

Mr. Speaker: The question is.

"That clauses, 1, 2, 3, the Schedule, the Enacting Formula and the Long Title stand part of the Bill".

The motion was adopted.

Clauses 1, 2, 3, the Schedule, the Enacting Formula and the Long Title were added to the Bill

Shrimati Tarkeshwari Sinha: Sir, I beg to move:

"That the Bill be passed"

Mr. Speaker: The question is

"That the Bill be passed"

The motion was adopted.

12.47 hrs.

MOTION RE FOURTEENTH REPORT OF THE LAW COMMISSION—  
contd.

Mr. Speaker: The House will now proceed with the further consideration of the following motion moved by Shri Ram Krishan Gupta on the 27th August, 1950, namely—

"That this House takes note of the Fourteenth Report of the Law Commission on the Reforms of Judicial Administration. (Volumes I & II) laid on the Table of the House on the 25th February, 1950."

Shri B. N. Datar may continue his speech

The Minister of State in the Ministry of Home Affairs (Shri Datar): Sir, I had been replying yesterday to some of the points made by the hon. Members in regard to this Law Commission's Report on the administration of justice in India

Now, the last point that I had then been dealing with was an important question in which considerable interest is taken by hon. Members, namely, the separation of the judiciary from the executive. I was pointing out that in three States, and by now in one more State, there has been complete separation of the judiciary from the executive. In respect of the other States I shall briefly point out what the position is.

So far as the State of Bihar is concerned, in twelve out of seventeen districts, the separation has been already in force. And so far as the remaining five districts are concerned, the State Government are now considering as to when the separation should be further introduced.

In Madhya Pradesh, may I point out that there is complete separation of the judiciary from the executive in the whole of the States except the Mahakoshal region. The State Government have decided to effect such separation in the Mahakoshal region also, and the question of implementing this decision is engaging their attention.

In Mysore, separation of the judiciary from the executive has since been effected in the whole of the State except Coorg. To complete their scheme the Government are considering the question of posting a Judicial Magistrate in Coorg.

In the State of Punjab, there is de facto separation of the judiciary from the executive in the area of the erstwhile PEPFU and also in some districts of the erstwhile Punjab States. And that was done by means of executive orders. The question of introducing complete separation throughout the present State of Punjab and also undertaking legislation is engaging the attention of the State Government.

In U.P. the scheme for the separation of the judiciary from the executive is in operation in twenty out of

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fifty-one districts of the State, and the State Government are considering the question of introducing complete separation throughout the State of U.P. during the next two years. In West Bengal a scheme for the separation of the judiciary from the executive has been in operation in all the districts of the State since last year and necessary legislation in this respect is going to be undertaken. With regard to the other States, the question is still under consideration. For example in the States of Assam, Orissa and Rajasthan, they have taken preliminary steps.

Thus it will be found that most of the States have already taken recourse either to legislative measures or to executive measures for the purpose of effecting the separation of judiciary from the executive.

Another question was raised as regards the recommendations of the Law Commission and that was, there ought to be no trial by jury at all. The House is aware that about three years ago we had an amendment, a detailed amendment, to the Code of Criminal Procedure, and then the position was made clear. The provisions relating to trial by jury were retained and it was left to the various State Governments either to continue the system of trial by jury or to abolish it as they thought fit. In the light of that, I shall point out what the present position is. Though it is true that the Law Commission has stated that there ought to be a complete abolition of the system of trial by jury, there are certain areas in India where the system has been found to be fairly satisfactory. In the three presidency towns of Bombay, Calcutta and Madras, it will be found that this system of trial by jury is in force and has been generally found to be satisfactory. Outside the presidency towns, in these three States, in the mofussil, it is optional. That means it is open to the State Government to have it in some districts or not to have it. But

the point I was urging was that in the presidency towns of Bombay, Calcutta and Madras, this system has been found to be fairly satisfactory

Therefore, the question arises as to whether, when such a system is found to be satisfactory, it should be abolished at all. After all, trial with the aid of a jury is an important element in the administration of justice, in that it associates the people therewith. Therefore, the abolition, if at all it is to come, should come out of the desire or the wishes of the State Governments, and wherever this system has been working fairly well, there should be no hurry to put an end to it altogether. There are some States where the system is in operation. For example, in Bihar, in ten out of the 17 districts, the system is already working. In Madhya Pradesh, in three out of 43 revenue districts, it has been working. In Mysore, in nine out of 19 districts, this system has been in force. In the following States, the trial by jury is not in operation at all. They are: Andhra Pradesh, Assam, Kerala, Orissa, Punjab, Rajasthan and Uttar Pradesh. Therefore, so far as this question is concerned, though it is true that the Law Commission have recommended the abolition, still, the policy of the Government of India is to leave it to the States concerned so that they can take into account their own experience so far as trial by jury is concerned. As it is, we should rather leave the question to them.

Certain other suggestions were made. For example, it was said that the system of investigation should be perfect; that there were many defects in this system and that as far as possible the investigation should be scientific. In this respect, may I point out that there are, in certain States like West Bengal, what are known as forensic laboratories where it is possible to have an investigation conducted on modern and scientific lines. The Government of India also have

one such laboratory at Simla, and advantage is taken by the State Governments also for introducing new and scientific methods for the purpose of effecting proper and expeditious investigation. That is a point which has always engaged the attention of Government. We are anxious to see that, firstly, there is a proper system of investigation and secondly that the investigation is carried on as expeditiously as possible.

