



LAW COMMISSION OF INDIA

FOURTEENTH REPORT

REFORM OF JUDICIAL ADMINISTRATION

(VOL. I—CHAPTERS 1—40)

MINISTRY OF LAW
GOVERNMENT OF INDIA

M. C. Setalvad,
Chairman

LAW COMMISSION

5, Jor Bagh,
New Delhi-3,
September 26, 1958.

Shri Ashok Kumar Sen,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the fourteenth Report of the Law Commission on the Reform of Judicial Administration.

2. The appointment of the Commission was announced by your predecessor in the Lok Sabha on the 5th August, 1955, and the Members of the Commission assumed their office on the 16th September, 1955. The Commission has since been engaged, among other things, in investigating the system of judicial administration in this country.

3. For various reasons the inquiry has taken a longer time than was originally anticipated. While an attempt has been made to go into all the matters covered by the terms of reference, we have for obvious reasons, not entered into a detailed examination of either of the procedural codes or of the law of evidence with a view to suggesting amendments. We have confined ourselves to indicating in broad outline the changes that would be necessary to make judicial administration speedy and less expensive.

4. The detailed examination and revision of the codes of civil and criminal procedure is a task which calls for considerable time. Such a revision on the basis of our general recommendations will have to be undertaken hereafter.

5. The manner in which the Commission conducted its investigations in this branch of its inquiry has been set forth at length in the introductory chapter. The large volume of material collected for this purpose was put into the shape of notes for a draft report by the Secretariat of the Commission. A draft report was then prepared and circulated to the members. The draft was after a final discussion settled by the Chairman.

6. I would like in this connection to express my gratitude to my colleagues for the assistance and the co-operation which I have received from them during the course of the Commission's enquiries and deliberations.

7. I would like to acknowledge the able assistance rendered in the course of the Commission's inquiries and in the drafting and the completion of the Report by the officers of the Commission. The Joint Secretary, Shri K. Srinivasan has brought to this work not only a wide knowledge of the working of civil and criminal courts

but also administrative ability of a high order. Shri R. M. Mehta, the Deputy Secretary, did very valuable work in the field of civil law and in allied fields. Shri P. B. Venkatasubramanian, the Chairman's Special Assistant did indefatigable work in gathering valuable information and putting into shape various parts of the Report.

8. Shri G. S. Pathak being outside India is unable to sign the Report, but he concurs in the recommendations and has authorised the Chairman to sign the Report on his behalf. Dr. N. C. Sen Gupta, Shri V. K. T. Chari and Shri D. Narasa Raju who are unable to come down to Delhi, similarly concur in the recommendations and have also authorised the Chairman to sign the Report on their behalf.

9. Dr. N. C. Sen Gupta and Shri V. K. T. Chari have signed the Report subject to their separate notes which are annexed to the Report.

10. With this Report, the Commission, as at present constituted, concludes its labours. The task of revising the Central Acts of general importance and making suggestions for the reform of the law is, however, far from being over. Much of the work undertaken in this connection is still unfinished and will have to be completed.

11. In conclusion, the Commission wishes to acknowledge the ungrudging services rendered to it by its entire staff.

Yours sincerely,
M. C. SETALVAD.

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1.—INTRODUCTORY

Ever since Independence, suggestions were made in and outside Parliament for the appointment of a Law Commission for examining the Central Acts and recommending the lines on which they should be amended, revised or consolidated.

On the 2nd December 1947 Dr. Sir Hari Singh Gour moved a resolution in the Constituent Assembly (Legislative) recommending the establishment of a Statutory Law Revision Committee to clarify and settle questions of law which required elucidation. The resolution was, however, withdrawn by the mover upon an assurance being given by the then Law Minister, Dr. Ambedkar, that Government would try to devise some other suitable machinery for revising laws. One of the methods by which the work of law revision could be undertaken was stated by Dr. Ambedkar to be a permanent Commission which would be entrusted solely with the work of revising and codifying the laws.

The advisability of creating a Law Commission was again stressed in the Lok Sabha on the 27th June 1952 by Shri N. C. Chatterjee, on a discussion on the Motion for Demands for the Ministry of Law.* In the course of his speech on the occasion, the then Law Minister Shri C. C. Biswas stated that the Government recognised that the work of keeping the law up-to-date was one of vital importance and he gave an assurance that the question would be examined by Government and necessary steps would be taken.

On the 26th of July 1954 the All-India Congress Committee resolved that "a Law Commission should be appointed as in England to revise the laws promulgated nearly a century back by the Law Commission of Macaulay and to advise on current legislation from time to time".

