

Shri V. P. Nayar (Chirayinkil): May I know if the hon. Minister is objecting?

Mr. Deputy-Speaker: The hon. Member is too alert. The Minister says that before he gives his consent he would like to know what exactly it is. Therefore it is quite reasonable.

Prof. D. C. Sharma (Hoshiarpur): What about 31?

Mr. Deputy-Speaker: Others are not agreed to.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

(Repeal of sections 266, 267 etc.)

Shri S. V. Ramaswamy (Salem): I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898 be taken into consideration."

In submitting this Bill for the kind consideration of this House I cannot do better than read the Statement of Objects and Reasons which runs as follows:

"The jury system is unnecessary and assessor system is useless.

Oftentimes the Jury returns perverse verdicts and Sessions Judges are generally disinclined to submit such cases to the High Court under section 307 of the Code of Criminal Procedure for a variety of reasons. Whatever justification there might have been for the introduction of the system, it is out-moded. Our Judiciary is one of the best in the world and the robust independence of our Judiciary is the sentinel guarding the liberty of the individual. Should there be any mistake, there are a series of appellate courts to rectify.

The economy involved in their abolition will be enormous, and the Code will become much simplified."

I need not go into the history of the Jury system. You know, in England it

was introduced during the Norman times, as a system by which they could summon the neighbours to ascertain rights to property. It was mainly with the aid of this Jury system that the famous Domesday Book was compiled later on. It was introduced in England to take the place of trial by ordeal, by hot water, by oil and by fire etc.

[**PANDIT THAKUR DAS BHARGAVA** in the Chair]

Then ultimately the Jury System was introduced both in civil and criminal matters. I need not elaborate upon it but only I would submit that that has been claimed to be a palladium of liberty, one of the glories of the English Judicial system. It is found everywhere the English speaking nations are found. You cannot think of the English Judiciary without the jury system which is an integral part of it. The position, as briefly stated by an eminent author so far as England is concerned, is, "In England while the Jury in criminal cases operates well and is not criticised, the jury in civil cases is almost obsolete."

If the jury system in England is a success it is due to historic reasons. I shall presently submit to you, Sir, that where it has been taken to other countries with a different set up and civilisation, the jury system has not succeeded.

11 A.M.

You know, Sir, that in the American Constitution, Art. 3 lays down definitely that there shall be trial by jury in all cases except in the case of impeachment. Following upon this Constitution several State Constitutions introduced similar provisions but in the U.S.A. they went far beyond the original scope of the English system. Several modifications were introduced in several states, for instance the Jury not merely giving a verdict on a question of fact but deciding a question of law as well and as to what punishment is to be given. The system in the U.S.A. is overworked and it is under very severe criticism. I shall read only one passage from Roscoe Pound, an

eminent writer on Law in the Encyclopaedia of Social Sciences:

"In contrast with its great popularity in the 18th and 19th centuries the jury system is now almost everywhere under attack. All American Constitutions guaranteed it as essential to liberty and free Government. Today it is being modified or restricted on every hand or is becoming disused. In the U.S. in civil cases waiver of jury trial or reference of cases to referees has become increasingly common. To this growing disuse must be added a long list of modifications which indicate a moribund institution. As to the jury in criminal cases that also is under attack generally. As it is, the steady growth of waiver of jury trial in criminal cases and the extension of summary criminal jurisdiction present a story very similar to that of civil Jury."

Now the position of jury system on the Continent of Europe has been ably summarised by another eminent writer, William Seagle:

"Everywhere there has been a growing discontent with the Jury system and there are not many continental jurists who have much to say in its favour except in connection with press and political offences.

An explanation for the dissatisfaction with the jury system should rather be sought in the fact that technically the jury represents a rather cumbersome procedure and politically a means for effectuating the will of the middle class. A great deal may be said for the jury, but it may as well be recognised frankly that efficiency in the trial of causes is not among its virtues."

Having summed up the position generally in England, in America, on the Continent and in several other countries, I would like to take you briefly over the history of the jury system in India. The first mention of this jury system has been made in

some of the regulations but a clear picture of what was obtaining in 1832 is given in Regulation 6 of that year. I am reading, Sir, from the First Report of the Indian Law Commissioners of 1835:

"At the trial the Sessions Judge is assisted by a Mahomedan Law Officer, who is called the Molvee Adawlut. He may also call to his assistance respectable natives in any of the following ways: 1st, he may refer the whole case, or any point in it, to a *panchayat*, who carry on their inquiries apart from the Court, and report to it the result; 2nd, he may constitute two or more persons assessors or members of the Court, the opinion of each assessor to be given separately, and discussed; 3rd, he may employ the persons as a jury. When the person to be tried is not a Mahomedan he may claim to be exempted from trial under the provisions of the Mahomedan Criminal Code; and in such cases the Judge is to proceed in one of the ways above referred to."

I proceed further:

"The depositions of the witnesses examined by the Sessions Judge are also reduced to writing, and the Law Officer is required to write at the end of the record of the proceedings the *futwah* or decision of the Mahomedan Law, as applicable to the circumstances of the case, comprehending both the fact and the law; that is, whether the evidence be or be not sufficient, according to that law, to establish the guilt of the prisoner, and what degree of punishment the law assigns for the offence with which he is charged...."

"After the Judge has read the *futwah*, if it appears to him consonant to natural justice, and also conformable to Mahomedan Law, he is to pass sentence in terms of the *futwah*, except in cases where the sentence is for death or imprisonment for life. In such cases, he is to transmit copies of the

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sentence and proceedings to the Nizamut Adawlut, and to await its final sentence."

"When the trial is before the Judge, assisted by respectable natives in any of the ways before mentioned, he may dispense with the *futwah* of the Mahomedan Law Officer, which is declared to be unnecessary."

At that time, Sir,—reading further from the same report:

"The criminal law is that which prevailed in India under the Mahomedan rulers of the country, modified by the Regulations of the Government of Bengal, and Acts of the Council of India. The Mahomedan criminal law may be generally described as written or unwritten, the former being contained in many recognised treaties on Mahomedan law, and the latter being gathered from the practice of the country as expounded by the law officers in cases for which there is no positive written law."

Why this system was introduced is ably summarised by Cowell in his Tagore Law Lectures on the "History of Constitution of Courts and Legislatures in India."

Shri V. P. Nayar (Chirayinkil): What year?

Shri S. V. Ramaswamy: At the beginning of this century, about 1911. It is the latest edition 1938 I have got. At page 197, it is said:

"In 1832 (Regulation VI), it was considered desirable to enable the European functionaries who presided in the courts for the administration of criminal or civil justice to avail themselves of the assistance of respectable natives in the decision of suits or in the conduct of trials which might come before them. Provision was accordingly made for referring suits to a *panchayat* or for constitution of assessors to assist the Judge, the decision however being vested ex-

clusively in the officer presiding in court."

Therefore this system was introduced in this country largely because the presiding judicial officers were Europeans, Englishmen, and they did not understand Indian customs and manners and it was mainly meant to assist them. Commenting upon this system, the Law Commissioners reported in their notes on clauses to the draft Bill of 1855 which subsequently became the Criminal Procedure Code of 1861. They have stated this particularly with reference to Chapter XIX. Section 260 of the Draft Criminal Procedure Code reads like this:

"Criminal trials before the Sessions Judge, in which a British subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor General in Council may see fit to extend this rule, registered according to such rules as the Governor General in Council shall prescribe, is the defendant or one of the defendants, shall be by jury, of which at least one half shall consist, if such defendant desire, it, of persons so registered."

Mr. Chairman: It has already been pointed out in the Act.

Shri S. V. Ramaswamy: I am tracing the history and how the system was introduced and worked.

Shri V. P. Nayar: Is there any reference to Kautilya's *Arthasashtra*?

Shri S. V. Ramaswamy: No; you interpret it as a jury. In their notes on clauses in the draft Bill, they say they are abolishing the grand juries. With regard to trial by jury, they say like this:

"We propose to retain this mode of trial in Calcutta, and in the case of British subjects in the *mofussil*: to extend it to certain other classes in the *mofussil* who have not hitherto enjoyed it; and to leave it to the discretion of the Governor

General in Council to extend it to such other places out of Calcutta as he may think fit."

"It will be seen, however, on a reference to the rules that we have proposed that the right of trial by jury in the case of persons residing beyond the limits of any place to which this mode of trial is extended, is to be conditioned upon registration, according to such rules as the Governor General in Council shall prescribe. It will be at the option of the parties entitled to register to avail themselves of the privilege, and we think they should be allowed to exercise this option at any time previous to trial. A reference to the register will at once decide the right to be tried by a jury."

Now, Sir, this was the state of affairs in 1855 according to the report. Subsequently, the recommendations were accepted and the Bill was passed in 1861, a year after the Indian Penal Code was placed on the statute book. Subsequently, there have been several amendments to the Criminal Procedure Code, but I wish to draw the attention of the House to only one passage in the proceedings of the Council of the Governor General of India, assembled for the purpose of making laws and regulations, dated 16th April, 1872. I am quoting a passage from Mr. Stephen's speech. Now, it is in that Bill of 1872 that Section 307 was introduced, by which the Sessions Judge may make a reference to the High Court against the verdict of the jury, if he was not satisfied with it. On that Mr. Stephen says:

"On the chapter (XIX) which relates to trials, I may make a few observations. It embodies the law upon the subject of juries, in which we have made several important alterations. We propose that if the Judge differs from the Jury he may refer the case for the opinion of the High Court. We also propose that the High Court in exercise of its powers of revision may, if it thinks fit, set aside the verdict of the Jury if the Judge

has misdirected. In other respects we have not altered the existing law."

