can we judge whether they vary the tax or not? Only the provisions of the Bill are to be seen. Now, so far as we can see the provisions of the Bill, they do not provide for any variation, so far as that tax is concerned. So, in my opinion, that would not be correct.

Now the question is:

"That the Bill further to amend the Public Debt Act be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: Now we come to clause-by-clause consideration. I shall put all the clauses together.

The question is:

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

The motion was adopted.

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

Shrimati Tarkeshwari Sinha: I move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

12.58 hrs.

MOTION RE: FOURTEENTH REPORT OF THE LAW COMMISSION—contd.

Mr. Deputy-Speaker: Now the House will take up further consideration of the following motion moved by Shri Ram Krishan Gupta on the 27th August, 1959, namely:

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

Along with that, the House will also consider the amendment moved by Shri Nemi Chandra Kasliwal on the 27th August, 1959.

Shri Naushir Bharucha (East Khandesh): Mr. Deputy-Speaker, on the last occasion I paid my humble tributes to the labours of the Law Commission for producing a voluminous and useful report which, as I said, even if it is partially implemented, would go a long way in putting our system of judicial administration on sounder footing. There are so many issues involved in the Law Commission's Report that a cursory list which I have prepared has got at least 42 points. So, it is hardly possible for me within the time which you, Sir, were pleased to allot to me, to deal with more than 4 or 5 of what I consider to be the most important issues.

One issue dealing with the appointment of High Court Judges, to which several previous Members have made reference, is an issue which I think this House should consider in greater detail. And my excuse for reverting to that point is that I consider the whole subject so very important that it goes to the very basis of our democratic existence and unless the difficulties pointed out by the Law Commission in the report are dealt with satisfactorily, I am of the opinion that our judiciary is bound to suffer deterioration. As this House is aware, article 217 provides for the appointment of High Court judges, after consultation with the Chief Justice of India and the Governor of the State and Chief Justice of the High Court. The Commission points out that in actual practice this is reduced to a conference between the Chief Minister and the Chief Justice of the High Court.

[Shri Naushir Bharucha]

14 hrs.

Often it happens that the Chief Minister and the Chief Justice do not see eye to eye and therefore a wrangle—rather an unseemly wrangle—ensues. It often happens that the Chief Minister of the State sends in a rival nomination to the nomination forwarded by the Chief Justice. In the course of this report, particularly from page 71 onwards, very clear and specific charges have been levelled by the Law Commission against the Executive, particularly against the Chief Ministers of the States. I would therefore request the hon. Law Minister to give this House a very categorical assurance in this respect that these incidents would not occur in future.

I am aware of the fact that the hon. Law Minister by his traditions and trading certainly believes in the rule of law and he will be the last man to do anything which would undermine the foundations of democracy. But the charges made by the Law Commission against the executive are very specific, very clear and very disturbing. May I invite the attention of the House to Volume I, page 71, paragraph 11 of the Law Commission's Report, where they have made these observations—

> "The person recommended by the Chief Minister may be, and occasionally is, selected in preference to the person recommended by the Chief Justice."

Then, again it has been pointed out that—

> "the Chief Minister thinks that it is his privilege to distribute patronage".

by appointment of High Court judges and therefore a wrangle ensues. The Law Commission further goes on to say—

> "This unedifying prospect has brought about some demoralisation in the minds of the Chief Justices . . ."

Demoralisation has been brought about because the Chief Justice feels that when he insists upon a suitable person being selected on merit other considerations enter and the Chief Minister ultimately wins. Therefore in this wrangle a Chief Justice prefers to concur with the Chief Minister rather than have a show-down with him.

Then, it further observes:—

> "This unedifying prospect has brought about some demoralisation in the minds of the Chief Justices.....The inevitable result has been that the.....appointments are not always made on merit but on extraneous considerations of community, caste, political affiliations. . .

It has also pointed out further on page 73:—

> "Also political considerations, and worse,"

that is, factors and influences worse than political considerations,

> "are creeping in and Chief Justices are finding it increasingly difficult to resist this sort of pressure"

The clear charge against the Government is—I do not mean this Government but the State Government—that increasing pressure is being brought upon Chief Justices to consent to the nominations of the Chief Ministers.

Then, it has further pointed out—

> "....the independence of the judiciary will have disappeared and the High Courts will be filled with Judges who owe their appointments to politicians."

This is a very disturbing state of affairs. As I said, we do not hold either the hon. Law Minister or the hon. Deputy Law Minister responsible for this, but the Centre certainly owes it as a duty to see that in the States the appointments of judges of the High Court are not interfered with by the Chief Ministers. I am coming to that point presently.

When we discussed the Kerala issue, to my mind the basic question was that the Kerala Government went wrong in interfering with the judiciary. They undermined the position of the judiciary and their sense of security and independence. Today if this state of affairs, complained of by the Law Commission, is permitted then I feel a day may come when we shall thoroughly undermine the independence of our judiciary. If the independence of judiciary is undermined, you, Sir, who know better in this matter than I or anyone else can do, will appreciate the fact that democracy has got no meaning left. I therefore request the hon. Law Minister to look into these things carefully and give an assurance to this House that he will take up this matter with the Chief Ministers of the States.

On a previous occasion when this issue was raised the hon. Law Minister gave a statement to this House saying that during particular years a certain number of appointments were made to the High Courts. He said that each and everyone of these there was concurrence of the Chief Justice of that particular State, excepting one in which, he said, the Chief Justice and the.....

Mr. Deputy-Speaker: The hon. Home Minister had made that statement, I suppose, and not the hon. Law Minister.

Shri Naushir Bharucha: My impression is that it was the hon. Law Minister.

Pandit K. C. Sharma (Hapur): The hon. Home Minister.

Shri Naushir Bharucha: I stand corrected. But the point that the Law Commission makes is not that. It is true that the concurrence of the Chief Justice of the High Court is being obtained. But it is being obtained almost under duress. So much terrific pressure is brought upon them. They say that political considerations and worse are creeping in as a result of which the Chief Justice of High Courts are compelled to surrender their judgment.

Mr. Deputy-Speaker: But it was said that the concurrence of the Chief Justice of the Supreme Court also was necessary and in every case he had concurred in that, so far as I know.

Shri Naushir Bharucha: That is exactly that point. The Law Commission also says that. But the Law Commission's grievance is that so much terrific pressure is brought upon the Chief Justice that they have either to enter in a wrangle with the Chief Minister or break on the point and have a show-down or succumb to that. That is the point that I am making and that is the point that the Law Commission has made. Therefore I come to this suggestion. I am of the opinion that the time has come when this House should seriously consider a change in the policy with regard to the appointment of High Court Judges. I am of the opinion that the State executive should be precluded from having any voice in the selection of High Court judges. I do not understand why a Chief Minister, who essentially is a person belonging to a political party and whose views consciously or un-consciously are coloured by party politics, should have a say in the matter of selection of judges where the calibre is better known to the High Court judges, the Chief Justices of those States or to the Chief Justice of India. It is very necessary, if we desire to maintain the independence of the judiciary and if in future we desire to do away with this type of wrangle, that the appointments must be kept absolutely, above board.

[Shri Naushir Bharucha]

I was shocked to know that the Law Commission has made this further comment—

> "This indeed is a dismal picture and would seem to show that the atmosphere of communalism, regionalism and political patronage have in a considerable measure influenced appointments to the High Court judiciary.....Within a few years of Independence, however, the judgeship of High Courts seems to have become a post to be worked and canvassed for."

They have meant clearly 'touting' This sorry state of affairs has got to be checked and remedied. I appeal to the hon. Law Minister to see either by legislation or otherwise that the States executive do not have any voice in the selection of High Court judges. This is essentially a matter to be decided by the High Court and the Supreme Court, if necessary, in consultation with the Governor and the Chief Ministers must keep completely out of this

I come to the second important point, namely, the recommendation made by the Law Commission regarding the creation of a Ministry of Justice. I think a time has come to consider this question seriously Our judicial administration and our governmental set up is such as not to induce to better co-ordination. The responsibility is divided between the Home Department and the Law Department. Today, so far as I am aware, the Law Department is virtually acting as an adviser of the Government and as draftsman of the Government. Apart from that, the main responsibilities are being discharged by the Home Ministry We claim that there should be a complete separation of the judiciary from the executive and I think Shri Kamble pointed out that it is necessary that there should be bifurcation at the very top. I am of the opinion and fully concur with the recommendation of the Law Commission that responsibility of Co-ordinating law and order as well as for Co-ordinating organisational matters in States must rest with a new Ministry—a Ministry of Justice at the Centre. Such a Ministry of Justice can act as a store-house of information and a clearing house of ideas. It can also lay down standards in the matter of judicial administration and can ensure that the various High Courts in the various States possess adequate and competent personnel. It can also persue the question of separation of judiciary from the executive in the various States.

If a Ministry of Justice were created, a great deal of improvement can be brought about because, today, by reason of the fact that our Constitution has provided that law and order are State subjects, a great deal of freedom has been left to the States in the administration of justice. A haphazard growth has taken place and there is very little co-ordination between State and State. The creation of a Ministry of Justice, therefore, would be a very welcome suggestion

Just now, I observed that the executive should have no hand in the appointment of the judiciary. I go a step further and I would like to express my concurrence with the recommendation of the Law Commission when they refer to the appointment of the other judicial officers. The Law Commission recommends that the power of appointing District judges by promotion of judicial officers and their postings and transfers, etc, should be vested in the High Court. I fully agree with this. It is possible for Government to browbeat the judiciary by transfers or denying them promotions. When we discussed the Kerala situation, one of the things that transpired in the course of the discussion was that when certain magistrates declined to

give permission for withdrawal of cases, against communist accused, were transferred and the police officers who did not toe the line of the Home department, were transferred. In order to remove all such doubts in the future and to make the judiciary thoroughly independent, I fully welcome and endorse the recommendation made by the Law Commission that the power of appointing District judges by promotion of judiciary officers and their postings and transfers should exclusively vest in the High Court and the Home department should have no say whatsoever in this matter.

There is another point to which reference has been made, namely, delay in the disposal of cases. This House has repeatedly discussed this issue and this issue is as old as law itself. Delays of law are proverbial. But, in the present case, it would appear that there is considerable increase in the quantum of work owing to the extraordinary pace of legislative output. Inadequacy of staff, judiciary and ministerial is another cause Where arrears have grown and where there is delay in the disposal of cases, in spite of repeated requests, State Governments have declined the most reasonable requests of courts for the supply of additional judges or ministerial staff. It would, therefore, appear that it is very necessary that judicial administration should not be looked upon as a revenue earning department and adequate strength should be provided of Judges

There is another thing. the cumbersome procedure that is followed When I speak on this point, I speak with three decades experience of law courts. The procedure is so cumbersome that needless precipe and affidavits are required. Affidavits of documents are very common. I do not understand why should affidavits at all be required and why a list should not be furnished instead of affidavit. Why should a precipe be required after the filing of a suit asking the Registrar or the other officer to prepare summons? It should be automatically prepared. I see no reason why a precipe should be required asking the bailiff to serve. It should be done automatically. The procedure is cumbersome. Though the Law Commission has felt that procedure is not responsible, I am of the view from practical experience that the procedure can largely be simplified.

Speaking about Bombay, on the civil side, we have got the Small cause court, the City Civil Court and the High Court. The City Civil court was created to facilitate the disposal of cases. But, the procedure is very cumbersome and that adds to the delay. I would suggest that the procedure could be simplified by increasing the pecuniary jurisdiction of the Small Cause court to Rs 10,000, abolishing the City Civil court and transferring the remaining cases to the High Court. The procedure there also should be considerably simplified

The last point that I desire to raise is that the voluminous reports which the Law Commission has placed before the House deserves the serious attention of the House. As recommended therein, I hope the Government will appoint a Special officer for implementing these recommendations Too many reports in the past have been shelved I hope the Law Commission's Report will not meet that fate.

Shri Harish Chandra Mathur (Pali) Mr. Deputy-Speaker, we have before us two bulky volumes, a very comprehensive report from the Law Commission on the first item of the terms of reference. If you refer to the terms of reference—it is para 3 to which this report refers It is said

"The terms of reference to the Commission will be—

[Shri Harish Chandra Mathur]

firstly, to review the system of judicial administration in all its aspects and suggest ways and means for improving it and making it speedy and less expensive;".

With all my respect and the deference to the great lawyers and the hon. Judges who have served on this Law Commission, I venture to submit that I feel a little bit disappointed, because I do not see, except streamlining the present set up of administration, whether the report goes to the root of the matter. We want speedy and less expensive administration. We wanted a change, if necessary, in the system of administration. But, it appears to me that the hon. Members, who are brought up and bred in the present system have not been able to get out of the groove. They have only suggested a streamlining of the present administration. It is there I express my disappointment so far as this report is concerned.

Having said that, so far as the recommendations are concerned, I further venture to submit that the main recommendations are as old as judicial administration itself. When I say this, I do not mean to detract from the value of the recommendations. But, I only wish to underline and emphasise the fact that in spite of our knowing that these reforms are called for for a long time, they have not been implemented. Knowing that there should be separation of the judiciary, knowing that there should be independence of the judiciary, we have not been able to streamline our administration. It is, therefore, absolutely necessary that special attention should be paid now to the recommendations made by the Law Commission. If we are to be assured that the recommendations of the Law Commission which are numerous —some of them could be implemented straightaway and some of them could be implemented, if pursued, in a few months time—are not again to be pigeonholed, it is extremely necessary that this particular aspect is given proper emphasis and we have a separate Ministry for judicial administration. I wish to emphasise this. Let us realise that the Home Ministry—we have nothing to say against this individual or that: is absolutely humbug.....It is quite clear that the control over the judiciary by the Home Ministry is just a hang over of the past which has no meaning in the present context. Therefore, for both the reasons, for the independence of the judiciary and for having a psychological effect on the country and for expeditious implementation of these recommendations, it is necessary that a separate Ministry, recommended by the Law Commission, is formed.

Not only that. A Special officer should be appointed. Even if a separate Ministry is formed, it is extremely necessary that a Special Officer is appointed. The appointment of a Special officer becomes all the more necessary if it is going to continue with the Home Ministry which is heavily burdened with all the various problems of the country. I would like to make a further suggestion in this matter, that the Special Officer should be of a high status. He should be a man head and shoulders above the Secretaries in the Ministries. I must say it would be better to have a serving High Court Judge to be appointed to see that these recommendations are implemented. Further, I would very much stress that every six months a report should be submitted by this officer to this Parliament as to what steps have been taken in implementation of the recommendations made by the Law Commission. Only if this suggestion is accepted, only if such an officer is appointed, and only if such six-monthly reports are submitted can we expect that something will be done.

Now, passing on to the next point about the appointment of the judges,

particularly regarding the appointment of the Chief Justice, a recommendation has been made that it should not go absolutely by seniority, but there should be an element of selection. With all the respect, again, for the members of the Law Commission, I stoutly and strongly oppose this recommendation. It is one of the recommendations which will do the greatest damage to the independence of the judiciary. The appointment of the Chief Justice should be absolutely by seniority, and there should be no wrangling in the selection of a judge for appointment as the Chief Justice. Even when you make appointments to the Supreme Court, you must take into consideration all the various elements. Until and unless a judge who is the seniormost himself declines to take over the responsibility of the Chief Justice, he should never be superseded, and nobody from outside should be taken and superimposed as the Chief Justice. Otherwise, it will do very great damage.