The genesis of the present Commission lies in a non-official resolution moved in the Lok Sabha on the 19th November 1954. The contents of that resolution were:

"This House resolves that a Law Commission be appointed to recommend revision and modernization of laws, criminal, civil and revenue, substantive, procedural or otherwise and in particular, the Civil and Criminal Procedure Codes and the Indian Penal Code, to reduce the quantum of case-law and to resolve the conflicts in the decisions of the High Courts on many points with a view to realise that justice is simple, speedy, cheap, effective and substantial."

*House of the People Debates, 1952, Vol. II, column 2690.

In the course of further discussion on this resolution in the Lok Sabha on the 3rd December 1954 the Prime Minister, Shri Jawaharlal Nehru, made a statement that the Government had accepted the resolution in so far as the appointment of the Law Commission was concerned and that Government were even then "engaged in considering the steps to be taken towards that end". In view of the acceptance by the Prime Minister of the principle underlying the resolution, the resolution was withdrawn.

2. Though the suggestions made to Government and the assurances given by them from time to time related to the revision and modernisation of laws, the underlying purpose as stated in the resolution of the 19th of November 1954 was "to realise that justice is simple, speedy, cheap, effective and substantial". This aim could not be achieved merely by revision and simplification of the laws but needs also overhauling the system of administration of justice. The growing accumulation of arrears in the various High Courts and subordinate courts had created a situation which necessitated a careful examination of the problem of the proper functioning of the machinery of the courts. Presumably these reasons led Government to widen the ambit of the activities of the proposed Law Commission so as to include in it the subject of the reform of judicial administration.

3. On the 5th of August 1955 the Law Minister, Shri C. C. Biswas, made the following statement in the Lok Sabha announcing the Government of India's decision to appoint a Law Commission, its membership and the terms of reference.

"Suggestions have been made from time to time both in Parliament and outside, that a Law Commission should be appointed for revising our statute law and suggesting ways and means of improving the system of judicial administration in the country. A few months ago we had a discussion in this House on a resolution to that effect moved by Shri Thimmaiah. On that occasion, the Prime Minister accepted the resolution in principle and stated that Government were considering what exactly the terms of reference to the Law Commission should be, what should be the personnel, and various other details.

2. The Government of India have now decided to appoint a Law Commission consisting of the following members:—

- (1) Shri M. C. Setalvad, Attorney-General of India (Chairman),
- (2) Shri M. C. Chagla, Chief Justice of the Bombay High Court,
- (3) Shri K. N. Wanchoo, Chief Justice of the Rajasthan High Court.

* (4) Shri G. N. Das, retired Judge of the Calcutta High Court,

(5) Shri P. Satyanarayana Rao, retired Judge of the Madras High Court,

(6) Dr. N. C. Sen Gupta, Advocate, Calcutta,

(7) Shri V. K. T. Chari, Advocate-General, Madras,

(8) Shri Narasa Raju, Advocate-General, Andhra,

(9) Shri S. M. Sikri, Advocate-General, Punjab,

(10) Shri G. S. Pathak, Advocate, Allahabad, and

(11) Shri G. N. Joshi, Advocate, Bombay,

✓ 3. The terms of reference to the Commission will be:

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;

secondly, to examine the Central Acts of general application and importance, and recommend the line on which they should be amended, revised, consolidated or otherwise brought up-to-date.

4. 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,—

(a) the operation and effect of laws, substantive as well as procedural, with a view to eliminating unnecessary litigation, speeding up the disposal of cases and making justice less expensive;

(b) the organisation of courts, both civil and criminal;

(c) recruitment of the judiciary; and

(d) level of the bar and of legal education.

5. With regard to the second term of reference, the Commission's principal objectives in the revision of existing legislation will be—

(a) to simplify the laws in general, and the procedural laws in particular,

(b) to ascertain if any provisions are inconsistent with the Constitution and suggest the necessary alterations or omissions,

(c) to remove anomalies and ambiguities brought to light by conflicting decisions of High Courts or otherwise,

(d) to consider local variations introduced by State legislation in the concurrent field, with a view to reintroducing and maintaining uniformity,

(e) to consolidate Acts pertaining to the same subject with such technical revision as may be found necessary, and

(f) to suggest modifications wherever necessary for implementing the directive principles of State policy laid down in the Constitution.

6. In order to perform its task expeditiously and efficiently, the Commission will function in two sections. The first section consisting of the Chairman and the first three members will deal mainly with the question of the reform of judicial administration, while the second section consisting of other seven members will be mainly concerned with statute law revision on the lines indicated above. The two sections, however, will work in close co-operation with each other under the direction of the Chairman.