Some hon. Members suggested that the confessions of the accused person should be recorded only before certain officers. Here, may I point out that when an accused person is inclined to make a confession, then he has to be brought before a magistrate and the magistrate takes all proper precautions to see as to whether the confession is not likely to be voluntary or whether the confession likely to be made by him is under a possible coercion of certain authorities. That is the reason why most of the high courts have laid down very proper precautionary rules that have to be followed before the magistrates actually record the confession. Therefore, the present system is fairly satisfactory and no further changes are necessary in that respect.

Another larger question was raised as to whether legal assistance was being offered to poor litigants. So far as the general question is concerned, my hon. colleague, the Law Minister, will deal with it, but, as it has a bearing on Scheduled Castes and Scheduled Tribes, to that extent, my Ministry is also seized of that question. We are making grants to the various State Governments on a 50-50 footing. Since 1955 we have been making grants to them on this basis and a number of States have taken advantage of this particular aid by the Government of India. I would not deal with it at great length, but I may point out that in respect of Scheduled Castes legal assistance is provided by the Governments of Andhra Pradesh, Bihar, Bombay, Kerala, Madhya Pradesh, Madras,

Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, Jammu and Kashmir, Pondicherry, and the administrations of Delhi, Himachal Pradesh and Tripura. In respect of the Scheduled Tribes also, in a number of States such aid is being offered. It was not necessary for me to pursue this point but for .

**Shri Sinhasan Singh (Gorakhpur):** So far as Uttar Pradesh is concerned no legal aid is offered to the poor litigants.

**Shri Datar:** Are they not being helped in Uttar Pradesh?

**Shri Sinhasan Singh:** In Gorakhpur, I know that no help is given. I am not sure about the position in other districts.

**Shri Datar:** This is the information that we have got. Legal assistance is provided by the Governments of a number of States. Yes, I now find that so far as the Scheduled Castes and Scheduled Tribes are concerned, no help has been asked for by Uttar Pradesh from the Central Government. But there are a number of States to which such aid has been given on the basis which I mentioned, and I am happy to point out that large sums of money are being spent in giving legal aid free to such persons as are entitled to it or as are in need of it.

**Shri Sinhasan Singh:** Has not Uttar Pradesh asked for any legal aid?

**Shri Datar:** It has not asked. So far as the question of aid to the Scheduled Castes and Scheduled Tribes in Uttar Pradesh is concerned, the hon. Member is right. But they are dealing with this question on the basis of their own resources. Possibly they are dealing with this question on a general footing and not on the footing of Scheduled Castes and Scheduled Tribes only. I have given the information which I have got so far as these States are concerned.

The last question to which an hon. Member made a reference was that the high courts were not working for

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an adequate number of days. On this aspect, the House is aware that we had a discussion on two Bills before this House—The Supreme Court Judges (Conditions of Service) Bill and the High Court Judges (Conditions of Service) Bill. In those Bills, it was laid down that so far as this question is concerned, in the case of the high courts it might be open to the President to fix the number of days. It was also pointed out that the fixation of the vacations would be made after consulting the State Governments and the High Courts. We have taken up this question with the various State Governments and I am happy to find that there are a number of States where already the number of days is 210. In some States it will be 210 from this year and in the case of a number of others it will be 210 from the next year. There are only two or three cases where the number is not so large. We are trying to persuade the High Courts through the State Governments to see to it that this minimum number, which has been laid down at the Law Ministers' conference some years ago, is maintained. This matter is being pursued and implemented with the consent or the concurrence of the various High Courts. So, that problem has been solved to a large extent and it will be fully solved as early as possible by the largest measure of persuasion which is likely to be effected in such cases. So, I might inform hon. Members that the position is fairly satisfactory in that respect.

18 hrs.

Some hon. Members made certain remarks about the judges, about the pay that they are getting and as to whether there ought to be a contempt of court proceeding at all. May I point out that the subordinate judges and also the magistrates, apart from the higher category of judges, are chosen after a full scrutiny. So, I would request hon. Members to use very careful words in referring to them. The judges, either on the civil

or on the criminal side have been doing very good work. Great efforts are taken to choose the best of them and they are carrying on their work on the whole very satisfactorily. It is one of good fortunes of India that the system of judiciary from top to bottom has been working very satisfactorily on the whole and their independence is maintained to the fullest extent. So, when we make reference to them, let us use words of restraint. It is absolutely essential that their dignity ought to be maintained in the interests of the proper administration of justice.

Sir, I have dealt with a number of points with which my Ministry is more or less directly concerned.

Shri Sinhasan Singh: The Law Commission have recommended that a Ministry of Justice should be formed. Before it is formed, they have recommended that a Judicial Secretary be appointed to look into the co-ordination work. May I know whether Government have appointed a Judicial Secretary.

Shri Datar: For what purpose?

Shri Sinhasan Singh: In their last recommendation about the Ministry of Justice, they have suggested it.

Shri Datar: The whole report is under consideration. The Government of India are considering the various recommendations to the extent they are concerned. The State Governments are also considering it, because the largest measure of judicial work is done by the various courts in the various States.

Shri Sinhasan Singh: Just before signing the report, the Law Commission have recommended that Government should appoint a Judicial Secretary to look into matters of co-ordination between the Ministry of Home Affairs and the Law Ministry.

**Shri Datar:** I replied to this question yesterday when I dealt with the recommendation for the establishment of a Ministry of Justice. Possibly the Judicial Secretary, which the hon Member has in view, will have something to do provided a Ministry of Justice is established. Both these questions go together. In any case, I can assure the hon. Member that the whole question is under full examination and whenever Government take proper steps, naturally the other incidental steps will also follow.