I can say that I know of a case even during these eleven years when one of the most eminent judges of the Supreme Court would have been superseded and would not have been appointed as the Chief Justice, if this provision had been there. But I must pay my tribute to the judges of the Supreme Court, for all the judges of the Supreme Court said that they would not like to have this sort of procedure, and that the seniormost person should be appointed. The man who was being promoted from down below to be appointed as the Chief Justice refused to take up the appointment; and the judge who was due for appointment as the Chief Justice, though he was offered the Governor's post, this, that and the other, declined to take up those posts.

It is, therefore, in that context that I very strongly oppose this recommendation of the Law Commission regarding the appointment of the Chief Justice on the basis of selection.

Regarding the appointment of the High Court judges, though so much has been said on the floor of the House, and the Commission have made such trenchant criticism in their report, yet I do not see how this trenchant criticism stands supported by facts and figures. The Home Minister told us the other day that since independence, 17 Supreme Court judges had been appointed, and all of them had been appointed on the recommendation of the Chief Justice; about 170 High Court judges had been appointed, and with the solitary exception of one, all the other High Court judges had been appointed with the concurrent recommendation of the Chief Justice of the High Courts as well as the Chief Justice of the Supreme Court.

An Hon. Member: Except in one case.

Shri Harish Chandra Mathur: My hon. friend Shri Naushir Bharucha has argued that well, the facts are so, but still they have made such a recommendation because the Chief Justices at the State level and the Chief Justice at the all-India level all yielded to the pressure of the executive. It is most surprising, and I think there cannot be a greater reflection, not against the executive, but against judiciary, that these people to whom we give such a high place as the Chief Justice of the High Court or the Chief Justice of the Supreme Court have yielded to pressure from the executive. When we have provided in our Constitution all the safeguards necessary for them, what is there for the judges to fear? Still, if they yielded to pressure, it is much better not to trust these judges, and it would be equally good to trust the executive. If these judges who have been given a high place, who are above criticism, who have been given all the security and who are above everything—and we have given them a special place—yield to

[Shri Harish Chandra Mathur]

indirect pressure from the executive, which can do no harm to them, then, certainly, it is a great reflection. I think this matter demands further examination.

Shri Naushir Bharucha: Please allow me to correct my hon friend. My hon. friend has said that it reflects on the judges. At page 72 of their report, all that the Law Commission have said is this:

> "The voice of the Chief Justice is not half as effective as it was in the past. Indeed, instances are known where the recommendation of the Chief Justice has been ignored and overruled and that of the Chief Minister has prevailed. This unedifying prospect has brought about some demoralisation in the minds of the Chief Justices and therefore, before making their recommendations they ascertain the views of the Chief Minister so as to be sure that the recommendation to be made by him, the Chief Justice, will eventually go through, and he will be spared the discomfiture and loss of prestige in having his nomination uncermoniously turned down."

So, it is only a question of the judges being gentlemanly That is all.

Shri Harish Chandra Mathur: If that is the explanation, then what Shri Naushir Bharucha calls as gentlemanliness, I call as yielding to pressure That is the only difference between us two. And I do not expect this from the Chief Justices of the various High Courts, and particularly, the Chief Justice of the Supreme Court

Shri Satyendra Narayan Sinha (Aurangabad—Bihar): They are not human beings? Does the hon Member mean to say that?

Shri Harish Chandra Mathur: If they are human beings, and if they ought to yield to these pressures, then how can you trust them better than anybody else?

Shri Naushir Bharucha: They did not want to enter into an arena and fight out the matter with the Chief Minister. They were too gentlemanly for that.

Shri Harish Chandra Mathur: What is the sense in it? They are as good human beings as the Law Minister or anybody else

I shall rather move on to the next point, and that is about the separation of the judiciary. I feel very strongly about this matter. You will remember that questions have been asked about the progress that has been made regarding the implementation of this, and we find that Rajasthan happens to be one of those States where it has not been implemented. I do not know how it happens, but if we take a general note, we find that it so happens that most of the States in the south have separated the judiciary from the executive, and most of the States in the north have not done it I do not know how this strange phenomenon has happened

Shri Naushir Bharucha: Moghul influence!

Shri Harish Chandra Mathur: Even U.P. has separated the judiciary only in certain districts, in most other districts, it has not been separated. But so far as Rajasthan is concerned, it is really unfortunate that we have gone a step backward. Even whatever separation was there in the pre-Independence days has gone away with the integration of the States, and now all the magistracy is under the executive It must be borne in mind that nearly ninety per cent of the people have got to deal with the magistracy at the lower level, and if the lower level is under the direct influence of the executive, then separation at the higher level has very little meaning. Therefore, it is es-

tremely necessary that such an officer should be appointed here, who will pursue and see that this separation is brought about as quickly as possible.

Lastly, I shall deal with the question of the Benches. This point was referred to by my hon. friend Shri Kasliwal. He has tabled an amendment to it. I really congratulate him for his eloquence. I sympathise with him for his injured feelings. But I certainly cannot compliment him for digging out the issue out of the grave. He has done no good to anybody. I am afraid he has done a great harm and a great injury to his own State of Rajasthan. Now, it is not merely on the recommendation of the Law Commission that this step has been taken I think if the facts are examined, it will be found that the case that was assiduously built up here would collapse like a house of cards under the weight of the simple facts which I shall state before you

It was when the integration of the States was brought about, that the Central Government had appointed a committee to look into the question as to what offices and what institutions should be located where. I think the name of that committee was Patel Committee or something like that That committee reported that there was nothing very much to choose between Jodhpur and Jaipur so far as the location of the capital was concerned. They have stated it clearly in the report, which is available in the Library, and anybody can go and see it. Then, they said that for certain reasons they would like that Jaipur became the capital of Rajasthan

We never raised a voice against it, we did not say a word against it As a matter of fact, I might submit this to you, though it may be used against me in the elections anywhere, and I am prepared to say it from the floor of this House again; you may have a look at the evidence which I gave; I have said, nothing doing about the capital of Rajasthan, it must continue at Jaipur; we have hardly settled there; it would be waste of public money if the capital is shifted; it would be unsettling the whole thing; therefore, the capital must continue there. I have gone and given this evidence before the Rau Committee which was lately appointed; I was with them for about an hour.

This Patel Committee recommended that the integrated seat of the High Court should be at Jodhpur; they further recommended that certain important departments like the office of the Comptroller and Auditor-General should be located there; they further recommended that the university should be located there. It was only in the course of the integration that the Benches were located at Bikaner, Kotah, Udaipur and Jaipur. I would like to ask my hon. friend Shri Kasliwal as to what the difference in the status of all these four Benches was Was there any difference between the status of these four Benches? The Bikaner Bench was wound up; the thing was transferred. Kotah was wound up, and Jaipur, which was on the same footing with the other three, continued, not because of merit but because of certain political pressures; later on, in spite of the decision of the 'Capital' Committee, because of certain political pressures, because of certain machinations—I will not go into the details of the politics of Rajasthan here—because of these considerations, it continued there And the Home Minister, even in spite of all this, while laying the foundation stone of the High Court building to house the Bench there used a word, to which, I think I objected when my hon. friend was asking, because even at that stage, the Home Minister felt that something wrong was being done but he would not like to override certain considerations which were there.

Then again after that, another independent body was appointed to go into the whole matter, because when Ajmer was integrated, we wanted to settled things. Though my hon. friend,

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Shri Kasliwal, mentioned here that the Rau Committee had nothing to do with it, it was referred to it. I ask him: why not go and read the report which is published in the Gazette? A definite reference was made to that Committee about the location of the various departments, the High Court and the capital. I appeared before that Committee. That Committee toured all over Rajasthan and reported. It was stated that it was wrong not to have implemented that decision, that the High Court should be definitely be there not only on administrative grounds but in the very best interest of the judiciary itself. The Bar of Jodhpur is superb. They said that all buildings are there and nothing has got to be added. For various other considerations also, they said that it would be a sheer injustice not to put the High Court there. The Rau Committee made a clear-cut recommendation. In spite of that recommendation, we said: 'All right; let the Home Minister decide in his wisdom what has to be done'. And the Home Minister with the full concurrence of everybody in Rajasthan decided that the integrated High Court should be located at Jodhpur. It was not only the Congress Party, the ruling Party, which was aggreeable to it. The Congress Party passed a resolution. The Assembly said that and here in the Home Minister's house all the various representatives from Rajasthan met. The President of the Bar Association of Bikaner said that they wanted the integrated High Court there. He was not for a Jodhpur Division or Udaipur Division or Ajmer Division. It was not only the MLAs who were there. The representatives of Ajmer Division were there and they spoke before the Home Minister—the Home Minister will bear testimony to it. Everything was done like that. So there was no necessity of raising the question now.

So it is only such wrong attitude which my friends take which creates a very unhealthy atmosphere in the whole State. It is only such attitude which is responsible for bringing out such feelings as 'Eastern Rajasthan' and 'Western Rajasthan' and giving rise to a demand for the bifurcation of Rajasthan. I wish my hon. friend would be well advised to chew only that much which he can bite. Let him bite only as much as he can chew. He has got the capital. He has got the legislature. So let these regional feelings not be aroused unnecessarily.

Even apart from the Law Commission's Report, the location of the High Court at Jodhpur is absolutely on merit, and the different grounds and different circumstances and the facts which have been given here against it will not stand scrutiny. I rely entirely on the facts available in the Parliament Library and elsewhere.

Shri Raghubir Sahai (Budaun): I join my hon. friends who have paid an eloquent tribute to the distinguished members of the Law Commission who have produced such an admirable Report. It would be very difficult in the time at my disposal to deal with each and every aspect of this Report. But with your permission, I would confine my remarks mainly to three points namely, the village panchayat courts, perjury and corruption.

So far as the village panchayat courts are concerned, it is, no doubt, well known that they are performing a very useful role, because they are deciding so many petty cases of civil, criminal and revenue nature in the villages so very cheaply and expeditiously. We also know that a lot of these cases had been taken away from the files of the district courts, either criminal or civil or revenue. But the main point that has to be considered in this connection is, what is the quality of justice that these courts administer. It is quite well-known that in many cases which are decided by these village courts, they are actuated—I mean the panches—by group, class factional and other

considerations. Herein comes the difficulty in regard to the justice administered by them. So far as I understand and so far as the Law Commission has dealt with this point, the main function of these panchayat courts is to arrive at an amicable settlement in the cases that are disposed of by them. If this main consideration had been kept in mind by the panchayat courts, nothing would be open to criticism. But I find that in very many cases that are actually decided by these courts, the quality of justice is not what it should be.

I was looking into the figures that were supplied by the Law Commission with regard to the States of Uttar Pradesh. It has given the number of cases decided by these panchayat courts in U.P. from 15th August 1949 to 31st March 1956. The total number is over 19 lakhs, out of which over one lakh were transferred to other courts from these village panchayat courts Something like two lakhs of cases were decided *ex parte*, and about three lakhs of these cases were dismissed for default. But nearly six lakhs of these cases were decided after regular hearing As I said, herein comes the difficulty in regard to the quality of justice administered by these courts because they perhaps begin to think that they have to decide these cases by recording evidence, by hearing the parties, by allowing cross-examination and by delivering judgments As the Law Commission has pointed out, if the emphasis was laid on the fact that the main function of these village courts was to decide cases by arriving at amicable settlement, I think everything would be satisfactory.

In this connection, we will also have to take into consideration the way in which these panches are selected. The Law Commission has emphasised that they should be selected by a prescribed, competent authority from amongst a panel of elected panches on the basis of their qualifications of literacy and their reputation for impartiality. I am sorry that these two weighty considerations are not being given effect to and are not considered at the time of selection of these panches. If these two main considerations were given effect to, then the quality of justice, to which I have just referred, is bound to improve.

Then there is another consideration, with regard to the jurisdiction of these panchayat courts. Apart from the useful role that these panchayat courts are performing, we have to take into consideration their limitations

The Law Commission has definitely come to the decision that in no case their pecuniary jurisdiction should go beyond Rs. 250 and in no case the power of inflicting fine should go beyond Rs. 50. But I can give instances of certain State, of which U.P. is one, where the pecuniary jurisdiction, by a simple executive order, has been raised to the extent of Rs. 500. Such things have been characterised by the Law Commission as unwise.

We know, especially those lawyer Members of this August Assembly know, that in conferring small-cause court powers on Munsifs and Subjudges, their experience and competence were always taken into consideration and the small-cause court powers were not conferred on them all at once. So, at least in determining their pecuniary jurisdiction in revenue and civil cases and also their power of inflicting fines, all these considerations should be kept in mind.

The Law Commission has also laid down that the work of the village panchayats should be watched very closely from day to day. They have recommended that a special officer should be appointed to do this duty; in case one special officer was not enough, more than one special officer should be appointed This has been lacking, I think, almost in every State.

Another salutary principle that has been laid down by the Law Commis-

[Shri Raghubir Sahai]

sion is that in those cases where panches have been accused of gross partiality and misconduct or they were otherwise proved to be corrupt, then the District Judge should be empowered to remove them. That power should also be taken into consideration and should be given to the District Judges. If these points that have been mentioned by the Law Commission were taken into consideration and given effect to the work of the village panchayats could be all the more improved in quality.

Now, I would come to the other point, perjury. In this connection the Law Commission has been pleased to remark:

> "It has been stated that perjury of late has increased greatly. The sanctity of oath has almost disappeared and persons seem prepared to make false statements on oath in courts of law. The law, however, is very rarely invoked for the purpose of punishing the perjurer."

Proceeding further, the Commission says:

> "Steps have to be taken to control this growing evil which tends, more and more, to bring the administration of justice into disrepute."

After having recorded these findings, the Law Commission suggested a change in the present Criminal Procedure Code. According to the present provisions of the Criminal Procedure Code, if a trying court comes to the conclusion that a witness has committed perjury it shall record that finding in the course of its judgment and that judgment would be sent to another court which would try the perjurer and would inflict punishment.

The Law Commission has suggested a change in the present law and the change is that the very court where the second contradictory statement has been made should be empowered to try that person and to inflict a punishment or imprisonment up to 6 months. I quite understand that by adopting this procedure some delay would be avoided.

But, in this connection the Law Commission itself says that laying down a minimum punishment or making it severe does not result in reducing the incidence of a particular kind of crime. I quite agree with that. Therefore, even by adopting the amendment that the Law Commission has suggested the evil of perjury is not going to be put down. I suggest that some more positive step should have been suggested and taken to put down this growing evil of perjury. It shows that the remedy for this growing evil lies not in the enactment of this kind of legislation only but somewhere else.

In this connection, with your permission, I would like to draw the attention of this House to a Bill that I moved in regard to putting down this evil of perjury.

Shri Braj Raj Singh (Firozabad): You withdrew it.

Shri Raghubir Sahai: Thereby I suggested an amendment of the Criminal Procedure Code, section 342.....

Shri Braj Raj Singh: What happened to it then?

Shri Raghubir Sahai: I am coming to that. The provision runs:

> "The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just."

My submission then was—and my submission still is—that if you want

to root out perjury, if you want to control this growing evil, there should be at least no statutory permission to make a false statement and that by keeping this provision as it is you are in a way giving encouragement to the speaking of falsehood. That should have been removed.