7. The Chairman of the Commission may at his discretion co-opt as members one or two practising lawyers of a State in order to assist the Commission's inquiries in that State.

8. The Commission is appointed in the first instance upto the end of the year 1956. Its headquarters will be at New Delhi."

4. Shri N. A. Palkhivala was appointed a Member of the Commission on the 1st October 1956 in the Statute Revision Section, it having been decided to give priority to the revision of the Indian Income-tax Act.

In December 1956, one of the Members of the Commission Shri G. N. Das resigned his Membership of the Commission for reasons of health. His resignation deprived the Commission of the mature experience of a senior and eminent member of the Bar and later of the Bench. It was with considerable regret that the Chairman accepted his resignation. It may be mentioned that the Commission is greatly indebted to him for the assistance he gave to the Commission during the period of his association with it, particularly on certain important topics relating to the reform of judicial administration.

After Shri G. N. Das resigned from the Commission Shri P. Satyanarayana Rao who was till then principally in charge of the Statute Revision Section of the Commission was invited by the Chairman to serve on the First Section in addition to his onerous duties in the Second Section and the invitation was accepted by him.

5. Although our appointment was in the first instance upto the 31st December, 1956, the period had to be extended from time to time upto the 30th September, 1958 in view of the large field of our inquiry.

6. In accordance with our instructions we have functioned in two sections. The first section consisting of the Chairman and the first three members has dealt mainly with the question of the reform of judicial administration. At our inaugural meeting held on the 16th September, 1955 we discussed the objectives in our terms of reference and the particular lines on which the Commission as a whole and the two sections thereof should proceed; the initial steps to be taken and the procedure to be followed, in so far as the work of the first section was concerned. It was decided (1) that the factual position with which the first section had to deal should in the first instance be ascertained before considering the remedial measures; (2) that detailed information on these problems should be collected from all possible sources; (3) after the information had been collected, a comprehensive questionnaire should be addressed to all bodies and persons likely to assist the Commission with their knowledge and experience, and (4) that the recommendations should be decided upon after the replies to the questionnaire had been examined. At the first meeting of the first section held on the 17th September, 1955 we discussed the several problems relating to the administration of justice on which reform was needed and prepared a list of the topics on which material had to be collected. After the required information had been collected from the State Governments, the High Courts and other sources, a detailed questionnaire* containing 193 questions embracing almost all the aspects of judicial administration was prepared at the second meeting of this section held on 6th January, 1956 and was finally settled at a meeting of the full Commission held on the 7th January. More than six thousand copies of the questionnaire were distributed amongst individuals and associations including the High Courts, the State Governments, Bar Associations and other organisations such as Chambers of Commerce, individual lawyers and judicial officers. Although we received a fairly large number of replies to the questionnaire we regret to observe that the response was not as encouraging as we had anticipated.

*See Appendix I to the Report.

At a meeting held in Bombay on the 21st July, 1956, we reviewed the progress of the work done by the first section of the Commission till that date with special reference to the answers to the Questionnaire that had been received. It was then decided that in order to obtain opinion and information on some of the important problems which arose, it was necessary that the first section of the Commission should visit the States and hold sittings at the principal seat of the High Court in each State and examine witnesses at these places. The conclusions reached at this meeting of the first section were endorsed by the Commission at its full meeting held on the next day.

The first section of the Commission met at New Delhi on the 18th, 19th and 20th of October, 1956 to further discuss the matters raised in the Questionnaire in the light of the replies and information received and formulated certain tentative ideas, with a view to eliciting opinion on them at the sittings of the Commission when on tour. These tentative ideas were placed before a meeting of the full Commission held on the 20th of October, 1956.

7. In exercise of the discretion vested in the Chairman of the Commission to co-opt one or two practising lawyers of a State in order to assist the Commission's inquiries in that State, the Chairman co-opted two members in each of the States visited by us except Madras where only one member was co-opted. The names of the members co-opted are given below :

UTTAR PRADESH (ALLAHABAD)

- (1) Shri Jagdish Swaroop, Advocate, Allahabad.
- (2) Shri Kirpa Narain, Advocate, Agra.

KERALA (ERNAKULAM)

- (1) Shri K. V. Suryanarayana Iyer, Advocate-General of Kerala, Ernakulam.
- (2) Shri K. P. Abraham, Advocate, Ernakulam.

MYSORE (BANGALORE)

- (1) Shri A. R. Somanatha Iyer, Advocate, Bangalore, (now Judge Mysore High Court).
- (2) Shri N. K. Dixit, Advocate, Dharwar.

MADRAS (MADRAS)*

- (1) Shri S. V. Gopalakrishnan, Advocate, Tinnevely.