Proceeding further, he says:

"I am aware that some of my colleagues think that we have changed the spirit of the whole system so much by these alterations, that it would have been better to sweep it away altogether. I cannot myself think so. I certainly should not have suggested the introduction of the jury system into India, if I had not found it here, and I cannot say that the opinions given of it by those who have had experience of its working are at all favourable. They were not, however, so altogether unfavourable as to induce us to take the step of recommending its total abolition."

Prof. D. C. Sharma (Hoshiarpur): Wherefrom are you reading?

Shri S. V. Ramaswamy: This is from the Debates in the Council of the Governor-General, 1872. I shall content myself with reading one other passage. I am again reading from the proceedings of the Council of the Governor-General, dealing with the consolidation of the Code of Criminal Procedure, 1898 the Code which we are now following. Mr. M. D. Chalmers, a distinguished barrister from England, Member of the Council, speaking on that Bill has said like this:

"Looking at the Code as an English lawyer, I must say I am struck by its complexity, its cumbersomeness, its over-minuteness, its attempt to regulate every case that can possibly arise. But I am assured by those who know Indian public opinion that people in India like to have every movement and action of their lives regulated by law, and that this Code which would be utterly and absolutely unsuited to England, where matters are left to the discretion and practice of courts, is nevertheless required and necessary in India."

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The history of the jury system has not always been happy. Even before I had raised this question on the floor of this House, it has been agitating the minds of several leading lawyers and Bar Associations.

Shri V. P. Nayar: Including yourself.

Shri S. V. Ramaswamy: And, my friends will be in a better position to tell the House that even the Madras Bar Association in its Annual Conference—I believe it was held at Madura in 1946—passed resolutions—and earlier also—that the jury and assessor system must be abolished. There are several members of the Bar who have active practice, leading practice, who know how by maintaining this jury system we are not advancing the cause of justice even one inch. Speaking for myself, Sir.....

Shri A. M. Thomas (Ernakulam): Does the hon. Member know that a leading lawyer like Dr. Katju is personally in favour of the jury system?

The Minister of Home Affairs and States (Dr. Katju): I am not a leading lawyer. He is referring to leading lawyers.

Shri K. K. Basu (Diamond Harbour): He has given up practice.

Shri S. V. Ramaswamy: Speaking more intimately of the system in the Sessions courts, it has been always a constant struggle between the Defending Counsel and the Prosecuting Police officers, to see that the jury is kept free from influence and pressure of all sorts, moral and material. I can give you one instance where I appealed to the presiding Judge—it was 6 p.m.—to continue the sessions case the same day because I expressed to him that if the court rose for the day and assembled the next day, the verdict would not be the same. The Sessions Judge was pleased to sit up till 9-30 p.m. that day and, would you believe it, Sir, that the verdict was 'not guilty'. If only I had not made that request and if only the Sessions Judge was not pleased to accede to my request, as sure as I am

alive, the verdict would have been 'guilty' the next day, and all the accused would have been behind prison bars. Because overnight the police would have been after the jury and somehow or other they would have given a different verdict.

Dr. Katju: I want to raise a point of order, Sir. Probably my hon. friend won a very good case. But to say "that the police would have been after the jury and would have influenced them" would be unfair. It would be really imaginary. I am not prepared to think that my own countrymen are such perverse people.

Mr. Chairman: If the case continued from day to day in the Sessions court, why could not the police do something during the previous nights?

Shri S. V. Ramaswamy: It is all in the game, Sir. I am not accusing the police.

Dr. Katju: It is a question of life and death and my hon. friend is treating it as a game.

Shri S. V. Ramaswamy: What I want is that there should not be this game.

You know, Sir, that I have referred to Chapter XXIII of the Code of Criminal Procedure. It contains 70 sections. According to my view, Sir, only 10 sections need remain there. Those would be 270, 271, 273 and 286 to 292. These are the ten sections that need remain in that chapter; all other sections may safely be given up. They introduce an element of great complexity and an ordinary man cannot understand those sections and give a proper verdict. The law is so intricate and where a grave crime is committed the evidence is so heavy and so detailed, we cannot always expect the layman to understand and give a proper verdict.

Apart from that, I may submit that it involves a lot of expenditure and unnecessary work for the State. Take, for instance, sections 312 to 330. All these mean needless work for the State Government. A list has got to be prepared, a list of common and special

jurors, publication of preliminary and revised lists, number of jurors to be summoned, summoning of jurors etc., High Court and Military jurors, failure of jurors to attend, liability to serve as jurors and assessors, exemptions, lists of jurors and assessors and publication of lists, objection to the list, revision of the list, preparation of the list of jurors, the District Magistrate to summon jurors or assessors and so on and so forth.

Shri N. Somana (Coorg): Does this Bill contain provisions to repeal these sections?

Shri S. V. Ramaswamy: I am accepting an amendment to be moved by Shri Mukund Lal Agrawal. I would only say at the outset that I am thankful to Mr. Agrawal for his amendment. I know, Mr. Altekhar has also given notice of one amendment. It completes the lists of amendments to be carried and when they are moved I would certainly accept them. I need not labour this point.

In conclusion, I would only submit that we would not be losing anything by the abolition of the jury and assessor systems. On the other hand, we would be gaining in every way. It would be tantamount to a declaration of our absolute faith in the honesty, integrity and capacity of our great judiciary. I yield to none, Sir, in my profound respect and appreciation of the Indian judiciary. From the District Munsifs right up to the Supreme Court, we have got an institution which is second to none in this world. I pay my humble tribute to the personnel of the Indian judiciary who have got great learning, great capacity and above all, great integrity. We can trust them to defend the liberties of the individual. We do not need the assistance of laymen like jurors and assessors. I submit, Sir, let us accept this Bill and pay our humble tribute to the great Indian judiciary of which every one of us in India must be proud.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Code of Criminal Procedure, 1898 be taken into consideration."

There is an amendment to the effect that the Bill be circulated for eliciting opinion thereon. Is the hon. Member moving it?

Shri Venkataraman (Tanjore): Yes, Sir. I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st December 1953."

The mover of this Bill has very ably dealt with the history of the jury and assessor system in Europe, in England and in India.

Shri Achuthan (Cranganur): May I know whether in other countries there is this system?

Shri Venkataraman: Yes, in some.

The purpose of my moving this amendment is to have before the House the opinion of the bar associations in India, of the judges, of the High Courts and the public, with regard to an institution which has been functioning in this country for a long time. The assessors, as you know, try nothing and decide nothing. They merely assist the judge in coming to a conclusion. Several bar associations have expressed the opinion that the system of trial with the aid of assessors is no longer necessary. On that question, I think, at any rate the opinion of the Madras Provincial Bar Federation is fairly categorical. In the resolutions passed at the annual conferences a fairly unanimous opinion was expressed that the trial with the aid of assessors is wholly unnecessary.

If you trace back the history of the trial with the aid of assessors, you will find that in those days when the British judges did not know the language of the country, they wanted the help of assessors who could understand not only the language but also the spirit in which the evidence was given by the witnesses and interpret them to the judges. It follows that when our judiciary is manned by our own people that sort of assistance does not appear to be necessary. Any way, on this question, the opinion of any particular

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State or any particular section should not be deemed to be conclusive and the opinions of bar associations all over India should be before this House for us to decide on this matter.

Then we come to the juries. The jury system in the mofussil differs from the jury system in presidency towns in regard to powers of decision in respect of giving verdict. Now, while in the mofussil the opinion of the jury is not binding on the judge, the presiding judge, in the presidency towns the unanimous verdict of the jury is binding on the judge. In the case of difference of opinion also there are differences between the presidency towns as well as mofussils. My own experience is that the jury system has worked fairly well in the presidency towns. I do not know of any complaint, except odd ones.—I talk of the generality of opinion—against the jury system in presidency towns. The juries are drawn from educated, respectable class of persons and it is good to have the assistance of that class of persons in deciding questions of fact. As regards the mofussil, I am unable to share the same opinion about the utility of the jury system in the mofussil. I think on that question we ought to get the opinions of the district judges who have had to deal with the juries. They might have more experience than any one of us, including my hon. friend Mr. Ramaswamy. They sit and hear cases with the help of the jury and they know when the jury has been perverse and when the jury has been right and what is the balance of convenience in respect of having the jury system. Therefore my motion that it should be circulated for eliciting opinion is I think one which will command the universal acceptance of this House. I do not want at this stage—unless you direct that the whole Bill is also under discussion now—to go into the merits of the several clauses. I will content myself with moving this motion that the Bill be circulated for the purpose of eliciting opinion thereon by the 31st of December 1953

Mr Chairman: Motion moved:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st December 1953.”