My Bill was sent all over the country; it was circulated for eliciting public opinion. I am glad to say that the consensus of opinion—the majority of the opinions that were received—was in favour of the Bill. But, unfortunately, some of the States were opposed to it and that was the position taken up by the hon. Minister of Home Affairs then As the State Governments were opposing, therefore, the Bill was not acceptable to him.

This is a growing evil and this is a point which should not be ignored Therefore, at least that Bill of mine, the opinions that had been collected from all over the country and the proceedings of the Parliament should have been transmitted to the Law Commission so that they may study the whole thing and either accept the suggestions that I made or may make some alternative suggestions to root out this growing evil.

My last point would be the removal of corruption from law courts. Everybody knows that corruption is as much prevalent in our law courts and within the precincts of the law courts as is perjury. In this connection the Law Commission says:

> "The court over which a judicial officer presides suffers in the public eye if the administrative set-up of the court is corrupt. This undoubtedly reflects discredit on the judicial officer concerned. It is, therefore, of the utmost importance that a judicial officer should examine the administrative sections from time to time and control the staff."

I think everybody here will agree that there is common talk all over in the streets and everywhere that corruption is prevalent in law courts. Take the *peshkar*, the *ahalmad* or the clerk or even the peon, everybody is given to taking bribes and illegal gratifications

• **Mr. Deputy-Speaker:** The hon. Member should conclude his remarks.

Shri Raghubir Sahai: I am closing my remarks within a few minutes, Sir.

This is a growing evil and should be checked. It is the duty of the officers in charge of these courts to check it. There are the District Magistrates under whom so many courts work; there are the Additional District Magistrates under whom so many courts work and there are District Judges under whom so many courts work They are cognisant of it but it is due to their connivance and due to their abetment that these things take place. I wish that emphasis should be laid on these high-placed dignitaries to see that corruption does not take place under their very nose. It is also the duty of the lawyers' associations and other non-officials to create public opinion so that this evil may be rooted out from our public life.

Shri N. R. Munisamy (Vellore): Mr. Deputy-Speaker, I am afraid I have to sing a different song.

Mr. Deputy-Speaker: That may be pleasant at least.

Shri N. R. Munisamy: I want to refer only to one point and be done with it. The first of the terms of reference given to the Commission reads:

> "firstly, to review the system of judicial administration in all its aspects and suggest ways and means for improving it and making it speedy and less expensive;"

[Shri N. R. Muniswamy]

The Commission has taken upon itself the responsibility of amplifying this:

> "With regard to the first term of reference, the Commission's inquiry into the system of judicial administration will be comprehensive and thorough, including in its scope. . recruitment of the judiciary . ".

Strictly speaking, the ambit or the scope of the terms of reference does not deal with the recruitment of personnel. It is left to the President or the Governor. Article 217 says

> "Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State.. "

The Governor does not act *suo motu* After all, he is a figure-head of the State and he has to act only in consultation with the Council of Ministers and they in their wisdom choose a particular individual The Governor of his own cannot offer any opinion as regards any individual because he is not aware of what is going on in the High Court except through his Council of Ministers. He has necessarily to seek the assistance of the Ministers and take their recommendation Whenever it is said 'after consultation with the Governor' it necessarily means that the Chief Minister comes into the picture. The whole burden is thrown on the Chief Minister and he uses some political influence and doles out the patronage. Ordinarily that person is chosen by the President because the Governor is consulted and his views are given consideration.

So far as the appointment of the Judges is concerned, it is purely a personnel aspect which does not come under the terms of reference They are asked to see whether there is unnecessary delay, whether there is any extra expenditure for the litigant, etc. They are asked to suggest ways and means to see how a particular litigation can be speedily ended and how it could cost him less. It is from that angle that they should review the system of judicial administration. But they have amplified the terms of reference to include recruitment of judiciary also. With due deference to their wisdom, I dare say that it does not come within the terms of reference. Of course it is a question of interpretation and so far as I could see my interpretation is that it does not fall within this. So, that recommendation seems to be extraneous, it does not come within the purview of the terms of reference and as such no serious consideration need be given to this aspect though many hon friends have stated that much should be done about this.

I know a particular gentleman when I was practising in the Madras High Court and his name has been recommended from England and he was chosen as a Judge. As a matter of fact, he was not having any case on the original or appellate side. He was having only matrimonial suits and he will be appearing in the original side once in a month or twice All of us were surprised when he was appointed as a High Court Judge. But after the appointment, he has done his best and his performance was appreciated as one of the best. Likewise, there may be a person who has put forth ten years of practice as an advocate

Mr Deputy-Speaker: Should they find out persons who have appeared once or twice a month?

Shri N. R. Muniswamy: I meant to say that though his appearance in the court was rather rare, he had enough legal acumen After all, he is an Englishman and he is not here. I refer to Justice Mockett. Many of his judgments have been upheld in the Privy Council.

I am told that the rule says that if a person has got ten years stand-

ing as an advocate, he can be recruited as a High Court Judge. What is the nature of the work that he is having? In what courts is he practising? Is it in the District Court? Is it on the original side or the appellate side? These things should be looked into If a man is enrolled as an advocate when he is 20 years old he may begin practice in taluk or division centres That man's name may be recommended by the Chief Minister to the High Court as being a fit person for the post of a Judge He will be hardly 30 or 32 years old In exceptional cases certain persons may have very keen intellect It is possible that they have not practised in district court or the High Court and they may be recruited. In that case, the reference that has been made by the previous speakers has got weight I would again say that this subject of recruitment of the judiciary does not come within their purview and so we shall not give thought to that

With regard to the speedy disposal of cases, the executive issues directions to the criminal courts that they should dispose of the cases within two months or three months But the civil cases take a longer time More often it is said that delays occur inevitably Still they could be avoided if some thouht could be given to the disposal of cases The advocates themselves who appear on either side are to be held responsible for this they manoeuvre to get adjournments in such a way that the judges have no other alternative except to grant the adjournment So, the fault also lies on the advocates who appear to take longer time for reasons best known to them On certain occasions I have known that for their own personal reasons, they ask for an adjournment so that the period is lengthened for another 2-3 months or they ask for adjournments because they have not been fully paid There will be many other reasons, but still there should be a time-limit Whether it be in criminal cases or in civil cases, if a time-limit is put in I am sure these unnecessary delays would be avoided

15 hrs.

So far as the question of expenditure is concerned, though there are certain provisions in the Civil Procedure Code that people can put in their claims and get relief by filing a proper suit, I find that even those provisions have not been well thought out and there are still some lacunae by which many persons who really need certain relief from the court are not being given such relief I would request the Government to consider this aspect as to how to minimise the time-limit and also expenditure

Sir, many of the recommendations given here are very formal recommendations Everybody knows that these things are to be remedied, but so far as Government are concerned I do not know how they are going to deal with these recommendations I hope at least the important recommendations will be taken in hand and action taken to remedy the defects

श्री खुशवक्त राय (बेरी) उपाध्यक्ष महोदय, अभी एक माननीय सदस्य द्वारा यह कहा गया है कि जहा तक जजो की नियुक्ति का ताल्लुक है उस पर कोई राय देने का अधिकार इस कमीशन को था ही नही । इस सम्बन्ध में दलील यह दी गई है कि जा टर्म्स आफ रेफ्रेंस थे उनमे सिर्फ यह था कि

"To review the system of judicial administration in all its aspects"

मै यह पूछना चाहता हू माननीय सदस्य से कि ज्यूडिशल एडमिनिस्ट्रेशन को इन आल एस्पेक्ट्स रिव्यू करने का उनको अधिकार हो और यह देखने का अधिकार हो कि ज्यूडिशरी इफिशेंट हो या न हो लेकिन इस बात पर गौर करने का अधिकार न हो कि उन जजिज की नियुक्ति किस प्रकार होती है, तो यह बात मेरी समझ में नही आती है कि किस तरह से

[श्री खुशवक्त राय]

यह चीज़ उसके टर्म्स आफ रेफ़रेंस में नहीं आती है । मैं समझता हूं कि ज्यूडिशरी के इंडिपेंडेंट रहने की बात और जिन कारणों से वह इंडिपेंडेंट नहीं रह सकती है, उन पर विचार करने का पूरा अख्त्यार ला कमीशन को था ।

एक माननीय सदस्य ने अभी थोड़ी देर पहले कहा है कि इस कमीशन ने कुछ राय जरूर जाहिर कर दी है इस बारे में कि ज्यूडिशरी इंडिपेंडेंट नहीं है । जहां तक इस प्रस्ताव के प्रस्तावक महोदय का सम्बन्ध है, उन्होंने अपने भाषण के दौरान में यह कहा था परन्तु इन सदस्य ने कहा कि ला कमीशन ने कोई तथ्य नहीं दिये हैं जिन से यह मालूम पड़े कि नियुक्तियां सही ढंग से नहीं होती हैं । मेरा नम्र निवेदन यह है कि यदि आप देखें तो आपको पता चलेगा कि हाईकोर्ट्स के जजिज ने अपनी शहादत में इसके बारे में क्या कहा है । एक जज महोदय का कहना है :—

"If the State Ministry continues to have a powerful voice in the matter, in my opinion, in ten years' time, or so, when the last of judges appointed under the old system will have disappeared, the independence of the judiciary will have disappeared and the High Courts will be filled with judges who owe their appointments to the politicians."

मैं यह कहना चाहता हूं कि इस से बड़ा तथ्य और कौन सा हो सकता था कि जिस के ऊपर हम राय कायम करते । अगर एक जज यह बात कहता है कि जिस तरीके से आज के दिन जजिज की नियुक्ति होती है, उसी तरीके से अगर वह जारी रही तो दस बरस के बाद कोई भी स्वतंत्र जज नहीं रह जायगा । मैं समझता हूं कि यह एक ऐसा तथ्य है और इस पर से जो निष्कर्ष निकाला गया है, उस पर हमें ध्यानपूर्वक विचार करना चाहिये और इस कथन का आदर होना चाहिये । हमारा देश प्रजातन्त्रात्मक देश है और उस में अगर हमारी जो ज्यूडिशरी है, हमारी जो न्यायपालिका है, वह स्वतंत्र नहीं रहती है तो मैं समझता हूं कि हमारी स्वतंत्रता भी कायम नहीं रह सकती है । प्रजातंत्रात्मक राज्य की सब से बड़ी ज़रूरत इस बात की है कि ज्यूडिशरी इंडिपेंडेंट हो, स्वतंत्र हो, उस के ऊपर हर व्यक्ति का विश्वास हो । अगर मेरे खिलाफ कोई मुकदमा हो और मैं ज्यूडिशल कोर्ट्स का दरवाज़ा खटखटाऊं तो अगर मुझे यह मालूम हो जाय कि चूंकि मैं अपोज़ीशन का मैम्बर हूं, इस वास्ते मुझे न्याय नहीं मिलेगा, तो मेरा विश्वास उस पर से उठ जायगा और अगर ऐसी स्थिति आती है इस देश में तो वह हमारे लिये और हमारे देश के लिये बड़े दुर्भाग्य की बात होगी ।

पिछली मर्तबा इस सदन में जब उन की मिनिस्ट्री की डिमांड्स पर बहस हुई थी, तो इस बारे में कुछ बातें विधि मंत्री ने कही थीं । मैं समझता हूं कि उन्हें इस सदन को विश्वास दिलाना चाहिये कि इस तरीके से आगे नियुक्तियां नहीं होंगी । पिछली बातों को आप छोड़ दें, मगर आगे के लिये ऐसे कदम उठायें कि जिन से इस तरह से नियुक्तियां न हो सकें और अगर ऐसी नियुक्तयां आप करते हैं तो आप की न्याय-पालिका पर से, ज्यूडिशरी पर से, सच मानिये, लोगों का विश्वास घटता जायगा ।

सब से बड़ी बात जो हमारे संविधान में दी हुई है वह फंडामेंटल राइट्स की है । हमें कुछ फंडामेंटल राइट्स दिये गये हैं और उन फंडामेंटल राइट्स की यह ज्यूडिशरी चौकीदार है इस को यह देखना है और हर वक्त देखना है कि इन फंडामेंटल राइट्स का कहीं इनफ्रिंज़मेंट तो नहीं होता है और अगर होता है तो उस का यह कर्त्तव्य हो जाता है कि वह उस इनफ्रिंज़मेंट को दूर करने का प्रयत्न करे ।

एक बात यह भी है कि ज्यूडिशरी के प्रति जो आदर और सम्मान की भावना होनी चाहिये, जो आदर और सम्मान उस को मिलना चाहिये वह नहीं मिलता है। आप जानते हैं कि जब हाई कोर्ट्स और सुप्रीम कोर्ट के सामने बहुत से ऐसे मामले आते हैं कि जिन में जो लैजिस्लेटिव एक्शन होता है, एडमिनिस्ट्रेटिव एकशन होता है, एग्जीक्यूटिव एक्शन होता है तो उन के बारे में एतराजात होते हैं और उन में रिट्स के द्वारा उन पर विचार होता है और उन को दुरुस्त करने की कोशिश की जाती है तो यह ऐसी चीज़ बन जाती है जोकि एग्जीक्यूटिव को पसन्द नहीं आती है और यही कारण है कि हमारी एग्जीक्यूटिव की तरफ से जो आदर और सम्मान हमारी ज्यूडिशरी को मिलना चाहिये वह नहीं मिलता है। आप देखें तो आप को पता चलेगा कि ला कमिशन ने इस बात पर बड़ा ज़ोर दिया है कि ज्यूडिशरी के लिये आदर और सम्मान घट रहा है और इस का कारण यह बताया है :—

"Because views were expressed by important persons which created an impression in the public mind that judges, law courts and lawyers were superflous institutions which hindered the progress of the social welfare State."

मैं कहना चाहता हूं कि सोशल वैलफेयर स्टेट के लिये इन जजिज़ की, इन ला कोर्ट्स की और इन वकीलों की बहुत सख्त जरूरत है। आप कानून के बाहर जा कर कोई बात नहीं कर सकते हैं। जो संविधान है वह यह कहता है कि आप बिना कानून के कोई बात नहीं कर सकते हैं और अगर आप कानूनी बात करते हैं तो उस के बारे में न ला कोर्ट, न जजिज़ और न ही वकील कोई बाधा पहुंचा सकते हैं। मगर जब आप कानून से कोई बात नहीं करेंगे तो बाधा पहुंचाई जायगी। इस वास्ते यह बहुत आवश्यक है कि न्यायपालिका का जो आदर और सम्मान पहले होता था, वही आदर और सम्मान उसे प्रदान करें। अकसर ऐसा देखने में आया है कि जो बड़े बड़े नेतागण हैं वे ज्यूडिशरी के बारे में ऐसी बातें कह देते हैं जोकि उन को नहीं कहनी चाहियें। मुझे याद है कि विवियन बोस की रिपोर्ट जब छपी थी तो हमारे प्रधान मंत्री ने कुछ बातें उस के बारे में कह दी थीं जोकि नहीं कहनी चाहियें थीं। जब कलकत्ता बार लायब्रेरी ने उस के बारे में उन का ध्यान आकर्षित किया तब उन्होंने कहा कि मुझ से गलती हो गई है। मेरी यह प्रार्थना है कि ऐसी गलती करने से पहले ही सब को यह सोच लेना चाहिये कि कहीं वे कोई ऐसी बात तो नहीं कह रहे हैं कि जिसे बाद में उन्हें वापिस लेना पड़े या जो ज्यूडिशरी की शान के खिलाफ जाती हो।

मैं दो तीन बातें और कहना चाहता हूं एक बड़ी सिफारिश जो ला कमिशन ने की है उस की तरफ मैं आप का ध्यान आकर्षित करना चाहता हूं। कोर्ट फ़ीस के बारे में उस ने लिखा है कि इसी मुल्क में यह पड़ती है। इस के बारे में जो कुछ कहा गया है वह सब पढ़ कर मैं आप का वक्त लेना नहीं चाहता हूं लेकिन संक्षेप में उन का कहना यह है :—

"India is, as far as we know, the only country under a modern system of government which deters a person who has been deprived of his property or whose legal rights have been infringed from seeking redress by imposing a tax on the remedy he seeks."

