

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

SIXTEENTH REPORT

Shri Aitekhar (North Satara): I beg to move:

"That this House agrees with the Sixteenth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 1st December, 1954."

It is a very simple matter. In connection with the allotment of time for all these resolutions, the resolution of Shri Thimmaiah regarding the appointment of a Law Commission for revision and modernisation of laws comes first. One minute was taken last time and the time that remains now for that resolution is 2 hours and 39 minutes; 2 hours and 40 minutes have already been allotted and was accepted by the House formally. As regards the other resolution 2 hours and 30 minutes have been allotted and this was also formally accepted by the House; there should be no other opinion on that now.

The only other recommendation that has been made is that because the House rose fifteen minutes earlier last time, that time should be given now.

The Deputy Minister of Home Affairs (Shri Datar): That is, we can rise at 5-15.

Mr. Deputy-Speaker: Very well. The question is:

"That this House agrees with the Sixteenth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 1st December, 1954."

The motion was adopted.

RESOLUTION RE: APPOINTMENT OF A LAW COMMISSION—*Concl'd.*

Mr. Deputy-Speaker: The House will now resume further discussion of the Resolution regarding appointment of a Law Commission for revision and modernisation of laws moved by Shri

Dodda Thimmaiah on the 19th November, 1954.

The Mover spoke for one minute and had not concluded his speech when the House adjourned for the day.

Out of two hours and forty minutes allotted for the discussion of the Resolution, 2 hours and 39 minutes are left for its further discussion.

Since the House has agreed to sit for 15 minutes longer today as recommended by the Committee on Private Members' Bills and Resolutions in their Sixteenth Report, there are 2 hours and 45 minutes available today. After the conclusion of the debate on this Resolution, the next Resolution in the List of Business will be taken up.

Shri Thimmaiah may continue his speech. He may take 15 or 20 minutes.

Shri Thimmaiah (Kolar—reserved—Sch. Castes): Though I am student of law, I am not a lawyer. Yet, I try my best to achieve the object of my Resolution. My Resolution seeks to appoint a Law Commission for revision and modernisation of laws. Before I come to examine the present-day law system, I wish to trace very briefly the development and codification of our laws.

In 1833, the Law Commission was appointed under the chairmanship of Lord Macaulay and he submitted a draft penal code in 1837 before he returned to England. This Commission became defunct in 1842 after submitting a scheme of pleading and procedure.

A second Law Commission was appointed in 1853 under the Chairmanship of Sir John Romilly, who drafted the Civil Procedure Code, which was passed in 1859, and drafted the law of Limitation which was also passed in 1859. In 1860, they revised the Indian Penal Code submitted by the Macaulay Commission and that was also passed in 1860. In 1861, they prepared a draft of the Criminal Procedure Code.

[PANDIT THAKUR DAS BHARGAVA in the Chair.]

Here is one more point which we have to notice. This Criminal Procedure Code and the Civil Procedure Code mainly followed the English procedure.

In 1861, a third Law Commission was appointed which prepared the draft law of Succession and the drafts relating to the Contract Act, Evidence Act, the Negotiable Instruments Act and the Transfer of Property Act. They also submitted a revised Criminal Procedure Code and Evidence Act. In 1870, this Committee resigned. Until 1879, the work of codification remained with the Secretary of the Law Member, Sir John Stepham, who submitted in 1871 a revised Law of Limitation.

Shri Amjad Ali (Goalpara—Garó Hills): On a point of order, when the appointment of a Law Commission is being discussed in the House, should there not be anybody connected with Law or Home Ministries?

Dr. Ram Subhag Singh (Shahbad South): There should only be common people here.

The Deputy Minister of Food and Agriculture (Shri M. V. Krishnappa): I am here. I have been asked to watch and take notes also.

Shri Amjad Ali: I know he is in charge of Food and Agriculture.

Mr. Chairman: The hon. Minister has, it seems, been specially asked to deputise.

Shri M. V. Krishnappa: Within ten minutes, he will be coming. I am taking notes.

Shri Amjad Ali: I do not know if he has been briefed for this purpose.

Shri Thimmaiah: In 1872, he submitted a revised Criminal Procedure Code, Evidence Act, and Contract Act, with amendments based on the previous Commission's drafts. In 1877, Lord Hobhouse was responsible for the Specific Relief Act. Since 1875, the Secretary of State for India insisted on the codification in other branches

of law also. Then, the Government of India recognising the public apprehension that codification was too fast, took over responsibility for further codification. They appointed three Commissioners to consider certain draft Bills already prepared. Their labours resulted in the passing of the Negotiable Instruments Act, the Private Trusts Act, the Easements Act, the Guardian and Wards Act, the Provincial Insolvency Act in 1908 to supercede the provisions of the Civil Procedure Code. Later on, drafts were also submitted regarding the relations between Master and Servant and also about Torts.

So, we see in the last century, these Commissions functioned and prepared drafts which were later on made into enactments. These Commissions worked more as Drafting Committees than as a body of jurists and men of affairs, who were concerned with the principles underlying these enactments. When the Britishers took over the Government, as the House is aware, they tried to regulate the trial of criminal charges on the lines of the procedure which was long obtaining in England. As a result of the work of these Commissions, today, you have got these various Acts namely the Criminal Procedure Code, the Civil Procedure Code, the Contract Act, Transfer of Property Act, Eastments Act, Specific Relief Act, etc.

These Acts have been in existence in our country for more than half a century. We have seen their working. We have understood their inadequacies and we are in a position to judge their limitations. Now, the circumstances in our country have changed. There is an economic change. There is a social change; there is a change in the idea of administration of justice. There is a change in the idea of enforcement of right. There is a change in the idea of punishment also. You can also take into consideration the fact that the psychology of our people has changed. We have also to note that during the British days, the people obeyed the laws not only because they were of a

[Shri Thimmaiah]

law-abiding nature, but were also afraid of terrorism. It was a police State. Now, it is a welfare State. Therefore, it is high time that we revise our laws to suit the circumstances of our country and the needs of the times.

Now, I shall come to the legal system. The Indian legal system as it exists today is based on many elements which are not consistent altogether. We had in the background the ancient system, the relics of which can be seen in the personal laws of the Hindus. The Muslim conquerors imposed on the people their own legal system. The law in relation to gifts as between Muslims is reminiscent of Muslim jurisprudence. The principles of equity which we received from English jurisprudence have shaped our law of alienation. Our law is not simple. It is not clear. Even the ideas in it are not all harmonious. The principles themselves are not well pieced together. The law of any land must be such as could be understood by a layman, if the presumption as to the knowability of a law is to be a reality rather than a mere fiction. The idea of a secular State presupposes a simple uniform system of law divorced from a theological, religious, spiritual background.

Shri B. S. Murthy (Eluru): What about psychology?

Shri Thimmaiah: Litigation, as we know, in our country is the rich man's luxury. The cost of litigation is highly prohibitive.

Shri A. M. Thomas (Ernakulam): It is the lawyer's food.

Shri Thimmaiah: Even an ordinary litigation has four stages: the first Court, the appellate Court, the second appellate Court and a third Court, probably the High Court. The most favourable estimation of the duration of a case is six years. It is not uncommon to see in our country cases hanging fire for several years during which time, the original parties, having lived a normal course of life,

disappear from the scene and this justifies a proverb which is prevalent in my part of the country which says that he who succeeds is one that is defeated and the defeated litigant is one that is dead.

In our laws, there are logical defects and ambiguities. In some cases, there is incomprehensibility. Some are incomplete. Some have got lacunae which prevent expressing logically complete ideas. In order that justice shall be smooth, and cheap the machinery for the implementation of the laws must be smooth and speedy. The technicalities of the procedural law have turned the salutary principles of substantive law into wormwood. The delays and dilatory tactics ought to be curtailed. As you are aware, the Civil Procedure Code provides a number of gadgets which promote the very things they exist to prohibit. In a civil case, delay itself has disastrous consequences. Therefore, the appointment of a Commission is the only way of enquiring into these causes for these state of affairs and removing the factors that outlive the reasons of their existence.

Coming to case law, we have in our legal system a mixture of conflicting case laws. It is expedient from time to time that these explanatory and supplementary laws are codified and incorporated into a separate edition. No sooner this is done, than the process of interpretation, which is the genesis of case law will begin to operate. The Legislature ought to be vigilant and provide a touchstone of answer to the public opinion and the needs of the time. The proposition on hand provides an opportunity to inquire into the extent to which the legal system satisfies the requirements of this provision. Our defence lies not in armament, not in science, not in going underground, but in law and order. The proper administration of justice is the essence of democratic Government.

One important event that compels the revision of our laws is the advent of our Constitution. In our Consti-

tution we have got many directive principles of state policy. These directive principles as they remain are non-justiciable. But it ought to be the aim of a purposeful legislation to secure the assimilation of these principles into the *corpus juris*. The degree of their expression in the law of the land is the degree of success of these principles which have got a constitutional mandate. Therefore, the system of substantive law, and the basis of their codification need fundamental review in the background of the directive principles of state policy incorporated in our Constitution. Legislations creating statutes, where there is a need for the state's interference on account of the ~~use~~ of bargaining power of the contracting parties, and the basis of such legislation ought to be more positive and consistent with the ideas of a welfare state.

Another cardinal requirement for the effective administration of justice is the adjectival law, which seeks to implement substantive law. The degree of efficacy of the law is directly proportional to the simplicity of the former. The ritual of procedures often eats into the substance of this right, and renders the administration of justice a reproach. It is high time that the principles of procedural law are redeclared in its various applications. The procedural laws in relation to civil and criminal murders have to prescribe a rigorous standard of time-limit for pendency of litigation, bear in mind that justice delayed is justice denied.

Coming to the criminal side of law, there are so many lacunae in our criminal law that cases of miscarriage of justice are too numerous for any Legislature to ignore. The hands of the executive have got to remain fettered now. Now various amendments are suggested to the Criminal Procedure Code while the grounds of apprehension about their deserving, have not wholly ceased to exist. It is a strange logic to think that a bad thing improves by giving it a good name. Even in England, where the administration of the police is an ideal

of the world, a great judge had occasion to remark that once a charge-sheet is framed, the police develops the spirit of a hunter and discards the rules of the game, and unless that is highly improved, the executive has to expend its power very guardedly.

Coming to the appellate jurisdiction, the scheme of present appellate jurisdiction is in need of thorough revision. The availability of the hierarchy of these appellate jurisdictions is no guarantee of accuracy in the final results. Therefore, the basis of these appellate jurisdictions needs thorough revision. In England, a committee was appointed very recently under the chairmanship of Raymond Evershed to inquire into the substantially identical questions with a special reference to the reduction of the cost of litigation. The report of that committee has been published, and our learned lawyer friends can make use of it.

Lastly, there are laws in our country, State laws as well as Central laws, which are contrary to fundamental rights. It is high time that a Law Commission is appointed to inquire and find out how far these laws are consistent with our fundamental rights, so that they may be brought up to a level where there will be consistent with the principles of our fundamental rights.

I commend to the consideration of this House that the legal system of India needs a thorough reconstruction consistent with the new fundamental values we have set before us, with the political and social aspirations, and the glimpses of new civilisation looming large in the mental horizon of India, and I commend the constitution of a Law Commission with this end in view.

Mr. Chairman: Resolution moved:

"This House resolves that a Law Commission be appointed to recommend revision and modernisation of Laws, Criminal, Civil and Revenue, substantive, procedural

[Mr. Chairman]

or otherwise, and in particular, the Civil and Criminal Procedure Codes and the Indian Penal Code, to reduce the quantum of case-law and to resolve the conflicts in the decisions of the High Courts on many points, with a view to realise that justice is simple, speedy, cheap, effective and substantial."

There are two amendments to this. Do the hon. Members concerned want to move them?

Shri Nageshwar Prasad Sinha (Hazaribagh East): Yes.

Mr. Chairman: The hon. Member may move his amendment. There is one in the name of Shri Sadhan Gupta. He is not here. So, it is not moved.

Shri Nageshwar Prasad Sinha: I beg to move—

That for the original Resolution the following be substituted, namely:

"This House resolves that a Committee of legal experts be appointed to study the various reports, e.g. Rankin Committee's Report 1924-25, Dass Committee's Report 1949-50, Wanchoo Committee's Report, Trevor Harris Committee's Report, the Bihar Jury Committee's Report and the latest Memorandum on Reform of Judicial Administration in India by Dr. K. N. Katju, and to recommend to the House the steps to be taken in the matter of making laws simple and justice expeditious."

The Prime Minister and Minister for External Affairs and Defence (Shri Jawaharlal Nehru): I should like to say at the outset that we accept the Resolution, in so far as the appointment of a Law Commission is concerned. Indeed, we had come to this decision some considerable time ago. The hon. Member might remember that there was a resolution to this effect passed by the All India Congress Committee. After that, we gave thought to this matter, and we agreed that this should be done. In fact, we

are now engaged in considering the steps to be taken towards that end.

The hon. Member who proposed this Resolution went rather deeply into social and other matters. For my part, if I may say so, I am very largely in agreement with his approach to this question. But I am not quite sure if learned lawyers are also in agreement with that approach—some may be, I hope—because I find that the more learned a person grows, the more is the tendency for him to become rather conservative in his approach; there is such weight of learning which prevents him from moving too fast.