Shri Punnoose (Alleppey): I rise to support the amendment just now moved. The valuable views placed before the House by my hon. friend Shri Ramaswamy is worthy of consideration—there can be no two opinions about it. I have often heard much said against both the jury and the assessors. It may be that they are not working properly now. It is very doubtful whether these assessors and juries have been able to perform their work in an efficient way in our country. The reasons for the bad working of the system have to be examined. It may be that these systems grew up under a foreign government and naturally that accounts for its present state. It has yet to be found out whether the system can be put on a proper footing. Now what my hon. friend Mr. Ramaswamy wants to do is to chop it away, to cut it away. That is very easily done. But I do not think that is the way the House should behave with regard to an institution that has been in this country for some time. Of course, I do not want this system to continue if it is of no use at all. But let the country have a say. As the hon. Member who spoke last said, the bar associations, the Judges, the clients and the public at large have views on this matter. Every section of the people must be given an opportunity to express their opinion and some time should be given to the various associations and bodies to consider whether the system could be improved upon. I believe under healthy conditions the juries and the assessors can be of valuable help to democratise our system. If healthy conditions are given, they can be of help. It is not only a matter of legal and judicial implications as Mr. Venkataraman said. It is not only the letter but the spirit of the law that can be brought to bear on judgments if this system is worked properly.

I believe even Mr. Ramaswamy would have no objection to wait for a few more months, having waited all these years. Let us therefore put it before the people. I very strongly support the amendment that has been moved.

Shri A. M. Thomas: I rise to support the amendment that has been moved by my hon. friend Mr. Venkataraman. The system of trial by jury or assessors has been recently introduced in some of the Part B States with the application of Central Laws like the Criminal Procedure Code. In my part of the country though the system of trial by jury or by assessors was not obtaining before the application of the Indian Criminal Procedure Code, with its application, the system of trial by assessors has now been introduced. It has been there only for a very short time. It is very good to have from the judiciary, the bar associations and other accredited organisations the opinion that they hold after the introduction of this new system in our State. Though a lawyer myself, since, as I have said, the system was recently introduced in my State I am not in a position to give expression to any personal experience in this matter.

I do not want to enter into the merits or the demerits of the system of trial by jury. This is a matter on which much can be said on both sides. You may remember, Sir, that I put a question when my hon. friend Mr. Ramaswamy was putting his case before the House and when he was citing the views of experienced lawyers, that they are generally against this system of trial by jury. But there are very many eminent lawyers who hold a different opinion. I do not know what the experience and the opinion of an experienced lawyer like your good self is. But when I put this matter before a lawyer coming from Lucknow, he said: "your Dr. Katju will be against it." Eminent lawyers like Dr. Katju are definitely in favour of the system of trial by jury. The reason may be, as has been alleged by Mr. Venkataraman, that it has worked well in the presidency towns. Though the entire

Judicial system of our country is, so to say, modelled on the British administration and though it may be characterised as having been imported from a foreign country, we need not have any prejudice against the jury system as such. This is an age when we are aspiring to have People's Courts for the trial of offences and even for investigating into cases of corruption. So my submission is that there cannot be any positive objection to the trial by jury. And it is good that we get ourselves fortified with the opinion of the public as well as other accredited organisations.

I support the amendment of Mr. Venkataraman.

Shri M. L. Agrawal (Filibhit Distt. cum Bareilly Distt.—East): I had also a motion on the Agenda for the circulation of this Bill for the purpose of eliciting opinion thereon by the 1st December, 1953.

Mr. Chairman: There is one difference. In the motion of the hon. Member the date is 1st December whereas in the other amendment it is the 31st of December. Otherwise the motion is the same.

Shri M. L. Agrawal: Mr. Ramaswamy has done a distinct public service by moving for the consideration of this Bill. The judicial and legal system of this country is not indigenous. It is British in its origin and character, and it is at present what it has been during the course of hundred years or more or with adaptations here and there. But the system remains the British system.

There has been a cry for a long time for a reform of the judicial system in our country. Since the attainment of Independence this cry has become even louder and more insistent. It is not only in this country that there has been a demand for a reform of the legal and judicial system. Even in England, from where we have got this system, there has been a great demand for reforms, and in April 1947 a Committee was appointed in England under the chairmanship of Sir Raymond Evershed to suggest reforms. That

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Committee conducted an enquiry and after examining many witnesses and holding hundreds of sittings it has submitted its report recently. I would not take the time of the House in going over the detailed recommendations of the Evershed Committee. I want only to point out that the desire for reform in the legal and judicial system is universal.

In our own country the first Committee was appointed in 1924. It was an all-India Committee. In various Provinces several Committees were appointed after 1924 to suggest reform of the judicial system. As many as seven or eight Committees were appointed in U.P. I would not go into the details of the recommendations of these Committees. But I would refer to the Committee which was last appointed, in 1950. It was a Committee presided over by no less a person than Mr. Justice Wanchoo with whom we are all familiar. It was on the basis of his report that the Andhra State Bill was passed only yesterday in this House. That Committee was constituted by the U.P. Government in 1950 and its terms of reference were very wide indeed. That Committee was entrusted with the work of examining the entire legal system—not only the present limited provisions—but other provisions also. The object of the Government was to suggest means to make the legal system cheaper, simpler more informal, and more expeditious and efficient. That was the object.

That Committee after long sittings has made several recommendations. I would come to the recommendations of that Committee and a few other Committees that preceded it in U.P., later on. Before going to that I want to refer to a speech contained in one of the proceedings before the Council of the Governor-General of India in 1872. I would not go over the same ground that has been covered by the mover of the motion for the consideration of the Bill. I would like to point out that Mr. S. V. Ramaswamy quoted a passage from the speech of Mr. Stephen who

moved the Bill before the Governor-General's Council. The hon. Lieut. Governor of Bengal who was also a Member of the Council of the Viceroy, made a speech and his criticism, I think, was even more outspoken about the system of trial by Jury. Excuse me, Sir, for reading this small quotation from the speech of the Lieut. Governor of Bengal. He said:

"Another subject to which he would draw the attention of the Council was the difficult subject of juries. In this country, juries framed on an English model were not altogether beneficial instruments in the administration of criminal justice; at the same time, he had not been willing to abandon the jury system altogether because, although he did not think that trial by jury was an unmixed good, he believed that the system had a great effect in the political education of the people. It was a very great object to induce the Natives of the country to take a part in self-government and in the administration of justice, and it was in that respect only that he regarded the maintenance of the jury system in criminal courts to be of some value. At the same time, he felt that the jury system was less fitted for criminal trials than to some trials of a civil nature: he should be glad to dispense with the jury system in criminal trials if there could be introduced something in the shape of trial by jury in civil cases. The Courts at present laboured under great difficulties in the determination of civil cases. It was in many cases a most difficult matter for them to arrive at the truth. He looked upon a panchayat somewhat in the light of a jury without the superstitious number twelve and he hoped that, if they dispensed with juries in criminal courts, they should be able to introduce something like the jury system in regard to civil cases."

The point made out by this speaker was that it was necessary to introduce that system with a view to give political education to the people of this country. I submit we have long passed that stage of political education. Whatever the reason might have been at that time, it is no longer available. I must admit that in our country there has existed a certain glamour for trial by jury and certain people are still in favour of trial by jury. That is why even in those early days, 1872, and later on, some people wanted that trial by jury should be extended.

In this connection, in the U.P., in 1921, a committee was appointed, known as the Dalal Committee. That committee was appointed to consider and recommend the extension of the system of trial by jury. That committee certainly recommended the extension of the jury system. But, later on in 1938, another committee was appointed under the Chairmanship of Mr. Justice Niamatullah. He was a Judge of the Allahabad High Court. I would refer to the recommendation of that Committee in respect of trial by jury. That committee recommended that the Jury system should receive no further extension, that if it be decided to extend the system, it should extend to the whole province and that the system of trial with the aid of assessors should be abolished altogether. That committee recommended some safeguards against abuse of the system of jury trial in case it was to be retained. This was the position in 1938.

Finally, there was the Wanchoo Committee to which I have referred. Justice Wanchoo was not alone in this committee. He was assisted by eminent Judges and jurists,—lawyers of great fame. I may give the names of a few of them: Sri Niamutullah, retired Judge, Allahabad High Court, Shri Tika Ram Misra, Ex-Judge, Allahabad High Court, Dr. R. U. Singh, Sri K. K. Bhattacharya, etc. This was a very eminent committee, eminently fitted to make recommendations on this aspect of the question. The terms of reference were very wide indeed. The terms of reference are

given under two heads (1) and (2). Under sub-clause 2(c), the question referred to this committee was whether the system of trial with the aid of jury or assessors should be further extended, limited or eliminated and, if so, in what class or classes of cases. How did this committee go about its work? Some argument was made by some hon. Members who preceded me that we should come to a conclusion after the Bill has been circulated widely, and opinions of Judges and so on were gathered. This Committee proceeded by issuing a questionnaire covering all problems of administration of justice and invited the opinions of district magistrates, judicial officers, legislators, Members of Parliament, eminent lawyers, official receivers, District Government counsel, University professors, businessmen, Chambers of Commerce, etc. After considering all this huge volume of evidence before them, they came to the conclusions which they have given in their recommendations. I would, with your permission, Sir, give a small quotation from their recommendations. They have given their recommendations about assessors and jurors separately. About assessors they say:

"The system of trial with the aid of assessors has been in vogue since long without any practical utility. Although the verdict of a jury cannot be set aside except on the ground of perversity or illegality, the opinion of assessors has no value whatsoever. The Judge is fully empowered to disregard the opinion of assessors in its entirety. The calling of assessors in sessions trial causes unnecessary waste of public money and the assessors are of no real help to the judge. Their presence at the trial could have some value in olden days when judges of foreign nationality used to preside over Sessions Courts and they being not conversant with the social customs and habits of the people of this country could take the help of assessors in appreciating facts. Now that all Judges are from this

[Shri M. L. Agrawal]

very country, the assessors have lost even the little utility which they previously had.

