्री मूल चन्द डागा]

है । यह प्राविजन इस लिए रखा गया है कि सदस्य पार्लियामेंट के काम के सिलसिले में विदेशों में जाते हैं । अगर उन को पहले से गिरफ्तार कर लिया जाये, तो पार्लियामेंट के काम में बाधा आयेगी ।

SHRI B. R. SHUKLA (Bahraich): Sir, this has been the convention of the House that a person who has been a member of the Joint Committee generally refrains from participating in the debate except to the extent he has given his note of dissent or elucidates certain important points in the report.

SHRI M. C. DAGA: I am completely following it.

MR. CHAIRMAN: You have spoken for more than 30 minutes. Please conclude.

SHRI B. R. SHUKLA You can imagine, Sir, how much time he would be taking in the court of law.

SHRI M. C. DAGA: That will depend upon the nature of suit.

SHRI C. K CHANDRAPPAN (Tellicherry): Sir, in a court of law he can take any amount of time but this is a very costly forum.

श्री मूल चन्द डागा: जहां तक जजमेंट का प्रश्न है, पहले जज और मुन्सिफ़ लोग कई दिनों तक जजमेंट नहीं देते थे ।

आज नहीं लिखा गया है, आगे पेश हो ।

अब इन्होंने दिया है :

"Provided that where the judgment is not pronounced at once, every endeavour shall be made by the court to pronounce the judgment within fifteen days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond thirty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders".

तो जजमेंट देने के लिए भी उन्होंने एक तारीख मुकर्रर कर दी और उस तारीख के दिन पहले पहले ही जजमेंट देना होगा ।

पहले जो साइट इंसपेक्शन करने के लिए जाते थे उस में एक्सपर्ट को जाने का चांस नहीं था । तो सिविल प्राक्टीजर कोड में एक बात और आई है :

"An expert can go to the spot and give his report. A technician can go to the spot and give his report for appreciation of facts of the case."

यह भी एक बहुत बड़ी बात की है । लेडिज के लिए भी उन्होंने वही बात रखी है कि अगर चाहे तो कोर्ट मे आ सकती हैं, कमरा मे उन का बयान हो सकता है । इस का भी उन्होंने प्रावधान किया है । तो इस में बहुत कायदे की बातें की गई है । यहां एक बात यह है कि बहस करने वाले ज्यादा हैं । सारे वकील लोग हैं । चैटर्जी साहब ने बहुत सी बातें इधर उधर की की लेकिन मैं उन को प्रोमीजर के मुताल्लिक सुनना चाहता था । उस के बारे मे उन्होंने कुछ नहीं कहा ।

श्री राम रतन शर्मा : (बांदा) : सभापति महोदय, प्रस्तुत विधेयक को देखने समय उसमें जो अच्छाइयां हैं उन को दुर्लक्ष्य नहीं किया जाना चाहिए । जैसा डागा साहब कह रहे थे इस विधेयक में बहुत सारी अच्छाइयां भी आई हैं और विधेयक को बनाते समय तथा इसके बाद सेलेक्ट कमेटी मे जो सदस्य गण थे, उस के जो चेयरमैन थे, उन्होंने उस को देखते समय पूरा पूरा प्रयत्न किया है कि देश के दुर्बल वर्ग को न्याय शीघ्र मिले और सस्ता मिले । ये प्रयत्न किए गए हैं । इस के लिए

मैं सेलेक्ट कमेटी के सम्पूर्ण मेम्बर्स और चेयरमैन साहब को बधाई देना चाहता हूं कि उन्होंने काफी प्रयत्न किया है ।