मैं यह कहना चाहता हूं कि न्याय पर आप को कीमत नहीं लेनी चाहिये। किसी आदमी को चोट लग जाती है तो आप की पुलिस फौरन उस में कार्रवाई करती है। कांग्निजेबल अफेंस होता है तो उस का कांग्निजेन्स लेती है, नहीं तो उस आदमी को अख्त्यार है कि वह अदालत में जा कर कार्रवाई करे। जब किसी के चोट लग जाती है तो उस के लिये आप ने अस्पताल खोले हुए हैं। मैं पूछना

[श्री खुशवक्त राय]

चाहता हूं कि अगर मेरी जायदाद को या जो हमारा कानूनी अधिकार है, उस को कोई आघात पहुंचता है और उस के लिये हम कोई चाराजोई करना चाहते हैं, तो इस के लिये मेरे ऊपर क्यों टैक्स लगाया जाता है ? आप वेलफेअर स्टेट की बात करते हैं । वेलफेअर स्टेट न्याय मुफ्त मिलना चाहिये । मेरी यह राय है और सुझाव है कि यह बात स्टेट गवर्नमेंट से कही जानी चाहिये क्योंकि कोर्ट फीस तो वे ही लेती है : उन को सुझाव दिया जाना चाहिये कि धीरे धीरे वे कोर्ट फीस के मामले को हटायें । यहां ला कमिशन ने भी कहा है । यह चीज एक दम से तो हो नहीं सकती है, पर इस के बारे में कदम उठाये जाने चाहियें । मैं आप के जरिये से विधि मंत्री से कहना चाहता हूं कि उन को इस बात पर विचार करना चाहिये ।

इस सम्बन्ध में एक बात और कहना चाहता हूं कि जो हमारी राज्य सरकारें हैं उन में एक होड़ सी लगी हुई है कि कौन ज्यादा कोर्ट फीस लेता है । आप देखिये कि एक राज्य में एक कोर्ट फीस है तो दूसरे राज्य में दूसरी कोर्ट फीस है । मैं बतलाना चाहता हूं कि इस तरह से डिस्क्रिमिनेशन होता है । मान लीजिये कि मेरा कोई मामला है । अगर मैं उस को राजस्थान में उठाऊं तो हो सकता है कि १००० रु० पड़े, लेकिन अगर मैं उस को ही उत्तर प्रदेश में उठाऊं तो सम्भव है कि उस के लिये १२०० रु० पड़ें । यह जो डिस्क्रिमिनेशन होता है इस को बन्द होना चाहिये ।

श्री जयपाल सिंह : (रांची—पश्चिम—रक्षित—अनुसूचित आदिम जातियां) : बिहार में सब से कम है ।

श्री खुशवक्त राय : हो सकता है वहां सब से कम हो ।

दूसरी बात जिस पर मैं जोर देना चाहता हूं वह लीगल एड टु पुअर के बारे में है । जो गरीब लोग हैं उन को कानूनी सहायता मिले । पिछली बार जब विधि मंत्रालय की डिमांड्स पर बहस हो रही थी तब भी मैं ने यह बात कही थी, और विधि मंत्री ने कई एक कांफरेंसेज बुलाई और उन में यह बात तय हुई पर अभी तक इस पर कोई अमल नहीं किया गया । मैं कहना चाहता हूं कि इस बात को तुरन्त ही करना चाहिये । बहुत से लोग ऐसे होते हैं जो गरीब होते हैं, जिन के पास पैसा नहीं होता है, जोकि आसानी से वकील की फ़ीस नहीं दे सकते हैं, उन के लिये बड़ी मुश्किल पड़ती है । इस के सम्बन्ध में मैं सिर्फ दो बातें कहूंगा । जहां तक सुप्रीम कोर्ट और हाई कोर्ट की बात है, जहां तक उन के रिट जूरिस्डिक्शन की बात है, वहां आप ऐसा प्रबन्ध कर दें कि जो गरीब आदमी हैं जिन के राइट्स इंफ्रिज हुए हैं उन को कानूनी सहायता सरकार की ओर से मिले ।

ला कमिशन ने जो यह सिफारिश की है कि बेंचेज अलग जगह पर न बैठें, जहां तक मैं समझता हूं यह मानने योग्य चीज नहीं है । आप उत्तर प्रदेश को देखिये, इलाहाबाद में हाई कोर्ट है और लखनऊ में उसकी बेंच है । लखनऊ की बेंच बहुत अच्छा काम करती है, उस से लोगों को इतनी अधिक सुविधा मिलती है कि जिस का कोई ठिकाना नहीं है । इस तरह की बेंचों के लिये जो सिफारिश की गई है कि उन को खत्म कर देना चाहिये, मैं इस से मतभेद प्रकट करता हूं । उन्हों ने कुछ ऐसी छोटी छोटी बातें इस के लिये कह दी हैं जो कि मेरी समझ में नहीं आईं । उन्होंने कहा कि अगर इस तरह से जगह जगह पर बेंचें होंगी तो वहां पर न वकील मिलेंगे और न अच्छी लायब्रेरी ही मिलेगी। मैं कहता हूं कि जो प्यासा होता है वह कुंएं के पास जाता है । जब वहां पर कुंआं पहुंच जायेगा तो प्यासा अपने ही आप वहां पहुंच जायगा । वकील भी पहुंच जायेंगे । लायब्रेरी भी हो जायगी ।

जहां तक लखनऊ बेंच का सवाल है, मैं जानता हूं कि वह इलाहाबाद हाई कोर्ट के मुकाबले में कहीं बेटर इक्विप्ड लायब्रेरी रखती है ।

मेरे पास अब समय नहीं है, इसलिये मैं इतना ही कह कर बैठ जाऊंगा ।

उपाध्यक्ष महोदय : अब मैं मेम्बर साहबान से कहूंगा कि वह दस दस मिनट के अन्दर ही अपना भाषण समाप्त करें ।

श्री दी० चं० शर्मा (गुरदासपुर) : दस दस नहीं, पंद्रह पंद्रह मिनट दे दें ।

उपाध्यक्ष महोदय : अगर मैं पंद्रह पंद्रह मिनट दूंगा तो फिर आप की बारी नहीं आयेगी ।

Shri J. R. Mehta (Jodhpur): I propose to confine myself primarily to one issue, namely, the issue of a unified high court *versus* the so-called divided high court, and I should like in this connection to deal particularly with the controversy that has been raised in regard to the high court of Rajasthan.

I felt rather unhappy with my hon. friend, Shri Kasliwal, who by his amendment, sought to raise what I consider a hornet's nest. I did not expect this from him as I have always given him credit for sobriety. I think he put the matter in such a manner that he has provoked me, a rather silent Member of this House, to rise to my feet.

This House will recall the rather unseemly agitation which was witnessed in Jaipur on the controversy over unified high court after the abolition of the bench from that place a year or so ago, with all its concomitants—hartals, stone-throwing, arson and damage to life and property. More than that, we witnessed a very unusual and unprecedented scene of members of the bar, as a body, taking to breaking of the law and defiance of the law,—people who are generally expected to defend, support and protect the law. My hon. friend Shri Kasliwal was out of that controversy at least to this extent that he did not court arrest like his other friends, the members of the bar, and I wonder whether he is trying to make amends for that omission by availing himself of this opportunity of moving this amendment.

It is not for me to go into much details as to the merits or demerits of the general question as to whether we should have a unified high court or not. Wisdom demands that we should leave such complicated and ticklish matters to the judgment of those who are competent to give judgment on such questions.

An Hon. Member: Who are they?

Shri J. R. Mehta: I think in this matter only those people who have an intimate knowledge and practice of the administration of justice are competent to give an opinion. Such a body of persons has given an opinion in favour of the unified high court and I think if we lightly disagree with the unanimous recommendations of that body we only delude ourselves. I think that in such matters, as Shri Datar put it the other day, we have to be guided by expert opinion and we have this expert opinion before us.

In this connection, I will take note of only one argument which has been put forward as a reason for, and in favour of, the establishment of benches, that is, we should decentralise justice so as to bring it within the reach of the common man. That is the main argument put forward. Now, the tragedy of the situation is that we live in a world of slogans and catchwords, and we are apt to be misled by these things. Decentralisation or devolution of power may be good, but I submit that it has its own limitations and that there are certain spheres or institutions which will not admit of breaking up and decentralisation without detriment to this very purpose, utility or dignity.

[Shri J. R. Mehta]

Take the UPSC, for instance, or even the Supreme Court. I wonder whether they will not lose in efficiency or dignity or prestige if they are broken up and decentralised. I would respectfully submit that all this applies to the high courts also. I mean no offence to anybody, but I would say that those who talk of breaking up the High Court in order to achieve or on the plea of decentralisation do not realise what the functions of the High Court are or what is the nature of the justice administered by the High Courts. Constituted as we are, we cannot avoid very complicated and ticklish questions of law and hon. Members can visualise whether such questions can be properly dealt with if we break up the High Courts, which will mean two or three judges sitting at each place, with no competent or fully developed bar, as there is at present.

Coming to the question of Rajasthan, my task has been lightened a great deal by my hon. friend, Shri Harish Chandra Mathur. He has dealt with it in his own inimitable and forceful manner. But I think I owe it to my constituency to say a few words on this subject. I want to stress that in this matter, we are likely to be misled by these catchy slogans of decentralisation and devolution of power. I should like this august House to bear in mind that so far as Rajasthan is concerned, this will have to be viewed from the point of view of integration of Rajasthan. As the House is aware, 22 or 23 princely States were brought together into the State of Rajasthan. Each princely State had its own capital, High Court, so many other institutions, etc. Above all, each had its own ideas of prestige, dignity and self-importance. ity. It was not an easy question to sacrifice and restraint each unit had to exercise in order to make this dream of a bigger Rajasthan a reality. It was not an easy question to integrate the princely States of Rajasthan. Sardar Patel, of revered memory, to whom we owe this great and noble task, first appointed a committee known as the Patel Committee—it was not Sardar Patel, but another Patel who was its chairman—which produced a lengthy report. That committee came to this conclusion. There was not much to choose between Jodhpur and Jaipur. Since they advised that the capital should be located at Jaipur, they said Jodhpur should be fully compensated and they recommended that Jodhpur should have a unified High Court, the headquarters of the military, a university, the office of the Accountant General, the office of the customs and excise department and one or two more departments.

I am sorry to say that except for the unified High Court which Jodhpur has got now, no other recommendation of that committee has been implemented. Yet, the Jodhpur people had not the audacity to raise any agitations about it. In fact they had the Accountant General's office there, but that has also been shifted slowly and slowly and it has now disappeared from Jodhpur. So, Jodhpur has not had a fair deal. Now most of the Patel Committee's recommendations were reinforced by a committee lately appointed, as a result of the integration of Ajmer with Rajasthan, *viz.* the Rao Committee. That Committee also went into this question and suggested unanimously that Jodhpur should have a unified High Court.

Formerly in many of the princely States there were High Courts. All of them disappeared, but to begin with, it was decided that four of them should function temporarily until the arrears were disposed of. These four States are Udaipur, Bikaner, Kotah and Jaipur. When the arrears were cleared, three of them were disbanded, but the Jaipur bench somehow or other continued. As rightly pointed out by Shri Mathur, there were political considerations. I will not go into the details, but somehow or other, it continued. But it was a

temporary bench and from year to year, it was given a lease of life by an order of the Chief Justice. Under the Rajasthan High Court ordinance, to create a permanent bench, an order of the Rajpramukh was necessary, which was never given. After the States Reorganisation Act, an order of the President was necessary in order to create a permanent bench. That was not given. So, it was all along a temporary bench and I think Shri Kasliwal was wrong when he said it was a permanent bench; it was not so.

In these circumstances, I do not think Jaipur people should have a grievance that their bench has been taken away from them. I would just ask, if Shri Kasliwal's suggestion is to be considered, then is there any reason why, for instance, the cases of Udaipur, Bikaner or Kotah, which had full-fledged High Courts, should not be considered. So, to put this question this way is to show that the whole proposition is absurd. I would respectfully submit that if under the name of decentralisation of authority or devolution of power, you break the High Court and take it into the district and have three or four benches, it is a misnomer to call it a High Court. It will be changed into a puisne court and it will lose all its dignity and prestige.

There is one funny thing which I might mention here, which will interest the House. When this Rao Committee met, the bar association of Jaipur as a whole insisted that there should be a unified High Court for Rajasthan. Probably in their heart of hearts, they hoped that if there is a unified High Court, it would be at Jaipur. But there is a unified High Court and if it has gone to Jodhpur, they have only to thank themselves; they should not assume an air of injured innocence and complain about it.