**Shri Krishwaqt Rai (Kheri):** In page 1226, the Law Commission have said:

"The establishment of a Ministry of Justice may take some time. It is, therefore, necessary, particularly in view of the fact that subjects with which we deal in this respect are matters dealt with partly by the Home Ministry and partly by the Law Ministry, that a Special Officer of the appropriate status and experience should be appointed to take up the consideration of our recommendations with the State Governments with a view to their speedy implementation."

We want to have some information about the appointment of this Special Officer.

**Shri Datar:** Government are examining this question also.

**Shri Ram Krishan Gupta (Mahendragarh):** May I know whether there is any proposal to give legal aid to workers and the labour class, just like other poor persons?

**Shri Datar:** Poor litigants would include the labour class also. Whenever there are any cases against them, they would also come under that.

**The Minister of Law (Shri A. K. Sen):** Mr. Speaker, Sir, much of my work has been made light by my

colleague, Shri Datar and I think I shall have very little to deal with in the course of my intervention. So far as the question of the High Courts and the judges are concerned, I do not propose to say anything. The point has been covered by the Home Minister in the course of his reply on the floor of the House during the debate of the Home Ministry's Grants this year. I had also dealt with this matter during the debate on the entire Law Commission report when the Law Ministry's Grants were discussed this year. I am afraid we have hardly anything new to add.

I only wish to say one thing and that is this, that we are certainly agreed, all of us here, that nothing should be done or said in public which undermines the prestige of the judiciary, whether they are judges of the High Courts or of the subordinate courts. So far as the judiciary is concerned, every democracy must preserve its integrity and prestige. It is on the independence of the judiciary that the future of our Constitution depends.

In fact, I was myself struck with admiration when I went through many of the judgments of the judiciary both in the High Court and the subordinate courts in the State of Kerala during the last 27 months. Kerala is a State which possibly did not enjoy the tradition of a very strong, independent and fearless judiciary as some of the other States. At least that is what the people thought, because it belonged to an Indian State and it did not have the advantage of the fearless judiciary, which some of the other States, had, even during the British days. But I was struck, as I said, with admiration when I found magistrates, subordinate judges, High Court judges, all without any exception, coming up to the occasion whenever the rights of any citizen came up before the court for determination or whenever there was a complaint that there was infringement of either individual or fundamental rights. That to my mind shows, if

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any proof was necessary, how necessary it is for our Constitution to be supported by a fearless judiciary everywhere, whether they belong to the subordinate courts or the High Courts. Therefore, I shall try to modify or, if I may say so, add to the remark of the Law Commission on the judiciary, by saying that nothing should be done or said in public which hurts the judiciary, whether they belong to the subordinate judiciary or to the High Court level. We must see that our judges are respected. Even when they go wrong the proper course is to have them corrected by taking the matter to the higher courts, and not by attacking the judges publicly. Of course, if there are any lapses in their conduct outside their judiciary duty, then like any other citizen they would be open to criticism.

But I have been pained to notice myself that a responsible Commission has indulged in remarks which have not improved the prestige of the judiciary though I am sure this was never intended by the Law Commission. Reading the report one carries the impression as if the judiciary has been packed during the last twelve years of our independence with men who possibly do not rise to the same stature as we expected them to. That is, unfortunately, the impression which has been created in the public mind generally. And I am positive that the Law Commission never intended that that impression should have been created, but their rather wide remarks all over the report concerning the judiciary have created the impression that the best men have not been taken that men have been taken on extraneous considerations and, therefore, the quality of the judiciary has suffered.

Shri Raghbir Sahai (Budaun)  
Not in every case

Shri A. K. Sen: Anyhow, that is the impression created. I am sure in no case has the quality of the judiciary suffered since our independence.

I am bold enough to say that. There had been bad judges in the past and there would be bad judges in the future, as in every other country. But a bad judge is not dishonest to his duty. He may be wrong in his judgment. But nowhere have we found judges, ever since independence, whether in the High Courts or in the subordinate courts, who have been dishonest to their supreme duty of dealing with or dispensing justice as between man and man. And, as I said, history of the Kerala judiciary during the last 27 months has proved, if proof was needed, that the judiciary all over the country stands on very sound foundations and it still consists of men who are not afraid of anyone. They may be wrong and they may do wrong, as all human beings do. Judges go wrong in every country. Otherwise, there would have been no necessity of courts of appeal, or the Supreme Court, or the House of Lords, or other supreme tribunals.

But the whole question is: have they been dishonest to their fundamental duties which they owe to the public and to the State? And have they also proved untrue to the oath which they have to take when they take up their judicial duties? I must say without any fear of contradiction that the judges in independent India have proved equal to, if not better than, their predecessors during the British days, and I think we owe it to the Judiciary outside this House to acknowledge it on the floor of this House. That is the least we could do to pay our tribute to the magnificent judiciary with which we have been endowed by the Constitution and under the Constitution. That is enough for me to say with regard to the chapter concerning the High Courts and the judiciary.

