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

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15.55 hrs.

ARREST AND RELEASE OF TWO MEMBERS

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

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

15.56 hrs.

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

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

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

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

Mr. Deputy-Speaker: I have none.

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

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

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

Mr. Deputy-Speaker: No, that is not the rule.

Shri Subiman Ghose: As I was saying, that was the purpose for which the Commission was formed. The Law Commission has worked hard and given some suggestions. Some of the suggestions are such that they should have been accepted by Government even before the Commission was formed. Those are common place matters. There are some suggestions which perhaps the Government will never implement, while there are some suggestions which cannot be accepted in the present context.

The Commission has not suggested any radical change from the present structure (*Interruption*) Be that as it may, that happened because, in my opinion, there was some sort of un-formity in the choice of the personnel I have the greatest respect for the persons who formed the Commission. They might be legal luminaries and jurists but that does not, I submit, raise a presumption that they will b in the know of what is going on in the court of a Magistrate possessing third-class powers, aged 25 or thereabout.

16 hrs.

It is not expected of them to know all these matters. And, naturally, we find that some suggestions they have made are impracticable But it might be said that they have toured all over India and examined many witnesses I am not acquainted with the witnesses of other States. But, so far as my State is concerned, I am acquainted with all the witnesses. I find that they were not fully representative Practically all Calcutta witnesses were examined Only two persons from the mofussil districts, one from Bankura and another from Jalpaiguri were examined. So far as I am aware, one lawyer who was examined from Jalpaiguri and who has now become a Member of this hon. House had never practised on the criminal side. Naturally, the procedure that is followed in criminal courts, how cases are conducted there, how a criminal court magistrate discusses the admissibility of evidence and all that is practically not known to him. He cannot say what procedure is followed there.....

Mr. Deputy-Speaker: The procedure is the same all over India—whether it is in Calcutta or elsewhere. And persons who had knowledge of criminal courts might have appeared before the Commission, many more of them, in other places.

Shri Subiman Ghose: But that is written procedure. But the magistrates follow certain procedure of their own Regarding some matters we find wonderful procedures. It is for this reason that I say that although there is one procedure which governs India, these magistrates who are not experienced, who are just now lifted to bench follow a procedure of their own, they go on in their own way

Mr. Deputy-Speaker: Lawyers would not permit them to go in their own way There are lawyers there

Pandit K. C. Sharma: What are you talking?

Mr. Deputy-Speaker: Order, order. Hon Members should not talk in that manner

Shri Subiman Ghose: It is, therefore, we find that regarding criminal matters the Commission have suggested something which is not workable. The Commission have suggested that a criminal case must be finished within 3 months of its filing I say, it is impossible They have said that a sess on case must be finished within 3 months from the apprehension of the accused Is that possible? It is difficult for the police to submit the charge sheet even within 3 months. If there is a case of murder, if there is a case of rape, the garments of the victim go to the chemical examiner.

If there is a case of a murder depending on circumstantial evidence, in that case, the blood is sent to the chemical examiner and the serologist and you cannot get the report within 3 months. How is that possible? That is one aspect They have discussed two aspects; one is general recommendations and the other is recommendations that require change in the law

So far as general recommendations are concerned, we all want that litigation should be cheap. The Law Commission have spoken of the continuance of the dual system, the Attorney-Solicitor system This solicitor system was introduced by hte Britishers I am referring to a very old document—a letter that was written by the Board of Directors to the Governor-General-in-Council at Fort William in Bengal at the time of the introduction of the attorney system The letter reads

> "The introduction of the attorneys was not encouraged by the authorities in England even as early as the first quarter of the 18th century in Bengal and even 50 years earlier than in this in Bombay The Directors think that the services of too many clements might lead to the prolongation of suits with the result that justice might be rendered 'sour by delaying'"

The letter is dated 17th February 1726 From that very day this system has not been encouraged My hon friend from West Bengal, Shri Bhattacharya was saying that one acts and another pleads That is the dual system that is being condemned and the Law Commission wants that that should be continued I think that it is absolutely contradictory You want legal aid to be given to the poor but you make justice very costly by the continuance of this system The barristers and members of the English Bar have no concern with the client and the client has to come through the conduit pipe of the solicitors Everybody knows what it costs and it should be abolished.