I cannot say, at this stage, what exactly the terms of reference might be, or the personnel might be. That will have to be considered. But broadly speaking, as regards the fact that it is very necessary to have a Law Commission to cover this vast field and try to simplify it and modernise it and make it more in keeping with modern conditions, I entirely agree with that. There is almost a difficulty to be faced in these matters. First of all, when we talk about a Law Commission, there is the idea of a Law Commission which does its job and then ends. There is another idea of a continuing Law Commission, which is sitting all the time, and revising; it is a permanent or a semi-permanent body. I think that for the moment, we should have a Law Commission, not a permanent one, but to consider the situation as it is, and make its recommendations for the consideration of Parliament. That very Law Commission may suggest the formation of a permanent body. That too may be considered at that stage. But at this stage, to have a permanent body would be inadvisable, at the stage where we are.

Secondly, the subject itself is a vast subject, and in fact, really covers almost the whole ground of many of our economic and social activities, not directly but indirectly. If any Law Commission is to consider all that,

then it may well happen that the Law Commission goes on sitting year after year, without finalising its conclusions or recommendations. That too would be unfortunate. If we give it much too wide a field to roam about in, its wanderings may never end, and what we want may be greatly delayed.

3 P.M.

The hon. Member laid great stress on the fact that justice delayed is justice denied. It is obvious, of course. All the best laws in the world are no good, if they cannot be applied and implemented with a fair degree of promptness. Now again, if we appoint a Law Commission which takes such a very long time to conclusions, not because of its desire to take a long time, but because of the vast field that is referred to it, then we have to wait all that time. And even in that case, I should imagine it would be better to go step by step, get something done, and then think of the next step, instead of trying to change the whole structure at one swoop. As a matter of fact, if an attempt of that kind is made, and something is produced here in this House for the consideration of Parliament, which covers the whole ground, well, we might have something in the nature of a Bill, of a big tome. We may consider that for months and months and never get going with it. That is the difficulty. As the House will remember, in the case of the old Hindu Code Bill that we introduced, quite apart from the merits or demerits of it, it was such a big thing that it was difficult ever to get it through. So, it was decided to split it up, take each part separately, get through with it and take the next one. Therefore, in this matter too, it would probably be desirable, subject to what final decisions might be taken, to take it up in bits and parts, rather than the whole scheme of things. It is perfectly true that while taking a certain part of piece one must have a broad picture of the whole in mind; otherwise you may have one bit and the other which does not fit in. Therefore, the Law Commission should have a broad picture. Having that

broad picture, it can proceed with parts of it in some detail and Parliament will consider those parts and deal with them. Thus, we can make some progress.

So, subject to what I have said, I accept this Resolution.

Shri S. V. Ramaswamy (Salem): Mr. Chairman, Sir, the draft of this Resolution is mine and I went on collecting the signatures of 58 Members. Shri Thimmaiah got the ballot.

Now, Sir, this is a very comprehensive Resolution and we are indeed thankful to the hon. the Prime Minister for straightway accepting the necessity for appointing a Law Commission. The Resolution seeks "revision and modernisation of Laws, Criminal, Civil and Revenue, substantive, procedural or otherwise." It mentions certain particular Codes. Secondly the Resolution seeks to "reduce the quantum of case-law and thirdly to resolve the conflicts in the decisions of the High Courts on many points, with a view to realize that justice is simple, speedy, cheap, effective and substantial."

Sir, the main point about the judicial system in our country is that it is complicated. The enormous delay that is caused in the dispensation of justice, leads to certain inevitable consequences, namely, the utter ruination of the litigant public.

Take for instance the civil law. The Civil Procedure Code is mainly responsible for the delays. I am sure hon. Members would have read the Civil Justice Committee's Report of 1924-25, to which a very useful note is appended by Sir Tej Bahadur Sapru. Certain facts mentioned in it are true to this day. The Procedure Code is so carefully drafted after the British pattern that in its actual application there is enormous scope for blocking the process of law, with the result that both the plaintiff and the defendant are ruined.

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I do not want to elaborate on this point. Many of the hon. Members of this House are lawyers. I will deal with Order XXI which has got 103 Rules dealing with execution. As has been well said, the difficulty of the litigant really starts after getting the decree. In the process of summons, filing of documents, interrogations and so forth, there are endless delays. At last, after a lapse of some years he gets a decree. That is not the end of his troubles. As an experienced lawyer you know, Sir, that the obtaining of the decree is just the beginning of his troubles. There are even cases where after obtaining the decree people have been unable to execute it, not because of unwillingness on their part, but because the law is so cumbersome, and so full of scope for obstructive tactics; and at last in despair they come to some sort of agreement, or ultimately give it up. May I, in this connection, read an extract from one of the minutes of the Civil Justice Committee, 1924-25:

The one outstanding feature of the law of execution in India is the leisurely manner in which a decree may be executed. Article 182 of the Law of Limitation provides for the execution of a decree or order of a civil court; the period of limitation prescribed for the execution of a simple decree is three years or where a certified copy or decree has been registered, six years. I confess that this looks very simple, but when the third column of the schedule is borne in mind, then it will appear what a complicated system we have provided. It will probably interest His Excellency to know that on this seemingly innocuous provision the rulings of the various High Courts cover something like 75 closely printed pages. I have always felt that these provisions are a standing temptation to dishonest decree-holders and dishonest judgment—debtors to trouble, annoy and cheat each other and to prolong execution at their will and pleasure by taking

shelter behind a thousand and one pleas which legal technicalities can raise.

This was an opinion expressed somewhere about 1924-25. Nearly 30 years have elapsed, but we have not done much to reduce the time within which a decree-holder can get execution. We have not reformed, amended or revised our Civil Procedure Code in such a manner that delays could be reduced and justice could be rendered to the person who has obtained the decree. That way lies a great need primarily to reform the Code.

When Law Commission, as promised by the hon. the Prime Minister, is appointed the first thing that should be dealt with is the Civil Procedure Code, with its cumbersome sections, rules and orders. It should be simplified and brought to sizable proportions. Side by side with it we must also deal with the law of limitation about which I have read a passage. I have always felt in the course of my practice that this Law of Limitation needs drastic reform. I am only waiting for a day when this law also will be referred to the Law Commission so that it may be revised drastically to see that justice is meted out to litigants as quickly as possible. It has been suggested now that not nearly is the revision to be there, but there should also be the modernisation of the laws. Let me deal, in this connection, with criminal laws. As you know, the Indian Penal Code is nearly 95 years old—having been framed in 1860. The social conditions, the ideas with which crime should be dealt with and everything else was entirely different at that time. The basis, the atmosphere in which this Code was brought into being, is different; conditions have changed, our outlook of society has changed. Whether we should emphasise the penal aspect of the criminal law or the reformatory aspect of the law is also much under consideration. In certain advanced systems of criminal jurisprudence, the reformatory aspect of criminal justice is emphasised more

than the penal or punitive aspect. In that way, the Italian system is considered to be very good. We have made no attempt to reform this Penal Code, some of the provisions of which are certainly archaic. Take, for instance, sections 312, 313 and 314. They do not in any way fit in with modern conceptions of social justice and social needs and social conditions. They are entirely unrelated to the social concepts of our modern times. I personally feel that they should be deleted; at any rate, there is need for modification and modernization to fit in with the life of our time and reflect the social purpose of the State.

Now, I do not wish to elaborate further upon this aspect. I have only given an illustration. I have also suggested that the revenue laws should be revised and modernized. The revenue laws of each State differ from the other. The revenue rules, for instance, in the Punjab may differ from what they are in Madras. Till lately we have been on the *zamindari* system. Wherever there was the *zamindari* system prevailing, the revenue laws were such that the ordinary man—the tenant—had very little rights to live upon. The law was definitely weighted against the ordinary tenant, with the result that the tenant under the *zamindari* system was groaning not merely under the weight of the system itself, but of the law which was heavily in favour of the *zamindar*. Now, the difficulty was also complicated by the fact that in those areas the elementary thing of survey lands was not being attended to. Disputes with regard to pathway rights, for example, of drawing water from wells, or with regard to tracks were not determined because there was no survey. Everything depended upon oral evidence. What record there was, was kept in the Estate office, so that the ordinary tenant could not find out records bearing on title. We have passed a series of legislation by which the *zamindari* system is abolished, but yet the difficulties of the people are still there for the reason that the records are

not complete. Surveys are not yet complete. The laws in regard to those areas have yet to be revised, so far as revenue matters are concerned, and modernized so that what obtains in the *ryotwari* areas, for instance, where the position is slightly better than in the *zamindari* areas, is equated with the rights of the people in these areas, and the condition of the people improved in such a manner that they can get justice easily and cheaply.

I do not want to elaborate because perhaps my time may be limited. I now come to the second aspect, namely, reduction in the quantum of case-law. I was looking into the history of the Law Commission in U.K. There was a Committee appointed as early as 1866 to codify the law. I find that that Committee said:

“Speaking of the bulk of the statutes and the amount of judicial decisions, they calculated that the judicial decisions were included in thirteen hundred volumes, exclusive of a hundred and fifty volumes of Irish reports”

I have not calculated all the statutes and decisions in respect of our country, but all I can say is that even statutes—bare Acts—passed by the Central and State Legislatures come to one bulky volume containing 1,500 pages per annum. If the bare statutes are of that size, what about case-laws and decisions? There is urgent need to reduce the quantum of case-law also. It is possible that it can be brought about if there is a proper revision of the law. The Commission can go into this question and bring their expert knowledge to bear upon this problem.

The third point is about resolving of conflicts in the decisions of the High Courts. You know on the simple question of section 162 of the Criminal Procedure Code as on section 27 of the Evidence Act, how each High Court differed from the other, with the

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result that ultimately, I believe, it was the Full Bench of the Lahore High Court which decided the question which was accepted by the other Courts.

Take again the case of section 411 of the Criminal Procedure Code, that came up in the Thyagaraja Bhagavathar case. The decisions were conflicting. We did not know where we were, and even now on very many points of law each High Court interprets each point of law in its own way and there is no consensus of opinion. This, again, helps to make for delay, each party quoting decisions in its own favour, there are decisions for any standpoint or for any point of view. The result is that there is enormous delay leading to appeals and further appeals and so on.

I do not wish to elaborate on this point especially since the Prime Minister has been pleased to accept the Resolution. I only wish that the Commission is appointed soon and in the initial stages some important laws, such as the Civil Procedure Code and the law of limitation, may be referred to them. I personally feel that there should be a permanent Law Commission working right through the year to revise the laws of this country and keep on revising them so that the object of the Resolution, namely, 'to realise that justice is simple, speedy, cheap, effective and substantial' may be achieved.

Shri C. C. Shah (Gohilwad—Sorath): I am glad that the Prime Minister has accepted the principle underlying this Resolution and has agreed to the appointment of a Law Commission. I am sure this Resolution will have the unanimous support of the whole House.....

Shri B. S. Murthy: Where is the difficulty now?

Shri C. C. Shah: but it is necessary that we should know precisely what a Law Commission can do and how it can proceed about it. Because if we read this Resolution and

the two substitute Resolutions which have been moved to it, all three of them end with the sentence, that justice should be speedy and inexpensive.

Now, that is one part of the demand for the appointment of a Law Commission. But as you follow the speech of the Mover of this Resolution, as also those who are thinking about it, you will find that there are all kinds of notions about what a Law Commission can do or should do. The Prime Minister spoke, for example, of what the terms of reference of such a Commission should be and what its personnel shall be. Now, my submission is this, that there are three or four things about this subject which we want to, and should, keep quite separate. The first thing, for example, is to make justice speedy and inexpensive. Now, that is essentially a subject for treating the procedural laws of the country in order that justice may be speedy and inexpensive. That is one object to which the Law Commission should apply its mind immediately.

Then the other thing which the learned speaker spoke about while supporting this Resolution is the modernization of these laws with a view to bring about social justice, to bring them in line with our ideas of economic and social equality and so on. Now, that concerns itself with what one may call the content of laws, what the laws should be—the substantive law. I submit a Law Commission of this nature cannot deal with all the substantive laws of this nature in all the fields of activity in which legislation enters in order that it may bring about social justice and so on. Take for example the industrial legislation. I submit it would not be a part of the work of a Law Commission of this character to advise us as to what kinds of industrial legislation we should undertake. You may also take for example revision of the Hindu Law which we are undertaking. But, the essential and immediate function of the Law Commission of this nature, I

submit, should be to revise the Criminal Procedure Code, Civil Procedure Code Evidence Act and all other procedural laws which make for delay. In doing that, the question we are faced with is whether we shall do it within the frame-work of the present legal system which we have inherited or whether we shall go to the root cause of the matter and have a legal system somewhat different, if not entirely, from the one under which we are functioning today. With respect, I would submit that if we are to change the legal system altogether, then, in order to consider a change of that character, speaking about the personnel of such a legal commission I should say, we need more persons who are jurists rather than only lawyers. A successful lawyer—I submit with the greatest respect to successful lawyers—can rarely suggest amendments to laws which will make it speedy, inexpensive and so on. Our minds are so conditioned. But, it is essentially the function of a jurist who thinks of the fundamentals of things of the entire judicial system by which it functions and a jurist need not necessarily be a successful lawyer. In fact, many jurists are not successful lawyers, but they are students of law who have applied their minds to the manner in which the entire judicial system should function. When we come to consider it, there are so many cognate matters which we must take into account in the reform of the judicial system because expensiveness of the judicial system or the delays inherent in it arises out of several other things like the organisation of Courts the legal profession and its remuneration, recruitment of the judiciary etc. There is in the first Court, second Court, third Court, fourth Court etc. There is tier after tier of Courts in the system which we have. What shall be the organisation of Courts? Whether we shall provide a number of appellate Courts or it will be limited; whether the jurisdictions both territorial and pecuniary will be water-tight divisions as we have today, or it will be of a different character, and so on.