Then Shri Ram Krishna Gupta talked about benches of High Courts. I am afraid, personally speaking—here again I am not speaking for the Government, because no decision has

been taken yet on any of the major recommendations of the Law Commission—I am not sure if we can impose a rule of the thumb all over India, irrespective of the peculiar problems concerning each State. The traditions of each State, its territorial size and other problems must necessarily determine this question of having more than one bench sitting in more than one place. England, for instance, is a small country. Nevertheless it has got a High Court which goes out in circuit all over the country, based on history, based on traditions and based on reason possibly, and they have seen no reason for a change in Uttar Pradesh, both the courts of Lucknow and Allahabad have their own traditions which have served their own purpose, having regard to the huge size of the State, its huge population and various problems which make it difficult for litigants to reach one bench located in one place from distances which may be very long in particular cases. Yet, in other cases, other factors might dictate the formation of only one High Court located only in one place.

For instance, the question of Rajasthan has been taken. No doubt there was this question of convenience of litigants reaching the High Court located in a particular place, but there were so many other factors governing the question of locating one unified High Court in Jodhpur. Those facts have been considered in detail by the Capital Enquiry Committee Jaipur, fortunately, has been endowed with most of the offices belonging to the State of Rajasthan and also to the Centre Jodhpur which was an important State before integration, lost almost every important office. There was, therefore, a demand, which could not be dismissed summarily, for having at least the High Court located there. For instance, why is the main High Court located in Allahabad in Uttar Pradesh though the capital is at Lucknow? There was some reason for it.

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apart from history, apart from the traditions of the Allahabad High Court

Shri Raghbir Sahai: Formerly, the capital was also in Allahabad.

Shri A. K. Sen: So far as Rajasthan is concerned, there was no State of Rajasthan before. As I said, history, sometimes accidental circumstances, local factors, exigencies of the needs of the population of a particular area and various other factors, make the choice of either one or more benches desirable for a particular place, whereas the same choice may not hold good for another State. Therefore, as I said, speaking personally myself, I am not prepared to accept straightaway the recommendation of the Law Commission that there should be one bench throughout the State. It may be that in particular places there would be justification for having one bench and yet in other cases that may not be so but on this—I speak entirely personally and not on behalf of the Government, because I have made it quite clear that the Government has not decided on this matter—apart from the question of the State of Rajasthan, in which case a decision was taken quite a long time ago.

Pandit D. N. Tiwary (Kesaria): May I ask one question? The hon. Minister of Home Affairs, while speaking yesterday, categorically stated that in future there will be no additional benches in any of the States. Is that the view of the Government?

Shri Datar: I never said so. I have said so "subject to the realities of the situation." That is how the press have reported.

Shri A. K. Sen: Knowing Shri Datar as I think I do, I am very surprised to hear that he could have made such a sweeping statement, because the report that I read today gave quite a different picture. What he said was that the utmost consi-

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deration would be given to the recommendations of the Law Commission. There is also the feeling that a unified bar located in one place is good. Of course, it is an important thing. It is true that a good bar is not created unless it is located in one place in one High Court. But that is a different matter.

As I said, this is a matter which cannot be decided so quickly and so summarily. Local factors, circumstances, history, tradition, various other things, play their part in the matter of choosing the site, so far as a particular High Court is concerned

The next question raised by Shri Ram Krishan Gupta was the question of improving the legal education. I heartily agree with him. Not only should the standards of our legal education be improved but also the work of research in the field of law should be taken up. Both are equally important and I suppose in that matter the responsibility of the Ministry of Education is more than that of any other Ministry. We can only give our suggestions in the matter. I am happy to note that during the last few years this matter has been considered frequently by the different universities and they are trying to revise their syllabuses to make them up-to-date. For instance, in many of the universities even now the syllabus includes subjects which are absolutely antiquated and are of no value whereas modern subjects like labour laws, tax laws and other important commercial laws, like the Company Law are not taught there. I know in my own university, the Calcutta University, I think even today income-tax is not a subject, labour laws are not taught and Company Law is not included in the syllabus

Shri N. R. Ghosh (Cooch-Bihar)  
That is the case of other universities also

Shri A. K. Sen: I should think so  
But they have changed it Company

Law is going to be introduced next year. Yet they study the antiquated systems of land laws which are no longer prevalent, Roman laws and various other laws without knowing many of the other important branches of law which they have to deal with when they actually come out as legal practitioners or possibly also as pure students of law. So far as the Ministry of Law is concerned, we are trying to devise a model syllabus and circulate it to the different universities and to the different High Courts for the purpose of seeing that our standard of legal education goes up.

Shri Kashiwal dealt with the purely local question of the Jaipur Bench. The matter has been dealt with by Shri Datar and I do not want to add anything to it

The next question raised by Shri Bhattacharya is as follows. He said that appeals to the High Courts should be reduced. That is a very general proposition. I am personally in favour of giving appeals in regard to the most important matters. Take our anomalous procedure today. If there is an ordinary title suit involving Rs. 5,000/- in value there is an appeal to the District Court and possibly a second appeal. If it exceeds Rs. 5,000/- in value there is an appeal to the High Court, whereas in many important matters, like, customs cases, income-tax cases and other cases where possibly the amount involved may be lakhs and lakhs of rupees there are no appeals. In fact the pattern of litigation has changed so much in our country that many of the appeals provided for have become out of date and possibly new fields of appeal should be thought of. It is a thing which cannot be settled for all times. We have to see whether the courts which are deciding the disputes in the first instance are deciding it in a manner which justified the abolition of appeals from them.