They have spoken of legal aid So far as legal aid is concerned, I do not know why the lawyers of the mofussil will be made the scapegoat If there be any person who volunteers his services I do not grudge. In the District Courts, I know a litigant can go to a lawyer by selling a goat if he got no money. So far as my district is concerned from Rs. 10 to Rs 30 is a sizeable fee. I do not say that they should not be asked to volunteer their services Only it is costly when you go to the other side of Ganges or when you go to Delhi or when one goes to the High Court. There it is spoken in terms of gold mohurs, it is not spoken in terms of rupees, annas and pies Go to the clerk of an Attorney or a member of the English Bar and he will say 20 gems, 25 gems or 30 gems, that is the fee of my lawyer I think the advocates practising in the High Courts and the Supreme Court should set up an example

With all respect may I submit to the legal luminaries and the jurists, to tell the public in how many cases in their lives they have given free aid to the poor and in how many cases they have not charged? If the jurists the legal luminaries and the big lawyers set an example, it would be very helpful to the persons practising in the district courts and in the sub-divisional courts It is idle to expect of those who earn a paltry income to render voluntary service to the litigant

Government should set up a body of lawyers, just as they do in sessions cases in section 302 cases, even if the accused cannot engage a lawyer—irrespective of the fact whether the accused engages a lawyer or not—Government engage a lawyer to defend the accused it should be extended to other cases also A body of lawyers might be set up to render legal aid to the poor at the cost of the Government when Government

[Shri Subiman Ghose]

thinks that they require justice, just as they grant exemptions from the payment of the court fees in pauper cases after enquiry. That can be extended and a body of lawyers might be set up to render that service to the litigants

Regarding criminal courts, I submit that conducting cases by Court Inspectors and Sub-Inspectors should be abolished here and now They should not be allowed to continue any longer They do not know anything They are sub-inspectors They roam from one police station to another and one fine morning one is told that he will attend a criminal court and will conduct the case We have seen their knowledge, we have got personal knowledge about them and know how difficult it is to deal with those persons This system should at once be abolished and should not be allowed to continue

I do not agree with the recommendation of the Law Commission that the jury system should be abolished I think that this system should continue with proper care and caution Here the jury are selected and allowed to go about here and there Naturally, there had been some corruption Government should take steps so that there may not be corruption When there is a sessions case, the jury may be segregated It takes three or four days or, at best, a week They should be kept under proper care, they should be properly qualified They should be allowed to continue in such a form because that is a valuable right of the people to be tried by their own tribunal The trial should not be kept in the hands of the Judge, helped or hampered by the public prosecutor That system should be continued with proper safeguard and caution

I will now refer to the separation of judiciary from the executive As I have already submitted in the beginning, some of the suggestions of the Law Commission should have been accepted by the Government before the Law Commission gave these suggestions. This is the crying need I do not know why the Centre or the States have not fulfilled this. By taking some steps in our districts, they did nothing but tinkering here and there with the problem. For instance, in my district, only one magistrate has been named as SDM Previously he was known as the SDO; now he is the sub-divisional magistrate doing judicial functions but he remains under the District Magistrate So, this suggestion is one which should have been accepted by the Government and all the criminal courts should at once come under the High Court One minute more should not be lost to implement it The criminal courts should not be under the District Magistrates Even if they are the Magistrates should be kept exclusively for judicial purposes and not for executive purposes After Independence what do we find? We find that the magistrates are dealing with matter from community development, refugee problem this and that, and motor transport and everything and in some leisure moments, they take up judicial works, the lawyers also stand in queue along with the other persons and send a slip

Shri C. K Bhattacharya: Even schools and colleges—they deal with them also

Shri Subiman Ghose: Then he gets a chance This suggestion should have been implemented long before the Commission gave it

There is another suggestion and I do not know how the Government is going to implement The exact language in which we find the suggestion is that the Judges should remember that their office demands of them certain reserve and restraint in their social life Really, do we find this? I, for myself, know a number of incidents when even the Judges join the political organisations in the name of social gatherings convened by the

political party That shakes the confidence of the people in the dispensation of justice. All these matters should be given careful consideration