Then a Commission of that character will have to consider the recruitment of the judiciary because the delays and the expensiveness of the judicial system today arise both out of the constitution of the Courts as well as constitution of the bench. The Commission will have to consider the kind of men which we shall have on the bench, the manner of recruitment, terms of their employment and so on. This is what will make for speedy and inexpensiveness, rather than consideration of the revision of substantive laws. Then comes the organisation of the legal profession which is part of the machinery by which justice is administered. What shall be the organisation of that legal profession and the remuneration to be paid to that profession. The expensiveness of justice today arises out of two things: Court fees which the State charges and the lawyers' remuneration. Dr. Katju has often told us—and in his memorandum he has also stated—that Court fees should not be considered a source of revenue by any State, and yet how many States there are in India today that do not consider that to be a source of substantial revenue? Heavy fees are one of the charges which the litigants have to meet with. So, I submit that a Commission of this character should consist of jurists rather than only lawyers and it should apply its mind more to the procedural part of the laws. As I said, it should also look to the recruitment of the judiciary, organisation of the legal profession, remuneration to be paid to the legal profession and the constitution of the Courts. These are the things which the Commission can do immediately.

Then, the second thing which this Resolution envisages is reduction of the quantum of case-law. That, as I said, arises out of this, as to the kind of legal system which we are going to have. There are continental judicial systems which do not give to case-law that amount of importance which the British or the Anglo-American system gives. Therefore a Commission of this character will have to study the legal systems of the various other countries

[Shri C. C. Shah]

which make for speed and justice, rather than the only legal system which is known to us since the last 200 years, namely, the Anglo-American System. And, the enormous case-law which we are having today is more a hindrance to the administration of justice rather than a help to it. Then there is the indiscriminate manner in which these cases are reported. You can quote anything and you can always get a case either for or against you.

The third thing which we have in mind is revision of existing laws. What do we precisely mean by revision of existing laws? On the one side, as I said, the first branch of the thing is to make justice speedy and inexpensive. Then the revision of existing laws would mean revision of all substantive laws as well—the penal laws, Hindu Code, Muslim Law and so on. That is a vast subject which can be undertaken by stages by various other Law Commissions and not necessarily by one Commission alone. On the other side, at the same time—I agree with the hon. Prime Minister in that and I hope he will consider that—we need a permanent Law Commission which will keep itself in touch with the case-law because it is not only necessary that we make laws, but it is also necessary that we should be continuously in touch as to the manner in which the Courts interpret those laws and apply those laws. Wherever we find that any interpretation put by a Court of law defeats the spirit of that law, defeats the intention with which that legislation is made, or wherever we find that any technical points in law defeat the ends of justice, it should be the duty of the permanent Law Commission to continuously keep itself in touch with the decisions of all Courts and to suggest immediate revision or amendment of laws wherever either the interpretation is contrary to the spirit of the legislation or intention of the Parliament or wherever a technical point has defeated the ends of justice.

But, that is not all. I submit, something more will have to be done in

order that this thing can be done continuously. What is the manner in which these laws are made at present? We have the Ministry of Law and we have the various other Ministries. How are these laws made and what function does the Ministry of Law perform in that? Now, take for example—I am only giving an illustration; I am not casting any reflection—a law like the Company Law. It is a very important piece of legislation, yet we find as if the Ministry of Law has no responsibility in legislating a law of this character. Or, take the Estate Duty Bill—I mean no reflection on the Ministry which has handled that legislation; in fact it has handled it in a very efficient manner—which is also a very important legislation. What I submit is, it must be principally the function of the Ministry of Law to take responsibility for every piece of legislation. Of course, the policy may be decided by the department concerned, but short of the policy being decided, it must not be left entirely to the Ministry Concerned to pilot the Bill, draft the Bill, accept or reject amendments; so on and so forth. The Ministry of Law, in fact, must function more effectively than it is doing today if we are to have an administration of justice which will meet the needs of the situation. In England, for example, they are seriously considering a proposal to call it not merely Ministry of Law but Ministry of Justice, the idea in calling it Ministry of Justice being that, that Ministry must concern itself with every aspect which concerns administration of justice. Take for example the recruitment of the judiciary. The Ministry of Law does not seem to feel its responsibility and it appears it is the function of another Ministry.

Shri N. C. Chatterjee (Hooghly): It does everything except 'law'.

Shri C. C. Shah: If we want to reform the entire judicial system we will have to reorganise the Ministry of Law in order that it undertakes its proper duties and functions. In fact, there should be a co-ordination of work and

nothing should be left to any other Ministry in judicial matters. Take for example the industrial legislation. It is a most important branch of our law and a number of industrial tribunals are giving all kinds of decisions which affect the economic policy of the country. It is left only to the Labour Ministry to find out whether it will undertake the amendment of any particular labour law or not. Obviously, it is the duty of the Ministry of Law, which I would call the Ministry of Justice, to see what particular legislation must be undertaken to carry out the real intentions of Parliament and meet the ends of justice. I, therefore, submit that the immediate function which we may perform is two-fold: appoint a Law Commission which will concern itself mainly with the procedural laws of the country and the reform of the judicial system, bearing in mind the recruitment of the judiciary, the organisation of the legal profession and similarly the constitution of Courts and other things which concern the administration of justice; and a re-organisation of the Ministry of Law which will continuously be in touch with every field of law.

Shri N. C. Chatterjee: In a speech seconding this motion, the Prime Minister flung an interesting innuendo that the more learned the man, the more conservative he is and develops the habit of being a stumbling block to reform. If it applies to my friends in the legal profession, I enter an emphatic protest because it is not correct in the first instance. I am one of those, not very learned lawyers, who have been pressing for the appointment of a Law Commission and if the House will remember, when Dr. Katju sponsored the Criminal Procedure Code (Amending) Bill.—think of him and he is bound to come....

The Minister of Home Affairs and States (Dr. Katju): At least think of my name.

Shri N. C. Chatterjee: I was pressing that a Law Commission should be appointed to go into the matter and take a comprehensive view of our

legal systems so far as administration of criminal justice is concerned. I am one of those who have some experience of law and administration of justice, and I am convinced that a Law Commission is long overdue. As a matter of fact, when I retired from the Bench, the Chief Minister of my State, Shri B. C. Roy, requested me to serve on a Commission which he appointed and Dr. Katju was Governor then. Shri Roy appointed a Law Reform Commission presided over by a very experienced Judge, who was the Chief Justice of Punjab, Chief Justice of Patna and later became the Chief Justice of Calcutta High Court—Sir Trevor Harris—and I can assure you that the other members were fairly successful practitioners at the Bar, and all of them did a good job of it and tried to simplify it. No responsible lawyer, who is a thinking citizen, will take up the attitude. When interests and duty come into conflict, it is generally the interests which predominate over duty. I know that for legal practitioners it may be sometimes desirable from the mere professional or financial point of view not to have speedy justice, but I do not know of any responsible member of the profession who has taken up that attitude. I can assure you that Sir Trevor Harris's Committee made recommendations which, if implemented, would simplify to a large extent the legal procedure and bring about speedy justice.

You know that there had been a continual conflict in Europe between two schools of thought and one was the school of Common Law. In England they believe not in legislation but in development of law in the Law Courts. They believed in induction and you will remember the great saying of Lord Tennyson in one of his great poems—in England freedom was trodden down from precedent to precedent. Remember the great jurist Bentham wanted to bring forward a Bill for the purpose of codification and for enactment of law, but that was turned down. The French took a different view and a code was enacted by Napoleon, who appointed a Law

[Dr. Katju]

Commission consisting of jurists and only jurists—jurists of course include successful lawyers too—and they made a good job of it and that has revolutionised the French law. In Germany, Savage fought against a legislation and he said that law would become petrified. After all, law is not self-expanding; and no self-progress or self-reform are there, and therefore he said that it is no good asking the Parliament to enact some laws and it cannot really reform it and therefore it is much better to leave it to the development of the social conscience.

As the hon. Mover of this Resolution pointed out, our laws were really enacted by great Judges and great lawyers sitting in Whitehall and in the Temple Inn in England. Lord Romely drafted; Stephenson drafted; to some extent, Macaulay drafted; As you know and any legal practitioner would know, it is absolutely out of date. Take for instance, our Contract Act and the English Contract Act. Our Contract Act would perhaps be the first edition of their Contract Act. Look at the latest edition of Pollock and you will see an entirely different system of contract law. I had some work in the commercial courts in Calcutta High Court—I claim to know something of commercial law I am convinced that the English law of contract has changed completely beyond recognition; the law of frustration is a new chapter. The doctrine of unjust enrichment, which is an entirely new chapter, is incorporated in the English law. There was a process of English judicial development stage by stage and it has developed their Contract Act. Our contracts are bound by the Indian Contract Act. The other day the Attorney-General was arguing a case on the law of contracts and it was a case of frustration, and the judgment was delivered by Mr. Justice Mukherjee, whose appointment as the next Chief Justice of India has been announced today, and he said "I am not Lord Wright who revolutionised the English law, and here I am gover-

ned by the Indian Contract Act and cannot go beyond that. Therefore, our law is a hundred years behind the progressive codes of England. Therefore, it is not true to say that we shall only leave it to the judge-made law or such law that will develop from time to time by judicial pronouncements or by precedents. Precedents are inducted; precedents are isolated. Legislation is deduced, legislation is comprehensive and legislation is general. A situation has come when you have got to set your own house in order. I agree with my learned friend Shri Shah, for whom I have great regard, when he pleaded that you should not only simplify the Criminal Procedure Code and the Civil Procedure Code but also take up the question of improving the Contract Act, the Specific Relief Act, the Transfer of Property Act and such other important Acts. After Sir Tej Bahadur Sapru became the Law Member of the Government of India he was the first great man—call him Jurist, call him advocate or a great legal practitioner—who said that it was a scandal the way laws are going on, and he appointed the Rankin Committee, of which Sir John Rankin was the Chairman. Since the report of Sir John Rankin, there has really been no comprehensive effort made for law revision in India.

Dr. Katju: What followed?

Shri N. C. Chatterjee: Dr. Katju filled the gap—the post of Tej Bahadur Sapru. I want him to appoint immediately a Law Commission.

Dr. Katju: What followed the Rankin Committee's Report?

Shri N. C. Chatterjee: After that committee, some improvements were made, some amendments were made and the Arbitration Act was complete. You know it is an entirely new Arbitration Act. The civil procedure was also, to some extent, modified. But since then there has been nothing really done. Now we have got solid law enacted—the Constitution of India—and in that Constitution we have put in deliberately article 13. Article

13 says that all laws in force before the Constitution of India came into force, and which were inconsistent with the Constitution shall be void and that no State Legislature shall enact any law which is repugnant to the Constitution, or, is in any way inconsistent with the fundamental rights. But it does not stop there. The Constitution which was promulgated in the 26th January, 1950, also declared that all existing statutes anywhere in India, to the extent of the contravention of the fundamental rights, would be void. It says they would be void. Therefore, the Constitution-makers have deliberately pronounced that all those statutes which were repugnant in any way to the provisions of the Constitution are all dead. But don't you know that there are statutes which are still repugnant to the Constitution and which are found in the Statute-book? Don't you know that section 24A of the Indian Penal Code was declared illegal by the Punjab High Court? Don't you know that section 153 also has been declared illegal? Therefore, it was the duty of Parliament immediately to appoint a Law Commission to bring the existing statutes in conformity with the fundamental rights. Not that the Supreme Court or the High Courts derive any pleasure in striking down legislation but when they take their oath that they must abide by the Constitution, they have got to carry out this duty of striking down all statutes which are in any way repugnant to the fundamental rights. This morning, the Supreme Court has pronounced that some orders of the Government of Ajmer are illegal because they infringe the fundamental right. It leaves great uncertainty, confusion, anarchy. Therefore, I am pleading that there should be Law Commission with wide terms of reference, and which should be composed of lawyers—call them jurists, call them lawyers—but it must be mainly a lawyer's job. You may associate, if you like any other person, but it should be predominantly of lawyers. It should not be run on party lines, it should not be for party

purposes, it should not be utilised for party purposes. The Law Commission should be constituted only with the purpose of bringing out law into conformity with the modern social concepts. Take England for instance. Even in England, law has changed. Justice Jenner has published a book called *Changing Law* and he has pointed out how the law has changed even in England in spite of their common law habits, in spite of their being constitutionally repugnant to resort to parliamentary legislation. He points out the first section in Simon's *Law of Torts*, namely, that the Crown cannot be sued at all in any Court of Law for tort. No action in tort lies. Is it not an absurd provision, when you are nationalising department after department, when the entire transport system of a big State is being taken over by the Government and run exclusively on monopolistic lines? If a poor bus-owner commits a fault, he has got to pay heavy damages, but simply because it is an organised State which run the buses, even if the vehicle kills a man, or runs over a man, or maims a man or injures a man, there should be no question of damage! The English law has changed these old concepts. So, we have to bring our laws into conformity with the industrialisation of society, with the progressive nationalisation of certain industries, with the expansion of the public sector. The old laws must be changed completely; old notions of jurisprudence must yield to the exigencies of the situation. Our Constitution demands it. The Constitution has pointed it out—it makes it mandatory. I am, therefore, pleading for a proper perspective, for a larger survey and do not be deterred by the difficulties of the situation. It may be that it should be done in compartments: the bill of lading, contract law, charter partly including negotiable instruments may be taken in one year. The next year, you may take up, say, the law of equity, and so on and so forth. Thus, you may distribute the work. It must be done. The sooner it is taken up and properly

[Shri N. C. Chatterjee]

brought into conformity with the spirit and the letter of the Constitution and with the modern concepts of social justice, the better for India.