परन्तु हम सी पी सी के अमेन्डमेन्ट की बात जब सुनते थे तो हम को लगता था कि 1908 का यह कोड बदल कर किसी नये स्वरूप में हमारे सामने आएगा । किन्तु हमारी आशाओं पर तुषारापात हुआ है । मुझे छोटी अदालतों से ले कर उच्चतम न्यायालय तक का थोड़ा सा अनुभव है । अनुभव थोड़ा है लेकिन मैं यह कहूंगा कि जब भी कोई विधि का विद्यार्थी सी पी सी पढ़ता है तो उस के सामने सेक्शन आर्डर और रूल्स ये सब चीजें होती हैं । एक बड़ा मेस है । पहले आप दफा पढ़िए, दफा के अंदर आर्डर और रूल्स हैं, इन को पढ़िए, फिर आर्डर और रूल्स का तालमेल बैठाइए । क्या यह संभव नहीं था कि इस सब को दफाओं में बांध देते ? सी आर पी सी का अमेंडमेंट हुआ है । वह पूरा का पूरा इतना बल्की है । आप एक तरफ से देख जाइए, उस में आर्डर और रूल का तालमेल बैठाने की बात तो नहीं है । तो इस में आखिर क्या जरूरी है कि हम उसी फार्म को रखते । एक नया ला का विद्यार्थी आता है उस को इस तरह से न पढ़ कर सीधा सीधा पढ़ने को मिलता तो उस में क्या हानि थी ? बहरहाल फार्म के बारे में मैं सोचता था कि इस को आप बदलते और एक तरफ से दूसरी तरफ तक सेक्शन में रख देते तो एक साफ रास्ता हो जाता ।

ऐडजर्नमेंट्स के बारे में हम को बड़ी प्रसन्नता है, मैं जिला अदालतों मे काम करता हूं, जिला अदालतों में कुछ ऐडजर्नमेंट कौंसल्स होते हैं जिन का काम है केवल मुकदमे में ऐडजर्नमेंट दिलाना, मैं नाम नहीं लूंगा, लेकिन मेरे जिले में एक ऐसे सज्जन हैं । अभी जब मैं यहां आया था तो एक केस में हम दोनों एपीयर हो रहे थे । उन्होंने कहा—शर्मा जी, मेरे पास सन् 1970 से इधर का कोई मुकदमा ही नहीं है । अब तो हमीरपुर से भी लोग मुझ एंगेज करने आ रहे हैं । हमीरपुर एडज्वायनिंग डिस्ट्रिक्ट है । वे इसलिये आ रहे हैं कि एडजर्नमेंट मिलेगा । हमारे यहां एक जज साहब ऐसे आये जिनकी रेपूटेशन थी कि वे किसी कारण पर भी एडजर्नमेंट नहीं देते हैं । सभी लोग रोते रहते थे कि केस तैयार कर के लाना है क्योंकि जज—साहब तो एडजर्नमेंट देंगे नहीं । उन सज्जन ने कहा कि देखो एडजर्नमेंट किस तरह से लिया जाता है । मैं आपको तमाशा दिखाता हूं । उन्होंने एक जांघिया लिया और उसको लेकर अदालत में चले गये । जज साहब ने कहा—मैं एडजर्नमेंट नहीं दे सकता । उन्होंने कहा—मैं क्या करूं, बरसात से नदी बह रही थी, मेरा मवक्किल इधर आने के लिये नदी में कूद गया । लोगों ने उसकी जांघिया पकड़ ली, लेकिन वह नदी में बह गया । इस तरह से लोग फाल्स और फेवलस तरीके से एडजर्नमेंट लेते थे जिससे केस बढ़ता था । मैं मंत्री जी को बधाई देता हूं कि उन्होंने इसको टाइप किया है । हम लोग जो दिन-प्रति-दिन अदालतों में काम करते हैं, वह जानते हैं कि छोटे-छोटे मुकदमों में,मनी-सूट्स मे जो रुपये की नालिशें होती हैं, उनमें छः छः साल लगाते हैं । डिसमिसिंग डिफाल्ट करा लिया, फिर उसको रेस्टोर किया और नहीं आये । फिर उसके 4 दिन बाद एप्लीकेशन दे दी कि बीमार हैं । इस तरह से केसेज बढ़ते थे जो कि अब नहीं बढ़ेंगे । मेरा विश्वास है कि आपने काफी टाइट किया है ।