Then there is a procedural matter That suggestion is not acceptable to me and that is with regard to confessions to be recorded by the police It has been suggested that an experiment should be made I think that is the least thing that should be done, that a confession should be recorded by the police That will be absolutely an outrageous matter That should not be done

I submit, Sir that there are some suggestions which should have been implemented by the Government long before the Commission came out with the suggestions The Commission has put in hard labour and it has come out with certain sugge tions It is for the Government to say to the people how they are going to implement those suggestions

Pandit M B Bhargava (Ajmer) Mr Deputy-Speaker, Sir the Law Commission's Report is a very important document covering about 1,300 pages containing two volumes divided into 57 chapters This expert and distinguished body has covered the entire range of our judicial system and while pointing out the infirmities of the present system it has made some very valuable recommendations that must be implemented by the Government at the earliest possible moment

The first point, Sir is with respect to the location or the seat of a unified High Court It was pointed out by Shri Kasliwal that this interim report of the Law Commission—Report No 4—was submitted in September, 1956 But the Law Commission again in its final report at page 104, Paragraph 81, has reiterated the recommendation that it had forwarded in the interim report The interim report contains very valuable arguments in support of the establishment of a unified seat of High Court

Sir, the time at my disposal does not warrant covering the arguments that have been advanced, but so far as Government is concerned it is high time for it to announce whether it accepts that recommendation of the Law Commission or not. My hon. friend, Shri Kasliwal said that the Government has practically rejected this recommendation and it is in favour of continuance of the Benches, the several Benches of the High Court in several States

Leaving apart the merits of the proposition whether there should be a unified seat of High Court or several Benches, my respectful submission is that Government should make it absolutely clear as to what is its policy in respect of Rajasthan. The policy pursued by the Government was that a Bench that was in existence for a considerable period was abolished in pursuance of the report of the Law Commission It has been contended by Shri Kasliwal that that recommendation did not fall within the purview of the Rao Committee That is not so Not only the question of the location of the capital but the question of the location of the High Court or the different Benches was within the purview of the Rao Committee and the sole ground upon which the Rao Committee recommended the abolition of the Jaipur Bench was that it was a unanimous recommendation of the Law Commission If that unanimous recommendation of the Law Commission has not been implemented in respect of other States, will the Government of India, I ask be prepared to undo this injustice done to the people of Rajasthan by taking a premature decision in that matter?

Again, with regard to the question of location, in case the Government of India is of opin on that a unified seat of High Court is necessary in the expedient interest of justice as recommended by the Law Commission the question arises whether that unified seat of High Court can be located in

[Pandit M B Bhargava]

a corner or a nook to the great inconvenience and harassment to the people This has been done so far as Rajasthan is concerned and it has been located in Jodhpur which is situated in a corner The majority of the people of Rajasthan are not only being put to inconvenience but to great expense, and the dispensation of justice is not only being delayed but it has become dearer also so far as the poor people of Rajasthan are concerned I respectfully submit and reiterate with all the emphasis at my command that the Government of India, upon whom under section 51 of the States Reorganisation Act rests the responsibility of locating a high court in each State at the appropriate place should reverse that decision which is so unjust to the people of Rajasthan

The second point to which I respectfully submit is the question of the separation of the executive from the judiciary That was a question which was on the forefront of the Congress programme as early as the year 1886, and right from 1886 up to the time, the Congress Government took the reins of governance of the country in its hands this demand has been reiterated But the irony of fate is that even after the Congress came to power in all the States of India this separation of the executive from the judiciary is yet to be realised notwithstanding 12 years of freedom and notwithstanding the fact that this has been embodied in article 50 of the Directive Principles of State Policy in the Constitution

At the time when this article was discussed in the Constituent Assembly it was reiterated by Member after Member that in this article itself a three years' limit should be fixed But the Prime Minister intervened and assured the House that the Government was equally anxious and would see that even before the three years, this recommendation would be implemented in most of the States of India