*Shri V. K. T. Chari, a member of the Statute Revision Section attend-Section's sittings at Madras.

ANDHRA PRADESH (HYDERABAD)*

- (1) Shri A. Ramaswamy Iyengar, Advocate, Secunderabad.
- (2) Shri M. S. Ramachandra Rao, Advocate, Secunderabad.

WEST BENGAL (CALCUTTA)†

- (1) Shri S. M. Bose, Advocate-General, West Bengal, Calcutta.
- (2) Shri Atul Chandra Gupta, Advocate, Calcutta

ORISSA (CUTTACK)

- (1) Shri B. Jagannadha Rao, Advocate, Berhampur.
- (2) Shri B. Mahapatra, Advocate-General, Cuttack.

ASSAM (GAUHATI)

- (1) Shri Debeshwar Sarma, Advocate, Jorhat.
- (2) Shri S. K. Ghosh, Advocate, Gauhati.

BOMBAY (BOMBAY)‡

- (1) Shri R. A. Jahagirdar, Advocate, Bombay.
- (2) Shri V. R. Dholakia, Advocate, Ahmedabad.

RAJASTHAN (JODHPUR)

- (1) Shri C. L. Agarwal, Advocate, Jaipur.
- (2) Shri Chand Mal Lodha, Advocate, Jodhpur.

PUNJAB (CHANDIGARH)

- (1) Shri A. N. Grover, Advocate, Chandigarh (now Judge Punjab High Court).
- (2) Shri G. D. Sehgal, Advocate, Jullundur.

MADHYA PRADESH (JABALPUR)

- (1) Shri K. A. Chitale, Advocate, Indore, (Madhya Pradesh).
- ** (2) Shri M. Adhikari, Advocate-General, Madhya Pradesh, Jabalpur.

*Shri D. Narasa Raju, a member of the Statute Revision Section attended the First Section's sittings at Hyderabad.

†Dr. N. C. Sen Gupta, a member of the Statute Revision Section attended the First Section's sittings at Calcutta.

‡Shri N. A. Palkhivala, a member of the Statute Revision Section attended the First Section's sittings at Bombay.

**Was unable to attend the sittings of the Commission.

BIHAR (PATNA)

- (1) Shri Aghore Nath Banerjee, Advocate, Monghyer (Bihar).
- (2) Shri Lalnarayan Sinha, Advocate, Bihar High Court, Patna.

8. Before commencing our tour we requested all the High Courts and the State Governments to suggest the names of witnesses of several categories, such as, (1) judicial officers, (2) representatives of Bar Associations, (3) representatives of the State Governments, (4) Heads of the police departments, (5) Chairman of the Public Service Commissions, (6) University teachers of law, (7) Persons experienced in the working of Village Panchayat Courts, (8) representatives of Legal Aid organisations and (9) individual lawyers. The selection of the witnesses to be examined in each State was made from the lists supplied to us by the High Courts and the State Governments. In addition, publicity in the press was given to the visits of the Commission to the headquarters of the High Courts, so that, in addition to the witnesses proposed by the High Courts and the State Governments, we were also able to obtain in each State the assistance of several other witnesses who volunteered to place before us their views on the problems in which they were particularly interested.

9. In December 1956 the first section of the Commission commenced its tours of the headquarters of all the State High Courts for the purpose of recording evidence of witnesses whose opinion could be helpful in our task. We examined in all 473 witnesses whose names are given in Appendix II. The sittings of the Commission and the places visited are shown below:

Place	Sittings commenced	Sittings closed	No. of witnesses examined
Allahabad	8-12-1956	21-12-1956	55
Ernakulam	7-1-1957	11-1-1957	28
Bangalore	14-1-1957	19-1-1957	35
Madras	21-1-1957	26-1-1957	55
Hyderabad	28-1-1957	1-2-1957	44
Delhi	22-2-1957	24-2-1957	10
Calcutta	27-3-1957	4-4-1957	43
Cuttack	5-4-1957	7-4-1957	14
Gauhati	10-4-1957	11-4-1957	17
Bombay	15-7-1957	19-7-1957	37
Jodhpur	31-7-1957	2-8-1957	27
*Chandigarh	5-8-1957	8-8-1957	32
Jabalpur	18-11-1957	21-11-1957	30
Patna	25-11-1957	29-11-1957	46

*Witnesses from Himachal Pradesh examined at Chandigarh.

We generally held our sittings at the centres we visited in public. Occasionally, however, it was found necessary to take the evidence of some witnesses *in camera*. The Commission had also the advantage of informal discussions with all the Chief Justices and a certain number of Judges of the High Courts on the various problems raised in the Questionnaire.