**Shri K. D. Misra (Bulandshahr)**  
It is the duty of the Law Commission to report on such matters. For that very purpose the Law Commission was appointed, but it has been

**Shri A. K. Sen:** They have done so. About the question of administrative tribunals and various other matters they have done so. But I wish

**Mr. Speaker:** They have suggested administrative tribunals.

**Shri A. K. Sen:** They have

**Mr. Speaker:** To give the right of appeal in such cases.

**Shri A. K. Sen.** Yes. In fact I personally am in favour of administrative tribunals in many of the important matters because at the present moment, as you know, we have many administrative tribunals, executive officers deciding very important points. Take for instance, forfeitures and penalties in proceedings under the Sea Customs Act in which a man may be fined several lakhs of rupees and so also under various other Acts and yet so far as the findings on facts are concerned, they are conclusive. High Courts cannot interfere. They can only interfere under limited circumstances, where either the tribunal has exceeded its jurisdiction or has taken into account extraneous circumstances or has dealt with the matter contrary to the rules of natural justice. There the High Court can interfere but not on finding of facts. So long as they have an iota of evidence and they have given the right of hearing to the person aggrieved there is no right of appeal. Therefore it is a sweeping statement to make that we should abolish appeal as much as possible. After all, justice is not done merely by the quickness with which it is done or by the summary manner by which it is done but also by the quality of justice which it really dispenses. The primary purpose of justice is justice

and not speed though speed is necessary to make that justice effective. Therefore the whole question of appeals, limitation of the right of appeal, extending new fields of appeal in regard to new patterns of litigation are matters on which more thought should be given. But in the meantime, hon. Members are aware that before the Law Commission's Report at the last Law Ministers' conference certain decisions were arrived at, which were communicated to the different High Courts, devising methods by which more work may be entrusted to single benches so that more judges will be available for dealing with the existing amount of work and also entrusting more work possibly to district judges. In many of the States, I think, the recommendations have been followed and in other States where they have not been followed they are in the process of being followed. Possibly they are waiting also for the Law Commission's recommendations which are now before them and they are considering the whole report.

Hon. Members will agree with me that this is not a report on which they should expect decisions of the State Governments or of the Central Government to be arrived at very quickly. After all, it is nearly after 50 years that we have a major Law Commission reporting on the entire judicial system of the country. It covers the entire field of judicial administration and goes into numerous details on each of which a decision has to be taken and taken after mature thought, because what is decided today would be the pattern for years to come. Therefore it is of the utmost importance that before the Governments come to any final decision they should consider each and every point carefully. It does not matter if they take six months or even eight months to consider the Report, but the Report has to be considered properly. I think hon. Members will agree with me that this is a Report which cannot just be

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glanced through or hasty decisions could be arrived at

The next point raised by Shri Subuman Ghose is twofold. He says that the jury system should be abolished. I am not prepared again to accept at once the recommendation of the Law Commission that the jury system has not been functioning successfully everywhere. I was myself associated with a High Court in which as one of the State counsel for nearly eight years, I used to conduct important sessions cases—not the minor ones but the important ones. There in the Calcutta High Court, original side, in the sessions court, there are two forms of jury—the special jury and the common jury. So far as the special jury is concerned, I shall be the last to advocate its abolition. It has been a grand system, functioning wonderfully, drawn from the best individuals available in the country. I must say that rarely have I found their judgments perverse or unreasonable. The prosecution may feel aggrieved or the defence may feel aggrieved at the decision of the jury as it must. But when nine highly intelligent men after hearing the evidence and the law ably explained by the judge come to a particular conclusion neither the prosecution nor the defence is entitled to think that theirs was the right stand and the jurors have gone wrong. In fact, in many cases, I must say, I have felt that they have been right. Therefore, I shall be very sorry if the jury system is abolished in some of those places where they have been functioning for over a century and without complaint, where it has become a system with a definite tradition and in which the public have confidence.

Shri N. R. Ghosh: What about the jury system in the districts?

Shri A. K. Sen: In some districts, they do not exist.

Shri N. R. Ghosh: In some districts they do

Shri A. K. Sen: In some districts they exist for specified offences. It is a matter for the State Governments. I am not personally very familiar with the jury system in the districts myself. I am prepared there to accept the verdict of the Law Commission. I think in most of the other States, the jury system has been abolished in the districts. I know in West Bengal in some districts it still continues.

About court fees, it is entirely a State subject. It is a matter of revenue. Speaking for myself, I am opposed to selling Justice. In fact, one great English Judge told me once that in India, the strangest thing that strikes the eye of a foreigner is that justice is *ad valorem*. In fact, it is a very proper description. You buy justice with *ad valorem* fees. The better system is what used to obtain in the original side in Bombay. But, it does not obtain now. Before the Court Fees Act was applied there, on the Original sides in Bombay and Calcutta High Courts, there was no court fee. The more work you have, the more stamps you pay. That is more rational. It follows the system more closely as it obtains in England. Subject to proper aid being given to the poor litigants, that system of making the litigant pay more as he gets more work out of the High Court, is more rational. Take this illustration. I file a suit on a promissory note for Rs 5 lakhs which is undefended. The court gives decree within five minutes. The time of the court has not been taken at all. Full court fees on Rs 5 lakhs is to be paid. But there may be a suit possibly which involves only Rs. 5,000 which might engage the court for about a month or two months and yet a much lower fee will be paid.

On the original sides in Bombay and Calcutta, the system that obtained was the more you make applica-

tions, the more you take the time of the court, the more you pay by way of stamps, for each day the court is engaged on your work and so on. This, as I said, is entirely a matter on which considerations of revenue play a very important part. It will be for the States to consider whether they could not treat the field of administration of justice as not a proper field for levy of duties like court fees.

**Shri Raghur Sahai:** Will it not be worth while laying down an All-India policy?

**Shri A. K. Sen:** It is very difficult. It is entirely a State subject. You can only lay down an All-India policy where all the States agree. Otherwise you cannot. As I said, personally speaking, I am against the system of *ad valorem* justice.