Shri Nageshwar Prasad Sinha: I maintain that there can be no two opinions on the point that a Law Commission is necessary. When the Prime Minister has accepted the Resolution in principle, of course, very little has to be said, because we have nothing more to do rather than to realise that the Government, that the party and Members on the other side of the House also agree more or less to the principle that a Law Commission is a necessity now. It is, I think, more or less a waste of time further to deal in arguments and try to convince one another of its necessity. I have moved an amendment and of course the main purpose or the purport behind that amendment is that we have already before us the reports of high-powered-committees like the Rankin Committee's Report, (the report that Shri N. C. Chatterjee has just now referred to)—that is, the Trevor Harris Committee's Report. Mr. Trevor Harris was also the Chief Justice of the Patna High Court for some time. His valuable report is also there. Again, the Bihar Jury Committee's Report, and the U. P. High-powered Committee's Report—I forget the name of the Committee—

Shri N. C. Chatterjee: Wanchoo Committee.

Shri Nageshwar Prasad Sinha: Yes, the Wanchoo Committee's Report. Thank you. So, we have got a mine of information in those reports, and therefore, I do not know what further work will a Law Commission have to do? Will all these reports go unexamined? We have also got the *Memorandum on Reform of Judicial Administration in India* by Dr. Katju. A parliamentary committee could have been appointed to go into these reports. It could have been either a parliamentary committee or a committee of legal experts or an *ad hoc* committee—you can call it any

way—which could go into the question, set down the principle, could have fixed up the terms of reference and then referred the same to the Law Commission going to be appointed. My amendment is on this point, and I wish that the amendment could be accepted.

So far as revision of laws is concerned and so far as the main Resolution of the learned Mover is concerned, I have not been able to understand certain important things about it. I do not understand what he means by modernisation of laws. Of course, modernisation comes from the social concepts, the changes in society, the changes in modern thinking and all those things, but it is difficult for us, all at once, to take up the entire bulk of law and try to modernise them. Of course, we have seen from history that attempts in this respect, which were made even by other countries have failed more or less, though certain good things have been achieved by revising the statutes now and then, here and there.

I am just going to refer the House to a passage from the book *Law in the Making* by Mr. C. K. Allen. I find at page 250 of that book that number of Commissions sat in U.K. from 1834 onwards and though many of their recommendations never got beyond the stage of pious wishes, one result was that a series of Statute Law Revision Acts began in 1861 and got rid of an enormous quantity of obsolete matter. One Act of 1877 in itself repealed 1300 statutes. That shows despite all that it is still far from perfection and much more will have to be done to reduce the statutes to a more systematic form. I agree that there are difficulties. In this connection, I would like to place before the House the observations of Justice Mehr Chand Mahajan, Chief Justice of India. On this particular point, he says:

"I wish to emphasise that there is a multiplicity of statute law in this country. Statute law of

a very intricate and complicated character is responsible for the present state of things. . . . In my humble opinion there should be an *ad hoc* reduction in the statute law that has been produced in this country *en masse*. I would, therefore, suggest that before undertaking any reform in the system of administration of justice the statute book of the country should be cleaned and only those laws which are considered absolutely essential for the society should be allowed to remain on the statute book and the rest of them scrapped and even those that are allowed to remain on the statute book should be made simple and easily intelligible. Everyone is supposed to know the law but it is a question how many really know it. Simplify your laws and the present system will work very nicely."

It is however difficult to distinguish the enactment of laws from the actual machinery which has to run the laws. But I confine myself to the present question. It is not an easy or a comfortable task to take up revision and deal with it in a fashion which would bring no credit to this House. I therefore, press my amendment and say that preliminary to the appointment of a Law Commission which has been accepted in principle by the House, there should be a Committee of legal experts to frame the terms of references and to bring before us the whole range of subjects which have got to be taken up for consideration before the Commission is appointed. With these words, I move my amendment.

Mr. Chairman: Before Pandit Upadhyay begins, I shall make one point clear. According to the time table, this Resolution should take 2 hours and 39 minutes. It started at 2.35 or so and so it can go on till 5.15 or 5.14 or something like that. But I find that the hon. Prime Minister has made a statement and the hon. Home Minister is likely to speak. If the House so wishes, I feel that the Resolution

may take half an hour more so that we can discuss it and then, if the House does not want to go on further with that Resolution, at that time, I shall put it to the vote of the House. I am entirely in the hands of the House. I do not want that we should go on unnecessarily with this Resolution. I shall put it to the vote of the House after hearing Dr. Katju and such other hon. Members who want to participate in the discussion.

Shri Raghavachari (Penukonda): If you permit me, I would also make a request. A few minutes may be left over to the next Resolution.

Mr. Chairman: I am saying exactly that. If it has been sufficiently discussed, I do not want that a minute should be wasted.

पंडित मुनीश्वर वत्त उपाध्यक्ष (बिला प्रतापगढ़ पूर्व): सभापति महोदय, जहां तक ला कमीशन की नियुक्ति आवश्यक समझी जा रही है, मेरी समझ में हमारा इस सदन के जीतिरिक्त बाहर भी प्रायः लोगों का यही मत है। जो लोग इस भी समझते हैं कि किस प्रकार से हमारा देश में न्याय करने का प्रबन्ध चलाया जा रहा है वह सभी लोग प्रायः यह महसूस करते हैं कि ला कमीशन की नियुक्ति आवश्यक है। मैं नहीं समझता कि इस वक्त इस की आवश्यकता बताने के लिये बहुत कुछ निवेदन करने की जरूरत है। परन्तु तो भी एक दो बातें निवेदन करना मैं आवश्यक समझता हूँ।

हमारा कानून जो बने थे, जिन कानूनों के मुताबिक हमारा यहां आज न्याय किया जा रहा है, वह कानून उस समय बने थे जब इस देश में गुलामी थी। जब हम को कोई अधिकार नहीं था। हमारा बनाया हुआ कानून यह नहीं है। यहां विदेशी राज्य करते थे, जन्होंने अपने दृष्टिकोण से कानून बनाया था और जो कानून इस समय हमारा यहां चल रहे हैं वह प्रायः उन्हीं के समय के हैं। इस में कोई सन्देह नहीं है कि जब कहीं कोई विदेशी राज्य करता होता है तो उस का दृष्टिकोण वहां के रहने वालों के दृष्टिकोण से भिन्न होता है और उस दृष्टिकोण की भलक

[पीडित मुनोश्वर दन्त उपाध्याय]

सब से पहले वहाँ के कानूनों में आती हैं। हुक्मत के जो नियम बनते हैं उन में जरूर उस की भूलक आती हैं और कहना तो यों चाहिये कि एक तरीका, एक पद्धति यहाँ उन के राज्य करने की थी, जो पद्धति कि उन के यहाँ अपने दश में राज्य करने की थी उसी के आधार पर, उसी पद्धति को रखते हुए, उन्हीं कानूनों के लिहाज से, उन्हीं कानूनों के मातहत, उन्होंने अपना राज्य यहाँ पर चलाने का एक तरीका अस्त्यार किया था। सार संसार में वह यह भी साबित करते थे कि हम ने कानून के जरिये से राज्य करने का तरीका तथा डिमाक्रैसी का अर्थात् प्रजातंत्रात्मक तरीका रक्खा है। जब कोई हुक्मत एक पद्धति के मातहत इस तरह के कानून बना कर शासन चलाती है तो निश्चित रूप से उस का दृष्टिकोण उन्हीं कानूनों के अनुसार ही होता है क्योंकि उन्हीं कानूनों के मातहत सार दश का प्रबन्ध, सारी हुक्मत का प्रबन्ध ऐसे शासक लोग करते हैं। इस वास्तव जितने हमारे कानून बने हैं, प्रायः सभी में हमारे विदेशी शासकों का दृष्टिकोण रहा है, और उन के चले जाने के पश्चात् यह आवश्यक हो गया कि हम जितने कानून अपने बनायें या जो संशोधन अपने कानूनों में करें उन को उस दृष्टिकोण से करें जो हमारे दश का दृष्टिकोण हो, जो कि उन का दृष्टिकोण कभी नहीं हो सकता था जो 6, 7 वर्ष पहले हमारे दश के शासक थे। फिर उन शासकों के चले जाने के पश्चात् हमारे समाज में कितना परिवर्तन हुआ, हमारे रहन सहन के तरीके में कितना परिवर्तन हुआ, हमारी नीति कितनी बदल गई? हमारी नीति जो नीति पहले थी उस से बहुत पलट गई, एक रास्ते पर हम चल रहे थे, अब दूसरे रास्ते पर चल रहे हैं, ऐसी हालत में हमारे रास्ते में पुराने कानून से बड़ी अड़चनें पड़ सकती हैं, जो कुछ हम करना चाहते हैं उस के रास्ते में बड़ी कठिनाइयाँ हो सकती हैं। अगर हम एक आध ही कानून को उठा कर देखें, केवल एक दो कानून जो उन्होंने बनायें हैं, तो हमें पता चल जाता है कि उन का दृष्टिकोण क्या था।

इस वक्त जो गणतंत्रात्मक राज्य हमारे देश में चल रहा है उस के हिसाब से जो एक व्यक्ति है, इस का सब से बड़ा स्थान है, सब से ऊँचा स्थान एक व्यक्ति का है चाहे वह कितना ही छोटा क्यों न हो। यह पद्धति हमारी पहले नहीं थी। यह दृष्टिकोण हमारे शासकों का नहीं था। उनका दृष्टिकोण यह था कि हमारा शासन कैसे सुरक्षित रहे। यह उनका मुख्य दृष्टिकोण रहता था। पहली बात जो उनके दिमाग में आती थी वह यह आती थी कि हमारा शासन कैसे सुरक्षित रहे। जब वह शासन की सुरक्षा सिद्ध कर लेते थे उसके बाद ही वह दूसरी चीजों पर जाते थे। और अगर हम उनके कानूनों को देखें तो उनमें इसकी भूलक बहुत साफ है। मैं उनके केवल एक कोड के बारे में आपसे निवेदन करना चाहता हूँ। उससे आप देखेंगे कि यह बात कितनी साफ है। उन्होंने इंडियन पीनल कोड बनाया। उन्होंने जो अपना पीनल ला बनाया उसको आप एक मिनट के लिए देखें। आप देखेंगे कि उनकी उस कानून को बनाने में क्या तरतीब थी। आप देखेंगे कि कानून बनाते वक्त कौन सी बात उनके दिमाग में पहले आयी। सरकार के खिलाफ जो जरायम हो सकते थे पहले उनके दिमाग में वह आये और उनके लिए उन्होंने प्रावीजन किया। उसके बाद ही कौनसी दूसरी बात उनके दिमाग में आयी। तो दूसरी बात जो उनके दिमाग में आयी वह यह थी कि अमन किस तरह से कायम रहे। वह भी उसी का एक अंग है। जो शासन चलाता है वह अपने शासन को सुरक्षित रखने के लिए, उसको पृष्ठ करने के लिए ऐसे कानून बनाता है जिनसे शान्ति कायम रहे, कहीं पर कोई बदअमनी न हो। लिहाजा उसके लिए भी उन्होंने कानून बनाया। और फिर जितने अधिकारी हैं उनके लिए कानून बनाये, जैसे कंटैम्प्ट आफ कोर्ट हैं या कंटैम्प्ट आफ पब्लिक सरवेंट्स हैं, इसके लिए उन्होंने प्रबन्ध किया। फिर उन्होंने सिक्कों के बारे में कानून बनाये क्योंकि शासन चलाने के लिए धन की आवश्यकता होती है। तो उन्होंने सिक्कों के बारे में कानून बनाये।