10. From the 2nd January to the 7th January, 1958 the First Section again met in New Delhi in a series of meetings in which conclusions were reached as to recommendations to be made to Government. These conclusions and recommendations were decided upon finally in the combined meetings of both the Sections of the Commission held in New Delhi on the 25th and 26th January, 1958.

11. A draft Report prepared in the light of the conclusions was discussed at a meeting of the full Commission in New Delhi on the 23rd August—and the Report as finally settled and approved was signed at a meeting on the 26th September, 1958.

12. We cannot conclude without expressing our warm and sincere thanks to the High Courts, the representatives of State Governments and to the large number of individuals and associations who at the expense of much time and labour sent us detailed and elaborate replies to the questionnaire and submitted memoranda on various topics relating to the administration of justice. We would also express our deep gratitude to the State High Courts and their ministerial officers for the valuable co-operation and assistance given to us during our visits to each State and to the State Governments for the excellent arrangements made by them for our accommodation and comfort and for the staff which accompanied us.

First Law
Commis-
sion.

The system of administration of justice and laws as we have today is the product of well thought out efforts on the part of the British Government. No less than four Law Commissions were appointed during the last century to augment the efforts of the Government in settling its shape. Since then a number of committees have been appointed from time to time to deal with particular aspects so as to modify the system to suit the needs of the community. A brief review of the work of the various commissions and committees is necessary both to take stock of what has been done as also to evaluate the task before us.

The first Law Commission was constituted in 1834 under the Charter Act of 1833, to investigate into the constitution of Courts and the nature of laws. In those years there were being administered in the different parts of British India several systems of law "widely differing from each other but co-existing and co-equal" and yet, singularly devoid of completeness, uniformity and certainty. The origin of the important movement for legal reform and codification which began in 1833 may perhaps be traced to a correspondence which took place in or about 1829 between Sir Charles Metcalfe and the Judges of Bengal, in the course of which a scheme was conceived of giving to British India a complete and definite system of laws to replace the medley of conflicting laws and systems of administration of justice which existed when the East India Company found itself the territorial sovereign of the greater part of the country.¹ In the debates which preceded the passing of the Act of 1833, Charles Grant, the President of the Board of Control, called attention to the three leading defects in the frame of the Indian Constitution. "The first was in the nature of Laws; the second was the ill-defined authority and power from which these various Laws and Regulations emanated; and the third was the anomalous and conflicting state of judicature by which the Laws were administered"². Macaulay who devoted a part of his speech upon the second reading, to the uncertainty of the laws and the need for codification to ensure uniformity and certainty, said:

"I believe that no country ever stood so much in need of a Code of law as India, and I believe also that there never was a country in which the want might be so easily supplied. Our principle is simply this,—

¹See Whitley Stokes: The Anglo-Indian Codes, Volume I, page x.

²Hansard, 1833 XVIII, page 728.

uniformity when you can have it; diversity when you must have it; but, in all cases, certainty".¹

2. The First Indian Law Commission was composed of T. B. Macaulay, the Law Member, as Chairman, and J. M. Macleod, G. W. Anderson and F. Millett,—civil servants drawn from the presidencies of Calcutta, Madras and Bombay as members. The Commission was to inquire into the jurisdiction, powers and rules of the existing courts of justice and police establishments and into the nature and operation of all laws prevailing in any part of British India; and to make reports thereon and to suggest alterations, due regard being had to the distinction of castes, differences of religion, and the manners and opinions prevailing among different races and in different parts of the said territories. The Commissioners were to follow such instructions as they should receive from the Governor-General in Council.²

Its personal and terms of reference.

3. Macaulay expected to finish the work on the Penal Code and the Criminal Procedure Code in 1837 and to enter on the work of framing a Code of Civil Procedure in 1838.³ The task before the Commission was, however, not as easy as Macaulay had envisaged. It was of a stupendous and diversified character and required a great deal of time and larger personnel. Moreover, the practice of the Government of making too many references to the Commission even on questions "which might have been settled without any such reference" added to the Commission's difficulties and evoked sharp protests from Macaulay.⁴ It appears from an undated minute of Macaulay that in order to speed up the work on the Penal Code, a fifth member was required.⁵

Work of the Commission.

4. After Macaulay's departure late in 1837, the Commission shrank in size and stature partly on account of the absence of a successor of equal vitality and drive and partly because of extraneous circumstances. As Rankin points out in his 'Background to Indian Law', notwithstanding its strenuous labours under Macaulay and his successors, no results had reached the statute book before the mutiny.⁶ In the words of Fitzjames Stephen "The Afghan disasters and triumphs, the war in Central India, the war with the Sikhs, Lord Dalhousie's annexations, threw law reform into the background and produced a state of mind not very favourable to it." It was felt that the Commission cost more than it was worth and in 1844

Its end.