Shri Naushir Bharucha said that the procedure in civil suits should be simplified. It should be simplified: there is no doubt about that. But the question is, how it could be done. The Civil Procedure Code has stood the test of time like the Criminal Procedure Code, not only here, but in countries like England. It is very difficult to tamper with procedure hastily or without thought. The Evidence Act and the Civil Procedure Code are well known.

**Shri Naushir Bharucha** (East Khandesh): There is the summary procedure for small cause suits which has stood the test of time for 60 years. The pecuniary jurisdiction of the Small cause courts could be very considerably extended.

**Shri A. K. Sen:** That is governed by the Provincial Small Cause Courts Act and the Presidency Towns Small Cause Courts Act.

**Shri Naushir Bharucha:** I am suggesting that the Ministry of Justice could set a pattern for all these things.

**Shri A. K. Sen:** I do not say there is no room for improvement. Basically, I am personally convinced that our Civil Procedure Code is a model code.

**Shri Naushir Bharucha:** The Civil Procedure Code does not apply to a Small cause court.

**Shri A. K. Sen:** Many of the provisions do. You will find that the High Court have made Rules. In the Presidency Towns, most of the sections apply except the sections relating to the taking down of evidence and various things.

13-35 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

So far as the question of a Ministry of Justice is concerned, my colleague Shri Datar has dealt with this. As hon. Members will appreciate, it means really the setting up of a separate Ministry with separate powers, with proper relationship between the States and the Centre. On a matter like this, it is not really for me to answer. It is for the Prime Minister to tell the House what is proposed to be done. As Shri Datar has said, the whole matter is under the consideration of the Government. The States have to be consulted in this matter because administration of justice is a State subject. Their views on the matter will be of very great importance. It is not what we decide in this House.

**Shri Naushir Bharucha:** Are you personally in favour of it?

**Shri A. K. Sen:** There is no personal view to be expressed on the floor of the House.

**Shri Naushir Bharucha:** He has expressed on one occasion.

**Shri A. K. Sen:** That is a matter that does not deal with governmental action. That is why I can express my personal views. On a matter like this, Ministers cannot have any personal opinion except in their secret discussions. We think alike and together and collectively on the floor

[Shri A. K. Sen]

of the House and decide. I am sure the Government will give this matter the utmost consideration.

One thing I want to say before I conclude; that it is our aim to make justice cheap and speedy. For that purpose, all that would be necessary would be done. Not that we can achieve it tomorrow or day after. There are so many things to think about. It will be our endeavour to see that nobody is denied justice simply because he cannot pay the price for justice.

The question of legal aid to the poor is being seriously considered. I think I have answered questions from time to time on the floor of the House to the effect that we are now busy preparing a model scheme which would be adaptable for all the States. Hon. Members will appreciate that it will be for the States primarily to extend aid to the poor litigants within their own fields. We cannot really process the question of legal aid to the poor in the States. As I said, administration of justice is a State subject. All that you can do is to share with the States a common scheme which may be agreed to.

**Shri S. M. Banerjee (Kanpur):** On a point of clarification, Sir, some time ago, the hon. Minister replied in this House that some lawyers have volunteered their names for such work. I would like to know whether you have received more.

**Shri A. K. Sen:** They have. They have to be fitted into a scheme. I must say that many lawyers from many States have said that they would be willing voluntarily to render free service. I mean, so long as they are not asked to appear free every day, but only on certain days in the year, they would be prepared to work free. But, it must be fitted into a scheme. I think it would be possible for us to frame a scheme

after proper circulation to the States before I at least give up my present assignment. I am very much interested myself because I conceive it to be the primary duty of any State seeking to administer justice to see that poor litigants are not denied justice simply because they cannot afford to pay for the lawyers or other expenses necessary for getting justice. In the last Law Ministers' conference, all the State representatives were agreed that we should earnestly take up this question of legal aid to the poor, because that is one of the most essential things in making justice really dear to the people. After all, justice means nothing to the poor man unless it is within his reach. I have known myself that even if a person is adjudicated a pauper, he does not get a lawyer of his choice. In the panel of every court are names of lawyers who are to be assigned to paupers. And rarely have I seen a first-class man being put on that panel; he does not agree to be there. Generally, it is the juniors who are eager to show their merit who are put on the panel, or those who have possibly very little chance in the future to succeed in the Bar. That is not doing justice to the poor because we know how difficult it is to get an adjudication in one's favour in a proceeding *forma pauperis*; it is very difficult to be declared a pauper.

Therefore, it has been accepted in every civilised country as a primary duty of any Government that a proper scheme for helping the poor litigants in court is pursued by Government. We have not done it so far, but it is absolutely necessary that we do so. And as I said, no State has so far set its face against it. The implications are very many. First of all, the patterns of litigation are different; there are criminal cases, there are civil cases, and within civil cases, there are so many types of cases; then, there are so many different types of courts; and there is also the question of money involved in it.

We are busy preparing a scheme, and as I said, it will be possible, I hope, to initiate a scheme all over India in all the States before I cease to be in charge of the Ministry of Law. And I am sure that all the Members of the House here would extend their utmost co-operation in the matter, because we have many lawyers here and they have influence in their respective States; and it is necessary absolutely that for any scheme for aid to the poor litigants to be successful, the Bar in every State co-operates fully, because without the cooperation of the Bar, it will be impossible to make a success of any scheme of legal aid to the poor.