इसके बाद उन्होंने वजन के बारे में कानून बनाये जिससे कि व्यापार चल सके। इसके बाद उन्होंने माप के बारे में कानून बनाये। और जो जरायम वजन और मेजर्स से सम्बन्धित हैं उनके बारे में कानून बनाये इसके बाद उन्होंने इलेक्शन के बारे में भी कानून बनाये क्योंकि वह डिमाक्रेसी की भी एक शक्ल यहां रख रहे थे और इस प्रकार के शासन को चलाने के लिए यह आवश्यक था कि वह उन कानूनों को बनावे। और इन सब के बाद वह उस व्यक्ति पर आये जो कि आजकल हमारे शासन में मुख्य चीज है। गणतंत्रात्मक राज्य में व्यक्ति प्रधान होता है। आजकल के हमारे शासन में यहां का नागरिक सबसे ऊंचा स्थान रखता है। इसलिए अब हमको सबसे पहले उस व्यक्ति की रक्षा के लिए कानून बनाने होंगे। अगर उस पर कोई ज़रूर आवे, अगर उस पर कोई हमला हो, उस पर कोई चोट आवे उसके बचाने के लिए हमको अब कानून बनाना चाहिए। तो अब सबसे पहले हमारे दिमाग में वह व्यक्ति आवेगा। लेकिन आप देखेंगे कि हमारे पहले शासकों ने व्यक्ति के लिए जो कानून बनाया वह सबसे बाद में बनाया। व्यक्ति उनकी तरतीब में सबसे बाद में आता है। अगर किसी व्यक्ति के चोट लग जाय, ग़ीबिस हो या सिम्पल हो, या किसी का कत्ल हो जाय, इसका कानून उन्होंने बाद में बनाया।

4 P.M.

अगर मैं इस सारी तरतीब में जाऊं तो बहुत लम्बा चला जाऊंगा। आप चाहे जिस एक्ट को देखें, चाहे जिस कानून और कायद को देखें आपको हमारे विदेशी शासक के दृष्टिकोण की झलक साफ दिखलायी पड़ेगी। लेकिन हमारा दृष्टिकोण वैसा नहीं हो सकता। मैंने तो आपको एक बहुत मामूली सी बात बतलायी है। पंचदीगियों की बातें तो और माननीय सदस्यों ने आपके सामने रखी हैं जिनकी वजह से यह आवश्यक है कि जो कानून अबतक चलते रहे हैं वह आगे न चलते रहें। वह हमारे लिए मुफ़ीद नहीं हो सकते, वह हमारे लिए सहायक नहीं हो सकते। जिस तरह का हम समाज बनाना चाहते हैं, जिस तरह की बातें हम करना चाहते हैं, जो

तरीका हमने अख्तियार किया है, उसमें हमको ये कानून मदद नहीं कर सकते। हमको अपने विकास के लिए ऐसे कानून चाहिए जिनसे हमको अपने लक्ष्य को हासिल करने में मदद मिले। और जिनके द्वारा हम अपने देश को विकसित कर सकें। इसके लिए हम उस कानून पर विचार करें जो कि हमारे देश में प्रचलित है। पहले तो विकास का कोई जिक्र ही नहीं था। पहले तो हमारे शासकों को विकास से कोई मतलब ही नहीं था।

डा० काटजू : विकास से क्या मतलब है ?

पीडित मुनीश्वर दत्त उपाध्याय : डवलपमेंट।

Dr. Katju: Contract is the result of two persons agreeing together.

उसमें विकास क्या है ?

पीडित मुनीश्वर दत्त उपाध्याय : कंट्रैक्ट का कानून है उसमें भी प्रिंसिपल है, एजेंट है, एजेंसी सिस्टम है। इन सब के लिए जब आप कानून बनाने बैठेंगे तो प्रधानता किसकी होनी चाहिए ? अबतक तो एक कंपीटीलिट की ही प्रधानता रही थी। लेकिन अब वह चीज बदलती जा रही है। आज बड़ी जायदाद वालों की प्रधानता खत्म हो रही है।

दूसरी बात जो मैं निवेदन करूंगा वह जमानत के सम्बन्ध में है। कोई चाहे कितना ही बड़ा आदमी हो, चाहे वह कितनी ही बड़ी हींसियत रखता हो, चाहे वह अपने मुल्क का कितना ही बड़ा लीडर हो, लेकिन अगर वह चाहे कि इस बिना पर वह किसी की जमानत कर दे तो ऐसा नहीं हो सकता। जमानत उसकी हो सकती है जिसके पास ट्रांसफरेंबल जायदाद हो, वह उस जायदाद की बिना पर जमानत कर सकता है। वैसे आप चाहे जितने बड़े नेता हों, मੈम्बर आफ पार्लियामेंट हों, और आप किसी की बेल करना चाहें तो अगर आपके पास जायदाद नहीं है तो दिक्कत होती है। अब तो समय बदल रहा है। शायद अब इतनी दिक्कत न भी रहे लेकिन कानून अब भी वही है, सिर्फ अधिकारियों का

[पंडित मुनीश्वर दत्त उपाध्याय]

दख बदल गया है। वह समझने लगें हैं कि क्या होना चाहिए। हमारे कानूनों में कुछ संशोधन भी आ रहे हैं। लेकिन जब हम अपनी पहली हींसवत को आजकल की हींसवत से मिलालें हैं तो हम यह अनुभव करते हैं कि हमको अपने कानून बदलने चाहिए।

इसके पहले हमारे जिन मिशनों ने निवेदन किया उन्होंने बतलाया कि एक मुस्ताफिल ला कमीशन रहना चाहिए। मैं निवेदन करूंगा कि इसके पहले कि कोई ला कमीशन आवे, इसके पहले कि उसका काम शुरू हो, इस बात की बहुत जरूरत है कि यह सांचा जाय कि उसका तरीका क्या है, किस तरह से उसका बनाया जाय और किस तरह से चीजें उसके सामने आवें। ऐसा करने के लिए यह आवश्यक है कि इस कमीशन के आने के पहले एक कमेटी बनायी जाय जिसके द्वारा वह क्रम निश्चित किया जाय जिसके अनुसार कमीशन काम करे। कमीशन बनने में चाहे कुछ देर भी लग जाय लेकिन यह कमेटी जल्दी से जल्दी बननी चाहिए, नहीं तो कमीशन आने पर उसका काम टलता जायगा, और मेरा निवेदन यह है कि यह काम ऐसा नहीं है जो कि टलता जाय मेरा निवेदन है कि जब हमारा ला कमीशन आवे तो कुछ बातें ऐसी हैं जिन पर उसका ध्यान जाना आवश्यक है। और वह बातें वही हैं जो कि उसकी आवश्यकता को बढ़ाती हैं, उसकी निष्पत्ति की आवश्यकता को बढ़ाती हैं। हमारे जो वर्तमान कानून हैं वह बदलें और उनमें आवश्यक संशोधन किये जाय लेकिन उसके साथ यह भी आवश्यक है कि जो हमारी मशीनरी है कानून के चलाने के लिये, जो हमारा साधन है जरिया है काम करने का उसमें भी बहुत बड़ा परिवर्तन होना चाहिये, उसमें भी काफी संशोधन करने की आवश्यकता है। इसके अलावा हमें यह भी देखना है कि हमारा आधार क्या होना चाहिये, किसी कानून का, उसके क्या बौद्धिक प्रिंसिपल्स आधारभूत सिद्धान्त उनके पीछे क्या होने चाहिये जिन पर कि वह

कानून बनें, यह हमारे लिये सोचने की बात है और वैसे कि मेरे और कई मिशनों ने निवेदन किया इसके लिये केवल वकालत करने वाले बड़े बड़े वकील और जूरिस्ट्स ही आवश्यक नहीं हैं, इस कमीशन में ऐसे लोगों को भी लिया जाना चाहिये जो इसको समझ सकते हैं, और इस मसले की राह में जा सकते हैं और मेरी समझ में ऐसे लोगों का सहयोग कमीशन को अपना काम पूरा करने में काफी सहायता करेगा। आप किसी एक मसले को ले लीजिये। जब क्रिभिनल ला में तबदीली करने की बात बहुत चल रही है, उसी को आप ले लें, आप देखेंगे कि उस के सम्बन्ध में कितनी बातों पर आपको विचार करने की आवश्यकता होती है, मसलन् संशान ट्रायल हो या न हो, कम्पाउन्ड्बुल कोई जुर्म हो कि नहीं, वारंट कंस हो कि नहीं या जूरी के साथ ट्रायल हो या नहीं, आनररी मजिस्ट्रेट होने चाहिये या नहीं होने चाहिये एपिलेट पावसे क्या होनी चाहिये ट्रांसफर एप्लीकेशंस किस हालत में होनी चाहिये, ये और इसी तरह के दूसरे सवाल हमारे सामने पेश होते हैं....

I hope no time has been fixed.

Mr. Chairman: The hon. Member has taken eighteen minutes already.

Pandit Munishwar Datt Upadhyay: Since I was told that no time-limit has been fixed....

Mr. Chairman: According to the rules, he can take only fifteen minutes. The hon. Member started at 3.55 p.m. I have noted the time here. He can go on for another two minutes.

Pandit Munishwar Datt Upadhyay: But as no time-limit has been fixed, did not confine myself to any time limit.

Mr. Chairman: In regard to Resolutions, the rule is that the Mover can take thirty minutes, while other hon. Members can take up to fifteen minutes. There is no question of discretion here. The rule itself is this.

Pandit Munishwar Datt Upadhyay: When I made a request that the time-limit may be fixed, it was not fixed.

Mr. Chairman: There is no question of fixing any time-limit. The rules require that the Mover may take thirty minutes, while others may take fifteen minutes.

If the hon. Member wants, I can give him two more minutes.

Pandit Munishwar Datt Upadhyay: I will take only one or two minutes more.

Mr. Chairman: Certainly.

पीडित मुनीश्वर दत्त उपाध्याय : मैं निवेदन कर रहा था कि यह जो इस तरह के परिवर्तन हैं, कानून में, उन पर विचार करने के लिये अध्ययन की आवश्यकता होती है और उस अध्ययन के लिये मैं समझता हूँ कि अभी से कोई एक मशीनरी कायम हो जानी चाहिये, कोई एक संगठन बन जाना चाहिये जो ला कमीशन के सामने मॉटेरीयल आना है उस पर अध्ययन करके और उसको तैयार करके एक सही शक्त में कमीशन के सामने रखें और यह काम किसी एक कमिटी के बना देने से या किसी एक संस्था के बना देने से नहीं हो सकेगा बल्कि होना यह चाहिये कि अलग अलग कानूनों के लिये अलग अलग आरगनाइजेशन अथवा संगठन बना दिये जायें और अगर ऐसा किया जायगा तो इस काम में सहूलियत होगी। मैं अब हाउस का और अधिक समय नहीं लेना चाहता और मैं इस प्रस्ताव का पूर्ण रूप से समर्थन करता हूँ। हमारी आल इंडिया कांग्रेस कमिटी ने भी इस को पास कर दिया है और अब इसमें कोई विवाद नहीं रह गया है कि यह बनाया जाय अथवा न बनाया जाय, केवल आवश्यकता उसके लिये तैयारी करने की और एक उपयुक्त मशीनरी कायम करने की है।

Shrimati Ila Palchoudhury (Nabad-wip): So many learned lawyers have spoken on this subject that I will be very brief about a point that strikes me merely as a woman. If at last

Government has taken into its mind to have a Law Commission at all, and it feels it desirable to do so, let us hope that it will not be composed merely of learned lawyers and jurists, whose learning will not let them advance but sit heavy on them so that again we will have laws just as dry as dust, as laws are in India today.

Dr. Katju: The suggestion seems to be very graceful.

Shrimati Ila Palchoudhury: I, Sir, cannot hope to bring up law points, but I earnestly feel that this Law Commission should be composed of not only lawyers and jurists, but should include social workers, welfare workers, psychologists, and even medical men, so that they may put their minds together on what really needs to be done away within our laws, and also what needs to be put in.

Particularly, I would recommend that when such a Law Commission comes, it will give a special slant to juvenile delinquency in free India. In rural areas, I have had cause to see the way women and juvenile delinquents are treated. Such treatment today is really shameful. They are frightened out of their wits, they are dragged to Police Stations and questioned—while half the time they are so nervous, that they hardly know what is happening. That is not what should happen with any law in a welfare state! When a Law Commission is promulgated, I hope it will have a soft corner for young delinquents. At present, they are whipped, and all sorts of horrible things are done to them. The conditions that make them do many of these anti-social acts must be looked into. I hope the people on this Commission will search the social background of these youths and women and see why these delinquencies have happened, and do their best to correct those conditions. Surely, it is up to all Law makers to see that law-breakers are not merely punished, but that when they are at last brought in front of the law, their minds are reoriented,

[Shrimati Ila Palchoudhury]

their bodies are made whole, and they can go back again as good and useful citizens of India. Hand in hand with the law, Social Welfare Centres, Child Guidance clinics and such like institutions, must work in close and understanding co-operation.

In conclusion, I have only to submit that when such a Law Commission comes, not only will it secure, according to this Resolution, that "justice will be simple, speedy, cheap, effective and substantial", but it will also be human and merciful, and really act for the betterment of the people of India.