The opinion submitted to this Committee is almost unanimous that trial with the aid of assessors merely results in waste of public money without any corresponding advantage. The Committee therefore recommends that all sections in the Code of Criminal Procedure dealing with the trial of sessions cases with the aid of assessors, should be completely omitted.

About Jury trial they say:

"A large majority of those who have replied are in favour of the abolition of the jury system. It seems that even in the few districts where this system has been working in connection with a few cases it has not been a success. The general complaint is that jurymen are open to approach and do not give a fair verdict on the evidence. It seems difficult to provide for the locking up of the jury in the present conditions as it will mean a very great expense if the system is to be introduced in all the districts of the State. Besides, it would be very difficult except perhaps in a few districts to have a sufficient number of the right class of people who would be prepared to serve as jurors. Lately a new factor has arisen which also makes it impossible to adopt the jury system, namely, a large majority of sessions cases do not finish on the first occasion and there is usually an adjournment for about a month or sometimes more. It is impossible to lock up the jury for all the period that the case is pending.

The system of trial by jury was borrowed in this country from England. The origin of this system was based on local knowledge and also independence of juries who were representatives of the people, against the arbitrary acts of King's Judges who were supposed to be

and were under the thumb of the King. It was therefore considered necessary to make certain that citizens should have a square deal when brought to the bar of justice. The present time, however, is of democracy when the legislature is responsible to the people and the Government to the legislature. There is little possibility of autocratic rule or of the judiciary being influenced by the rulers. The subordinate judiciary is under the direct control of the High Courts and the independence of the High Courts is guaranteed under the Constitution.

Jury trial has been extended only to a few districts of this State and there too all serious offences are excluded from jury trial. Recently the State Government has excluded certain more offences including those of dacoity. This Committee strongly feels that trial in Sessions Courts should be by the Judge alone and recommends that all sections relating to trial by jury should be omitted from the Code of Criminal Procedure."

I submit that I cannot find a more weighty authority for supporting the motion of Mr. Ramaswamy than the one I have quoted. It is recent. It is based on a large volume of evidence of the persons who were entitled to give their opinion on this subject.

The disadvantages of these trials by the jury system and assessors are too patent for me to dwell at length upon them. In the first place, they mean so much expenditure which can be utilised for other objects. Then, it causes delay. There are frequent adjournments due to the absence of jurors and assessors who do not turn up, and there is so much waste of public money and public time. Then, it prolongs the trial, and the accused are unnecessarily harassed by prolongation of trial. Besides this, every adjournment causes so much additional cost to the public exchequer. There-

fore. I think that the motion made by my hon. friend Mr. Ramaswamy is quite feasible, and I would submit that we can pass it just now and here. At the same time, I have made this motion for circulation as a concession to the possible conservatism of some of my hon. friends and hon. the Home Minister. If I find the reaction of the Home Minister to be favourable to take this Bill into consideration at once, I shall withdraw my motion, and support the original motion.

Lastly, I wish to point out some of the provisions of the Bill whose consideration has been moved by my hon. friend Mr. Ramaswamy. As a matter of fact, Mr. Ramaswamy has already referred to my amendments. I have tabled some amendments. The purpose of the Mover is to wipe out all provisions relating to trial with the aid of Juries and assessors. In that object he has not succeeded. There are several Sections of the Criminal Procedure Code which also would have to be deleted and my amendments to the Clauses of the Bill—4, 5 and 7—go to improve the Bill. The new Clauses 6(A) and 7(A) go to include all other Sections which also should be deleted in order to make the Bill more complete and fuller.

With these words, I would support my Motion for circulation of this Bill for eliciting public opinion by 1st December, 1953. As I have already said, I will be prepared to withdraw the motion if the hon. Home Minister is prepared to accept consideration of the Bill just now.

Mr. Chairman: Why should the hon. Member insist on his date? He can have 31st December.

Shri S. S. More (Sholapur): Make it 31st December.

Shri M. L. Agrawal: I have no objection to make it 31st December.

Shri S. S. More: I rise to support this particular motion, but in supporting this motion, I will try to cover a larger field.

Dr. Katju: Motion for?

Shri S. S. More: Circulation.

The present judicial system, both as far as civil matters and criminal matters are concerned, was framed by the Britisher. In framing this system, if we go through the original documents when the Criminal Procedure Code or the Penal Code was being reconstructed for this country by the British administrators, we can see that they tried to copy from the English system as far as it was feasible. Again, they took into consideration the temperament and the traditions of the people here, and tried to frame a sort of bureaucratic system. Sir Stephen's name has already been quoted. I have seen some document in which he describes the psychology of the people, the *zulum* to which they were subjected for so many ages, and he has opined that in this country only if we devise a District Officer who is entrusted with all the powers in the world, he will be able to command respect from the people, and the collection of revenue will be facilitated. I think it is more than sixty or seventy years, or nearly a century back, when this system was framed. Much water has flowed under the bridge since then. We have achieved Independence.

12 NOON

I support the measure which Mr. Ramaswamy has brought before the House, but I want to make a plea to the Government that it is high time for them to take a long-range and all-embracing view of the whole matter, to apply their mind as urgently and as early as possible to the reconstitution, to the re-orientation of the whole judicial system. I do not quote the previous declarations by the Congress, but particularly Mahatma Gandhi was very much insistent in saying that our judicial system should be both expeditious and cheap. I would ask the Government: "Is our judicial system expeditious and cheap"? No. There are so many provisions in the procedural code by which a trial is protracted for any length of time. I come from Poona. I can give many instances where criminal trials for such petty offences as under Section 323 have been pending

for two years, because there is a Clause that if a Magistrate is changed, the accused gets the right of saying that he wants a *de novo* trial.

Shri N. C. Chatterjee (Hooghly): Section 350.

Mr. Chairman: Two years is not a long period, in the experience of many lawyers.

Shri S. S. More: As a matter of fact, I am giving the minimum period. I am not giving the maximum. What happens if an accused is out to protract a trial for some reason or other? As a matter of fact, particularly in these Prohibition cases, the accused is interested in protracting the trial because some liquor has been attached. The liquor is kept in some *Malkhana*, and when the trial is protracted, in spite of the certificates of the Chemical Analyst or Analyser, by the period of two years, the liquor becomes *acquapura*, with the result that the man gets the benefit of doubt and he is acquitted. I do not want to repeat all these instances.

It is time that we revise the whole judicial system. I would rather say that we must classify the offences into two categories—serious offences and minor offences. I would like to give you instances. For instance, when there is a faction fight between villagers in a village, a complaint under Section 323 is filed. Then both parties flock to the Court. The complainant is accompanied by about 25 persons. The accused too, if he is also an influential person, is accompanied by a large number of persons. This is loss to the country. They are all agriculturists. They are dragged to the Taluk Court or the District Court some miles away. They have to pay their transport charges. They have to maintain themselves at these headquarters. They lose their working hours on agriculture. On top of that, they have to spend. The result is that the trial goes on for about six months or one year. He is out of pocket to the tune of Rs. 200 or Rs. 300. It is a drain on the villagers. We were complaining during our national struggle that whatever we are sending

to England is a drain on the lean purses or the lean finances of this country, but this drain on the villages in favour of the urban areas is something which is breaking the back of the rural community. So, I would say that some of these offences may be classified as minor offences, and People's Courts or Panchayat Courts may be established, or a sort of Assize Court which can go on circuit and can hold the trial at the place where the parties are supposed to reside, should be undertaken. There are many suggestions which we who are supposed to have some experience of the original Courts can tender, in every branch of law.

Take for instance, confessions. The accused is supposed to make a confession. The Police, instead of applying their intellect, their investigating intelligence, to the detection of the crime, concentrate all their efforts on exacting a confession. The accused is brought before a magistrate, and the magistrate, possibly belonging to the executive arm, records his confession. By the time the accused is placed before a magistrate in the original court for committal to sessions or in the sessions court, he is given some legal advice, and possibly proper advice too, and he retracts the whole confession. There are many cases in which it has been held by the courts that the facts disclosed by the accused in his confession, and the facts objectively proved by the prosecution are at loggerheads. All such provisions ought to be modified. I do not want to dilate on this point any further, but I want to emphasise the urgency of a whole-sided, all-comprehensive inquiry into this matter, and the evolution eventually of a judicial system which will suit the modern times, which will suit the temperament of the people, and also be in a position to give justice fairly, expeditiously and as cheaply as possible. Possibly, I may be speaking against the interests of the fraternity to which I have the honour to belong, but I am sure that a majority of the lawyers have no doubt that if their legal intelligence is removed from this particular ambit on which it is now surviv-

ing as a parasite, it can be used for more constructive and beneficent purposes in the country.

Everybody is admitting that a malady is there, that the peasant is suffering from head to foot, but we are administering the ~~medicine~~ or remedy only in a piecemeal manner. This should be avoided. We should see that the remedy should be given completely so as to cure the malady.

While supporting the motion for circulation placed before the House, I would also make an earnest request to my hon. friend Dr. Katju and my hon. friend Mr. Biswas to put their heads together, as they are doing now.....

An Hon. Member: Knock their heads.

Shri S. S. More: I said they should put their heads together.

Dr. Katju: You also assist us.

Shri S. S. More: I am prepared to be at your service, if you so desire. This is a matter which requires serious study.