I extend my appeal to the Bar and to the public generally in making this essential requirement for the administration of justice proper a success.

I thank all the Members who have participated in the discussion, for their valuable suggestions, and at least in regard to matters concerning our Ministry, there is one very happy feature, that is, that we do discuss outside the pale of political controversy. Political bitterness and controversy hardly embitter our discussion, and we can possibly in these matters think constructively as Indians irrespective of the party affiliations which we have.

The question of justice being cheap and speedy for the common man is a very great question. We do not always give due importance to that question. After all, no democratic Constitution can work properly if the common man does not feel that he enjoys the benefits of the law and justice in his every day life.

I hope that before long, we shall be able to bring about that great change in our system of justice, which would make it known and felt that justice is meant for the common man and for the benefit of the common man.

श्री राम कृष्ण गुप्त : मिस्टर डिप्टी स्पीकर, सर, मुझे यह देख कर बहुत खुशी है कि जितने भी मबरजैक्ट्स भ्रमवा रिपोर्ट्स पर दिसकशन हुई, इनमें जितनी यूनीनिमिटी इस ला कमिशन की रिपोर्ट के बारे में मैंने देखी उतनी और कित्त मामले में नहीं पाई गई। यह बड़ी खुशी की बात है और जो ला कमिशन ने तजवीजे पेश की हैं उनके बारे में जहा तक मैं समझता हू सब की यकमा राय थी और मुझे पूरा विश्वास है कि उनको भ्रमली शेष देने के लिए भ्रमली जाया पहिनाने के लिए पूरी कोशिश की जायगी। सिर्फ एक बात के बारे में मैं थंडा ला जिक्र करना चाहता हू। कल भेरे एक साथी ने इस बात का जिक्र किया कि जो टर्म्स आफ रेफेंस थे उनके अन्दर सेलेक्शन आफ जजेज शामिल नहीं था। कमीशन सिर्फ इस बारे में राय दे सकता है कि लीगल सिस्टम के अन्दर क्या डिफेक्ट्स हैं। मेरी समझ में यह नहीं आया कि सेलेक्शन आफ जजेज का काम क्या लीगल सिस्टम से अलग है? मैं ना समझता हू कि लीगल सिस्टम की कामयाबी का दारोमदार सबसे ज्यादा इस बान पर है कि जजेज का सेलेक्शन ठीक हा और सही हो। अगर जस्टिस ऐडमिनिस्टर करने वाला ठीक नहीं होगा तो क्या वह लीगल सिस्टम दुरुस्त कर सकेगा? इसलिए मेरी राय में इस बारे में ला कमिशन ने जो राय दी है वह ठीक दी है और वह टर्म्स आफ रेफेंस में शामिल था और मुझे पूरा भरोसा है कि इस बान पर पूरा विचार किया जाएगा।

जहा तक जुडिशियरी को एक्जीक्यूटिव में अलग करने का ताल्लुक है यह बड़ी खुशी की बात है कि सब मेम्बरान की इनके बारे में एक राय है और धानरेबल मिनिस्टर ने भी इस बात का यकीन दिलाया है कि इसको अलग करने की कोशिश की जा रही है और पूरी कोशिश की जायगी। उन्होंने कुछ दिक्कते भी बतलाई। जहा तक मैं समझता

[श्री राम कृष्ण गुप्त]

हूँ सब से बड़ी मुश्किल तो यह है कि यह जो जुडिशियरी है यह स्टेट्स सञ्चैक्ट है और इसलिए देरी होती है। उन्होंने इनडाइरेक्टली इस बात को तसलीम कर लिया कि देरी का कारण यह है कि यह स्टेट सञ्चैक्ट है। अगर हम यह महसूस करें कि बाकई देरी ज्यादा होती है तो इस पार्लियामेंट को बहुत ज्यादा पावरस हासिल है। विधान में भी तबदीली हो सकती है। इसको सेंट्रल सञ्चैक्ट भी बनाया जा सकता है। लोगों को हंसाफ देने के लिए अगर हम विधान में तबदीली करें तो मैं समझता हूँ कि यह एक बहुत अच्छी बात होगी और मैं इस बात पर इसलिए ज्यादा जोर देना हूँ क्योंकि मैं महसूस करता हूँ कि जब तक जुडिशियरी को एक्जीक्यूटिव में म्कम्मिल तीर पर अलग नहीं किया जायगा तब तक जो हमारा वीगल मिस्टम हूँ वह किसी भी हालत में सुधर नहीं सकता।

मैंने एक माननीय डॉलर न अपनी स्पीच में इस बात का भी जिक्र किया कि जब हमारा विधान बनाया जा रहा था उस वक़्त यह तजवीज थी कि कुछ टाइम मुक़रर कर दिया जाय जिसके कि अन्दर यह काम पूरा हो जाय लेकिन ऐसा नहीं किया गया। इसलिए मेरी यह तजवीज है और मुझे पूरा विश्वास है कि माननीय मंत्री इस बात पर विचार करेंगे कि अगर बाकई स्टेट्स की तरफ से इस मामले में देरी हो रही है और अगर बाकई स्टेट्स इस बात के लिए तैयार नहीं हैं कि उन्हें जो जुडिशियरी पावरस मिलनी हुई हैं उनको एक्जीक्यूटिव में अलग कर दिया जाय तो हम ऐसा भी कर सकते हैं कि इसको सेंट्रल सञ्चैक्ट बना दिया जाय। मैं यह बात इसलिए कह रहा हूँ कि यह दुनिया के तमाम देशों का माना हुआ उमूल है कि जुडिशियरी को एक्जीक्यूटिव में अलग करना बहुत जरूरी है। बाह बह किसी किसम की गवर्नमेंट हो और इस डीविजन के ऊपर तमाम दुनिया के देश अमल करने हैं और इसके बारे में यह कहा गया है और एक किताब का जिक्र

कि मैंने पहले भी रेफ़र दिया था और इस चीज़े पर फिर देना चाहता हूँ, उसमें यह लिखा है :—

"In every government, whether it be a republic like that of Holland, a limited monarchy like that of England, an absolute monarchy like that of France, or despotic government like that of Turkey, there are three sources of power, the legislature, the executive and the judiciary, and the more distinct these powers are kept, so much the better."