¹Cited by Whitley Stokes : The Anglo-Indian Codes, Vol. I, page x.

²Act of 1833, ss. 53—55.

³Macaulay's Legislative Minute of 6th June 1836. India Legislative Consultations, 3rd April 1837 No. 28 ; C. D. Dharker : Lord Macaulay's minutes pp. 239-40.

⁴India Legislative Consultations, No. 3, 2nd Jan. 1837.

⁵Ibid.

⁶Page 21.

⁷Cited in Rankin] : op. cit. p. 21.

its strength was reduced to one member and a secretary in addition to the Law Member who acted as its president. By January 1845 it had to forego its secretary as well.

Estimate
of its work.

5. In spite of difficulties in its way the first Commission did remarkable pioneering work. It had to work against the background of the English system which had not then been pruned of its manifold technicalities and the Indian system, full of diversity and incongruities. Without the aid of a perfect model it had to evolve a consistent system of Courts and Laws from a conflicting and ill-defined system of judicature on the one hand, and a bewildering variety of ascertained, unascertained or unascertainable rules of law of doubtful origin and vague application, on the other hand. Its chief contributions were the draft Penal Code of 1837, the draft law of Limitation and Prescription of 1842, the scheme of pleading and procedure with forms of criminal indictments of 1848 and the *Lex Loci* proposals of 1841. Besides these, the Commission also reported on diverse subjects, e.g., Judicial Establishments of the Presidencies of Bengal, Madras and Bombay, Special Appeals, Review of Judgments framed by Sadar Courts, Report on Slavery, and Remuneration of officers of the Courts of Judicature. It thus laid down the foundations on which other legislators were to work.¹

The Second Law
Commission

6. The next Charter Act² provided for the appointment of the Second Law Commission to examine and consider the recommendations of the First Indian Law Commission and the enactments proposed by them for the reform of the judicial establishments, judicial procedure and the laws of India and other matters. This Commission was composed of Sir John Romilly, Sir John Jervis, Sir Edward Ryan and Messrs. C. H. Cameron, J. M. Macleod, J. A. F. Hawkins, T. F. Ellis and R. Lowe. The Commission was directed to address itself in the first instance to the problem of amalgamation of the Supreme and Sadar Courts of each of the presidencies and to devise a simple system of pleading and practice, "uniform as far as possible throughout the whole jurisdiction"

First, Third
and Fourth
Reports of
this
Commission

7. In its First Report the Commission submitted a plan for the amalgamation of the Supreme Court at Fort William with Sudder Dewanny and Nizamut Adawlat as well as simple and uniform codes of Civil and Criminal Procedure, applicable to all the courts in the Presidency. The Commission submitted plans and codes of procedure on somewhat similar lines for the North Western Provinces in their Third Report and for Madras and Bombay in their Fourth Report. The Commission's proposals for the amalgamation of the Sadar Courts and the Supreme Courts were given effect to by the Indian High Courts Act of 1861. In 1859, the Indian Legislature enacted the

¹Cambridge History of India, Volume VI (1932) p. 8.

²16 & 17 Vict. c. 93 Sec. 28.

Code of Civil Procedure (VIII of 1859) and the Limitation Act (X of 1859). The Penal Code and the Code of Criminal Procedure were passed respectively in 1860 and 1861. In 1862 a greater part of the Civil Procedure Code was extended to the High Courts by Letters Patent.¹ In their Second Report the Commission examined the problems of *Lex Loci* and codification and came to the conclusion that "what India wants is a body of substantive civil law, in preparing which the law of England should be used as a basis, but which, once enacted, should itself be the law of India on the subject it embraced. And such a body of law, prepared as it ought to be with a constant regard to the condition and institutions of India, and the character, religions, and usages of the population, would, we are convinced, be of great benefit to that country".² The Commission also recommended that codification should not extend to matters like the personal laws of the Hindus and the Mohammedans which derived their authority from their respective religions.

Second
Report of
Lex-Loci.