What is the position at present? So far, only Bombay, Madras and Kerala —only three of the States in India— have sincerely implemented the separation of judiciary from the executive So far as Uttar Pradesh is concerned its implementation is halfhearted inasmuch as it has provided for magistrates in the judiciary There are judiciary and executive magistrates But the judicial magistrates are not under the high court, but under the Commissioner and are subject to the same executive influence Therefore, its implementation is only in name and not in substance

So far as the State of Punjab, the State of Rajasthan and the State of West Bengal are concerned, the Law Commission report shows that high officials such as the Inspector-General of Police and others who appeared before the Commission propounded the reactionary view that real separation of executive from the judiciary is not possible as it is likely to affect the law and order situation in those States adversely

I respectfully submit that keeping in view the directive principles of State policy keeping in view the entire struggle for freedom during which time this demand was kept in view in the forefront, it is too late to suggest that this recommendation cannot be implemented or that the implementation of the recommendation will affect order and law If there is still a Government which believes in pursuing such a reactionary idea, it has no right to continue and it must go (*Interruption*)

The third point upon which this Commission has given a very illuminating recommendation is Chapter 22 In that chapter, the Commission has raised a very fundamental question and that is the question as to whether the modern State which we want to build, the welfare State which we want to build, is right in charging what we call a fee for dispensation

of justice As has been rightly pointed out by the Law Commission, in no modern State, either in England or in America, a tax on dispensation of justice is in vogue, and this is a matter which requires serious consideration

So far as India is concerned, neither in the Hindu period nor even during the Muslim period up to the Moghul period, there existed any court-fee for dispensation of justice It is a curse which we have inherited from the British period. For the first time, in 1782, we found that court-fee was brought into existence in Madras, and then by Regulation 38 of 1795, it was brought into existence in Bengal But even Lord Macaulay in 1835 adversely commented and severely criticised Regulation 38 of 1795 as absolutely absurd. The reason given for the levy of this fee was to discourage frivolous litigation That argument was adversely commented upon and broken to pieces by Lord Macaulay as early as 1835

But what is the state of affairs today in India? The Central Court Fee Act of 1870 prescribed Rs 7-8-0 per cent upon the litigating public That has been enhanced to Rs 11 per cent in many States like Bihar and Bombay The maximum under the 1870 Central Act was only Rs 3 000, but that maximum has been enhanced by some of the States In Bombay that maximum has gone up to Rs 12,500 and in Bihar, it is Rs 10,000 In Punjab, there is absolutely no maximum The more the valuation the more will be the tax leviable Is it dispensation of justice? Can the proposition be seriously disputed that the dispensation of justice is the primary duty of a modern and enlightened State?

The only way to discourage frivolous litigation is not to charge fee but to penalise the defeated litigant, who after adjudication has been found to have indulged in frivolous litigation That is the only way to prevent it. Otherwise, it is helping the rich at the cost of the poor My submission is that this question must be taken up immediately with the other States in India Our State, which claims to be a Welfare State, which is indulging in nation-building activity must set an example by taking an equally progressive step and eliminate the question of fee altogether.

The irony of fate is that the litigants have got to pay not only for the administrative machinery for the decision of civil cases, but they have also to pay for the criminal courts, which is absolutely a question of State So, it is unjust The Law Commission has worked the figures and has pointed out that in most of the States in India, there is a surplus from the civil litigation and that surplus is utilised for the maintenance of criminal courts and also to augment the sources of revenue, which is hardly justified

The next point to which I respectfully invite attention is in respect of the recommendation about legal aid. We know that most of the prisoners who are poor and who cannot engage a legal practitioner file jail appeals What is the fate of these jail appeals? When they are heard by a Sessions Judge or High Court, it is a mere paraphrasing of the judgment of the lower court, maintaining the conviction I respectfully submit that these prisoners whose means do not permit them to engage a lawyer have a right to demand from the State that at State expense, pleaders must be engaged to defend their cases Similarly in sessions cases, barring murder cases, no amicus curiae is appointed In all other cases, the criminals go undefended and grave injustice is being done to them Legal aid is a recognised expense in all the modern and enlightened States of the world and consequently the Government of India also must pay attention to this

The last recommendation of the Law Commission is that so far as the Government of India—the Ministry of Law and the Home Ministry—are concerned, the division of the subjects concerning justice between these two

[Pandit M. B. Bhargava]

Ministries is a mere anachronism and an archaic which we have inherited from the British. In the Viceroy's Executive Council, the Law member would always be an Indian and Home Minister an European. While the Home Affairs was not in charge of the organisation of High Courts etc. and where the Law Member was in charge of legal affairs Consequently, it could be understood that the question of the organisation of High Courts, appointment of judges etc. fell within the purview of the Home Ministry and not within the purview of the Law Ministry.