संठ अचल सिंह (जिला आगरा---पश्चिम) : सभापति जी, मैं आपका बहुत आभारी हूँ कि आपने मुझे अपने विचार रखने का अवसर दिया। हमारे देश में बहुत समय से यह मांग चली आ रही है कि समय के अनुसार कानून बनाने चाहिये और इस प्रस्ताव में उस कमी की ओर ध्यान दिलाया गया है और इस हेतु वह स्वागत योग्य है। अंगूजों ने हिन्दुस्तान में कानून अपनी सत्ता और अपनी धाक कायम रखने के वास्तु बनाये थे। वर्तमान कानून निहायत ही खर्चीला कानून है और इसके द्वारा न्याय मिलने में काफी समय और खर्च लगता है। लोग इन कानूनों के कारण परेशान हैं और उनकी वजह से भारतवासी कराह रहे हैं और जनता की इसी भावना को ध्यान में रखते हुए जौलाई सन् १९५३ में आल इंडिया कांग्रेस कमेटी ने आगरा में यह पास किया कि ऐसे कानून बनाये जाय जो देश की जरूरत के अनुसार हों और जिनमें कम से कम खर्चा हो और कम से कम समय लगे। इस प्रस्ताव द्वारा आज यह कमी पूरी होती दीख रही है। मैं आपको बताऊँ कि जब सन् १९२१ में महात्मा गांधी जी ने असहयोग आन्दोलन चलाया था उस वक्त कोर्ट्स का बायकाट किया गया था, हमने आगरा में भी उस समय कोर्ट्स का बायकाट किया था। उस वक्त हमने आगरा शहर में पंचायतें स्थापित की थीं और हमारा अनुभव यह रहा कि जहाँ रोजाना पहले सैंकड़ों मुकदमे दायर होते थे वहाँ केवल ५५ पांच ही

दायर होने लगे और जनता बड़ी खुशी से अपने मामले पंचायतों द्वारा निबटा लिया करती थी हमारा भारतवर्ष एक गरीब देश है और अंगूजों से पेशतर यहाँ पर इस किस्म की अदालतें नहीं थीं, हर शहर व गांवों में पंचायतें हुआ करती थीं और वे वहाँ के लोगों का मामला निबटा दिया करती थीं और पंचायतों द्वारा निर्णय कराने में कोई खर्च भी नहीं होता था। यह कहावत भी प्रसिद्ध है कि जहाँ पंच होता है वहाँ परमेश्वर होता है और वहाँ पर जनता को पूरा पूरा न्याय मिल जाता है।

वर्तमान न्याय प्रणाली काफी खर्चीली है और उसमें समय भी काफी लगता है और देखने में आता है कि जो मुकदमा झूठा होता है वह सच्चा बन जाता है और सच्चा मुकदमा झूठा बन जाता है और अदालतों में वकील लोग कानूनी बहस चलाते हैं और झूठ को सच और सच को झूठ साबित करते हैं लेकिन जहाँ पर पंचायतें होती हैं वहाँ उनमें लोकल (स्थानीय) व्यक्ति होते हैं जो सब बातों को स्वयं जानते बूझते हैं और इस कारण वहाँ ठीक न्याय मिलता है।

Shri Tek Chand (Ambala-Simla):
Judges are witnesses.

संठ अचल सिंह : इसलिये पंचायतों द्वारा न्याय दिलाने की प्रथा जो भारतवर्ष में शुरू से रही है वही यहाँ के लिये उपयुक्त है और इसलिये यह जो प्रस्ताव पेश हुआ है वह बहुत उपयुक्त है और हमारे प्रधानमंत्री पीडित नेहरू जी ने भी उसके उसूल को मान लिया है। मैं चाहूँगा कि अंगूजों ने जितने भी कानून इस देश के लिये बनाये हैं जैसे ताजीरात हिंदू, दीवानी हिन्दू और माल के कानून वगैरह उन पर पूरा गौर किया जाय और समय की मांग को देखते हुए और देशवासियों की इच्छा का आदर करते हुए उन कानूनों को फिर से बनाया जाय अथवा संशोधित किया जाय जिससे जनता को कम से कम समय में और कम से कम खर्च में न्याय मिल सके। मैं इस प्रस्ताव में जो मांग की गयी है उसका पूरी तौर से समर्थन करता हूँ।

श्री आर० डी० मिश्र (जिला बुलन्दशहर) :
 अध्यक्ष महोदय, मुझे आज बड़ी खुशी हुई कि जो यह प्रस्ताव है यह एक नान-आफिशल मੈम्बर की तरफ से पेश किया गया है और हमारे नेता ने इस प्रस्ताव को मंजूर कर के अनुमति दी। हमारे दश में कानून इतने ज्यादा बढ़ गए हैं, इतने उन में संशोधन हो रहे हैं कि आज उन कानूनों का पता न तो अदालतों को है कि हमारे दश में क्या क्या कानून हैं और न ही बहुत से वकीलों को, सिवाय बहुत बड़े वकीलों के जिन के पास तमाम कानूनों की लाइब्रेरी मिल सकती है। तमाम दश के अन्दर जो मुफसिल कोर्टों के वकील हैं और जो अन्य लोग हैं उनको पता नहीं कि यह कानून क्या हैं और न ही उन के पास कोई लाइब्रेरी है। जब कभी उन के पास कोई मुकदमे आते हैं तो वे वकील कहीं से किताबें मंगा कर पढ़ लेते हैं और इस तरह से अपना काम चलाते हैं। जजों को भी मालूम नहीं कि यह तमाम कानून क्या हैं और हाई कोर्ट्स वगैरह में तो सब जरूरी रिकार्ड होने की वजह से वहां पर सब कानून मौजूद हैं। लेकिन मुफसिल कोर्टों की अदालतों में कोई अच्छी लाइब्रेरी नहीं है। उन जजों को इन कानूनों का पता नहीं। इस लिए यह बहुत जरूरी हो जाता है कि उन को इन तमाम कानूनों का पता हो। मुझे पता है कि बहुत से ऐसे कानून हैं जो कि हाई कोर्टों ने अल्ट्रा वायरिस (अनियमित) ठहरा दिये हैं, लेकिन वह अभी तक हमारी स्टैट्यूट बुक पर मौजूद हैं। हमारे विधान के पास होने के बाद यह जरूरी हो जाता है कि वह तमाम कानून विधान के अनुसार बदल दिये जायें। लेकिन अभी तक वह तमाम कानून बदले नहीं गये और जब वह सुप्रीम कोर्ट और हाई कोर्ट के सामने जाते हैं तो वहां पर उन को अल्ट्रा वायरिस डिकलेयर किया जाता है (अनियमित घोषित किया जाता है)। इन के अल्ट्रा वायरिस डिकलेयर हो जाने के बाद भी यह कौशिश नहीं की जाती कि उन कानूनों को कानून की दृष्टि से ठीक कर दिया जाय। आज हमारे दश में सब जगह एक ही कानून लागू है लेकिन अगर कानून की किताबों को देखें तो

पता लगेगा कि एक ही कानून के मुताबिक हाई कोर्ट ने अलग अलग रूलिंगज दिये हैं। आज हाई कोर्टों के जजों की राय में इखिलाफ है। जरूरत इस बात की है कि एक कानून बना दिया जाय सारे दश के लिये। अगर एक जगह के लिये एक बात ठीक है तो दूसरी जगह के लिये भी वही ठीक होनी चाहिए। तो सब से बड़ी जरूरत आज दश के अन्दर इस बात की है कि कानून सही हों, ठीक हों, क्योंकि कानून एक ऐसी चीज है जो जनता को मालूम होना चाहिये। आप को वकील होने के नाते मालूम ही है कि कोई मुल्जिम इस बात का एतराज नहीं कर सकता कि मुझे यह कानून मालूम नहीं था। इसलिये यह जरूरी हो जाता है कि कानून इतने सीधे और साफ हों कि जनता को आम तौर पर मालूम हो कि क्या कानून हमारे दश में हैं और क्या जुर्म हैं और क्या जुर्म नहीं हैं। जब हमारे मुल्क के बड़े बड़े व्यक्तियों को, मॅजिस्ट्रेटों को और आम वकीलों को तमाम कानून मालूम नहीं, उन की पेचीदागियां मालूम नहीं तो साधारण जनता को वे कैसे मालूम हो सकते हैं। यह बहुत बड़ी जरूरत थी इस दश की कि उन तमाम कानूनों को देखा जाय।

मुझे कुछ उम्मीद हुई थी यह देखकर कि क्रिमिनल प्रोसीजर कोड में संशोधन किचे जा रहे हैं। लेकिन मुझे अफसोस है कि सिवाय दो चार बातों के जो इस संशोधन में अच्छी हैं और जिन के जरिये कुछ सहूलियतें दी गई हैं लेकिन जो होना चाहिये था वह नहीं हुआ। खैर कोई बात नहीं आगे हो जायगा। मुझे उम्मीद है इस ला कमिशन में अच्छे अच्छे जूरिसट होंगे, अच्छे अच्छे जज होंगे और वह तमाम कानूनों को देख कर जो अच्छे कानून होंगे उन को स्टैट्यूट-बुक पर रखने की सिफारिश करेंगे और जो खराब होंगे उन को रद्द करने की सिफारिश करेंगे। यह राय मेरी ही नहीं है बल्कि सुप्रीम कोर्ट के जो आज कल चीफ जस्टिस श्री मेहर चन्द महाजन हैं उन की भी यही राय है। यह राय उनकी क्रिमिनल प्रोसीजर कोड के ऊपर मांगी गई थी और उन्होंने जो राय दी है

[Shri R. D. Misra]

वह सफ़्फ़ २२४ पैरा ५ ग़ुप़ 'सी' में दर्ज़ हैं । पैरा ५ इस तरह हैं :

"5. The second point that I wish to emphasize is the multiplicity of statute law in this country. Statute law of a very intricate and complicated character is responsible for the present state of things. Our statute book was already over-burdened with laws when the British left; but during the five years of our independence our legislatures have produced myriads of statutes and our executive has produced rules and regulations which are very difficult to count. All these laws, whether relating to income-tax, estate duty, companies, trade marks, banking, contract, tort, are of a very complicated character and can only be administered by highly specialised machinery of judges and advocates. They are beyond the comprehension of the layman. It is impossible to design a simpler system than the present to administer such complicated laws. The solution of the problem lies more with the legislature than with the machinery of the system of administration of justice. In my humble opinion there should be an *ad hoc* reduction in the statute law that has been produced in this country *en masse*. Legislation is only justified to eradicate grave evils that prevail in a country but should not be resorted to on any pretext even in a welfare state...."

डा० काटजू : क्या आप अपनी राय भी देंगे या दूसरों की राय ही पढ़ते जायेंगे ?

श्री आर० डी० मिश्र : मेरी भी यही राय है ।

"It is not necessary to have countless laws relating to every form of human activity. A society can only be considered civilized if its citizens are allowed without threat of law to behave as proper citizens and law is only enacted when it becomes absolutely necessary for maintaining a certain standard amongst its citizens. What has to be achieved by educating the society in various ways, the legislatures think, can be achieved by

setting in motion the legislative machinery and by passing statutes, no matter whether those statutes will be observed or can even be carried out or there is a machinery for enforcing them. It is known to everybody that a number of laws that have been enacted and placed on the statute book are more observed in their breach than in their observance. What is the use of having such laws? There is neither machinery enough in the country to enforce them nor is there desire in any person to enforce them. I would therefore suggest that before undertaking any reform in the system of administration of justice the statute book of the country should be cleaned and only those laws which are considered absolutely essential for the society should be allowed to remain on the statute book and the rest of them scrapped and even those that are allowed to remain on the statute book should be made simple and easily intelligible. Everyone is supposed to know the law but it is a question how many really know it. Simplify your laws and the present system will work very nicely."

इसलिये इस ला कमीशन का बनना निहायत जरूरी है और मैं इस प्रस्ताव की ताईद करता हूँ । अब तक हमें मालूम नहीं है कि क्या कानून हैं । मैं यहां पर अपने देश के प्राचीन मंत्रों को जो वेद में दिये हुए हैं इस सम्बन्ध में पढ़कर सुनाना चाहता हूँ :—

प्रातयुजा विवाध्याशिवनावेह गच्छताम्
अस्य सोमस्य पीतये । ऋग् १/२२/१

[इस समता के फल अर्थात् न्याय का उपभोग करने के लिये मौलिक अधिकार तथा उनको कार्यान्वित कानून वाले न्याय-अधिकरण का ज्ञान प्राप्त करना चाहिये]

In order to enjoy (पीतये) this fruit of equality *i.e.* justice (अस्यसोमस्य) one must know (विबोध्य) the basis of the origin of political union *i.e.* Funda-

mental Rights (प्रातर्युजा) and the judicial Authority which provides remedies, civil and criminal, against their infringement (बरिवना) for their enforcement (इह गच्छताम्).