3. The Third and the Fourth Commissions were constituted respectively in 1861 and 1879. The Third Commission was at the outset composed of Lord Romilly, Sir William Erle, Sir Edward Ryan, Robert Lowe (later Lord Sherbrooke), Mr. Justice Willes and Mr. J. M. Macleod and sat in England.³ The Fourth Commission sat in India and was composed of Mr. Whitley Stokes, Mr. Justice Turner of Allahabad (later Sir Charles Turner, Chief Justice of Madras) and Mr. Justice West of Bombay. Those two Commissions were entrusted with the task of codification of substantive law on the lines laid down by the Second Law Commission in its Second Report. The Third Commission submitted six draft Bills on Succession, Contracts, Negotiable Instruments, Evidence, Transfer of Property and Insurance besides making suggestions for revision of the Criminal Procedure Code of 1861. Of these drafts only the first became law in 1865. The Third Commission felt dissatisfied with the apathy of the Government of India in taking no action on their reports and the acquiescence of the Home authorities in this attitude of the Government. They resigned in 1870 partly for these reasons and partly as a result of a controversy between the Secretary of State and the Commissioners on the one hand and the Home and Indian authorities on the other, as to certain proposals of the Commission in the draft on the Law of Contract. The Fourth Commission was directed to report on certain Bills which had already

The work
of the
Third and
Fourth
Law Com-
missions.

¹The Civil Procedure Code of 1859 was amended four times during the next four years. Further amendments were made in 1877 and 1879 and the original Code was revised and replaced by the Codes of 1882 and 1908. The Criminal Procedure Code of 1861 was revised and replaced by the Codes of 1872, 1882 and 1898.

²Second Report dated 13th December, 1855, page 8.

³Sir W. M. James L. J. succeeded Sir William Erle; Mr. John Henderson succeeded Mr. Justice Willes; and Mr. Justice Lush succeeded Mr. Henderson.

been prepared for codifying the laws relating to Negotiable Instruments, Transfer of Property, Easements and certain other subjects and to make suggestions for future codification of the remaining branches of the substantive law of India. The Commissioners completed their work in about ten months and submitted their report in 1879. In accordance with their recommendations the Bill relating to Negotiable Instruments was enacted in 1881 and the Bills relating to Trusts, Transfer of Property and Easements etc. were enacted in 1882.

Other subsequent inquiries.

9. The system of laws and judicial organization established in the last century on the basis of the earlier Law Commissions' recommendations has continued with minor modifications down to the present day. The scope and need for improvement particularly in the sphere of judicial administration and procedural laws has been felt throughout this long period but it was only in the years following the first World War that systematic efforts were made in the direction of reform.

Statute Law Revision Committee.

10. The earliest of these efforts was the creation of the Statute Law Revision Committee of 1921 under the chairmanship of the President of the Council of State. This Committee was entrusted with the task of preparing for the consideration of the Government such measures of consolidation and clarification as might be necessary to secure the highest attainable standards of formal perfection in the statute law of the country. The Committee did some work in the sphere of consolidation of some branches of substantive law, e.g. Succession and Merchant Shipping. With the retirement of its second President in 1932 the Committee ceased to function.

Civil Justice Committee.

11. In 1923, mainly through the efforts of Sir Tej Bahadur Sapru, then Law Member of the Viceroy's Executive Council, a committee was appointed to deal with the problem of delay in civil courts and the defects in the constitution of the Judiciary and the substantive and procedural laws of the country. This Committee with Mr. Justice Rankin as Chairman was "to enquire into the operation and effects of the substantive and adjective law, whether enacted or otherwise, followed by the courts in India in the disposal of civil suits, appeals, applications for revision and other civil litigation (including the execution of decrees and orders), with a view to ascertaining and reporting whether any and what changes and improvements should be made so as to provide for the more speedy, economical and satisfactory despatch of the business transacted in the courts and for the more speedy, economical and satisfactory execution of the process issued by the courts". The Committee was expressly directed not to inquire into the strength of judicial establishments maintained in the provinces. After a thorough and careful inquiry into the various problems the Committee submitted

an exhaustive report in 1925. We shall have occasion to refer from time to time to its recommendations and the extent to which they were implemented.

12. In the years preceding independence other Committees were set up both by the Central and Provincial Governments to inquire into particular problems. Amongst the Central Committees must be mentioned the Indian Bar Committee of 1923 to examine the conditions of the Bar in India. The report of this Committee led to the passing of the Indian Bar Councils Act of 1926. Earlier in 1921 the States of Bengal, Bihar, Punjab and United Provinces had appointed special committees to inquire into the problem of the separation of the Judiciary from the Executive. In Madras two committees were appointed for the same purpose, the first in 1923 with Mr. Justice Coleridge and the second in 1946 with Shri K. Rajah Aiyar as Chairman.

Committee
on special
topics.

