

[श्री श्रीनारायणदास]

मैं समझता हूँ कि न्याय पाने की जो वर्तमान पद्धति है, वह सरकार के लिये भी और मुकदमा लड़ने वाले के लिये भी खर्चीली है। मैं मानता हूँ 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 इन्तिजाम 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 हूँ कि जो राज्य सरकारें हैं, जो केन्द्रीय सरकार है तथा सुप्रीम कोर्ट व हाईकोर्ट्स 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 Com-

mittee 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

courts as also in the Supreme Court. This question was debated at great length while the Demands of the Ministries of Law and Home Affairs were under consideration during the last budget session, and a detailed reply was given thereto both by the Minister of Law and the Minister of Home Affairs. I would not like to repeat all those arguments but I would merely submit to this House that so far as those remarks were concerned the circumstances were not found to be such as they were made out to be, and almost all the appointments had been made with the full concurrence of the Chief Justice of India. Wherever there was some difference, that difference was only with regard to the recommendations made by the Chief Justices of the high courts or the Chief Ministers as the case may be.

**Pandit D. N. Tiwary (Kesaria):** In the report of the Law Commission, it is said that extra-influences are brought upon the Chief Justices of high courts in regard to the appointment of judges. What about that?

**Shri Datar:** May I point out that the same thing was.....

**Mr. Chairman:** I think that hon. Members will do well to permit the hon. Minister to proceed, and that the hon. Minister could deal with such points at the end. Otherwise, there will be too much of interruption.

16.45 hrs.

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

**Shri Datar:** May I point out that the question that was considered was both in respect of appointment of judges to the Supreme Court and of judges to the High Courts? So, I would not deal with that question, because it was satisfactorily dealt with and a full and effective answer was given here to the various complaints and observations made in the Law Commission's report.

The next question is whether there is any need for what has been called

a Ministry of Justice at the Centre. Certain points have been made in the Law Commission's report and we have to consider a number of other circumstances in this respect. So far as justice is concerned, largely it is within the State sector, except so far as the Supreme Court and the High Courts are concerned. It is for the State Governments to consider these matters in the first instance. As I have stated, the question is whether there is any need for a separate Ministry of Justice at all at the Centre. The actual administration of justice, as you are aware, vests in the Supreme Court, various High Courts and a hierarchy of courts. So far as we are concerned, we deal with certain matters regarding appointments or matters which are of an administrative nature.

The Law Commission themselves have pointed out how in India conditions are different. We are in a federal constitution and the administration of justice is within the State sphere. The second point they have pointed out is, generally our administration of law or justice has been based upon the system that prevails in the U.K. Even in U.K. certain opinions were expressed that there ought to be a Ministry of Justice. The Law Commission have pointed out on page 1225 of their report as follows:

"We may in this connection refer to the fact that the creation of such a Ministry of Justice has been advocated in England where eminent lawyers have expressed themselves against the condition of affairs under which the responsibility for the administration of justice is divided between the Lord Chancellor and the Home Secretary though the conditions there are not so confused and illogical as here."

We have to consider to what extent they are illogical or confused, as the Law Commission have pointed out. Whether they are confused or illogical at all is a question which has to be fully considered and we have not

[Shri Datar]

got very great elucidation so far as this question is concerned in the Law Commission's report. They say further:

"No doubt this reform has not been given effect to in England for various reasons, some of which " etc.

I will not deal with them. So, this question requires a full examination and it will not be possible at this stage to point out what the final policy decision of the Government will be in this respect

I next come to the question of the establishment of benches in various High Courts. We have got the well-considered views of the Law Commission in this matter. They produced a special report and pointed out that in India so far as the High Courts are concerned, there ought to be only one principal seat of the High Court and there should be neither permanent nor temporary benches. That was the view expressed by the Law Commission on the ground that if there are going to be various benches—there are some such cases even now—then there would be a lowering of standards on various grounds. And one of the grounds which has to be referred to in this connection is that the Chief Justice, who has to control all the administration of law in that particular High Court, will be staying in one place and, therefore, there will be no effective control or supervision by the Chief Justice of the particular High Court. They have pointed out a number of other cases also. Therefore, as I submitted on an earlier occasion in connection with a private Member's Bill, this Report of the Law Commission is entitled to the greatest weight and generally, subject to certain realities of the situation, the policy of the Government would be to follow the recommendations of the Law Commission in this respect.

Shri Kashiwal: It is only from now on.....

Shri Datar: If the hon. Member had waited, I would have clarified the position. It is true that there are certain benches in about 4 or 5 States. But they have arisen on account of historical considerations, and therefore we have to consider as to what should be done, so far as these benches are concerned. Now that, as I have pointed out, is the general policy of the Government, which is in keeping with the Law Commission's report. We have also to consider how long such benches ought to remain. That is a question on which it is not necessary at present to pronounce any opinion. But may I point out again that they arose on account of historical circumstances? In fact, as the Rao Committee pointed out, there were five High Courts in the Rajasthan State, when it was integrated into one. There was also the Judicial Commissioner, so far as Ajmer was concerned. Then, when all these States were integrated, naturally it would have been very hard to immediately have only one High Court and not to have any benches at all. That is the reason why even in respect of Rajasthan a gradual policy was followed. In respect of other States also, may I point out that only on account of certain conditions then obtaining were the benches allowed? Take the case of the Bombay High Court. In the reorganised Bombay State we naturally have the Bombay High Court. But Nagpur had a High Court when it was in the former Madhya Pradesh and, therefore, it was considered proper

Shri Braj Raj Singh (Firozabad):  
May I know

Shri Datar: You should allow me to complete. The time at my disposal is very little. Also, I have to cover a number of matters. Therefore, I would request the hon. Member not to ask any questions now. He can ask any number of questions afterwards.