The present judicial system, I would say, is a remnant of the British bureaucracy that was governing our country. This judicial system has been designed for the purpose, not of dealing even-handed justice to all parties and sections, but for imperial purposes. The time is now over-ripe, when the Government should come out with a well-thought out and well-consolidated scheme, suitable to the needs of our country, to the temperament and psychology of our country, in the light of the modern conditions now prevailing.

I am rather dissatisfied with this trial by jury. With the limited experience I have got of these trials, I have found that when an accused belongs to a particular religion, and the jury or assessors consist of persons who belong to another religion, then the assessors or the jury are not in a position, for different reasons, to take an impartial or judicial view of the matter. If the accused belongs to one

caste, and the jurors belong to another caste which is at loggerheads with it, then.....

Shri A. M. Thomas: The same thing might be said of judges too.

Shri S. S. More: But I am prepared to say that the judges due to their training and long experience, may be expected to take a non-caste and non-communal view of the matter. But as far as the jury is concerned.....

An Hon. Member: What about village *panchayats*?

Shri S. S. More: This question is being asked by a Congressman, whose main plank is Gandhism. The basis of Gandhism is that the villages should have their own *panchayats*. Village autonomy should prevail, so that the village people can have the best control over their different aspects of life. I do quite concede that in certain cases, the villagers also might go wrong. But after some training, and after some experience, after some judicial trial for the purpose of correction or rectification, the village *panchayats* can be brought up to a stage where they can dispense justice with a fair measure of equality and fairness. That is my contention. I would therefore say that the Government, particularly Dr. Katju and Mr. Biswas should be amenable enough to consider this proposal which has emanated not only from me, but from many sections in the country.

Shri N. Somana: I rise to oppose the motion for consideration, and support the motion moved by Mr. Venkataraman for circulating the Bill for eliciting public opinion thereon.

The opinion, so far as the utility of the assessors or juries is concerned, is certainly very much divided. Even in the case of the experienced advocates, it is divided. Sometimes it can be said that the opinion of the assessors has helped the judge in coming to a right conclusion.

There may be instances where many local customs and local expressions may not be very patent to the judge, but may be known to the assessors.

[Shri N. Somana]

who will be in a position to assess the evidence that is placed before the judge, and present it in its proper perspective. At the same time, there are also cases where on account of the complicated nature of the law that is existing today, the assessors or the juries are not in a position to correctly assess the evidence. In our country today, unfortunately law and facts are very much connected and complicated, especially in most criminal cases. Law is often closely bound up with facts, and the result is that very often the juries or the assessors are not in a position to give a correct verdict. But that is only a negative aspect of the matter, only to say whether they are useful or not.

But nobody has been in a position to say that this is an institution which has done any injustice or any wrong, as it is contended by my hon. friend Mr. Ramaswamy. I certainly do not agree with him, when he says that the juries or the assessors are amenable to corruption and bribery at the hands of the advocates. If any such thing has been done, I say the blame should be laid at the doors of the advocates and not at the doors of the juries or the assessors themselves. That is an unfortunate remark with which I certainly cannot associate myself.

What is interesting, however, is to note that so far as the advocates are concerned, there is a uniform opinion that the juries and assessors should go, because very often the verdict of the jury or the assessors may not be in favour of the advocates. We often know by experience that whenever the verdict of a jury or an assessor is not in favour of an advocate, the advocate is likely to say that there is no use of these assessors or juries, and so the system could be abolished. But it is worthwhile knowing the opinion of the judges, as Mr. Venkataraman has pointed out, especially of the Sessions Judges and the High Court judges. It is really their opinion which counts, and not that of the advocates, who are naturally averse to this system.

Shri S. V. Ramaswamy: I am sorry my hon. friend is denying the experience of his own profession.

Shri Punnoose: He is referring to small advocates.

Shri Biswas: It is the privilege of advocates to abuse either the judge or the jury, whoever goes against them!

Shri N. Somana: I suppose it is common knowledge that all advocates blame the juries or the assessors, whenever their verdict goes against them. But anyhow, as I stated before, this is a matter on which the opinion of the Sessions and the High Court judges counts more than anybody else's. The move suggested by Mr. Venkataraman is the right one to be adopted.

I find one technical difficulty. The Bill as it is, is not comprehensive. There are very many Sections, which have not been included in this Bill. If it is to be circulated as it is, then it would be incomplete, because there are many sections which relate to juries and assessors, but which have not been touched at all in this Bill. So, I do not know how far it will be...

Dr. Katju: We want to elicit opinion on the most important topic, whether you would like to have the jury system or not.

Mr. Chairman: The other Sections can be put in afterwards.

Shri N. Somana: If the reference is mainly on the question whether the jury system should continue or not, certainly opinion could be taken on that matter, and the Bill brought forward again, if necessary. Anyhow, my submission is that it is a fit case where public opinion, specially of the Judges—Session Judges and High Court Judges—should be taken before we finally consent to it. I therefore support the motion for circulating the Bill for eliciting public opinion.

Shri Altekar (North Satara): I rise to support the Motion for circulation of the Bill for eliciting opinion. Of course, there are very different views

with respect to the utility of this jury system. In England its origin was in the trial by the neighbours and then it developed into the jury system. There was a tussle between the King on the one hand and the commoners over the powers of the Judges. They wanted to keep these courts free from the influence of the King. Later on, when they had their Magna Carta, there was a clause by which the Englishmen's right to be tried by jury was there guaranteed. Somehow or other, as the system advanced in course of time and there was an evolution of law and the courts and Judges became independent of the King and the political party in power, the system of jury is not finding so much support even in England these days.

Dr. Katju: I am not so sure about that.

Shri Altekar: So far as regards the trial of civil cases is concerned, sometimes it is waived.

Dr. Katju: In all cases relating to personal injuries, trial by jury is one of the most valued rights in England, e.g., libel, slander etc.

Shri Altekar: It is a valued right, no doubt. But during recent years, trial by jury is not so common as it was formerly. I can find it even in the recent volume of *Social Encyclopædia*. There it is said that trial by jury is not so much common now as it was in old times.

Dr. Katju: What about criminal cases?

Shri Altekar: So far as criminal cases are concerned, of course trial by jury is there.

Dr. Katju: In every case.

Shri Altekar: In England, it is valued and it is going on. But so far as America is concerned, American opinion about the trial by jury is, on the other side; they do not so much favour it now. They attached very great importance to it during their fight against the British and sometime afterwards. So far as the introduction of this system in India was concerned, it was brought by the Englishmen along with them, and in the Presidency towns it was

there. So far as the mofussil towns were concerned, they had given the right to the Europeans—Englishmen and Americans—and they extended it also to others in certain districts, not in all. Later on, we find that even in our own country opinion in connection with trial by jury is divided on both sides.

So far as trial by assessors is concerned, it was not unknown to us from the ancient times. So far as trial by jury also is concerned, I may say that the panchayat system of old was a trial by neighbours and very much akin to the trial by jury. But that was not common to all the cases. It was in cases of crimes of a minor character. Later on, of course, it was taken over by the British. We can find the trial by assessors being mentioned even in our old Smritis.

सोऽस्य कार्याणि संपश्यत्सम्यैरेव त्रिभिर्वृतः ।

Manu

"The Judge will look after the cases from day to day being aided by three assessors". So the assessor system was there. It is not that the Britishers themselves for the purposes of their Judges who did not know the languages of this country brought it here. It was there among us from old times. It was continued to the time of the *Gram Panchayats*. But later it came in a modified form when the judiciary was established by the British.

Now, the question is, how and to what extent this trial by assessors and by the jury should be continued any longer. The main ground on which the Britishers value this jury system is that it is a bulwark for protecting the liberty of the people against any encroachment by the State. And that being so and we having formed our Republic and established an independent judiciary system, a system which is entirely independent and free from political influence, the question is whether it is necessary to continue the jury system any longer. That is the point which has to be considered. Then again, this is a trial which is not obtaining in all the mofussil towns; it is in some places only. So far as the provincial places are concerned, where

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there are High Courts, it is there, but that too in criminal cases and there is not a general application of the jury system here in India. When we are to consider this question, we should look to all the aspects of the jury system, to what extent and under what circumstances it should be allowed. It is desirable that the opinion of all the Bar Associations in India, of all the Judges of High Courts as also Sessions Courts, should be taken as to how it is working and whether it is being abused. There is a complaint that the juries are sometimes ignorant, there is a great complaint that they do not properly understand the questions which are referred to them etc. It is not within the competence of laymen to understand the intricacies of law without these being explained to them, to assess the facts and to give their opinion. Under these circumstances we have to see whether such a system should be continued. That is a point on which the opinion of the highest Judges as also of eminent advocates and counsels is quite desirable and necessary. One should not pass any hasty judgment as regards the utility of this jury system without in any way taking into consideration the opinions of the highest Judges and of eminent lawyers in this country as to how this system is working and is effective so far as the whole country is concerned, whether any change is desirable therein and how far and to what extent it should be allowed.

Therefore, I submit, that this Bill should be circulated for the purpose of eliciting opinion of all these Judges as also of the Bar Associations and the public. Only when such opinions are received and we assess them in a calm and thinking manner, should we come to any certain conclusion. It is no use saying that the jury system has become quite out of date or that it is not in any way suitable to this country. From that point of view I support the Motion for circulation of this Bill for eliciting public opinion.