But in the changed circumstances of the country, this division is merely artificial and thus hampers the real dispensation of justice. So, the Law Commission has recommended, wisely enough, the establishment of a Ministry of Justice which should look exclusively to the co-ordinating work of the judicial system in all the States, and to the implementation and also to the modification of the law according to the changed conception of modern jurisprudence. This work cannot be discharged at present The function of the Law Ministry today is more or less that of an advisory body The Law Commission has recommended a Ministry of Justice to cope with this important task and till this is done a special officer should be appointed who will look to the implementation of the recommendations of this Committee, because justice is an important subject and unless the Central Government by itself exerts its influence on the States, the States will not be able to implement the recommendations of this important Commission

Shri B. C Kamble (Kopargaon) I would like to make a few observations on the report of the Law Commission Of the commissions which have so far been appointed, this is the first Indian Commission, and I would say that a great work has been done by this Commission. There were eminent men in the Commission and they have made certain recommendations. But, so far as the terms of reference are concerned, I am afraid the Commission has not done justice to the second part of the terms of reference, so far as the examination of the Central Acts is concerned. It was pointedly mentioned in the terms of reference that this Commission should examine the Central Acts with a view to see how far they should be amended. On that point, the Commission has been completely silent. I am very sorry to note that this feature has escaped the attention of such eminent jurists, even of the High Court judge.

I would like to point out in this regard article 13 In article 13 of the Constitution, it has been mentioned:

> "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void"

Therefore, such of the provisions as may offend article 13 should have been examined in the different Central Acts, which has not been done.

Similarly, in our Constitution, there is a chapter which relates to temporary and transitory provisions I am afraid, they are going to be a permanent feature. How long will these provisions remain temporary or transitory? That feature should have been examined by the Commission. I am sorry to say that it has not been done.

Then, article 17 of the Constitution relates to untouchability How far has the Commission recommended amendments to certain Central Acts in this respect because it involves the definition of Scheduled Castes and the question of untouchability This is an omission and I need not dilate too much on this point

Now, I would turn to the question of appointments. With regard to the appointments much has been said in the House There is also criticism in

the newspapers. But then what I would submit to the Government is that a Commission of this kind has made certain definite allegations. The Commission says that it visited all the important High Court centres and bitter criticism was heard from the High Court judges, the Bar Associations and so on and so forth. What is the allegation that is made? It is that on political expediency, regional sentiment and communal sentiment certain appointments have been made These are the three categories Now, the point is that if we are saying that we are a secular State, it is the duty of this Government to place all the details before this hon House and before the country with regard to these three categories, that is, with regard to the appointments which were made on political expediency, with regard to the appointments which were made on regional sentiment or on communal sentiment If this is the position with regard to appointments in the judiciary, where the judiciary has a certain freedom under the Constitution, what may be the position, if somebody examined that position, in the administrative or the executive branch so far as the affairs of our country are concerned? I am afraid that things may be worse Therefore, even that information should be made available.

I am making this reference because I had written to the hon Home Minister to make such information available before the Commission's Report was out But such information has not been supplied. A secular State may have too many points of view. One may be that all the communities should be satisfied, that each has a share in the administration. Probably this aspect might have been overlooked by the Commission I do not know whether the Commission held the view that all the communities in the country should have a fair share in the administration, that they should be satisfied and that they should feel that they have some say and they are citizens of this country My own opinion is that all communities should be satisfied and only when each community has a fair chance, then alone we can call ourselves as a secular State. Therefore, if this is the principle which the Government of India is pursuing then that evidence should come forth. Then, there would be no ground for accusing the Government.