In Rajkot there was a High Court for Saurashtra State. So far as U.P. is concerned, at Lucknow we had a chief court formerly and after independence we have now got the Allahabad High Court and a permanent bench at Lucknow. Similarly, in the South, as I have already pointed out, according to a decision between the parties, and according to the terms of the integration, the High Court's principal seat was only at Ernakulam. It was only subsequently that bench was established, a temporary bench, at Trivandrum. Therefore, in all these cases we have to consider the question first from the point of view of the efficiency of the High Court, or of keeping the efficiency of the High Court administration at as high a level as possible.

So far as Rajasthan is concerned, let us take into account one more circumstance. In respect of Rajasthan there was a special committee. After the integration of Rajasthan as a part B State and Ajmer as a part C State, a question arose as to what should be done so far as a number of matters of common interest were concerned. That, including the question of the High Court and the High Court Bench, if any, was at the instance of the Rajasthan Government referred to a special committee presided over by a hon. Judge of a High Court. That committee went into the whole question. I need not deal with the other questions. But they considered this question from two points of view. One was to where the principal seat of the High Court should be. They considered the claims of Jodhpur. They considered the claims of Ajmer. They considered the case of Jaipur also because it was stated that if only one principal seat was to be there why should it not be at Jaipur. After considering all the circumstances, the points of principle and questions of administrative matters, they came to the conclusion that there ought to be the principal seat only at Jodhpur. So far as Jaipur was concerned, they have pointed out in their report very

properly that the Jaipur Bench cannot be considered as a temporary bench, much less what can be called a permanent bench under section 51(2) and 51(3) of the States Reorganisation Act.

I would point out as to how the position was extremely anomalous so far as the Jaipur Bench was concerned. In paragraph 117 of the Rao Committee's Report it has been pointed out how the position was not like any ordinary temporary bench or a permanent bench. I would read that.

"It may be pointed out in this connection that it may not be accurate to describe the judges sitting at Jaipur as a Bench."

This question should also be understood.

"The expression may not convey to one's mind a correct picture of what is actually happening. At present the Rajasthan High Court consists of seven judges and it is said that one more judge is to be appointed soon. The strength will then be eight. Actually four judges sit at Jaipur and three judges at Jodhpur, the principal seat of the High Court. The Chief Justice....."

This may kindly be noted.

"The Chief Justice goes for one week in the month to Jaipur and sits there for disposal of cases either alone or in a Bench. It is really a division of the High Court into two unequal parts...."

That should be noted. It is not merely a temporary bench.

"It is really a division of the High Court into two unequal parts with a common Chief Justice and the small part of it functioning at Jodhpur."

You will agree, Sir, that if we take a detached view, the position so far as the High Court in Rajasthan is concerned, was far from satisfactory.

[Shri Datar]

It was almost anomalous. Therefore the whole question was gone into as to where the seat of the Rajasthan High Court should be. This question was considered even though at the time when the States Reorganisation Act came into force, naturally Jodhpur was declared as the principal seat of the Rajasthan High Court. Still, the pros and cons of the question as to whether Jaipur or Ajmer or Jodhpur should be the principal seat of the High Court was fully considered and after considering all the aspects of the matter the Rao Committee came to the conclusion that in the first place the principal seat should be at Jodhpur; secondly that there should be no Bench at Jaipur at all. So far as Ajmer was concerned, the question was not pursued because Ajmer was not found to be a suitable place from the criteria that were laid down in this respect. After considering all these circumstances it was found necessary or rather inevitable to abolish what is popularly called the Bench at Jaipur. Under these circumstances I would request my hon. friends to know the correct and realistic position in this respect and not to allow this question to be always raked up because whenever such attempts are made naturally they lead to a position of uncertainty and to a position of suspense. Therefore let things remain as they are so far as Jaipur is concerned. I would not like to deal further with this question.

17 hrs.

In respect of separation of judiciary from the executive, may I point out that there has been complete separation in respect of three States? In respect of the fourth, by this time I am confident that the Government of Bombay will have introduced complete separation in what are known as Vidarbha and Marathwada areas, so that we can take it that there are four States in India where there has been complete separation.

Shri Feroze Gandhi (Rai Bareilly):  
Bombay and Maharashtra are to be separated.

Shri Datar: I am dealing with the question of the separation of judiciary in the State as it exists today.

I was pointing out that at least in respect of four States which are fairly big ones, Bombay, Andhra Pradesh, Kerala and Madras, we have got complete separation of the judiciary from the executive. In the case of 7 States, it has been introduced partially. Gradually, as experience is gained, the question of the extension of separation of judiciary from the executive is being undertaken. After all, we have to take this circumstance into account that this is a question which has to be dealt with by the State Governments. My hon. friend Shri Shree Narayan Das spoke almost on the footing that we had a unitary form of Government with Parliament exercising absolute authority in respect of all the States. My simple answer is that we have a federal structure of the Constitution and the State Governments are competent in a number of matters to deal with them as they like. This is a matter in which all we can do is to persuade them as early as possible to give effect to one of the Directive principles of the Constitution that there ought to be complete separation of the judiciary from the executive. That point is being pursued.

Mr. Deputy-Speaker: Would the hon. Minister like to finish today?

Shri Datar: I should like to continue tomorrow. The Law Minister is going to reply.

Mr. Deputy-Speaker: Then, we take up the Half-an-hour discussion.

Shri Ram Krishna Gupta (Mahendragarh): I wish to make some submissions, Sir.

Mr. Deputy-Speaker: Does he want to speak before the Minister has concluded?