इसलिये यह बहुत जरूरी है कि जो कुछ इस मन्त्र में आदर्श दिया हुआ है उस पर अमल किया जाय और इसके लिये जो सब कानून बनाने होंगे उनके बारे में हमें क्या करना चाहिये यह दूसरे पैज में दिया हुआ है जो इस प्रकार है :

या सुरथा रधीतमोभा दवा दितल स्यूशा
अशिवना ता इवा महे। ऋगृ १/२२/२

[जो दोनों अच्छे न्यायाधीश तथा कुशल शास्त्रज्ञ हों उनको उच्च न्याय-अधिकरण का कार्य करने के लिये आह्वान करना चाहिये।]

Invite (हवामेह) the (ता) who (या) be both (उभा) good judges (सुरथा good drivers of the carriage of justice) as well as distinguished jurists (रधीतम) for constituting the Supreme judicial Authority (दितल स्यूशा अशिवना).

Invite those judicial persons of high order who are the best drivers of judiciary system i.e., both good judges as well as distinguished jurists.

Therefore we must have this Law Commission for the reform of our judicial system and for that we must invite the best judges and distinguished jurists of our nation.

उस के बाद तीसरं मंत्र में जो तीसरी बात लिखी गई है वह यह है :

“या वां कशा मधुमत्यशिवना
सुनतावती तथा यज्ञं मिमिक्षताम् । ”

ऋगृ १/२२/२

किसने सुदर शब्द हैं ?

Whatever (या) decisions or recommendations (कशा) the

Supreme judicial authority (अशिवना) may utter or make (वां), relating to the judicial interpretations of laws (मधुमती), and rules governing righteous way of life (सुनतावती), they should be amalgamated with or form part of the law of the land (तथा यज्ञं मिमिक्षताम्).

जो मुल्क का कानून हो वह कैसा होना चाहिये ? उस के अन्दर जो बड़े बड़े जुरिस्टस और जजज हों उन के जो सुन्दर फैसले हों, जो कानून का सार हो और जिस से आदमी सन्मार्ग के रास्ते पर चल सके, ऐसा कानून बनना चाहिये। यह जो हाइरीक्टव (आदर्श) हम को दिया गया है वह हमारे वेद मंत्रों की बहुत बड़ी देन है। हमारे दर्श में ऐसे कानून नहीं बनते थे जैसे कि आज कल बनते हैं। हमारे यहां राइचिजसनेस (सत्य) का राज्य था, अगर हमारे यहां कोई चोरी करता था तो उस को भी सजा मिलती थी। ऋषियों की मिसालें मौजूद हैं, वह तक सजा से बच नहीं सकते थे। प्राचीन काल का चोरी के मुतालिक एक किस्सा है। एक ऋषि के यहां दूसरे ऋषि पहुंचे, उन को बहुत भूख लगी थी और जो दूसरे ऋषि थे वह कहीं संघ्या में लगे हुए थे। वक्त खाने का हो गया था। इस पर उस ऋषि ने बागीचे में से कुछ फल तोड़ कर खा लिये। जब दूसरे ऋषि पूजा से फारिग हो कर आये तो उन्होंने खाना तैयार किया और तैयार करने के बाद पहले ऋषि से पूछा भाई आ कर खाना खा लो। उन्होंने कहा कि मैं तो खा चुका। दूसरे ऋषि ने पूछा क्या खाया ? उत्तर दिया आप के बागीचे में से फल तोड़ कर खा लिये। तब दूसरे ऋषि ने कहा : हैं ! तुम ने बिना मंत्री आज्ञा के फल तोड़ कर खा लिये ? यह तो चोरी का अपराध हो गया, तुम को इस का प्रायश्चित्त करना चाहिये। जब भी हमारे दर्श में कोई आदमी अपराध करता था तो वह उस का प्रायश्चित्त करता था। कोई पुलिस नहीं रहती थी। वह खुद धर्म-मार्ग पर चलते थे। दूसरे ऋषि ने चोरी करने वाले ऋषि से कहा कि तुम को चोरी का दंड पाने के लिये राज्य के

[श्री आर० डी० मिश्र]

अधिकारी के पास जाना होगा। जब तक राजा तुम को दंड नहीं दे देगा तब तक तुम इस अपराध से नहीं छूट सकते हो, इस के पाप से नहीं छूट सकते हो। चुनावें वह राजा के पास गया और कहा कि मुझ से इस तरह से चोरी हो गई है, इस लिये मुझ को सजा दो। राजा ने कहा कि आप को कैसे सजा दूं, आप तो महात्मा हैं। उस जूरी ने लौट कर दूसरे जूरी से कहा कि राजा इस प्रकार कहता है। दूसरे जूरी ने इस पर कहा कि तुम जा कर राजा से कहो कि अगर तुम राजा रहना चाहते हो तो सजा देनी होगी। तुम को अपराधों के लिये सजा देने का अधिकार दिया गया है, अगर तुम दंड नहीं दे सकते तो गद्दी छोड़ो। हमारे देश में ऐसी मिसालें थीं। वह आदर्श हमारा हट गया, अब तो हम दूसरी तरफ को जा रहे हैं। ज़ाबता फौजदारी में मैंने कोशिश की कि गवाहों के बयान के आगे "टूली" का लफ्ज बढ़ा दिया जाय ताकि गवाह ताहकीकात में पुलिस अफसर के सामने सच्ची बात कहें, लेकिन वह "टूली" का लफ्ज यहां हार गया। और मेरे मित्र रघुवीर सहाय ने अर्ज किया कि ज़ाबता फौजदारी में लिखा है कि मुल्जिम भूटा बयान देगा तो उस पर मुकदमा नहीं चलाया जायगा, यह चीज उस में से निकाल दी जाय। लेकिन इस झूठ को उस में से नहीं निकाला गया। झूठ की जीत हुई और टूली की अर्थात् (सच्चाई की) हार हो गई। इसी तरह कम्युनल आफेंस का मामला है। उस में क्या है? चोरी करने के बाद राजीनामा, जायदाद बदनीयती से मुत्तकिल करने वाले अपराधों के लिये राजीनामा, यानी जो सांशल क्राइम्स थे उन सब में राजीनामा। कोई भी आदमी चाहे जो जर्म करे, जर्म करने वाला दबाव डाल कर या डलवा कर जिस के खिलाफ जर्म किया गया है उस से राजीनामा कर सकता है। नतीजा यह होगा कि पचास जगह किसी ने चोरी की, एक जगह वह पकड़ा गया तो दूने पैसे मुद्दई को दिये और छूट कर आ गया। किसी औरत को छेड़ दिया, उस के मर्द

को पैसे दे दिये और छूट कर आ गया। यह हमारे कानून की हालत हो रही है। जीत हो रही है चोरी की और दूसरे जुर्मों के करने वालों की। झूठ के लिये, या चोरी के लिये या चिपिंग के लिये। अब यह हो गया कि मुजर्मि मुद्दई को पैसे देकर राजीनामा कर ले। अब तक कानून इस की इजाजत नहीं देता था। अब तो सिर्फ डकैती और कत्ल के जुर्म ही बच गये हैं जिनमें राजीनामा नहीं हो सकता।

डा० काटजू : वंदों में बनीफिट आफ डाउट के लिये भी कुछ लिखा है ?

श्री आर० डी० मिश्र : वंदों में इस तरह की कोई बात नहीं थी। बनीफिट आफ डाउट तो इंग्लिश ला में है। यह उसी जूरिस्पूडेंस में है जिस को आप फाला करत रहे हैं और हिन्दुस्तान में ला रहे हैं।

मोबाइल कोर्ट (चलती हुई अदालत) इंग्लैंड में होते थे, वह अब आप यहां कायम कर रहे हैं। यू० पी० में मोबाइल कोर्ट होते थे उनके संबंध में शिकायत होती थी, मोबाइल कोर्ट में न्याय नहीं होता था सब परेशान होते थे इसीलिये वे बन्द किये गये। सब जानते थे कि मोबाइल कोर्टों को वकील नहीं मिलेंगे और जो मिलेंगे उनको बहुत पैसा देना होगा और सरकार को भी जजों और उनके अमल के सफर खर्च तथा मुल्जिमों को लाने ले जानें और पुलिस का प्रबंध करने में ज्यादा खर्च करना पड़ेगा। नतीजा यह होगा कि लोग ज्यादा परेशान होंगे और न्याय पाने के लिये मुकदमे नहीं करेंगे। आपने मोबाइल कोर्ट्स कायम करना ठीक समझा। इस का भी आप तजुर्बा कर लीजिये कि कितना वह कामयाब होंगे।

इस लिये मैं उम्मीद करता हूँ कि जब ला कमीशन बनेगा वह हमारे देश की जरूरत और आदर्श के मुताबिक काम करेगा। सत्य की विजय के लिये जिस का आइडियल (आदर्श) हम ने अपने यहां बहुत पहले से रख रखा है वह कार्य करेगा। आज जो सत्य का उस्ता है

उस के मुताबिक आप नहीं चल रहे हैं। अगर आप हमारी बात नहीं मानेंगे तो असत्य का बोलचाला रहेगा। हम ने जो 'सत्यमेव जयते' का आदर्श आइडियल बना रखा है उस से सत्य की विजय अन्त में जरूर होगी ऐसा मैं समझता हूँ। इस जाय्ता फौजदारी तथा अन्य कानूनों की जांच के लिये ला कमीशन बनने की बात आ गई है वह बनगा और हमारा दश के आदर्श के मुताबिक ऐसे सब कानून बनायेगा जिस में कोई बेगुनाह सजा नहीं पावेगा, लेकिन मुजरिम बच कर न जाने पावेगा। अगर ऐसा कानून बन सका तो हमारा दश का आदर्श अच्छा बन सकेगा।

इन शब्दों के साथ मैं इस ला कमीशन बनाने की बात को सुशामदीद कहता हूँ, इस का स्वागत करता हूँ और गवर्नमेंट से प्रार्थना करता हूँ कि हमारा दश के आदर्श के मुताबिक अपने दश का कानून बनाये।

Shri Tek Chand (Ambala-Simla): Mr. Chairman, I offer my hearty citations to the author of this Resolution and to the Government in accepting the Resolution. This Resolution was not one day too early. The necessity for the appointment of a Law Commission is imperative, not for the purpose of examining your laws and improving upon them, but also for the purpose of inviting science to come to the aid of law. The old vindictive attitude has always been there. If somebody were to ask: "What is the cure for crime?", the answer was: "Impose severe punishment. Put teeth into your laws." That doctrine has been exploded to be an old archaic theory no longer good enough. Punishment is no cure for crime. Prisons are the last place where certain types of criminals should be sent. The question is, that if you send a person to imprisonment, he becomes an embittered, worsened and hardened criminal. All that one may wish to teach him in the art of crime without detection he learn in your prisons. It used to be said by Sir Paul Vinogradoff a great jurist—and I was lucky to have him as my professor—that of all modes of punishment,

imprisonment is the most unsatisfactory thing. It is a matter of regret that whereas we are getting every conceivable assistance from science in various walks of life, in the matter of justice, in the matter of punishments, science and we are far apart. I want that Government should have the assistance of criminologists and penologists who understand the things. In this matter it had a great part to play. The ancient laws of Rome have mothered the present European laws and incidentally some of our. In the 18th century in Italy there were great jurists, jurists of the modern type. There was the school of Lombroso and there were many people who came under his influence. So far as the theory of punishment is concerned, credit is due to Cesare-Lombroso who revolutionized the whole outlook.

Dr. Kufju: What is the state of crime in Italy? I suppose there are no crimes there?

Shri Tek Chand: The state of crimes in Italy is pretty bad. But, because Italy produced jurists will you refuse to borrow a leaf from a jurist; will you rather go to the criminal? It is amazing; because in Italy there are lots of crimes therefore, forget what the jurists have said. Of the several principles that the jurists laid down—I think it was Beltrani-Scalio who in one sentence laid down the maxim and said: "*Studiare il Delinquente Ecco il Besogno*" (Study the Criminal. That is the requirement). It is the individualisation of the criminal. When a Magistrate imposes punishment, does he care to find out what are the antecedents of the criminal; what are his domestic conditions, what is his economic condition, what is his environment? No. What led him to commit the crime, his previous career, his motives, his temptations, all these are matters which ought to be studied. They are simply scoffed at by those who think that punishment will cure a criminal. Therefore, I suggest that from this point of view, the Law Commission ought to examine why there are

[Shri Tek Chand]

criminals born and why they persist in criminality, what is the contribution of the society to the making of a criminal, what is the contribution of our jails towards the making of hardened offenders and increasing crimes. So far as the investigation of crime is concerned, there is much left to be desired. Again I want to see in my country that the police stations are equipped with scientists, serologists, with people who are experts in finding out thumb impressions, people who can reconstruct and find out who the criminal is, from the little little things and little little marks that he has left. In France, in England and in America there are cases—I wish if I could dispel my hon. friend's ignorance in the short time that I have at my disposal—where from finger nail, from human hair, from thumb impressions, the detective agency has been able to lay its hands on the criminal and it has been perfected to a great extent. What is our process? Extorting of confessions, third degree methods, frightening him, getting hold of his other relations in the hope that someone will come and tell the truth; torture is the usual method. It is amazing that our ignorance seems to be colossal and abysmal? It is time that we realise it and there is nothing to be ashamed of and these things are matters for study. I want to see that practically with every police station, there should be station wagon, there should be mobile laboratories, as it were. A proper camera man should go to the spot immediately and we should have higher standards of proof. If you want to curb criminals or crime or criminal propensities, a criminal must be made to realise that it is not a profitable business to pursue crime, and that is only possible when our detective agency, or our investigating agency, is improved. Therefore, so far as crime is concerned, I feel that it has to be individualised, it has to be humanised and its causes have to be found; we need criminologists. It is perhaps an exaggeration to say but there is a great

deal of truth in the saying, that one policeman is equal to two jailers and one street lamp is equal to two policemen. Endeavour should be made to study this subject. This subject is so vast and so fascinating that one is tempted to say....