मुझे पूरा विश्वास है कि इस तरह पूरा ध्यान दिया जायगा।

इसके अलावा मेरी प्रार्थना तजवीज एक छोटी सी और भी है। चूँकि इसकी तरफ हाउस में जिनने भी प्रान्सेबल मेम्बर ने अपनी राय दी इस वाइट को किसी ने भी टच नहीं किया इसलिए मैं उम्मा जिक्र करना बहुत जरूरी समझता हूँ। अगर बाकई इस चाहते हैं कि हर जगह इमाफ हो और लोगो को इमाफ हासिल करने में दिक्कत न पायें तो हमें पचायतो का ताकत देनी होगी। यह सब में अच्छा तरिका है कि गाव गाव के अन्दर पचायतों कायम की जायें और उनको पूरा ताकत दी जाय। इसके बारे में प्रान्सेबल प्राइम मिनिस्टर ने भी अपनी राय ज़ाहिर की थी और उन्होंने इंडियन इन्टीरिअर आफ पब्लिक टेडमिनिस्ट्रेशन की फिफथ ऐनडाल जनरल मीटिंग में जो कि २७ अप्रैल १९४६ का हुई थी उसमें यह कहाया था —

"that greater power should be given to panchayats and village co-operatives"

मुझे पूरा विश्वास है कि इस तरह भी पूरा ध्यान दिया जायगा।

प्रार्थना में रहा तक कि सेंट्रल मिनिस्ट्री आफ जस्टिस के क्लर करने का मसाला है

मुझे यह जान कर बड़ी खुशी हुई कि इस मामले पर भी विचार हो रहा है और मुझे पूरी आशा है कि अगर इसको क्रिएट करने में देरी होती है तो कम से कम स्पेशल आफिसर जरूर मुकर्रर किया जायगा और मैं समझता हूँ कि यह बहुत जरूरी है।

जैसे कि अभी माननीय मंत्री ने फरमाया कि यह स्टेट सब्जेक्ट है इसलिए देरी होती है तो इस देरी को दूर करने का एक ही तरीका है कि एक स्पेशल आफिसर इस काम के लिये मुकर्रर किया जाय और जिन तजवीजों को हम सही समझते हैं और जो हम अपने लीगल सिस्टम में इम्प्रूवमेंट्स करना चाहते हैं उनको पूरा करने में मदद दे और मुझे पूरा विश्वास है कि ऐसा करने से हमारे जो डिफक्ट्स हैं उनको जरूर दूर किया जायगा और लीगल सिस्टम को इम्प्रूव करने की पूरी कोशिश की जायगी।

आखिर में मैं सिर्फ यही कहना चाहता हूँ कि लीगल सिस्टम हमारे देश की पोलिटिकल जिन्दगी में ही नहीं सोशल जिन्दगी में भी उसके बनाने में अहमियत रखता है। अमरीका के मि० रावर्ट नैरैन्सु का कहना है :—

“It is the legal system which not only influences the character of the entire system of justice but even the political and social life of the country because a lawyer is the middleman between citizen and justice”.

मुझे पूरा विश्वास है कि इन तमाम बातों पर पूरा विचार किया जायेगा और इसको सुधारने के लिए अमली कदम उठाये जायेंगे।

**Mr. Deputy-Speaker:** Am I required to put Shri Kasliwal's amendment to vote?

**Shri Kasliwal (Kotah):** I just want to say a word.

**Mr. Deputy-Speaker:** There is no right of reply.

**Shri Kasliwal:** I am not replying. My amendment was entirely of a general nature. I have also been supported by the Minister of Law. But in view of the fact that he wants to keep the question open, I would like to ask leave of the House to withdraw it.

**Mr. Deputy-Speaker:** Has the hon. Member the leave of the House to withdraw his amendment?

*The amendment was, by leave, withdrawn.*

**Mr. Deputy-Speaker:** The question is:

“That this House takes note of the Fourteenth Report of the Law Commission on the Reform of Judicial Administration (Volumes I & II) laid on the Table of the House on the 25th February, 1959”.

*The motion was adopted.*

13.55 hrs.

DEMAND FOR EXCESS GRANT  
(DELHI)\*

**Mr. Deputy-Speaker:** The House will now take up discussion and voting on the Demand for Excess Grant in respect of the Government of Delhi State for 1956-57 (1st April, 1956 to 31st October, 1956).

**Mr. Deputy-Speaker:** Motion moved:

DEMAND No. 10—ADMINISTRATION OF JUSTICE

“That a sum of Rs. 1,21,921 be granted to the President to make good an excess on the grant sanctioned for the former Part C State of Delhi in respect of ‘Administration of Justice’ for the year ended the 31st day of March, 1957”.

\*Moved with the recommendation of the President.