श्री ब्रजराज सिंह (फिरोजाबाद) : उपाध्यक्ष महोदय, विधि आयोग की विद्वता-पूर्ण रिपोर्ट की कुछ बातों से मैं अपने को सहमत नहीं पाता हूं, खास कर बेंचों के संबंध में । बेंचों के सम्बन्ध में उन की सिफारिश पर जो चर्चा हुई है उस में राजस्थान के कई माननीय सदस्यों ने अपने को इस पर केन्द्रित कर लिया है कि जयपुर में बेंच रहे या हाई कोर्ट रहे या कि जोधपुर में वह रहे । सौभाग्य से न मुझे वहां की किसी कांस्टिट्युएंसी की चिन्ता है और न मैं राजस्थान में रहने वाला कोई नागरिक हूं । इसलिये मैं इस को दूसरे ही दृष्टिकोण से देखना चाहता हूं ।

अभी मेरे पूर्व वक्ता महोदय ने यह फरमाया कि अपने क्षेत्र के साथ न्याय करने के लिये सम्भवतः उन्हें कहना पड़े कि जोधपुर में हाई कोर्ट की सीट न रहे । इस तरह की दलील देना कि इसलिये हाई कोर्ट का स्थान कहां रहे, यह कोई मुनासिब दलील नहीं है । मेरे मित्र श्री माथुर ने जो दलीलें पेश कीं उन से यह साबित करने की कोशिश की कि कई कमेटियों की राय थी कि जयपुर में बेंच रहना उचित नहीं है, लेकिन मैं इस मसले को दूसरे दृष्टिकोण से देखना चाहता हूं । ला कमिशन ने तो यह सिफारिश की है कि एक प्रदेश में एक ही हाई कोर्ट रहे, उस की बेंचें न रहें । यदि हम इस सिद्धान्त को स्वीकार कर लेते हैं तो हमें यह स्वीकार करना पड़ेगा कि उत्तर प्रदेश जैसे एक प्रदेश में, जहां की आबादी ७ करोड़ होने को है और उसके साथ केरल जैसे प्रदेश में, जिस की आबादी सिर्फ डेढ़ करोड़ है, दोनों में ही कोई बेंच नहीं रह सकेगी । भले ही उत्तर प्रदेश की आबादी वहां से कितनी ही अधिक हो । उत्तर प्रदेश आबादी के हिसाब से बड़ा और राजस्थान क्षेत्रफल के हिसाब से बड़ा है, फिर भी इन सूबों में, चाहे वे आबादी के लिहाज से बड़े हों, चाहे क्षेत्रफल के हिसाब से, एक छोटे से छोटे प्रदेश के अनुसार ही हाई कोर्ट रखना होगा । मैं निवेदन करना चाहता हूं कि यदि हम जनता के बड़े से बड़े भाग को न्याय देना चाहते हैं और सस्ते

[श्री बजराज सिंह]

मूल्य पर देना चाहते हैं तो हम इस तरह का कोई सिद्धान्त स्वीकार नहीं कर सकते । जहां आवश्यक हो वहां सिर्फ एक ही हाई कोर्ट रहे, लेकिन जहां आवश्यक हो वहां एक से ज्यादा हो सकते हैं, इस सिद्धान्त को स्वीकार किया जाना चाहिये । इस सन्दर्भ में जयपुर में क्या आन्दोलन हुआ, इसे मैं इस के अन्दर नहीं लाना चाहता । कहा जाता है कि यह राजनैतिक प्रश्न था । लेकिन जो जयपुर में बेंच नहीं रखना चाहते हैं, सिर्फ जोधपुर में बेंच रखना चाहते हैं, मुझे लगता है कि वह भी सिर्फ राजनीति की बात करते हैं । श्री माथुर ने कहा कि कांग्रेस पार्टी के राजस्थान असेम्बली के सदस्यों, पार्लियामेंट के सदस्यों और दूसरे लोगों से राय ली गई । मैं पूछना चाहूंगा कि क्या इस राय लेने में राजनीति नहीं थी ? खैर, राजनीतिक प्रश्न को न ला कर मैं कहना चाहूंगा कि सिर्फ एक यह दलील कि अगर बेंचें विभिन्न स्थानों में रहनी हैं

Shri Harish Chandra Mathur: What I said was that absolutely independent bodies have gone into this matter and this is the opinion of those independent bodies. It was reinforced by others concerned. Even the Jaipur Bench, as my friend pointed out, pleaded for an integrated High Court. The only difference was that they wanted it in Jaipur. Now I am saying this because you referred to it.

श्री बजराज सिंह मैं केवल जयपुर की बेंच के सम्बन्ध में अपने को सीमित नहीं रखना चाहता हूं । इसलिये मैं इस बात को नहीं कह रहा हूं । लेकिन जहां तक मद्रास इन कमेटियों का उठा, वे मुख्य रूप से इसलिये बनाई गई हैं कि सब राज्यों का एकीकरण हुआ है, कई राज्य इकट्ठे किये गये हैं, और उन राज्यों के विभिन्न हिस्सों को देखते हुए हर राज्य चाहेगा कि हमारे यहां केन्द्रीय स्थान रहे, असेम्बली रहे, सरकार की भी सीट रहे, हाई कोर्ट रहे, रेवेन्यू कोर्ट रहे, अकाउन्टेंट जनरल का दफ्तर रहे ।

Shri Harish Chandra Mathur (Pali): My hon. friend does not come from Rajasthan and is not interested in Rajasthan. A member of this Committee was a High Court judge from Madras who had no constituency in Rajasthan and was therefore, I hope, as independent as my hon. friend. Another member was the Chief Justice of Rajasthan who was also a member of the Law Commission.

श्री बजराज सिंह मैं श्री माथुर को बतला दूं कि वे यह मान कर कि जो कमेटी के मेम्बर थे, उन की कोई कांस्टिटुएन्सी वहां नहीं थी, इसलिये वे किसी प्रभाव से प्रभावित नहीं हुए, सम्भवतः अप्रत्यक्ष रूप से यह कहना चाहते हैं कि इस तरह के मेम्बरों को प्रभावित किया जा सकता है, जबकि हम सभी मानते हैं कि हाई कोर्ट के जज हों या सुप्रीम कोर्ट के जज हों, उन्हें प्रभावित करना आसान काम नहीं है और ऐसा नहीं किया जाना चाहिये क्योंकि यह तो हमारे देश के जनतंत्र के लिये एक आशा की किरण है । खैर, मैं तो सिर्फ यह निवेदन करना चाहता हूं—इस दलील से नहीं, बल्कि यह कि सिर्फ इस बिना पर कि वहां अच्छे वकील नहीं मिल सकेंगे, वहां अच्छी लाइब्रेरी नहीं होगी, कहीं पर कोई बेंच न रखी जाय, यह उचित दलील नहीं है ।

जिस तरीके से राजस्थान में पहले चार बेंचें थीं, कोटा, जयपुर, उदयपुर और बीकानेर में थीं और यदि आप इन चार स्थानों पर बेंच रखते हैं तो हम अपने इस सिद्धान्त का प्रतिपादन कर सकेंगे कि न्याय का भी प्रशासन की तरह विकेन्द्रीकरण होना चाहिये ।

अभी हमारे श्री ज० रा० मेहता ने कहा कि जो न्याय को विकेन्द्रित करने की बात करते हैं वे समझते नहीं हैं कि हाई कोर्ट्स का कार्यक्षेत्र क्या है । हाईकोर्ट्स का एक बहुत सीमित कार्यक्षेत्र है फिर भी जहां मौलिक अधिकारों को प्रतिष्ठापित करने का सवाल आता है तो वहां पर हाई कोर्ट्स में हर एक व्यक्ति जाने की सोच सकता है । मैं उस तफसील में नहीं जाना चाहूंगा जिस में कि मेरे मित्र श्री कामलीवाल हाउस को ले गये लेकिन मैं भी इस बात में सहमत हूं और चाहता हूं कि जयपुर में बेंच हो । अब जोधपुर में हाईकोर्ट बन जाने से जयपुर डिवीजन और कोटा डिवीजन यह जो राजस्थान के हिस्से हैं और उन में राजस्थान की दो तिहाई आबादी रहती है उन की सुविधा का भी हमें ख्याल रखना चाहिये और वहां पर बेंच कायम करनी चाहिये । मैं तो कहूंगा कि यह केवल राजस्थान का ही प्रश्न नहीं है बल्कि दूसरे सूबों का भी प्रश्न है । अब आप उत्तरप्रदेश को ही ले लें जहां एक बहुत बड़ा प्रान्त है और साथ ही बहुत बड़ी आबादी वाला प्रान्त है । अब उत्तर प्रदेश में इलाहाबाद में हाईकोर्ट है और लखनऊ में बेंच है लेकिन पश्चिमी उत्तर प्रदेश का एक बहुत बड़ा हिस्सा ऐसा है जिस को कि इलाहाबाद जाने में बहुत कठिनाई पड़ती है । इसलिये मैं तो कहूंगा कि बेंच कायम करने के प्रश्न को इस तौर पर टाल देना कि कहीं पर कोई बेंच हो ही नहीं सकती चाहे वह ७ करोड़ की आबादी वाला सूबा हो और दुनिया के अन्य बहुत सी स्टेट्स से आबादी में बड़ा हो और चाहे वह डेढ़ करोड़ की आबादी वाला सूबा हो, न्याय के विकेन्द्रीकरण का जो सिद्धान्त है उस के खिलाफ आचरण करना है । इसलिये मैं ला कमिशन की इस सिफारिश को उचित नहीं समझता हूं और मैं ऐसा महसूस करता हूं कि न्याय के विकेन्द्रीकरण के लिये यह आवश्यक है कि न सिर्फ हाई कोर्ट्स की अलग अलग बेंचें हों बल्कि सुप्रीम कोर्ट्स की भी बेंच होनी चाहिये । अब जाहिर है कि दक्षिण भारत के लोगों को यहां दिल्ली में सुप्रीम कोर्ट के सामने आने में और अपने किसी अधिकार को प्राप्त करने में काफी खर्च और दिक्कत उठानी पड़ती होगी और मैं समझता हूं कि दक्षिण में आवश्यक रूप से सुप्रीम कोर्ट की एक बेंच होनी चाहिये । जैसी तरह से हमारे देश के जो दूरवर्ती प्रान्त हैं जैसे बंगाल और आसाम, वहां भी बेंच होनी चाहिये । हम न्याय को विकेन्द्रित कर के जनता का अधिक से अधिक भला कर सकते हैं ।

मैं ला कमिशन ने अपनी रिपोर्ट में भाषा के सम्बन्ध में जो सिफारिश की है उस से अपनी असहमति प्रकट करना चाहता हूं । भाषा के सम्बन्ध में ला कमिशन ने अपनी रिपोर्ट में कहा है कि २५ साल तक कम से कम हमें अपना कामकाज अंग्रेजी में चलाना होगा और मुझे यह कहना पड़ता है कि आज देश में जो एक विचारधारा चल रही है चाहे वह प्रशासन के क्षेत्र में हो और चाहे वह न्याय के क्षेत्र में हो, इस तरह की एक विचारधारा चल रही है कि हमें हमेशा के लिये अंग्रेजी का गुलाम बनना पड़ेगा । मैं अंग्रेजी भाषा से कोई वैमनस्य नहीं रखता हूं । मैं मानता हूं कि अंग्रेजी भाषा के ज्ञान से हम अपने लिये दुनिया के विभिन्न ज्ञान के दरवाजे खोलते हैं लेकिन उसी के साथ साथ मैं यह भी कहना चाहता हूं कि भाषा और सत्ता का गहरा सम्बन्ध हुआ करता है । जो सत्ताशील देश होता है उस की भाषा का एक विशेष महत्व हो जाता है और अंग्रेजी का जो एक विशेष महत्व है वह उस के कल के इतिहास की वजह से था । इसलिये मैं यह कहना चाहूंगा कि हमें आज की बदली हुई परिस्थितियों में जितनी जल्दी हो सके उतनी जल्दी भाषा को विकसित करने का प्रयत्न करना चाहिये । अब अंग्रेजी को बरकरार रखने के लिये यह कहना कि चूंकि उन में कानूनी शब्द व टर्म्स नहीं होंगे इसलिये हम अंग्रेजी भाषा को २५ साल तक लादे रहेंगे, मैं कहना चाहूंगा कि यह उचित बात नहीं

[श्री बजरंग सिंह]

है। यह दलील दे कर अंग्रेजी को लादे रहने की वकालत करना तो मेरी समझ में उसी तरह है जैसे कि एक बच्चे को यह कहा जाय कि तुम पहले तैरना सीख लो तब उस के बाद तुम्हें पानी में छोड़ा जायगा। इस के तो साफ मानें यह हुए कि आप उस बच्चे को तैरना ही नहीं देना चाहते। बच्चे को अगर आप तैरना सिखाना चाहते हैं तो आप को उसे पहले पानी में छोड़ना पड़ेगा और फिर एक दो डुबकियां खाकर और हाथ पैर चला कर वह तैरना सीख जायगा यह बात भाषा के सम्बन्ध में भी लागू होती है। चाहे वह हिन्दी के प्रयोग का सवाल हो अथवा प्रादेशिक भाषाओं के प्रयोग का सवाल हो। जब तक हम सरकारी क्षेत्र में चाहे वह न्याय का क्षेत्र हो, चाहे वह प्रशासन का क्षेत्र हो और चाहे वह राजनीति का क्षेत्र हो, उन में हम अपनी हिन्दी भाषा को या प्रादेशिक भाषाओं को काम में नहीं लाते हैं तब तक वह भाषायें अंग्रेजी की जगह नहीं ले पायेंगी। इस तरह की दलीलें दिये जाने रहना कि हिन्दी अथवा प्रादेशिक भाषाओं में कानूनी शब्द इत्यादि नहीं हैं उचित नहीं है। अब अंग्रेजी के ढाई लाख शब्दों में तो उपयुक्त शब्द है लेकिन हिन्दी जिस में कि ६ लाख शब्द हैं उन में उपयुक्त शब्द नहीं है, यह उन का कथन कुछ गले नीचे नहीं उतरता। अब मैं इस बहस में तो नहीं पड़ना चाहता कि अंग्रेजी समृद्ध भाषा नहीं है या हिन्दी समृद्ध भाषा नहीं है लेकिन मैं इतना जरूर कहना चाहूंगा कि जहां तक न्याय का सम्बन्ध है हमें न्याय ऐसी भाषा में देना चाहिये जिस को कि ज्यादा से ज्यादा लोग पढ़ सकें और समझ सकें और जिस से कि न्याय अधिक से अधिक लोगों को मिल सके। जहां मैं यह चाहता हूं कि केन्द्रीय स्तर पर और सुप्रीम कोर्ट में हिन्दी में न्याय दिया जाय वहां विभिन्न प्रान्तों के हाईकोर्ट्स में वहां की प्रादेशिक भाषाओं में काम हो और उन को जल्दी से जल्दी इम्प्लीमेन्ट में लाने की कोशिश की जाय। सुप्रीम कोर्ट में हिन्दी में जोकि हमारे देश की राष्ट्रभाषा घोषित की जा चुकी है उस में जल्दी से जल्दी काम करने की कोशिश की जाय। मैं चाहूंगा कि इस दिशा में शीघ्रता से यह प्रयत्न किया जाय और साल दो साल में या अधिक से अधिक सन् १९६५ के पहले पहले सुप्रीम कोर्ट में हिन्दी में सारा काम होने लगे और हाईकोर्ट्स में वहां की प्रादेशिक भाषाओं द्वारा कामकाज चलने लगे। मैं चाहता हूं कि इस तरह की सिफारिश हो और भाषा के सम्बन्ध में जो ला कमिशन की सिफारिश है उस को न माना जाय।

एक बात और कह कर मैं समाप्त कर दूंगा। जहां तक न्यायपालिका और कार्यपालिका के अलगाव का ताल्लुक है उस के अलग करने के लिये तो हम बहुत दिन से कहते चले आ रहे हैं लेकिन अभी तक सेपरेशन आफ जूडिशिएरी एंड एक्जीक्यूटिव नहीं हो पाया है। अब उत्तर प्रदेश के लिये कहा जाता है कि वहां पर न्यायपालिका को कार्यपालिका से अलग कर दिया गया है लेकिन क्या वास्तव में वहां यह दोनों अलग हैं? वहां जो जूडिशिएल मजिस्ट्रेट्स तैनात किये गये हैं वे जिलाधीश के मातहत काम कर रहे हैं और आप समझ सकते हैं कि इस के रहते वे कैसे बिलकुल निष्पक्ष हो कर और बगैर किसी के असर में आये स्वतन्त्र रूप से लोगों को न्याय दे सकते हैं? इसलिये जब तक न्यायपालिका और कार्यपालिका का अलगाव नहीं होगा तब तक कार्यपालिका का हमेशा उस पर प्रभाव पड़ेगा और जाहिर है कि उस के रहते जनता को निष्पक्ष और अच्छा न्याय नहीं मिल सकेगा इसलिये जहां तक कि ला कमिशन ने इन के अलगाव के लिये सिफारिश की है मैं उस का मैं हृदय से स्वागत करता हूं और आशा करता हूं कि सरकार इस को जल्द से जल्द मान कर क्रियान्वित करेगी।

आखिरी बात बार और एडवोकेट्स के इनरोलमेंट के सम्बन्ध में मुझे यह कहनी

है कि ऐडवोकेट्स नियुक्त किये जाने के लिये कोई फीस नहीं ली जानी चाहिये और एक एडवोकेट को यह अधिकार होना चाहिये कि वह किसी भी हाई कोर्ट में जा सके और ऐपीयर हो सके, सुप्रीम कोर्ट में जा सके और उन पर कोई प्रतिबन्ध नहीं होना चाहिये कि वह एक हाई कोर्ट से दूसरे हाई कोर्ट में नहीं जा सकेंगे । या इतने साल की प्रैक्टिस के बाद जा सकेंगे । अब यह कहना कि काफी प्रैक्टिस न होने से उन में योग्यता नहीं होगी कुछ जचता नहीं क्योंकि जिन में योग्यता नहीं होगी वे जाहिर है कि वहां नहीं जा सकेंगे और वे ही जा सकेंगे जिनमें कि योग्यता होगी ।

Shri Kalika Singh (Azamgarh): Mr Deputy-Speaker, Sir, I have only a few points to make out First of all I will take the recommendation of the Law Commission about the High Courts When the Report is read, it appears that it is in defence of the judiciary There are eleven members on the Commission There are advocates and judges too When the Report is read as a whole it appears that everything that has been said there is in defence of the judiciary The terms of reference of the Commission were, firstly, to review the system of judicial administration in all its aspects and suggest ways and means for improving it and making it speedy and less expensive It was assumed, while appointing the Commission, that there were drawbacks and the judiciary required improvement. It was assumed that there was delay in the disposal of cases and that speedy disposal was necessary It was also assumed that the judiciary is expensive and therefore it has to be made less expensive. These are the only three things that ought to have been made the subject matter of the Report.