Mr. Chairman: I hope the hon. Member will resist the temptation.

Shri Tek Chand: The other ailment from which we are suffering is overdose of law. Without meaning any disrespect to anybody, I would say that the draftsmanship of our laws is of the poorest kind imaginable in the country. Hardly the ink is dry on your Act, then follows a long array of correction slips and one cannot keep pace with the procession of correction slips, with the amendments, with the rules and bye laws. It is said that everybody is supposed to know law. The privilege of ignorance belongs to the Judges and that is why there are appellate Tribunals to rectify the mistakes of the original Courts. Whether he is a dhobi or a carpenter or the poorest man, he is supposed to know law, but not the Magistrate, and that is why we have the Sessions Judges to correct the mistakes of the Magistrates, the High Courts to correct the Sessions Judges and the Supreme Court to correct the High Courts.

Shri Raghavachari: And Parliament to correct the Supreme Court.

Shri Tek Chand: Yes.

Dr. Katju: Is there any presumption that the Judge knows law?

Shri Tek Chand: I believe that the presumption is that the Judge does not know law. If he knew it, there would be no appellate Tribunals, and you have got a plethora of appellate Tribunals. Therefore, the only presumption from this is that the Judge does not know law and, therefore, there is a corrective administered every time a Judge makes a mistake. Even in the High Court, if one Judge makes a mistake, the case goes before a Bench of two and if two

[Shri Tek Chand]

Judges make a mistake, it goes before a Full Bench where it is corrected. There is progressive rectification of mistakes throughout. I am not scoffing at it. It is as it should be. Nevertheless, so long as you have that presumption that everybody is supposed to know law consequence will be confusion. Your laws are so prolific and their multiplicity is so terrible that they will not fare badly with rabbits so far as prolificity is concerned.

Then, again, the case law of our country is the greatest menace to law and there is such an abundant plethora of case law that for every little matter, there is a case law and precedent followed. Judge-made law is a terrible head-ache for the lawyer as well as the litigant. The Law Commission should see that only those judicial dicta and precedents are really immortalised which deserve immortality and not anything and every thing in print. There are the law reporting agencies turning out in print tremendous multiplicity of judge-made laws. Today, the price of a lawyer's library is astronomical and this is the misfortune that our country suffers from. It is being felt and realised elsewhere, but I wonder if they have been able to think of some remedies. I, therefore, think that there are several aspects. The problem is tremendous and some kind of experimentation or exploration is necessary in every walk of our legal system. I in agreement with the hon. lady Member who preceded me when she said that Law Commission should be manned not only by jurists, not only by scientists but also by others who can put the point of view of those who come into conflict with law or who come into contact with law. Everybody's viewpoint is worthy of examination at this time and it appears that even the talk of science being harnessed to law seems to be something strange, something impossible. Therefore, I have great pleasure in endorsing the Resolution that is before the House

Shri Keshavaleengar (Bangalore North): I shall successfully resist the temptation to make any long speech. Just one minute may be given to me. With the permission of the Chair I just want to say a few words.

Dr. Katju: How can you say a few words in one minute? You need ten minutes.

Shri Keshaviengar: I shall finish in one minute. I rise to congratulate my hon. friend for having been lucky in having this Resolution drawn in the lots and to have the opportunity to place it before the House.

Shri A. M. Thomas: Provincialism.

Shri Keshaviengar: No provincialism. I am also equally thankful for our beloved leader in having accepted the principle of this Resolution. There are no two opinions on the volume of statutes now in existence in our country. They are multifarious, and intricate and complicated and they badly require a review by a Law Commission. We are only concerned now with the personnel of the Law Commission. I entirely agree with the lady Member of this House that we need not be frightened at the presence of experienced lawyers on the panel of the commission. In order to investigate the practical aspects of law, it is necessary to have at least a few representatives of experienced lawyers on the panel. The commission should also consist of representatives of every aspect of our society, as well. I would like to make one suggestion here. Many of our statutes take their origin in the British administration and none can dispute the fact that they had their own motives behind the promulgation of those statutes. Every one of their administrative set-up that we have inherited from them comprises enormous amount of centralisation. I am one of those who feel that a very effective decentralisation of dispensation of justice is the only way of carrying justice to the homes of our countrymen. With these few words, I wholeheartedly support the proposition and I expect that the Government will

[Shri Keshaviengar.]

very soon, without wasting much time, place before the House a Bill for the appointment of a Law Commission.

Dr. Katju: After the Prime Minister's statement that the principle of the resolution is accepted, not much need be said but the topic is a very complicated one and it would have become apparent from the speeches which have been delivered that some of them have been inconsistent with each other. The scope of the Law Commission has to be carefully examined. One part of the speech which we have heard just now from my hon. friend, Shri Tek Chand, would seem to imply that the function of the Law Commission is to function as a Prison Reform Commission, as to how the prisoners are to be reformed, and that it has also to become an investigating commission—how crimes are to be investigated. The topic is very complicated because the House must bear in mind the fundamental thing. Laws, under the British system of development, have been judge-made laws because they were mostly uncodified and being uncodified, there was ample opportunity for judges to develop the law according to their own notions of fairplay, equity, justice and good conscience from generation to generation and from century to century. Take India, for instance. Of course the British judges made the law, but they had no personal motives behind it. There was no question of any imperialism behind it. But you take any law report, of say, the year 1811 or 1800 on a topic of Hindu law and take a law book of 1950, and you find that during that period of 150 years, it is all judge-made law. They are the *Manus*, they are the commentators, they are the translators, and out of those keeping in view the justice as they saw it, the social needs of the times, the changing circumstances, the changing needs of society, the Judges endeavoured to develop the law of land. The moment you come to a codified law, difficulties begin. It is no use blaming Judges

because though Parliament enacts laws, Parliament itself does not change the law, does not alter the law, for, every Judge is bound by the oath of his office to carry out his duty and the Judge may say that this law has now become completely outmoded that instead of being a just law it has become an unjust law, and Parliament is bound to give effect to it. One difficulty that we have and which we ought to avoid—and I suppose it will be the function of the law Commission to avoid—is that we have got in India about 27 High Courts and we have got all-India codes—civil Code, Indian Penal Code, Evidence Act, Contract Act, etc. A section of the law is construed in one way by the Judges of the Calcutta High Court; it is construed in an absolutely opposite way by the judges of the Bombay High Court or the Judges of the Mysore High Court. The number has increased—Part A States, Part B States, and the Judicial Commissioner of Tripura is the 'High Court' there, so far as he is concerned. Now, so long as a judicial pronouncement is not rectified or overruled by an appeal to the Supreme Court, it stands. The view taken by the Calcutta High Court is binding on all the people subject to the jurisdiction of the Calcutta High Court, and similarly the views of the Bombay High Court are binding on the people living in the Bombay State, and you have the curious anomaly of having the same law. The law is one and the same which has been enacted by Parliament and which is being construed in two different manners by two different sets of Judges. If one litigant is adventurous enough to take his appeal to the Supreme Court and the Supreme Court gets an opportunity of defining what the law is, in the view of the Supreme Court, these divergences continue. It is a question of language. Different people look at it differently and put a different interpretation on the same language in different ways. I suppose one of the functions of the Law Commission

would be to have a periodical examination of all those all India codes. I am only suggesting it. The Law Commission may look at the substance of the law and look up and say, well, section 10 of the Indian Contract Act means this, but having regard to the changing circumstances of society and the demands of social justice, it ought to be amended. That is a clear recommendation that the law ought to be amended, but at the same time, they may say, "It is very funny thing; section 10 has been construed in one way by one Court, in another way by another Court and in a third way by a third Court. These things go on." Therefore, the Law Commission may decide to do a periodical examination of say, the Indian Contract Act. Supposing a period of ten years is fixed, the Law Commission may decide that having divided our existing laws into blocks, one block shall be examined in the year 1955, another block in 1956, a third block in 1957 and so on. Thus they may exhaust all the blocks in ten years and then begin again. The result would be that the terms of every law would come in for a close examination with a view to the removal of all those discrepancies and divergences of opinion every ten years, and the Commission may then sit down and say, "We are going to recommend to Government for submission to Parliament that the law should be simplified in this manner. These doubts and difficulties should be removed and further, that it may be changed in this way, in keeping with the demands of social justice and welfare of the State and so on and so forth. Please remember that it is a very difficult topic. It cannot be removed by vague suggestions. Immediately on the appointment of the Law Commission, it will be faced with difficulties. One difficulty, and that a tremendous difficulty, will be what I said just now. We may demand that the law must be codified and must be put in terms of definite phrases. If you do it then comes the question of interpretation. Secondly, you have this periodical review because there is

not only one Court. You may have this thing in the olden days. In olden days the British people had it. Even now we have got it. There is an article in the Constitution which authorises the President to submit a particular question for the opinion of the Supreme Court. Unless you have it, each High Court goes its own way. Then the difficulties arise as to what should be the scope of the working of the Law Commission. If you say that they should look after the welfare of the criminals, juvenile delinquents, neglected children, you may thereby impose a burden upon the Commission which no one can carry. It should be restricted to see that our laws are wellmade, properly explained and properly interpreted and finally, apart from the Supreme Court, they should be interpreted and enforced in a uniform manner. Otherwise, it seems to me to be almost tragic. If I have got a claim on a promissory note or a bond and I go to the Bombay Court, my suit is dismissed on the ground that it is barred by limitation. If I am lucky enough to go and file a suit in the Calcutta High Court on the same bond, the Calcutta Judges say; 'Your suit is within time' and they give me a decree. These kind of contradictions are intolerable and the first thing the Law Commission must attend to is this. The setting up of a Law Commission has been under consideration for a large number of years.

5 P.M.

Mr. Chatterjee referred to the Rankin Committee. There have been many committees but every committee has dealt with the procedural part of it. The Rankin Committee said: 'Why these delays?'. A Law Commission is not concerned with that. My respectful submission is that it was a procedural committee. You must have more Judges; you must have more Magistrates; you must see that the procedure is speedy and you must also have a sense of better professional conduct in the lawyers.

[Dr. Katju]

My hon. friend, Shri Misra, was reading out something about the Vedas. It uplifted me. There were no lawyers in those days. (Interruptions.) Where were the criminals who would face the crime? (Interruptions.)

Mr. Chairman: You all pleaded guilty when you were before the Courts.

Dr. Katju: For the last fifteen days in this House, Member after Member rose in his seat and spoke that a guilty person should not be asked a single question which was incriminatory. Nothing should be done to induce him to make a single incriminatory statement. What is an incriminatory statement? An incriminatory statement is a statement by a guilty person which leads to the conclusion that he admits doing the wrong thing. But every Member here is most anxious that he should not be compelled to say so. Somebody said that the criminal should stand in the dock dumb. Do not compel him to say 'My darling'. Do not compel him to say: "I looked at such and such a woman with greedy eyes." (Interruptions.) I shall bring these observations to an end.

I think the hon. Mover of this Resolution has to be congratulated because he has drawn pointed attention to a very important topic and he has earned, I submit, the gratitude of all of us. The Prime Minister has, on behalf of the Government, accepted the principle of the Resolution. I request the hon. Mover to consider all these and withdraw the Resolution and I can really say that even within a few months action will be taken which will satisfy the country.

Mr. Chairman: Does the hon. Member want to proceed further with his Resolution?

Shri Thimmaiah: There are no two opinions about the constitution of the Law Commission.

Mr. Chairman: I am only asking him whether he wants to proceed further and I should put the Resolution to the vote of the House.

Dr. Katju: He wants to withdraw.

Shri Thimmaiah: In view of the assurance given by the hon. Prime Minister and the Home Minister, I wish to withdraw my Resolution.

Mr. Chairman: Does the hon. Member have the leave of the House to withdraw his Resolution?

Hon. Members: Yes.

The Resolution was, by leave withdrawn.

Mr. Chairman: The Resolution is, by leave, withdrawn and the amendments do not arise.

✓RESOLUTION RE: STATUTORY
BODY TO SUPERVISE AND CON-
TROL GOVERNMENT INDUSTRIAL
UNDERTAKINGS

Shri Raghavachari (Penukonda): There are just a few minutes and I wish to start with the Resolution. I beg to move:

"This House is of opinion that Government should immediately set up a Statutory Body to exercise general supervision and control of such industries where the Government has whole or substantial interest, either financial or otherwise."

✓At the outset, I wish to make it perfectly clear that the purpose of this Resolution is not to try to convince the Government or the House or canvass arguments in support of it be-