Now, there is another question and that is with regard to article 217 of the Constitution. This relates to the position of the Governor, that is, whether the Governor has any discretionary power or is he merely to act upon the advice of the Council of Ministers in a State while making recommendations with regard to the appointment of any judge. The popular notion which prevails is that the Governor is merely a figure head and, therefore, whatever is the recommendation made by the Council of Ministers should naturally be forwarded by the Governor Unless this provision is modified, the complaint which the Law Commission has made cannot be removed, that is to say, the Governor should have a certain kind of discretion which, I am quite sure, under the Constitution also has been given to the Governor. But I am sorry to say that the Governors are not either using it or dare not use the discretion which is given to them That is why the Law Commission has been compelled to make a recommendation that article 217 should be amended with a view to see that the recommendation as made by the Chief Justice prevails over the recommendation as made by the Chief Minister

With regard to legal aid to the poor, I may submit that this is a matter of the utmost importance This matter has been completely neglected by this Government and by the various State Governments. It is only in name and form that there is such a provision in the Central budget as well as in the budgets of the State Governments, that is, with regard to the aid to the poor for legal matters. In fact, there have been surrenders of

[Shri B. C. Kamble]

such amounts. The amounts are not used and are not properly utilised. The information with regard to the legal aid to the poor is not properly advertised. Therefore, what I would suggest is this. Such of the lawyers who are coming from the poorer sections should form a panel and Government should entrust them with a kind of scheme to render aid to the poor. Unless people are picked out from those communities which are poor, it is not possible for such aid to reach the poor

There is also another matter We are speaking about democracy and accordingly, we are having different acts based on democracy. Naturally, therefore, in the administration of justice, there should be such men who are not only able masters of law, but who are also able to understand the spirit of law so far as democracy is concerned. From that point of view, some encouragement should be given so far as making appointments in the judiciary is concerned.

The Law Commission has made one, may I say, curious suggestion with regard to the appointment of the Chief Justice of India Their suggestion is that the usual method which is followed, namely to appoint the seniormost puisne judge as the Chief Justice of India should not be followed and, if there is any other better person than the seniormost puisne judge, he may be given preference for being the Chief Justice of India I am not aware why such a recommendation has been made But, I would impress upon the House and I would suggest to the Government that whosoever may now be the seniormost puisne judge, he must have the chance Otherwise, I am afraid by reason of the recommendation of the Law Commission, whosoever may now be the seniormost puisne judge, his chance may go On this basis, the present seniormost puisne judge should not lose his chance If any convention is to be established, it should be established later on after the particular puisne judge gets a chance.

With regard to trial by jury, what I submit is this. Trial by jury need not be abolished. I am prepared to concede that there are many defects in trial by jury. With all the defects, the people at large have a kind of sentiment that they have a share in the administration of justice. Also trial by jury has certain very fine principles. With all the defects, what we should do is, we should not quarrel with the principles of trial by jury. But, what we should do is that we should improve ourselves. It is not a matter of a defective system. It is a matter of defective people. We have to improve ourselves. Therefore, I would suggest that trial by jury need not be abolished as recommended by Law Commission

Finally I have to say a word and I have finished This is with regard to the establishment of the Department of Justice I am quite in agreement with a previous speaker who said that the Judiciary should not fall within the jurisdiction of the Home Ministry The Judiciary should come under the Ministry of Law or this Department as suggested by the Law Commission—Department of Justice. That is the proper way of doing the thing Otherwise, all the proclamations to the world by this House that we have separated the executive from the judiciary have no meaning for the sheer reason that the judiciary is functioning under the Home Ministry Therefore, there must be immediately a complete separation of the judiciary from the Home Ministry. A very fine and thoughtful suggestion has been made by the Law Commission that there should be established a Department of Justice I support that suggestion

With these few observations, I close.