The second term of reference was to examine the Central Acts of general application and importance and recommend the lines on which they should be amended, revised, consolidated or otherwise brought up-to-date.

Taking up the High Courts, I will first of all say that the main aim of the Commission appears to be that they want the salary of the judges to be increased to Rs. 6,000. I do not think that that ought to have been made a very important point in the Report of the Commission. It appears that an opportunity has been taken by the High Court judges to emphasise on the Government that their salary is inadequate and that the remuneration paid to them is not proper. Therefore now that they have got an opportunity to recommend, the Commission have recommended the increase in salary on the main ground that the value of money has gone down

Shri Satyendra Narayan Sinha (Aurangabad—Bihar): They have not recommended an increase in the salary of the High Court judges That was a demand of the Bombay Bar, that is, that the salary should be raised to Rs 6,000

The Minister of State in the Ministry of Home Affairs (Shri Datar): What they have recommended, if I mistake not, is an increase in pension

Shri Harish Chandra Mathur: They have referred only to pension

Shri Kalika Singh: On page 81, they have said

> "The salary of a High Court Judge was fixed at Rs 4,000 about a hundred years ago when the value of money was far higher than at present Notwithstanding the fall in the value of money and the heavy rise in taxation, the salary of judges was reduced by the Constitution to Rs 3,500 A leading member of the Bombay Bar pleading for an increase in the Judge's salary to Rs 6,000 stated as follows "

If we read the Report further on, it appears that there is an argument that the salary is low

Mr. Deputy-Speaker: If he had just read as to how the paragraph started, he would have known that it says that there is a feeling among the members of the Bar that the salaries are low It says·

> "There is undoubtedly a feeling among the members of the Bar that the present salary of High Court Judges is too low to attract the members of the Bar in the front rank to judgeships."

Shri Kalika Singh: That is a way of arguing bout They only put it into the mouth of an advocate that he said like this. That is my impression

The second thing, as I just now said, is that it was assumed while appointing the Law Commission that there was delay in the disposal of cases On reading the Report, it appears that many excuses have been found out. The main excuse found out is that the volume of work in the High Courts has increased because of certain factors One thing on which the main emphasis has been laid down there is that the increase in the work of the High Courts is due to so many writs having been filed under the Constitution. Thus, the volume of work has increased a lot and, therefore, they have suggested certain things. If the High Courts also feel that the volume of work has increased there because of so many writs that had been filed and had to be disposed of, then I will suggest that our Constitution already provides that Parliament may, by law, confer the jurisdiction of writs on courts other than High Courts There are a large number of petty cases where persons are arrested, and, are just fined or *Panchayat* cases or cases which can be specified as petty in nature both on the criminal side and on the civil side and even on the revenue side Therefore, my suggestion is that if all such petty cases are specified and jurisdiction is conferred on district judges, or if zones are created of two or three districts and there is a zonal judge of those districts, then if that jurisdiction of granting writs etc is conferred on the zonal judges, I think that would be a good solution. That will also provide a very cheap remedy for persons who are very poor and who cannot go to the High Court. It is very strange that even in *Panchayat* cases, where the jurisdiction is mostly below Rs 100 although in Uttar Pradesh now the *Panchayat* jurisdiction has been raised to Rs. 500, if a person is aggrieved over a *Panchayat* judgment, only if he goes to the High Court, files a writ and spends thousands and thousands of rupees, he gets a remedy under the Constitution. I think that is a very suitable case where the Parliament may, by law, confer the jurisdiction on courts other than the High Courts. I mean to say that it can be conferred on the district judges, or we may create zonal judges on whom that jurisdiction may be conferred That is a very important point which may be considered

About the vacations, I will say that Parliament passed two laws, namely, the Supreme Court Judges (Conditions of Service) Act and the High Court Judges (Conditions of Service) Act. It was suggested then that the vacations are too long Now, we find here in the Report that the judges argued that the vacations are not too long, and that there are too few holidays In the olden days, there were English judges in all the High Courts and they had long vacations only to allow them to sail for England and come back Therefore, they had three months' vacation. Today when there is no English judge on our Benches even then they want a vacation of three months It is mostly 2½ months Sometimes, it is three months Even here in the Report, it is argued that the vacation is not too long I will say that a judge has to keep abreast with law from day to day and sitting in vacation for three months, I think he will be out of touch with law Therefore, a vacation for three months is not at all justified If in the district courts, the munsifs and judges get a vacation of only one month, in the High Courts also they should have a vacation for one month. The High Courts judges

also get Saturdays. That also is a holiday there. I think that also should not be allowed. I have learnt that a letter was addressed to all the High Courts asking them as to what the opinion of the judges was regarding vacation. I do not know as to what their reaction is. But I think we should request the judges themselves that in the interest of justice and the country at large and in the public interest they should try to reduce their vacation and holidays

About the subordinate judiciary, the main thing, as my hon. friend, Shri Raghubir Sahai, said is corruption. The prevalent corruption there is so much that that comes in the forefront whenever we go in the public I do not say that corruption is only in giving tips and money and this and that The litigant, when he sits in the verandah or in the court room, is treated as a very subordinate human being The courts sit there just as lords A Munsiff gets Rs 250 He is appointed on Rs. 250 He gets certificates from us We know that he was a cringing sort of a person just a few days before When he is appointed a Munsiff on Rs 250, the first jurisdiction that is conferred on him is to decide the fate of 4 to 5 lakh persons That is the ordinary jurisdiction of a Munsiff's court His jurisdiction is so big that in the very first month, if in that very district the district magistrate were to be dismissed from service and if he valued the suit for Rs 200, that Munsiff will have to decide whether the dismissal of the district magistrate in his district was right or wrong Therefore, I say that conferring jurisdiction on the ground of valuation in big suits and big matters, on such small officers who have been just appointed fresh, is a wrong policy It is only because of this that, even though they get very small salaries, the moment they sit on their chair, they feel that they are so big that they can treat all the litigants who come to their courts with contempt That is one thing that should be taken into consideration.

In this connection, I may say a word about the Contempt of Courts Act I do not think any other country in the world, has the Contempt of Courts Act. Here in India, we have got it. The Indian Penal Code already provides the remedy If there is contempt of court, the court can file a criminal complaint in the court. Why should there be the Contempt of Courts Act in India? That should also be repealed I appeal to the Minister of Law to consider this point also as to why there should be special protection given to the Judges in regard to contempt of courts

Shri S. L. Saksena (Maharajganj) Mr Deputy-Speaker, I am very glad that the Law Commission has done its work with so much of conscientiousness and has made recommendations which do credit to them and to the country as a whole I am in agreement with most of their recommendations excepting one or two.

The one important recommendation on which I differ is about language and it is the most important I do think that this craze for English should now go and we must have our national language as the language of the Supreme Court and the regional languages as the languages of the High Courts How long shall we say that these languages cannot be fit for writing judgments, etc If we continued to do that, we will never fit them to do so In other countries, when we go and talk in English, we are looked down upon and they feel as if we have no language of our own Therefore, the worship of English is something which is most degrading We must see that as soon as possible, the High Courts and the Supreme Court function in the regional languages and the national language

The second recommendation on which I differ is the prohibiting of the creation of Benches of High Courts. In my own State U.P., one High Court will not be sufficient. By experience we know that One Bench at Lucknow has been reduced I think the demand of the Bar and the people of Rajasthan should be accepted and a Bench should be provided there

[Shri S. L. Saksena]

About the other recommendations of the Commission, I am in full agreement, particularly with some of them which are rather bold. About the Supreme Court Judges and High Court Judges, they say:

> "The Judges of the Supreme Court should be barred from accepting any employment under the Union or a State after retirement, other than employment as an *ad hoc* Judge of the Supreme Court under article 128 of the Constitution."

About High Court Judges also, they say the same thing:

> "The Constitution should be amended to bar a Judge of a High Court from accepting any employment other than as a Judge of the Supreme Court after retirement either under the Union or the State."

When High Court Judges and Supreme Court Judges can look upon higher posts like Ambassadorships or Governorships, they naturally look to their relations with the executive. If the executive has the power to appoint them as Ambassadors, they may wish to be popular with them and not give judgments and interpret the laws independently. Therefore, I think it is very important henceforth that no Judge of the Supreme Court or the High Courts should be offered appointment to act as a Governor or an Ambassador or to any other post after retirement. They must think that the Supreme Court or the High Court Judgeship is the highest office that they can occupy and that that is the highest position of respect. Thereby, the confidence of the people in them will also be increased because then we can know that Judges cannot act with ulterior motives.

15.56 hrs.

[SHRI JAIPAL SINGH *in the Chair.*]

In their appointment also, my hon. friends have said already that appointments of Judges have been mostly on party considerations. This is something which is very serious for our country. I think the recommendations of the Law Commission in this respect are very bold and very conscientious and they should be accepted. They have said very well that it should be the Supreme Court Chief Justice whose recommendations should be ultimately binding. The executive should not have the right to propose names for Judgeship of the Supreme Court or the High Courts. The Executive should be authorised only to give opinions about their suitability or not. They may ask him to submit other names. Ultimately, the Chief Justice of the Supreme Court and the High Courts should be the final authority in selecting Judges. This is another very important thing.

Delay in disposal of cases is another very crying scandal of our judicial system. I know of cases in the Allahabad High Court which are 10 or 12 years old. There are several cases and they are not yet decided. The litigants sometimes die before their cases are decided. This is most unfortunate. Justice delayed is justice denied and this state of affairs must be remedied: first of all, by appointing more Judges, secondly by cutting the vacation and by making the working days six in a week. Without these, the arrears cannot be cleared.

Justice is very dear. The practice seems to be for every State to make law courts to be a source of revenue. I think free justice should be the ideal of a State. For that purpose, court fees should be nominal. Service of lawyers should also be available free of charge to the poor litigants. The Government should also fix ceilings on fees. Sometimes the fees are so high that litigation ruins any estate or any family.

It has been stated in this report that many labour cases are on the files of the Supreme Court. As a worker and representative of labour, I do feel that when the mill-owners take the cases to the Supreme Court, the labourers are ruined. First of all, there is the Board, then the Industrial tribunal, then the Appellate tribunal, then the High Court and

then the Supreme Court. The result is the case is prolonged for 5 or 6 years and labour cannot bear this delay and the cost of litigation. Of course, the mill-owner can spend money from the mill and he can go on. This must stop. The labourers must have the same rights as ordinary litigants to go to the courts. That is not the case. They have first to apply to the regional board. The Government has the right to send the case up or not. This is very bad. Many people cannot go because the State Government does not want to send up those cases. They favour some institutions and others are not allowed. Every labourer should have a similar right to go to the courts as an ordinary man has to go to any court, civil or criminal.

16 hrs.

Then, there must be a special Bench of the Labour Appellate Tribunal, which has been abolished, in my opinion, wrongly now; and all the labour cases should be decided by that Bench. The standard of judges of the Labour Appellate Tribunal should be similar to that of the other judges of the High Court and the Supreme Court, so that they may administer justice well, and the labourers will have the same confidence in their judgment as in that of the Supreme Court.

Therefore, I suggest that every labourer like every citizen should have the right to go to a labour court. There should be a special Bench of the High Court or the Supreme Court, and they must deal with all labour cases, and the ordinary courts should not be tied down by cases from the labour courts. That will make justice cheap to the labourers, and will also reduce the work of the High Courts and the Supreme Court.

The last point that I would like to deal with is in regard to corruption. Perhaps, people do not know how deep it has gone. In fact, it is almost destroying the confidence of the people in the courts. I think this should be put down with very strong hands; even mere suspicion should be sufficient to disqualify a judge or a lawyer from being there. This is very important. I hope the Ministry will take this into consideration and see that cases of corruption are not dealt with leniently but very firmly so that nobody may dare to indulge in it.

Shri Satyendra Narayan Sinha: I am not going to be as technical as my hon. friend, Shri N. R. Muniswamy, in challenging the recommendations of the Law Commission on the ground that they have exceeded their terms of reference, in so far as their recommendations concern the recruitment to the High Courts and the Supreme Court. I feel that they were quite competent to review the whole thing and make their recommendations.

I listened with very great interest to the speech of my hon. friend, Shri Harish Chandra Mathur on this subject. I am in agreement with him when he says that if the recommendation of the Law Commission with regard to the appointment of the Chief Justice of the Supreme Court is accepted *in toto*, and a convention is firmly established that a person from outside will be appointed, that will create a feeling of uneasiness in the mind of the seniormost puisne judge who naturally looks up to the highest office in the judiciary, and perhaps, he might start canvassing. So far as that remark is concerned, I am in agreement with him, and I feel that there is a danger in adopting that recommendation of the Law Commission *in toto*. But when I read the report myself, I found that that recommendation was not in these terms—that the post of the Chief Justice should be filled up by recruiting from the Bar or from the Chief Justices of the High Court and by ignoring the claims of the seniormost puisne judge. On the contrary, they have said that whenever the seniormost puisne judge is not found suitable and does not possess the requisite qualifications, Government could go outside the precincts of the Supreme Court and make recruitment from the Bar or from the Chief Justices of the High Court. So far as this recommendation is concerned, I do not see any difficulty in accepting

[Shri Satyendra Narayan Sinha]

it, and I feel that that danger is unnecessarily exaggerated.