दफा 100 की बात आई है । क्योंकि डागा साहब जाने वाले थे इसलिये मैं उनकी बात पहले निबटा देना चाहता हूं । इसमें राइट आफ सैकिंड अपील है । उस पर मेरा अमेंडमैंट भी है, जो शायद कल आयेगा । यह चेंज किया है कि सबस्टैंशियल क्वैश्चन आफ ला होगे और जज इसको सैकिंड अपील में फार्मूलेट करेगा । उसके बाद ही उस पर बहस होगी । लेकिन अगर वह फारमूलेट होकर के

[श्री रामरत्न शर्मा]

एडमिट होता है तो दूसरे क्वैश्चन आफ ला पर बहस सुनी जा सकती है। यह आपने दिया है। लेकिन आप देखें कि एक गरीब किसान जिसकी एक झोपड़ी है, उस पर कोई कब्जा करना चाहता है। उसने एक मुकदमा परमानेन्ट इजेंक्शन का दायर किया। परमानेन्ट इंजेक्शन में मुन्सिफ कोर्ट में, फार्चुनेट्ली उसके म्वाफिक डिक्री हो गई, लेकिन अपील में उसका सूट डिस्मिस हो गया, यानी डिक्री सेट-एसाइड हो गई। अब यह फाइंडिंग आफ फैक्ट हुआ, मुन्सिफ कोर्ट में अलग और जजेज कोर्ट में अलग। अब हाई कोर्ट में आये, आप फाइंडिंग आफ फैक्ट में जाने नहीं देना चाहते हैं, तो उसमें क्या क्वैश्चन आफ ला है। क्या डागा साहब इसको बता सकते हैं? कान्करेंट फाइन्डिंग आफ फैक्ट यह है कि तथ्यों के सम्बन्ध में जैसा मुन्सिफ फैसला देता है वैसा ही अपील में डिस्ट्रिक्ट जज देता है। यह तो फाइन्डिंग आफ फैक्ट हो सकती है। इसमें आप सब-स्टेंशियल क्वश्चन आफ ला कर दें। लेकिन अगर फाइंडिंग आफ फैक्ट नहीं है, एक कोर्ट उस फैक्ट में कुछ दूसरा कहती है और अपील अदालत उसके सम्बन्ध में दूसरे निष्कर्ष पर पहुंचती है तो उसके बारे में आप सोचिये। गरीबों की बात तो हम सब करते हैं लेकिन गरीबों के पास अदालत में आने तक के लिये 1 रुपये 4 आना बस का किराया नहीं होता है। उनके पास अदालतों में गवाही देने के लिये कोई नहीं होता है। इन परिस्थितियों में जो मुकदमा लड़ता है, वह फाइंडिंग आफ फैक्ट में उड़ जाये, तो ला प्वाइन्ट में हाई कोर्ट में कौन जायेगा ?

हाई कोर्ट में जाकर, आप समझते हैं मैटर को सरल कर दिया, लेकिन मैटर सिम्पिल नहीं हुआ। दो बार अपील करनी पड़ेगी। एक बार स्पेशल लीव के लिये जाना होगा। आपने उस तरह की टर्मिनोलौजी का प्रयोग नहीं किया, लेकिन आपका मतलब यही है कि जैसे स्पेशल लीव के लिए सुप्रीम कोर्ट में एप्लीकेशन दी जाती है, उस तरह की एप्लीकेशन दें और फिर जब क्वैश्चन आफ ला फार्मूलेट कर दें तब अपील एडमिट हो, तब उसकी नोटिस जाये। यह गरीबों के बस की बात नहीं है। मेरा आपसे निवेदन है कि फाइंडिंग आफ फैक्ट वाली जो बात है, इसको आप देखने की कृपा करे।

दफा 80 की बात भी आई है, इसके बारे में भी डागा साहब ने कहा है।

MR. CHAIRMAN: He may continue tomorrow. The House stands adjourned till 11 A.M. tomorrow.

18.00 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, August 12, 1976/Sravana 21, 1898 (Saka).

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