Pandit K. C. Sharma: Mr. Deputy-Speaker, law and rule of law have become important to an extent that

they never have been in the history of administration of justice in the world. To quote Banes —

> "Laws and lawyers are today the most important directive elements in our civilisation Our technique of production, transportation and communication may be determined and controlled by science and machinery But our institutional life is dominated by law and lawyers Ours is as much a lawyer-made civilisation on its institutional side as the civilisation of Syria and Rome was a military one and that of the middle ages a religious one"

Therefore, I beg to submit that these two pillars make a modern State One is technology and science to look to the productive resources of the State, and the other is the law and the lawyer to provide the institutional fabric of the State

Ours is a crisis of personnel It is not a crisis of systems so much, though that also exists, because I would point that we took a legal system that existed some centuries or thousands of years before in Rome, and which was taken over by England and then it was taken by us or rather it was given to us So, in the modern sense of law, we did not make a law for ourselves We were given a law by the others It was a law given by the rulers to the ruled Whether that is good or bad is a different question, but it is not in consonance with the forces around our life and our society To that extent, it is a crisis of system But, as I said, there is also the crisis of personnel or the crisis of man That is a very difficult question

I would not criticise the judges and their judgments, but I would just say only one thing, that there was a time when the crime was what was written in the book Now, the crime is the resultant of the cultural textures conditioned by the life around us The two make two different senses The crime of the law is a different thing from the crime which is the resultant of the cultural textures conditioned by the life around us A judge has to look into that No judge can do justice to an accused standing on the dock unless he knows the development of his life, the condition of the society and the environmental forces working therein It would be an impossible proposition, if he does not know these things Let me quote here the opinion of a jurist

> Law must be stable and yet cannot stad still In law we rely upon experience and reason As I have been in the habit of saying, law is experience developed by reason, and reason tested by experience, for experience, we turn to history for reason, we turn to philosophy"

My respectful submission is What is the experience? What is the psychological make up? What is the sociological equipment of the judge sitting in judgment either to adjudicate on the question of property or to sentence a man to imprisonment because under certain circumstances the person has committed a crime?

Ours is a very difficult condition It is a difficult position, because we have got a system that existed thousands of years before in which we had no say whatsoever It was unrelated to our life and circumstances, it was adopted by other countries blindly and against their own interests, and then foisted on an unwilling people, and we as a subjugated race had to accept it It is the tragic irony of history that Manu who gave the Law to the World, has no significance to the Indian lawyer

It is of great moment that the Law Commission has decided something about the system of law something about the modification, something about the education and equipment of the judges etc

I must raise my voice in support of the availability of justice to the people I am referring to justice that the people want not the justice that the book gives There is justice that the people want the justice that life demands the justice which is in

[Pandit K. C. Sharma]

accord and in consonance with the circumstances as they obtain at a particular moment or in a particular context and there is the justice that is written in the book, written in the Roman laws, accepted by the English Judges and thrown over head by the English rulers. These are two different things. I would quote what Prof. Munroo Smith has said in this connection. He says:

> "In English-speaking countries, this freer mode of interpretation"—

that is, interpretation not bound by the letter of the law or the letter of the Constitution as such, but looking to the circumstances around—

> "has always been applied to the unwritten or common law, and it is usually applied to a written law with a degree of boldness which is very closely proportioned to the difficulty of securing formal amendment. Thus the rigidity of our federal Commission has constrained the Supreme Court of the United States to push the interpreting power to its furthest limits. This tribunal not only thinks out the thoughts which the Fathers were trying to think one hundred and twenty years ago, but it undertakes to determine what they would have thought if they could have foreseen the changed conditions and the novel problems of the present day. It has construed and reconstrued the Constitution in the 'evolutive sense' until in some respects that instrument has been reconstructed".

Shri Braj Raj Singh: I do not mean to interrupt the hon. Member. But may I know with which of the points you referred to he is dealing?

Pandit K. C. Sharma: I am dealing with the equipment of the Judges and as such, legal education. He will take time to understand it.

So my respectful submission is that we are facing a difficult proposition, and that difficult proposition is not of our making. It is not so very easy to remedy; it is not so much easy to find ways to evolve a new system of administration of justice or a new technique of making law. Anyhow, as we are situated, I submit certain points for your consideration. They are these. For the training of lawyers or for the study of law, there should not be law colleges as they are today and there should not be lectures for half an hour or an hour by what are called exhausted lawyers. There should be Universities of Law. People should be trained not only in what is called the law as it is,—codification of law, Acts and so on—but they should also know the legal history of their own country, the history of Roman law and the social and economic conditions of the country. Then they should be trained in sociology and psychology.