Shri N. C. Chatterjee: I am supporting Mr. More's appeal. It would be my earnest request to both the Law Minister as well as the Home Minister to see if they could do something to appoint a Commission with large and wide powers to go into the question of law's delays, both civil and criminal, and to do something to retrieve the very unsatisfactory state of things which obtains in India today.

I was appearing in a High Court where a criminal appeal in which about 39 accused had been convicted and that appeal was pending for over 4 years. Some of them had their bonds cancelled and were in jail. The Chief Justice—an experienced Judge—sitting with another Judge acquitted all of them and held that the trial was illegal. On the average, some of them had been in jail for practically more than two or three years. One of them had been acquitted, but the State had also appealed against acquittal and he was arrested and put back in jail. He could not furnish the bail and he was in jail and he was actually attending from jail—although he had been acquitted by the Sessions Court—the appeal court hearing from day to day.

Dr. Katju: May I just enquire who took the objection that the trial was illegal?

Shri N. C. Chatterjee: The appellant naturally took objection.

Dr. Katju: They ought not to complain. They had to enter trial. There was a misjoinder of charges. Why take objection?

Shri N. C. Chatterjee: It is perfectly scandalous. I hope the Home Minister. . . .

Dr. Katju: The Home Minister himself has been a lawyer. All the guilty persons want to escape by raising all sorts of questions and then complain here that they have been ordered for retrial.

Shri N. C. Chatterjee: There was no retrial ordered. The Judges said, "There should be no retrial". They were all acquitted by the High Court and I am sorry to say that in the High

Court with which Dr. Katju was associated for a number of years the appeal was pending for over four years, I think about five years. I am pointing this out so that something could be done to redress this very unsatisfactory state of things.

Dr. Katju: Then why talk of all those allegations; just go on merits.

Shri N. C. Chatterjee: I am sorry, Dr. Katju is not in a mood to listen today. Something has happened to him after the Andhra State has come into being. But he will do the greatest service to India as a lawyer of eminence as well as the Home Minister of India if he does something to put the judiciary, the whole judicial system, in order and I am quite sure all the sections of the House will give him their whole-hearted co-operation.

The Minister of Law and Minority Affairs (Shri Biswas): Let me tell you the home Minister is taking action in the matter.

Shri N. C. Chatterjee: I hope the action will materialise. We will be very happy to give our unstinted co-operation in that respect. The arrears have been multiplying in every High Court. Something should be done to simplify the procedure.

Now, with regard to this Bill there is practically unanimity of opinion throughout India that the system of trial by assessors has not been a success.

Shri Biswas: Question!

Dr. Katju: Two Judges of the same High Court and with the same judicial experience!

Shri N. C. Chatterjee: My learned friend, who was once my learned brother, questions. But what I am pointing out is: go throughout the length and breadth of India and you will find generally that the bulk of the opinion is that this has been without any practical utility. The Wanchao Committee Report also says:

"The opinion is almost unanimous. The trial with the aid of assessors merely results in waste

of public money without any corresponding advantage."

Shri Biswas: "Assessors" and not "jury".

Shri N. C. Chatterjee: I am not talking about jury, I am talking about assessors.

Shri Biswas: Then I withdraw my question.

Shri N. C. Chatterjee: It is just like my learned friend; he has criticised without following me. What I am pointing out is this. With regard to this assessor business it is high time that it should be ended. It is a useless system. The time has come when all the sections of the Criminal Procedure Code dealing with trial by assessors should go.

Now with regard to Jury trial, I honestly feel that it will be a bad day for India to say that Jury trial has completely failed and that you cannot in free India today, find a number of people, honest and fair-minded enough to help in the administration of justice and give honest judgment. As a matter of fact in England Jury system is an integral part of judicial system but that has been the result of experience of centuries. The Jury system has helped the growth of ideas of freedom and it has helped to develop democratic ideals not only in England but in other freedom-loving countries also. What is the cardinal principle of British system of justice? It is the jury system. I am sorry, my friend there was saying that it was going down in England. That was not my experience. In 1949 in the month of November I was in England. I was going daily to the King's Bench Court. I saw Chief Justice Goddard and other Judges were trying civil cases and criminal cases with the help of jury. I also went to the Old Bailey. There also almost all the cases were tried by the jury. That is the greatest bulwark of freedom-loving people? What is the greatest guarantee of justice? It is the system of trial by jury.

Now, you know that in the defence of human liberty the jury system in England has played a very conspicuous

[Shri N. C. Chatterjee]

ous and satisfactory part. In every court you will find jurors willing to help the Judges for the purpose of dispensing justice. You cannot generalise and repeat charges against the jurors throughout India. You cannot condemn and say that all jurors are corrupt, that they are open to approach or that they are amenable to caste influence and so on. In my experience, in the Calcutta High Court sessions, there has been no charge of corruption against any juror. Although passions had sometimes been inflamed, they behaved with full rectitude and uprightness. Any Judge, can go wrong but on the whole they have been fair. It would not be right to condemn the jury system. On the other hand, it will be proper to give it a fair trial. I do not think in Punjab there has been any jury system; there were only assessors. In some places there has been no fair trial given to the jury system and it would be only proper to consult the legal profession. The High Courts have got a right to say what should be done.

Different High Courts may have different views but I hope the majority of the Judges in India and the majority of Bar Associations will not support this Bill. They will say that the jury system should continue. Although there are many defects in our system of administration of justice, it will be a very unfortunate thing if you decide today that this system of jury should go. They might have some defects in some respects but you will find progress of democratic ideals and advance of public spirit if you maintain this system.

In England and other countries men and women are both conscious of their rights and duties and they have given a good account of themselves. Why should you think in India they will not be upto the mark? If there is anything, as my friend, Mr. More was saying, that reflects on the great legal profession the defaulting people should be strongly dealt with. If you like you could put juries in lock up. I think it would not be right

to condemn the jury system as a failure. It has served its purpose very well and it should be given a fair trial. It should continue in areas where it has been a success.

There are certain courts where it is impossible for the judiciary to function in a satisfactory manner, specially in the courts of Delhi; Dr. Katju knows better than anybody else. Sir Trevor Harries was the Chief Justice, of Lahore High Court and he remarked that the conditions under which these courts were working were disgraceful. These courts are functioning here in small rooms. There are no proper rooms for Judges to hold their courts and if you stretch your hand in a court you may hit the Judge.

I am told the Home Minister laid the foundation stone of a new building in Delhi for the Courts a couple of years back. I was passing through that area yesterday. It is still nothing but a *Goshala*. Some attention should be given to it. You must improve the conditions of service
.....

Shri R. K. Chaudhury (Gauhati): Is the hon. Home Minister hiding his face on account of this?

Shri N. C. Chatterjee: If you want to improve the administration of justice, you must really give decent emoluments to the subordinate judiciary, and improve the conditions of service of the judiciary. Take, for instance, the city of Calcutta or Delhi. It is impossible for the subordinate judges, or Sessions Judges or the magistrates to get any decent living accommodation where they can possibly live and properly function. That should also receive the attention of the country. I hope the jury system would not be abolished and I hope that the assessor system would be ended in the interests of justice and in the interests of the country as a whole.

Mr. Chairman: Does the House want this debate to be continued on some other day?

An Hon. Member: We should be taking the view of the hon. Home Minister also.

Mr. Chairman: I see that the matter has been sufficiently discussed, and that the House wants to know the views of the hon. the Home Minister. If the House is anxious to go on with the debate, I have no objection.

Several Hon. Members: It should be continued.

Mr. Chairman: We can hear the views of one or two Members more in view of the time left today. It is, therefore, that I am asking the House whether it proposes to continue the debate.

Shri Venkataraman: In view of the motion that I have made that the Bill be circulated for eliciting opinion, discussions need not be continued.

Mr. Chairman: It is a very good suggestion. After all, this Bill is coming back to the House. So, we need not take much more time of the House at this stage.

An Hon. Member: Let both the Ministers express their view.

Dr. Katju: The Government are in agreement with the motion for circulation. But as the matter is of very great importance, and as some hon. Members have done me the honour of mentioning my name in this connection, I may say how the matter strikes me. In the olden days, when travellers used to come here from foreign countries, everybody noted that Indians were famous as truth-lovers. There were practically republics in every village in India and they said that Indians never told lies. Today,—I do not know what is happening, what would happen,—the situation is that every law court, civil or criminal, both, has become a home of perjurers.

Shri S. S. More: May I bring to the notice of the hon. Minister that when discussing one of the legislative reforms in those days, separation of the judiciary from the executive, it

was contended by an eminent British lawyer that in India, it was difficult to secure the conviction of a richman for any offence as it was difficult to get witnesses who could speak the truth.