When I heard my hon. friend on the point of appointment of High Court judges and the system that prevails today, and then his strong criticism that it reflects upon the Chief Justice of the High Court if he yielded to the pressure of the Minister, I was really surprised. For, on the one hand, he feels that the seniormost puisne judge of the Supreme Court is liable to take to canvassing, if his claim is likely to be passed over; on the other hand, he expects the Chief Justice of the High Court to be as firm as to ignore all the considerations of losing of face or of discomfiture in the event of his recommendation being ignored by Government. They are also human beings, as I said earlier in an interjection. And I do submit that the general impression is that in the ultimate analysis of things, the appointment of High Court judges is such that the judges are tending to become the nominees of the State Chief Ministers, not even the State Government This is the general impression To the extent that this impression persists in the public mind; I beg to submit, the respect and confidence that we have in the judiciary in the States is suffering a slump; and, therefore, it is necessary that Government should take note of what the Law Commission has said on this point.

However vehement and loud Government might have been in their repudiation and denial of what the Law Commission has said on this point, I still beg to submit with all the emphasis that I have, that this is the general feeling today. Instances have also come to our notice where there has been a real difference between the recommendation of the Chief Justice and the recommendation of the Chief Minister, and ultimately the views of the Chief Justice have been passed over or ignored.

Then, the Law Commission has been very sensible in making a recommendation that the Chief Minister's voice should be there. They should be able to say whether a particular man is suitable for being appointed as a judge or not, from another angle, that is, from the point of view of integrity, desirability and other standards; but the decision on whether he possesses merit, ability and legal equipment is within the competence of the Chief Justice of the High Court; he is the person to decide this question, and in my opinion, his nomination should generally be given proper weight. They did not say that the Governor should be completely excluded from this orbit. All that the Law Commission says is that the concurrence of the Chief Justice of India should be there. That is the simple amendment that they are asking for, and I do not see why Government should find any difficulty in accepting this recommendation, because this will create a very healthy atmosphere in the country, and the Chief Justice of India who is supposed to know the leading Members of the Bar and the High Court judges will have an effective voice in this matter; and then, the general impression that is getting saturated in the public mind will also disappear and get dissolved Therefore, I do submit that Government should not find any difficulty in accepting this recommendation of the Law Commission.

Then, I come to the appointment of the Chief Justice of the High Courts Here also, the recommendation is very good. The Law Commission has said that it is better to have the Chief Justice of a High Court brought from outside; they do not say that the claims of the seniormost puisne judge in a particular High Court should be ignored; if he is found suitable for being appointed as the Chief Justice, he may be appointed as such in another State. If that is done, then the impressions that are created about a particular judge, due to his association with a particular State for a long time, will also not have any existence. If he goes to another State with a fresh mind, he is able to look at a thing from an absolutely dispassionate point of view; and whatever we hear

and whatever impressions are currently circulating against a High Court judge will also disappear altogether. That is my submission on this issue.

Now, I come to the recommendation of the Law Commission with regard to the reorganisation of the Ministry I personally feel that it is an anachronism that the Home Ministry is in charge of the working of the criminal law as well as the appointment of the High Court judges When we know that it is the practice of the Government to have one of the most leading members of the Bar as our Law Minister, and he is supposed to know most of the leading Members of the Bar in the country, he should be placed in charge of the working of the criminal law and also the appointment of the High Court judges. The Home Ministry should only be asked to tell us on the basis of the confidential reports that they receive as to the desirability of a particular person being appointed as a judge, not that they should have anything to say with regard to his ability or legal equipment Therefore, the sooner this recommendation is given effect to, the better will it be for us

With regard to delay in the disposal of cases, the Law Commission has made a very exhaustive recommendation on this subject. They have reviewed the whole thing and made recommendation on every point. But from my personal experience, I can tell you that it is necessary that the persons who are called upon to preside over the judiciary in different spheres should have a certain awareness in their mind with regard to the duties that they are called upon to fulfil or discharge, and they should also be cognizant of the convenience of the public and always be feeling the need to administer justice in a manner that the public is satisfied with the way the administration of justice is done. That should be the duty of the superior courts to create the awareness.

I have found that in respect to some suits or appeals, when there may be an interlocutory matter and injunction is granted and there is need for the whole matter to be disposed of within a particular period, it appears that the judges go to sleep and the matter remains hanging fire for months. And by the time the case is disposed of, the whole thing becomes infructuous Such a state of affairs should not be allowed to persist in our law courts, and it is the duty of the High Courts and the district judges who are called upon to preside and administer justice that they should look to these things. This is just an instance of the lack of awareness

Mr. Chairman: The hon. Member from Gurdaspur. After him, I will call the hon Member from Farrukhabad.

Shri D. C. Sharma: Mr. Chairman, Sir, the hon. Members who have preceded me have talked about very weighty matters connected with the judicial reports, but I want to focus the attention of the House on legal education.

For a long time, I have been connected with a University and, I have had some experience of the way in which legal education is being conducted. I agree entirely with the finding of the Commission that legal education is deteriorating all along the line. This applies to all parts of India. If our legal education is not of the right standard, I think the legal profession would go down. And if the legal profession goes down, the judiciary would go down and all our legal appartus would suffer all along the line

I would, therefore, say that legal education should be placed on a highly professional basis It should be treated on a par with medical education and engineering education Medical education is guided and supervised by an All-India Medical Council. The curricula of studies of the medical colleges, the appointment of teachers of the medical colleges, the standards of examination, all these have got to be approved by the Medical Council.

[Shri D. C. Sharma]

Similar is the case with engineering education. We have recently started an engineering college at Ludhiana, and I know on the governing body of that college, there is a representative of the All India Technical Education Council. They want that the standard should be kept very high, and, therefore, they see to it that proper things are done in the way of appointments, curricula, etc. But legal education is an education which is neither legal nor education. I should say....

Shri Supakar (Sambalpur): Is it illegal education?

Shri D. C. Sharma: I wish it were illegal education, because that would be some kind of education! But it is a legal education. I would submit respectfully that legal education in many parts of the country has become a kind of a by-product of general liberal education. It has become a kind of an addition or appendix to general education.

I suggest that legal education should be divided into three parts. There are some persons who want to have legal education as a part of their culture. There are some persons who want it as a part of their general liberal education. And there are some persons who want to have it because they want to practise law. Now, what we are doing is that we are hanging all by the same rope, we are lumping all these three categories of students together and we are putting them in the law college. Therefore our law colleges are a mixture of the fits, unfits and misfits on the legal side. I would therefore submit that for the proper education of the future young men of our country we must try to have legal education along these three lines. I would strongly suggest that in no case, in no University, in no State should a student be allowed to do his M.A. and LL.B. together. That should be stopped forthwith. And legal education should be made something which comes after a person has graduated.

Again, I would say that so far as the curricula of the law colleges are concerned, they are in a state of mess. For instance, if a student wants to study politics he begins politics with Aristotle and he studies all the great mass of political science. Of course to recent works he comes, and he specialises. I have looked into some of the syllabuses of these courses and I have found that in these courses you get neither a sound grounding in theory nor a good grounding in what will be helpful to you when you practise, nor a good basic knowledge of other things. This legal education is neither theoretically sound nor practically sound.

There was a time when in the Punjab we tried that every graduate of law should serve with a lawyer for some time before he went to practise in a court of law. But that thing became quite useless, because a lawyer would sign a certificate that a person served with him in his chamber for so much time. Therefore the whole thing had to be given up.

Legal education should be like teachers' education. It should be like a training college, like an M.A. course plus a teachers' training college. That is to say, there should be a knowledge of theory and there should also be some practice. And I support the contention put forward by the Commission that the person should go and work in the chamber of the lawyer for at least one year, keep a diary and make a note of what work he has been entrusted with and also give an account of what he has done, and after that has been done he should be asked to practise.

If you go to a law college you will find that you have got lectures there. I do not want to enter into the quality of those lectures. We have lectures. In an arts college or science college you have lectures, but you have also what are called extra-curricular activities. Some persons call them co-curricular activities. In

these law colleges there are sometimes moot courts and mock trials and tutorial classes, but mostly they are only in name. They are not given as much attention as they deserve.

Therefore I would say that legal education should be made sound in three ways. In the first place, the theory part of it should be made as broad as possible. Secondly, the co-curricular part of it should be made as wide as possible. And thirdly, the practical part of it should be made as useful as possible.

I would also say that so far as law examinations are concerned, they require to be looked into. I do not want to say more about that but only this that so far as law examinations are concerned, all the examiners should be external examiners. If, for instance, the examination is held in Punjab, you should take most of the examiners or all the examiners from some State other than Punjab. I think that will level up the standards of legal education in our country.

Another point that I want to make is this. In free India we are making a big drive so far as research is concerned. I find that in science and in arts, there is a big movement for doing research. But I want to ask in how many law colleges is research being done. I think there are some Universities which have the degree of LL.M., but there are very few of them. Therefore, we should try to give our legal education this kind of research bias. We are talking about international law, this kind of law and that kind of law. But we are not preparing our younger generation for tackling those problems.

At the same time, I would suggest very humbly that these lawyers have got, what I may call, a high unemployment potential. Most of them go to the law colleges because they have not much else to do. I would request the Home Minister to take note of it, that for practising lawyers Government should create new avenues of employment. If we should have new avenues of unemployment, then at least throw open to them some proportion of the jobs which they can claim as their right on account of their knowledge and experience. I know a few jobs are given to them, but they are as nothing compared to the vast army of lawyers that we have in this country.

Therefore, the profession of law should be such as can lead to certain good employment also in the case of those who do not want to practice but who have the necessary legal equipment which can be useful to the country.

Mr. Chairman: Now I call upon the hon. Member for Farrukhabad. Then I will call the hon. Member for Darbhanga. Between them they must finish by 4.40 when I propose to call the Minister of State in the Ministry of Home Affairs.

Shri Mulchand Dube (Farrukhabad): How much time shall I have?

Mr. Chairman: The usual time.

Shri Mulchand Dube: Mr. Chairman, in a Welfare State, the citizen has certain rights and he is entitled to the safeguarding of those rights to him. I however regret to have to say that the Law Commission has not paid adequate attention to the protection of those rights.

It appears from the Report that about 249 laws were enacted from 1933 to 1940 and in the same period of seven years from 1950 to 1957 about 580 laws have been enacted in this Parliament. I have not been able to find whether it has given the number of laws enacted in the various States in the country. However, I found in a journal of the Law Society that from 1953 to 1957 about 2511 laws have been enacted. If we come to calculate it at the same rate it appears that in the seven years there would be about 5000 laws in the various States also. To these laws there are also rules and regulations framed by Government, so that this enormous

[Shri Mulchand Dube]

amount of legislation is an inroad on the freedom of the individual. The question is whether there is any adequate protection for the rights of the individuals. So far as the Law Commission's Report is concerned, my submission is that there is none

So far as the rules and regulations are concerned, they are, most of them administered by administrative tribunals Now, lawyers are not allowed in these tribunals I submit it is absolutely impossible for any person to keep pace with this enormous volume of law, unless he is well versed in laws or unless he has made a study of them I submit even Judges will find it impossible to keep pace with the legislation that is going on. If we do not allow lawyers to appear before the administrative tribunals, the result will be that the rights of the individual may not be safeguarded, as they should be under the Constitution

Apart from this, so far as the law courts are concerned if a man is allowed to go to t law courts to establish his rights, the same difficulty arises For instance, to begin with, he has to pay an enormous amount as court-fees Poor people will not be able to afford the payment of the court fees When the court-fee is paid, other expenses follow Apart from these expenses, there are the delays of the law An ordinary litigation takes 7 to 8 years

If this is the state of affairs prevailing in this country, then there is no hope It appears to me that the members of the Law Commission who were trained in law and who had been dealing with law for a considerable time and who, in the practice of this law, had been following certain procedures adopted from the United Kingdom did not find it possible to change it I am quite prepared to understand it. Probably, it is right that in the ancient system that prevailed in this country for thousands and thousands of years there was some system and that system if adapted to modern conditions would have done very well. But, some how or other, in the report I find that the members of the Law Commission have not been able to find any coherent or consistent system of law under which society in this country was governed. It cannot be doubted that we had an ordered society, a society which was good enough and perhaps better than one can find in many other countries. If this was the state of affairs, I submit that it is simply regrettable that the Law Commission should not have been able to find something from the ancient books or from ancient laws that prevailed in this country

Be that as it may, they have not suggested any remedy for the evil that is prevailing In the absence of such a remedy, my submission is that if nothing else can be done, at least this should be done that the orders of the Administrative Tribunal should be made appealable to the High Court or the Supreme Court as the case may be and the Administrative Tribunals should also be asked to give reasons for the orders they pass. This is so far as the Administrative Tribunals go

But, so far as the law courts are concerned, my submission is that an attempt should be made to see that every case that comes before a court could be sent to arbitrators as far as possible If it is not found practicable, there may be at least a panel of lawyers or other gentlemen who are prepared to do arbitration work to be appointed in every court or tahsil so that in every case that comes before a court the parties may be given the option to take it to the arbitrators. If it goes to the arbitrators the chances are that it will be quickly decided even though in some cases justice may not be done.