As regards Judges, it is not as if, as one hon. Member said, because one gentleman is appointed by the Governor or the Home Minister and since the Minister or the Governor belongs to a certain political party, for the matter of that, therefore, his judgments are coloured. It is not so easy a thing. Judges are conditioned by the environment around them. They have a certain sense of dignity—a sense of responsibility. They are conditioned by the dignity of office and exalted position they hold. To depart from that is not so easy a thing. Once you sit in that exalted office, once you sit in that exalted chair of the Judge, you will be a different man. You will not be a communist then. Take it from me; you would be a judge and nothing else but a judge. *(Interruptions)*.

Mr. Deputy-Speaker: Objection is being taken if that was addressed to the Chair.

Pandit K. C. Sharma: I am sorry.

I pay my respect for the work done, to the hon. Judges both of the Supreme Court and of the High Courts.

We may be proud of their ability, their performance and their erudition, if we read the reports, the points raised, the decisions taken, the law laid down, the analysis of the facts... (*Interruption*). But I have yet to find any allegation of partiality against a District Judge, of sectarianism or anything of that sort.

I have been in this profession for over 30 years and I have never come across any allegation by anybody whatsoever that a District Judge or a Sessions Judge has been corrupt. I have been a public worker going to the people and talking to them. (*Interruption*). Do not talk of lunatics; lunatics can talk anything they like because they do not know what they talk But a sensible man has never said anything against a Sessions Judge or.

An Hon Member: Do not say that.

Mr. Deputy-Speaker: I do not think any Member would dare say anything now.

Shri Narayanankutty Menon: Are you talking about the Members of the Law Commiss.on?

Pandit K. C. Sharma: While I have all the praise for the performance, and ability and acumen, I would respectfully submit that things have changed As I have just now pointed out reading from the highest authority on law, I would submit that instead of law colleges there should be universities of law and there should be eminent professors of law and jurisprudence. The judges, particularly High Court and Supreme Court Judges, should have an immediate extended knowledge of economic life and practical experience of social conditions and history of important developments of economic and social life. They should have a knowledge of the history of the legal system, particularly of the western system, the English system of law and they should have been well educated in the philosophy of law and jurisprudence. They should know Roman law, its origin, its development; they should have knowledge of classical jurisprudence and they should be students of sociology and criminology. This equipment for a judge expected to sit in the exalted chair of the High Court Bench or the Supreme Court Bench is a difficult thing.

But things have changed and the conception of crime has changed. In the classical idea of jurisprudence the conception of property was something to be touched, something to be possessed, to be held, to be locked. Now the conception of property is a functional conception; it is a movement; it is a force; it is a power to act; it is a power to act and achieve; it is something that works in societies. Things have changed Therefore, a great scholar of the Roman law system is not well equipped for dispensing justice to a growing and changing society of today; and much less would he be competent to dispense justice to the society to come tomorrow.

With these words, I would request the Home Ministry to look to the education of law and the equipment of judges. I may say one thing by the way—I am not concerned very much about it—about the separation of judiciary and executive.

Mr Deputy-Speaker: That has been said by so many hon. Members.

17 hrs.

Pandit K. C. Sharma: One minute Sir In U.P. we are developing a system of judicial magistrates and my experience and information is that it has worked quite well. Judicial magistrates do not have anything to do with the executive work. They look to the cases alone and there are no complaints against such a system.

Shri Nanshir Bharucha: Mr. Deputy-Speaker, at the outset, I would like to pay my humble tribute to the labours of the Law Commission which have resulted in the production of a monumental report which, if carefully examined by the Government and implemented even in parts, would bring

[Shri Naushir Bharucha]

about a considerable reform in the judicial administration of this country.

Mr. Deputy-Speaker: The hon. Member may continue tomorrow.

17.02 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, August 28/Bhadra 6, 1881 (Saka).