Dr. Katju: I am telling of travellers of a thousand years ago. I am not mentioning British people. My hon. Friend seems to be very fond of British people. I do not want to take much time. I am speaking with some feeling upon this matter. What oppresses me today is that in the administration of justice—both civil and criminal—the most pressing problem is to awaken the social consciousness so that at least witnesses may not go and tell lies. You do not realize—I am referring to non-lawyer Members—the difficulty that we feel, particularly judges, is that the whole record is a record of lies. It is not the question of the jury system or the assessor system or any other system. The man is acquitted. I was told that in the Punjab—I do not know the figures—that about 95 per cent. of the prosecutions for murder ended in acquittal. I heard recently—I tell you from my horrifying experience—that a man was tried on a charge of murder. He was acquitted. I forgot whether he was acquitted by the Sessions Judge or on appeal by the High Court. One of his relations—the relation of this acquitted man—was murdered within a few days of his acquittal by a member of the family of the deceased. The police prosecuted them and the motive alleged was that this acquittal was wrong. The people were full of vindictiveness and they took their revenge by murdering. And would you believe it that the police actually produced as a prosecution witness, for proving the motive, the man who had been acquitted in the previous case? This man comes and swears solemnly: "I was tried; the charge against me was perfectly true; I had actually shot the man dead", and in so many words, and produced one or two relations of his who said this was correct. This man was guilty, but then he gave this version. Nothing could be done, because there is the general maxim that a man

[Dr. Katju]

cannot be tried for the same offence twice over. So, in the first case,—I do not know what he had done, he may have pleaded alibi or he may have put up some defence—he was acquitted. This is what happened afterwards. In the Punjab, particularly,—hon. Members who come from the Punjab may know this—it is happening over and over again. It is a game of seesaw—murder and murder. People would not have it, would not stand it. If justice is not administered properly, they take the cudgel in their own hands and shoot.

Prof. D. C. Sharma: May I submit that the reference of the hon. Minister, to Punjab is not entirely justified.

Dr. Katju: You are only speaking from your knowledge of one district.

Shri Tek Chand (Ambala-Simla): My submission is that the hon. Minister is quite correct in saying that murder is going on there, and they go on from generation to generation. That is the point.

Dr. Katju: I do not want to raise any controversy here. What I was saying was that our system of administration of justice should be such as to stop this evil of perjury. And, how to do it? By awakening the conscience of the people and associating it in the administration of justice. One of the curses of the British rule that I feel today is that the people of India do not recognize a court of justice as their own.

An Hon. Member: Why not?

Dr. Katju: They recognize this Parliament as their own. They will growingly recognize it. They will recognize the Provincial Legislatures as their own. They will recognise that they can make ministries and unmake ministries, that the Ministers are their servants. Today, it may be a legacy of the past. But they say that the court of justice is not our own, and therefore it is permissible for anybody to go and tell lies. You

see there is an ordinary saying familiar to us. I am talking to A and B. "For god's sake, it is not the court of justice; tell the truth here." "It is not a court of justice!" —the court of justice is a place where lies are permissible! So, now, how to secure the people's consciousness in the administration of justice?

Shri B. S. Murthy (Eluru): What is the reason? Say it, before the remedy.

Dr. Katju: The reason is it is one of the curses of foreign domination, because it was supposed to be a court of justice run by the British authority, an alien rule; they say, do not go into that. We can discuss it afterwards. What have we done today? You have associated the ordinary man, the common man, the villager, the common man and woman, in the public field, in the making of laws, in the running of administration. But you say, well, that common man is not to be trusted when it comes to the question of a trial. I know what the opinion may be, and I know the opinion of lawyers. This is a matter which has been discussed by me with my friends for the last 25 years. But the way to look at it is this: we must associate the people, so that we may make the people feel that if a man is unjustly acquitted, it is their fault.

I had some hand in the administration of village *panchayats*. I drafted a law and had something to do about it in Uttar Pradesh. I am very glad to say that in U.P. in the last 9 months, so far as petty cases up to a limit of Rs. 200 and petty criminal cases are concerned, they had about two lakhs and forty thousand cases disposed of by these *panchayats* in these villages. There is no right of audience to lawyers and the *Panchayats* did the work. I think Mr. More might be very glad to hear that in 98 per cent. of the cases the judgments were upheld. As a matter of fact, there were no appeals in 94 per cent. of the cases. There is a provision about very simple revision.

Pandit K. C. Sharma: There is no provision for appeal.

Dr. Katju: Will you please, for God's sake, listen?

In 94 per cent. the judgments were accepted. In 6 per cent. cases there were revisions. And the revision has been made deliberately very wide. The sections say that you can apply to revisional court, the Divisional Magistrate or the Subordinate Judge or the Civil Judge. And, if that judge is satisfied that there has been irregularity and injustice, he cannot substitute his own decree. He must refer back the case to another *panchayat*; because we do not want to take away the burden from the *panchayats*. Of this 6 per cent. revisions 4 per cent. failed. Please remember that in 94 per cent. cases no revision application was filed and the judgments were accepted. In 4 per cent. cases revisions failed. Only in 2 per cent. cases, the courts said the cases should go back. (*Interruption.*) Conceive of the great benefit to the villagers of U.P. in these cases. If the cases had gone through the lawyers and the law courts, each case would have cost at least Rs. 100 by way of engaging *mukhtars*, *vakils* and summoning witnesses etc. All these 240,000 cases would have cost to the countryside somewhere about 3 crores of rupees. They have saved all this.

So, I come back to the point that you should associate the people. You must make the people feel that it is their court. I used to go to the country-side when we established *panchayats*. I told them, 'if you find there has been injustice, do not come to me, go and shoe-beat the *panches* who have done it.' In U.P. they say *Panch Parameswar*; the *panches* are Gods. It is a process. Very great, reliable and independent and influential men in the village do great justice in simple cases and they finish with it. They assemble under a pipal tree in the village. It is in the presence of the whole village and people will not be able to tell lies, they will not have the courage to tell lies. They tell lies in the courts because they come away from the villages,

say some 20 miles, they come to Delhi and tell lies with perfect liberty and the greatest freedom.

Please remember one thing more. My friend Mr. Ramaswamy referred to a volume of opinion, particularly in the legal profession and particularly among the Judges also that the Indian jury is corrupt and perverse. I think not. By God's grace we have got an absolutely first class judiciary here, independent, fearless and honest men of integrity. Do you know what happens in U.P.? I have got some figures. Out of 100 men ordered to be hung, by the Sessions Judge, in which there were appeals to the High Court, speaking broadly, one-third were acquitted. In the case of one-third, convictions were changed and sentences were commuted or reduced. And, the appeals were dismissed in the case of one-third. Now, no one has suggested that in the 33 per cent. of acquittals the Judge had been dishonest or the Judge had done nothing at all. They say, 'Well, opinions differ'. The Judge may go wrong; the High Court may go wrong. The Sessions Judge, in 75 per cent. of the cases, is so thoroughly dissatisfied with the evidence that he acquits. Now, no one says there that the acquittal is due to corruption or perversity or caste or provincialism. But if the jury were to acquit in such a case, everybody will say that the jury is perverse, the jury was in somebody's pocket, or the jury had been bribed, or as my hon. friend just now said that at half past nine of the clock he got a "not guilty" verdict, but if it had been the next morning the verdict would have been guilty.

This is the mental attitude in which we have fallen. I say we have not given a fair trial to the jury. I am prepared to go much further. Let the jury commit mistakes, but if people realise that they are doing justice, you will see after a slight deviation things will come right. Today we are living in a most unnatural state of affairs. I am speaking from knowledge because this is one of the fields where I have personal knowledge—I have worked for forty years in this line.

[Dr. Katju]

Everybody complains of cumbersome of procedure, the defects of evidence—evidence is excluded, evidence is included, etc. Now what happens? The poor judge hears a case. He has got to deliver a judgment. He has to give his reasons. Those reasons go before the High Court and there with the assistance of competent counsels, that judgment is torn into pieces, this judgment is wrong, this technical defect, that technical defect, that particular bit of evidence was not admissible, etc., etc. People do not realise—this is one of the points on which one of the eminent barristers who has written a biography has laid the greatest stress—that one of the most beneficial rules is that the jury like an arbitrator is not called upon to give the reasons. It says either the man is guilty or not guilty. They hear the party, they watch his demeanour and say we believe him, or we do not believe him. Once you create an atmosphere of fear of God—people are God-fearing—that it is an anti-social thing not to do justice, we will improve the system of justice. Otherwise, what is that system of administration of justice in which 75 per cent. of the cases prosecuted result in acquittal? Either your police investigation is utterly dishonest and incompetent, or if the police investigation is efficient, then the guilty man escapes. And please remember that I have never subscribed to the maxim that nine guilty men may escape rather than one innocent man should suffer. I entirely agree that no innocent man should suffer; but today the unjust escape of one guilty man is a thing to be condemned and we cannot possibly have it.

In the murder cases, the ordinary experience of people at the bar is that most of them are true cases, but the culprits get away because of technical defects, misjoinder of charges. People are saying lots of things about the jury: no one says anything about the defence.

Shri M. L. Dwivedi: (Hamirpur Distt.): What are you doing to remedy this?

Dr. Katju: I am going to tell you. My hon. friend has put me this question. As a matter of fact here is this file. . .

Shri B. S. Murthy: What is that?

Dr. Katju: I expect to be able—or Government expects to be able—to lay before this House in its autumn session—I am talking of the autumn session, not the winter session—about the 15th of November, concrete proposals covering the entire field of administration of justice and I welcome the assurance given by my hon. friend Mr. Chatterjee that he will extend his co-operation to me. So far as this matter is concerned, it is not a party matter. To whichever party we may belong, we are all interested in the purity of administration of justice. The All-India Congress Committee passed a resolution that the administration of justice in India is expensive, dilatory and cumbersome. These are the three main heads. And I do hope that the House will have before it proposals, covering both the civil administration and criminal administration of justice, which will be directed to remove these three evils. I shall then come here and ask for co-operation, the largest possible co-operation. And I am hoping that there will be the fullest co-operation, because there will be no question of any party feeling on that matter and that we will be able to bring on the statute book the necessary modifications and additions so that our administration of justice may be made as perfect as we can make it, say, by the close of the financial year. That is what I am willing to do. We have been working hard on it. And all these things will come.