But what is the idea of justice? A man who tries to have justice loses

even the thing he is fighting for and he has to wait for 7 or 8 years before he can get any justice My submission is that instead he may as well dispense with justice, and get something which he seeks within the shortest possible time My submission is that the court of arbitrators will be the only solution for the evils from which we are suffering

That is all I have to say

Mr. Chairman: The hon Member from Darbhanga

Shri Mulchand Dube. One point more, Sir

Mr. Chairman: Order, order, the hon Member from Darbhanga

श्री बोलारायण दास (दरभंगा) सभापति महोदय, हम सभी ला कमिशन के बहुत ही कृतज्ञ है, जिस के माननीय सदस्यों ने बडी मेहनत कर के न्याय पद्धति के सम्बन्ध में एक रिपोर्ट हमारे सामने उपस्थित की है। हमारे यहा जो न्याय पद्धति अभी जारी है उस के सम्बन्ध मे जो टीका-टिप्पणी होती है, उस का समावेश सरकार ने अपने प्रस्ताव मे कर दिया था और अभी कई माननीय सदस्यो ने उस की तरफ ध्यान खीचा है कि यह प्रणाली खर्चीली है और यह प्रणाली ऐसी है, जिस मे न्याय बहुत देर मे मिलता है। जहा तक मैं ला कमिशन की रिपोर्ट को पढ़ सका हू और उन की सिफारिशो को देख सका हू। मुझे ऐसा लगता है कि उन से न तो हमारी न्याय-प्रणाली कम खर्चीली होगी और न ही न्याय का निपटारा जल्दी हो सकेगा। यद्यपि ला कमीशन ने न्याय प्रणाली मे बहुत सुधार सुझाये हैं, जिनसे किसी न किसी प्रकार से कुछ सुधार की आशा की जा सकती है, लेकिन मैं अभी भी इस बात का महसूस करता हू कि हमारे देश की जो न्याय प्रणाली है, वह जनता की आवश्यकताओं को ध्यान में रख कर नही बनाई गई है और अब तक जितने ला कमीशन्स की नियुक्तियां समय समय पर हुई हैं उन के सुझावो का समावेश हम अपनी न्याय-पद्धति —अपनी कोर्टस की व्यवस्था—में कर पाये है, लेकिन फिर भी हमारा उद्देश्य पूरा नही हुआ है और वाछित सुधार नही हो पाये हैं। हिन्दुस्तान की जनता समझती है कि आज की न्याय-पद्धति मे न्याय धनियो को ही मिल सकता है—गरीबों को न्याय नही मिलता है। इस का कारण यह नही है कि हमारे जो न्याय करने वाले हैं, वे कुछ पक्षपात करते है, लेकिन जो पद्धति हम ने अपने देश मे चलाई है और अभी तक जारी रखी है, उस में हर जगह मुकदमे में खर्च की जरूरत है। हम ने अपने सामने हिन्दुस्तान में एक कल्याणकारी राज्य की स्थापना का आदर्श रखा है, लेकिन अभी तक हमारे देश में सैकडे मे ७५ और ८० आदमी ऐसे है, जोकि अपने पेट को ठीक तरह से नही भर सकते हैं। उन के प्रति अगर समाज के किसी अग के द्वारा अन्याय किया जाय, तो अव्वल तो व जिले की कचहरी तक भी नही पहुच सकते है और अगर किसी तरह पहुचने की हिम्मत भी करते है, तो मुकदमे के एडजर्नमेंट के कारण—कई कई तारीखें पडने के कारण उन को बडी परेशानी का सामना करना पडता है। अपने मुकदमे के लिये उन को पद्रह पद्रह दिन तक आना पडता है। सभापति महोदय, आप इस बात का अनुमान लगा सकते है कि खेत में काम करने वाला मजदूर कितने दिन तारीख पर अदालत मे हाजिर हो सकता है। इस का परिणाम यह है कि उस के प्रति जो भी अन्याय समाज के किसी अग के द्वारा होता है आज की कोर्ट की व्यवस्था मे वह उस का निराकरण नही करा सकता है उस के सम्बन्ध मे कोई न्यायोचित निर्णय नही करा सकता है। मैं कोई वकील नही हू, लेकिन देहात मे काम करने वाला एक कार्यकर्ता जरूर हू। मैं जनता की भावना को जानता हू। जब उन्हे किसी मामले मे—वह गलत हो या सही—किसी मौके पर मुद्दई या मुद्दालेह के रूप मे अदालत मे जाना होता है, तो वे घबरा उठते

[श्री श्रीनारायण दास]

हैं, वे थर्रा उठते हैं। वे समझते हैं कि क्या बला हमारे सिर पर आ पड़ी। जो मोटी पुस्तक हमारे सामने रखी गई है, उस में दी गई सिफ़ारिशों को मैं ने बड़े गौर से पढ़ा है। मैं वहीं समझता कि किन सुधारों से हमारे गरीबों को कुछ राहत मिल सकेगी—चाहे वह ज़िले की कचहरी के स्तर पर हो, चाहे सूबे की अदालत के स्तर पर और चाहे सुप्रीम कोर्ट के स्तर पर हो। आज हमारे वकील भाइयों की फ़ीसें दिनों-दिन बढ़ती जा रही हैं। तो फिर किस तरह हमारे गरीबों को न्याय सस्ता और शीघ्र मिल सकेगा? इस लिये मुझे अफ़सोस के साथ कहना पड़ता है कि जहां तक इस पद्धति को कम खर्चीली बनाने का ताल्लुक है, उस में हमारे ला कमीशन के माननीय सदस्यों को कुछ भी सफलता नहीं मिली है। धनी और ग़रीब का भेद-भाव जब तक कचहरियों में नहीं मिटाया जाता, जिस तरह धनी रुपया खर्च कर के न्याय पा सकता है, जब तक ग़रीब भी न्याय नहीं पा सकता, तब तक हमारी न्याय पद्धति न्याय-पद्धति नहीं है, उस को न्याय-पद्धति का ढकोसला ही कहा जायगा।

हमारे आयोग ने कहा है कि जो पद्धति हम ने अंग्रेज़ों से ले कर अपने देश में चलाई है, वह बहुत असंतोषजनक नहीं रही है। मैं नहीं जानता कि हमारी पद्धति संतोषजनक है या असंतोषजनक, इसका क्राइटेरियन, इस की कसौटी क्या हो सकती है। इस की कसौटी यह हो सकती है कि हमारे न्यायालयों के सामने मुकदमे करने वाले कितने गरीब आये और कितने धनी आये, यह देखा जाये। कितने ही ग़रीब ऐसे हैं, जिन के साथ अन्याय होता है, लेकिन वे उस का निराकरण नहीं कर पाते, क्योंकि उन के पास पैसा नहीं है। यह ठीक है कि हमारे ला कमीशन के माननीय सदस्य बड़े विद्वान हैं, बड़े मेहनती हैं और उन्होंने बड़ा परिश्रम किया है, लेकिन जैसा कि अभी माननीय सदस्य ने कहा है, उन का यह भी कर्तव्य था कि यदि वे कोई मौलिक सुधार न करें, तो कम से कम पद्धति को कम खर्चीली बनाने का मोटा उपाय तो बतायें।

ज्यादा वक्त नहीं है, लेकिन फिर भी मैं एक बात की तरफ़ आप का ध्यान खींचना चाहता हूं। ला कमीशन ने उस तरफ़ कुछ ध्यान दिया है और वह है लीगल एड की बात। जब से हमें स्वराज्य मिला है, इस सदन में गरीबों को मुकदमे के सिलसिले में खर्च या कुछ सुविधा देने या वकीलों की सहायता देने का सवाल उठाया जाता रहा है और हमारे माननीय मंत्री जी ने—कभी ला मिनिस्टर ने और कभी होम मिनिस्टर ने—कहा कि इस पर विचार किया जा रहा है, फलां स्टेट से स्कीम मांगी गई है, केरल से मांगी गई है, बिहार से मांगी गई है, अभी स्कीम नहीं आई है, वगैरह। मालूम नहीं कि ग़रीबों को फ़ायदा पहुंचाने सम्बन्धी स्कीम कब तक आयगी और कहां तक लागू की जायगी। इस रिपोर्ट में इस सम्बन्ध में कुछ सुझाव दिये गये हैं, लेकिन प्रश्न यह है कि इतने बड़े देश में, जहां ज्यादा आदमी ग़रीब हैं, ग़रीबों को न्याय के सिलसिले में सहायता पहुंचाने के लिए, उन को लीगल एड उपलब्ध करने के लिये जितने रुपये की ज़रूरत है, हमारी सरकार क्या उतने रुपये की मुहैया कर सकेगी या नहीं। अगर इस बारे में कोई कदम न उठाया गया, तो हमारे ग़रीब वहीं के वहीं रह जायेंगे, जहां कि वे सदियों से रह रहे हैं। इसलिये मैं माननीय विधि मंत्री से कहूंगा कि अगर इस न्याय-पद्धति को कम खर्चीली नहीं बनाया जा सकता है, तो कम से कम हर जगह—हर जिले में, हर तहसील में—लीगल एड की समितियां बनाई जायें, जिन के द्वारा वकीलों और दूसरे लोगों की सहायता की जाये। सेंट्रल बजट में से उन को रुपया दिया जाये, ताकि ग़रीब लोग जब मुद्दई या मुद्दालेह की हैसियत से कचहरी पहुंचें, तो उन को इस खर्चीली न्याय-पद्धति में कुछ न्याय मिल सके। लीगल एड सोसायटी के बारे में केन्द्रीय

सरकार को शीघ्र से शीघ्र कदम उठाना चाहिए । उस ने अब तक इस सम्बन्ध में जो नीति रखी है, वह बहुत उपेक्षा की नीति है । जो न्याय-पद्धति हमारे देश में प्रचलित है, वह इतनी खर्चीली है कि गरीब उस में न्याय नहीं पा सकता है । सरकार ने लीगल एड सोसायटीज की तरफ़ कदम नहीं उठाया है । सरकार की तरफ़ से यह कहा जा सकता है कि यह केन्द्रीय विषय नहीं है, यह राज्य का विषय है और राज्य सरकारों को स्वतन्त्रता है कि वे लीगल एड सोसायटी बनायें । लेकिन मैं समझता हूं कि आज के जमाने में, जब कि केन्द्रीय सरकार धीरे धीरे अधिकारों को लेती जा रही है, यह कहना कि यह कार्य राज्य सरकारें चलायें, उचित नहीं है । केन्द्रीय सरकार और राज्य सरकार दोनों की इस बारे में जवाबदेही है कि इस मौजूदा पद्धति को तो कम खर्चीली नहीं बनाया जाता है और ऐसी व्यवस्था नहीं की जाती है कि जल्दी न्याय मिले इसलिये जल्द से जल्द ऊपर से लेकर नीचे तक लीगल एड सोसायटीज स्थापित की जानी चाहिए । संविधान की दफा १३६ और २२६ में सुप्रीम कोर्ट और हाई कोर्ट को अपील और रिट आदि जारी करने का अधिकार दिया गया है । लेकिन जरा ख्याल कीजिये कि अगर गांव के रहने वाले किसी साधारण आदमी के व्यक्तिगत अधिकारों में यदि हस्तक्षेप होता हो, तो वह किस तरह दिल्ली जैसे सुदूर शहर में आ कर, बड़े बड़े वकीलों का बड़ी बड़ी फीसें दे कर सुप्रीम कोर्ट का दरवाजा खटखटा-कर इस रिट का फायदा उठा सकता है ? इसलिये अगर हर जगह लीगल एड सोसायटीज हो जायें, तो ऐसे लोगों को कुछ सहारा मिल सकता है ।

एक बात की तरफ और मैं ध्यान खींचना चाहता हूं । न्याय दिलाने के सम्बन्ध में पुलिस एक मुख्य कड़ी है । अगर कोई अपराध होता है, तो उस की जांच करने के लिये जितने अधिकार हैं, वे पुलिस के हैं, लेकिन हमारे देश में इस तरह की पुलिस है—मैं सब के बारे में नहीं कहना चाहता हूं लेकिन जिस तरह की पुलिस की व्यवस्था अभी तक हमारे देश में है, उसमें ठीक ठीक सही सही हालात का पता लगाने में इतना विलम्ब हुआ है, इतनी देरी होती है कि कुछ कहना ही नहीं । इसके साथ ही साथ करप्शन, भ्रष्टाचार भी होता है । जब कभी कोई अपराध होता है तो न्याय पाने के लिये सबसे पहले पुलिस को खुश करना पड़ता है और आप जानते ही हैं कि पुलिस को खुश करना कितना कठिन काम है । पुलिस की रिपोर्ट ठीक न हो तो न्याय नहीं मिल सकता है । जो गरीब होता है वह उसी रिपोर्ट पर निर्भर करता है, इस वास्ते पुलिस की रिपोर्ट का ठीक होना बहुत आवश्यक होता है । मैं मानता हूं कि मैजिस्ट्रेट को अधिकार है कि पुलिस की इन्क्वायरी के बाद भी फिर से इन्क्वायरी करा ले और दूसरी बातें भी हैं, लेकिन फिर भी इतनी दिक्कतें रास्ते में आती हैं कि उनको पार नहीं किया जा सकता है । इसलिये ला कमीशन ने जो एक सुझाव दिया है कि इनवैस्टिगेशन करने के लिये जो पुलिस हो वह दूसरी पुलिस हो और साधारण पुलिस दूसरी हो, एक अच्छा सुझाव है और मैं इसका स्वागत करता हूं ।

इसके साथ ही साथ एक और भी सुझाव दिया गया है, जिसको मैं अच्छा समझता हूं । हमारे प्रान्त में तो यह चीज है नहीं और दूसरी जगहों पर हो तो मुझे पता नहीं है । वह सुझाव यह दिया गया है कि एक डायरेक्टर आफ प्रासीक्यूशन होना चाहिये । अभी जो पब्लिक प्रासीक्यूटर होते हैं, वे नीचे के दर्जे में जो इन्स्पैक्टर आफ पुलिस है, वही प्रासीक्यूशन का काम भी करते हैं । मैं समझता हूं कि सभी देहातों के अन्दर, सभी जिलों के अन्दर, सभी तहसीलों के अन्दर अगर एक स्वतन्त्र विभाग, पब्लिक प्रासीक्यूशन के लिये बनाया जाए और उसका इचार्ज डायरेक्टर आफ प्रासीक्यूशन हो जो कि पुलिस के बाहर का आदमी हो, तो ज्यादा फायदा हो सकता है ।

कोर्ट फीस के बारे में बहुत से माननीय सदस्यों ने अपने विचार प्रकट किये हैं ।

[श्री श्रीनारायणदास]

मैं समझता हूं कि न्याय पाने की जो वर्तमान पद्धति है, वह सरकार के लिये भी और मुकदमा लड़ने वाले के लिये भी खर्चीली है। मैं मानता हूं कि तनख्वाह बढ़ाने की बात चलती है, कोर्ट फीस हटाने की मांग चलती है लेकिन फिर भी सरकार की चाहिये कि वह साधारण टैक्सों से इकट्ठे किए हुए पैसे से ही न्याय पद्धति का इन्तिज़ाम करे। न्याय को जनता तक पहुंचाने के लिये, फीस लेना उचित नहीं है, न्याय संगत नहीं है, यह सबसे प्राइमरी अन्याय है, जो हो रहा है और यह दूर होना चाहिये।

इन शब्दों के साथ मैं आशा करता हूं कि जो राज्य सरकारें हैं, जो केन्द्रीय सरकार है तथा सुप्रीम कोर्ट व हाईकोर्टस हैं, जिनसे सम्बन्ध रखने वाली ला कमीशन की सिफारिशें हैं, व सब इन सिफारिशों को कार्यान्वित करने के लिये जल्दी कोशिश करेंगी।

16.42 hrs.

BUSINESS OF THE HOUSE

Mr. Chairman: Before I call upon the Minister of State to intervene in the debate, I permit the Minister of Parliamentary Affairs to make an announcement.

The Minister of Parliamentary Affairs (Shri Satya Narayan Singh): Sir, I have a little announcement to make with your permission.

As you are aware, the consideration of the Andhra Pradesh and Madras (Adjustment of Boundaries) Bill has been postponed to the next week at the request of certain sections of the House. It is proposed to take in its place the Arms Bill as reported by the Joint Committee. The Bill will be taken up tomorrow after discussion and voting of Demands for Excess Grants (Delhi) and Demands for Excess Grants (Himachal Pradesh). The Business Advisory Committee has already allotted five hours for this Bill.

I have also to announce another change, namely, that discussion on the motion of Shri Harish Chandra Mathur regarding the Vivian Bose Board of Inquiry and the allied documents originally announced for Friday, September 4, will now be held on Monday, September, 7, and the House will discuss the report of the Commissioner for Linguistic Minorities on Friday, September 4.

These change, as you are aware, have been made to accommodate they wishes of large sections of this House.

Shri Nagi Reddy (Anantapur): What is the time allotted for the discussion of these reports? (*Interruption*).

Mr. Chairman: No further explanation is necessary. The Minister of Parliamentary Affairs has made his announcement.

16.43 hrs.

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

The Minister of State in the Ministry of Home Affairs (Shri Datar): Mr. Chairman, Sir, a number of points have been raised in the course of the debate today and also on the last occasion in relation to the Law Commission's recommendations as well as suggestions. I should like to deal with a few of them because they are more or less concerned with the Ministry of Home Affairs.

In the first place, a reference was made by one or two hon. Members to the comments or the complaints made by the Law Commission in regard to the appointment of judges in the high