But this Bill may go for circulation for eliciting public opinion. But I will only beg that when this Bill goes for circulation, the hon. judges of the High Courts, the bar associations in the several provinces, and lawyers and every citizen would bear in mind these larger considerations. That is why I have welcomed this Bill.

It is not a question of having any preconceived notions—juries from the

same caste, juries are perverse, juries are corrupt, juries are bribed—which, I tell you, about 95 per cent. is absolutely untrue. Do not be unkind to the jury. You may make improvements in the system of administration. If you ask me—I do not want to go into details—the greatest defect today outside the presidency towns is—I am not speaking with knowledge of Bengal but with knowledge of U.P. and other provinces—the judges do not know how to handle juries, because they are not accustomed, they do not know. We have six districts in U.P. in which the jury system prevails. There are big cities like Kanpur, Allahabad. But there is a judge, say, at Aligarh or Bareilly who has never handled a jury, who does not know how to put the case before the jury, how to guide the jury, how to charge the jury. He goes to Allahabad and the jury comes before him. It is there that it is a case of human relation.

You have to read the charges to the jury by the British judges, and you see how tactfully they handle and guide them. Every minute they say: you are the judges of facts, but I am also an experienced man, treat me as the thirteenth man of the jury, do this, do that. They create that atmosphere.

We have got to take all that into consideration, selection of juries, what is called the 'locking up' of juries so that they may not be open to external pressure. All that has to be done.

One thing which I hate is an appeal in a case which turns upon evidence. The Appellate Judges have to proceed on the basis of a dead record, they have not seen the witnesses, how they have given evidence. Sometimes judges know—my hon. friend Mr. Chatterjee will know—it depends upon the twinkling of the eye of the witness, the smile, how he looks, whether he hangs his head. You cannot get it on paper.

Sir, I will not take longer time of the House. I support the motion for circulation, and I am pleading in advance for the co-operation of all sides of the House in the consideration of

the proposals which will be put before the House—that is a matter of definiteness—in the autumn session, covering the entire field of judicial administration.

1 P.M.

Shri S. V. Ramaswamy: Could we have the views of the hon. Law Minister as well on this Bill?

Shri Biswas: I do not know why my hon. friend should be so anxious to know the views of the Law Minister. The Home Minister has spoken on behalf of the Government and the views he has expressed are shared by the Law Minister. Between us both, we are doing our best to evolve some proposals which will certainly improve the existing system of administration, which will make it expeditious, which would make it cheap and which would make it simple. There is no doubt about that. So far as the jury system is concerned, that would be a part of the larger system. There is no doubt about that also.

The present Bill which is proposed to be circulated is limited to this question of jury system. The jury system has had a long past. We know how it originated in England. We know how it is claimed to be the birth-right of every Englishman. We know also how it is functioning during all these years. It will be a travesty of truth to say that the jury system has been tried and found wanting in this country. It is perfectly true that the system has been introduced in its present form from the British. But, because it is British, let us not condemn it simply on that ground. Let us examine the system for ourselves and find out how, in the conditions which have so far prevailed in this country, it has passed the test. I do not know of any human institution which can claim to be free from imperfections. The jury system has been tried only or mostly in connection with criminal cases in this country. We ought to judge it by the results that we have seen in connection with criminal trials. Now, my experience is limited in that field.

[Shri Biswas]

But, with the little experience that I have had both as a member of the Bar and as a member of the Bench, I am not prepared to say that in Bengal the jury system has failed. I know that there have been districts where complaints were made by the District judges that the jurors were a perverse lot, were a corrupt lot and therefore the system of jury should be abolished in that district. The matter came before the High Court and it was considered. But, the High Court hesitated before pronouncing in favour of abolition. As a matter of fact, there may be some districts, some places, where the people who act as jurors might be open to other extraneous pressure, influence and so on. Every care is taken in the selection of jurors; there are ordinary jurors, there are special jurors and so on. Every attempt is made to choose men of sufficient education, men of known integrity, men who do their duty in the way in which it should be done. But, there may be cases where in spite of the best endeavour, you may have been unhappy in the selection of jurors. Because in certain cases some jurors have gone astray, it is not right to condemn the whole system or to say that every juror must be a dishonest fellow.

Shri R. K. Chaudhury: On a point of information, Sir, may I ask the hon. Minister if it is not a fact that in most of the cases where the decision of a jury has been set aside, it is due to the misdirection of the Judge and not due to any fault of the jury?

Shri Biswas: I will not dogmatise; I will not give a general verdict. Certainly where appeals are successful in criminal cases, it will be found that they succeed only on the ground of misdirection.

Shri R. K. Chaudhury: By the Judge.

Shri Biswas: By the Judge. Therefore, what I was going to suggest was that merely because in certain cases a panel of jurors have given a verdict which is not acceptable, it would be

wrong to say that must be a perverse verdict. The Judge may also go wrong. As a matter of fact, in these appeals which succeed, it is found that the Judge misdirected the Jury on points of law. Similarly, it is quite possible that the jurors might take a view regarding the facts which may not commend itself to another tribunal. It does not follow, however, that they are dishonest or corrupt, that they were doing something which they ought not to have done. The whole question is this. On questions of fact, whom should you like to be tried by? By men who know you and whom you know, in whose judgment you have confidence, or by somebody who will be guided possibly more by his legal learning than by an appreciation of the facts of the case? If you have men in a tribunal who would guide the jurors on questions of law, and a different set of men who will be the ultimate judges of fact, do you not get a tribunal from which the greatest measure of justice can be expected? That is the jury system. There are both sides to the question. I have in my hands a book. I think most of hon. Members are aware of it. My hon friend Mr. Chatterjee must know it. It is a book which was written by the late Sir Manmatha Nath Mukherjee, one of the greatest criminal lawyers of Bengal. It is a treasure house of information.

Shri S. V. Ramaswamy: What is the name of the book?

Shri Biswas: "Trial by Jury and Misdirection". It gives you a complete history of the system of jury trial not merely in India, but in other countries. You will find elaborate extracts from American jurists, English jurists and jurists of other countries, and both sides of the question have been discussed dispassionately. It is a book which I would recommend to all hon. Members, to all those who are interested in the future of jury trial in this country. You will find a mine of information there, and it is highly constructive and educative.

Therefore, this is a system which has its merits, and which has its demerits. We have got to weigh one against the other, and we have to judge the success or the failure of the system in the background of the actual social conditions which prevail in the country. What may be good today may not be good tomorrow. What may be good in one country may not be good in another country. So, you have got to judge this in this light. As my hon. colleague has said, after all whatever the system, whatever the tribunal you set up for the administration of justice, the first *sine qua non* is this, that there must be a high degree of social conscience developed, so that those who assist the Courts and the tribunals—whether the tribunal is composed only of a Judge or of a Judge and a jury—by giving evidence are men on whom you can rely with absolute confidence. That is what I have to say. I have nothing more to add.

Shri Raghunath Singh (Banaras Distt. Central): What about the assessors?

Shri Biswas: So far as the assessors are concerned, the experience of the system of trial by assessors has not been quite happy.

Shri S. V. Ramaswamy: I accept the Motion for Circulation.

Mr. Chairman: I put the motion to the vote of the House. The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st December, 1953."

The motion was adopted.

Mr. Chairman: Let us proceed to the next Bill. There are ten minutes yet.

Several Hon. Members: Only five minutes.

DOWRY RESTRAINT BILL

Shrimati Uma Nehru (Sitapur Distt. cum Kheri Distt.—West): I beg to move:

"That the Bill to restrain the custom of taking or giving of dowry in marriages, be taken into consideration."

जनाब चैयर्समैन साहिब, आज एक मुद्दा के बाद गालिबन् दो साल के बाद और बहुत इन्तजार के बाद यह दहेज की प्रथा का बिल में आप के और हाउस के सामने पेश कर रही हूँ। मुझे पूरा विश्वास है कि इस बिल को हाउस बखूबी मंजूर करेगा। स्त्री जाति में बराबर एक हलचल मची हुई है, उस का हृदय व्याकुल व परेशान है और उस की स्वाहिश है कि वह समाज में जबरदस्त परिवर्तन करे ताकि वह भी एक इंसान की नाई बसर कर सके। आज कल जो भी समाज में परिवर्तन हुए हैं वह संतोषजनक नहीं हैं। कानून के हिसाब से स्त्री की स्थिति में कोई परिवर्तन नहीं हुआ है और जो हुए भी हैं वह निहायत सुपरफिशियल हैं और नतीजा यह है कि आज के दिन भी स्त्री की बेसिक पोजीशन वैसे ही है जैसी कि श्री मनु के समय में थी। इस समय में नहीं चाहती कि मैं स्त्री समाज का इतिहास आप लोगों को सुनाऊँ। इतना ही कहना चाहती हूँ कि स्त्री के भी हृदय और दिमाग है, और एक इंसान के नाते उस की भी स्वाहिशें हैं और स्त्री चाहती है कि समाज में लोग उस को भी इंसान समझें। हमारी समाज ने स्त्री के साथ जो अन्याय किया है वह तकलीफदेह है। हमारे देश में सामाजिक उन्नति तब तक सम्भव नहीं है जब तक हम हर एक के साथ एक सा बर्ताव नहीं करते, समाज में कोई ऊँच नीच न हो, और कोई छोटे बड़े का भेद न रहे, उसी दशा में समाज उन्नति कर सकता है और