The post-independence period witnessed a powerful demand for a complete re-orientation of the legal and judicial systems of the country. Not much, however, could be done in the years immediately following 1947 on account of the Central Government's preoccupation with other problems of a more pressing nature. Mention must, however, be made of the High Court Arrears Committee of 1949 and the All India Bar Committee of 1951. The High Court Arrears Committee, presided over by Mr. Justice Sudhi Ranjan Das, was appointed to inquire into and report on the advisability of curtailing the right of appeal and revision, the extent and method of such curtailment, and any other measures that might be adopted to reduce arrears in the High Courts. In view of the restricted character of its terms of reference the Committee contented itself by making a few concrete proposals.

The All India Bar Committee was appointed in December 1951 again under the chairmanship of Mr. Justice Das. Some of the problems referred to it were the desirability and feasibility of a unified Bar for India, the continuance or abolition of different classes of legal practitioners, the continuance or abolition of the dual system of counsel and attorney, and the desirability of a single Bar Council. The Committee recommended the creation of a unified All India Bar and the continuance of the dual system in the Bombay and Calcutta High Courts. In regard to its latter recommendation two of its members expressed dissent.

13. Meanwhile the States of West Bengal and Uttar Pradesh appointed separate committees in their respective States to report on several problems relating to the administration of justice. The West Bengal Committee appointed in 1949 under Sir Arthur Trevor Harries, then Chief Justice of Calcutta, was asked to report on four specified matters—(a) reform in the system of administration of justice in Calcutta, (b) reform in the administration

West Bengal
and Uttar
Pradesh
Judicial Re-
forms Com-
mittees.

of justice in the rural areas, (c) reform of the legal profession and (d) the question of State aid to indigent litigants. The Committee submitted its report in 1951 recommending *inter alia* the setting up of a City Civil and Sessions Court and made several other recommendations.

The Uttar Pradesh Committee was set up in April 1950 with one of us, Mr. Justice K. N. Wanchoo, as Chairman for considering the question of reform in the system of administration of justice in that State with a view to simplifying the process of law and making justice cheap and expeditious. Its terms of reference were fairly comprehensive. The Committee submitted its report in 1951 making a series of recommendations, some of which required changes in the law for their implementation.

Other
Committees
of Enquiry.

14. Amongst the other committees constituted in the States to inquire into particular problems, special mention may be made of the Separation Committee of 1947 in Bombay under the chairmanship of Mr. Justice Lokur, and the Jury Committee of Bihar in 1950 with Mr. Justice S. K. Das as its chairman.

Conclusion:
task before
the present
Law Com-
mission.

15. As we have seen, the work of the four Law Commissions of the last century formed an integrated whole and together they accomplished the task with which the First Law Commission was entrusted but which, for reasons already explained, it could not accomplish. Their work was directed towards the creation of a co-ordinated system of Courts of law and a well-defined and as far as possible a unified system of rules of law. Their emphasis all along was on Indian conditions and Indian needs and their endeavour, in the words of the Third Law Commission was, to create a system which would be "alike honourable to the English Government and beneficial to the people of India". Their personnel consisted of some of the leading jurists of England. Their task was essentially of a pioneering nature; it lay principally in delineating the broad outlines of a system suited to Indian conditions. The subsequent inquiries into the diverse problems affecting the legal and judicial systems in the present century were all considerably restricted in scope and character.

In contrast, our task is more in the nature of improving and reforming our present structure of judicial administration in all its aspects of revising and modifying the statute law. In fact, ours may well be described as the first comprehensive inquiry into our legal system. We are thus faced with a task of greater complexity and responsibility than that which confronted our predecessors. Its complexity is increased by the need for adjusting the machinery of law and justice to the changed ideologies embodied in our Constitution and our rapidly changing conditions.

3.—THE JUDICIAL SYSTEM

1. The powerful impact which the system of Courts and judicial administration has on a vast number of citizens needs to be pointed out, so that, it may be appreciated that the reform of the system is a matter of vital importance, not only to the lawyer and the judge but also to the State and the average citizen. The smooth and speedy operation of the Courts of law is essential to the progress of the country and the growth of its economic and industrial stature.

Efficiency
of judicial
machinery
essential.

2. The vast volume of ordinary original civil litigation in the country during any one year is shown in the accompanying Table I which relates to 1954. We refer to it as ordinary civil litigation as opposed to disputes of a special kind, arising under special enactments or determined by special courts. In terms of money, the value of such ordinary litigation (excluding cases which cannot be valued in terms of money, of which there is a large number) approaches the order of one hundred crores of rupees in a year. The number of suits instituted in the civil courts exceeds ten lacs; and of these, nearly nine lacs of cases involve disputes relating to sums of rupees one thousand and below. The majority of these actions affect persons to whom these sums of one thousand rupees and less represent all or a major part of their belongings. It would therefore be wrong to regard them as petty litigation not worthy of consideration.

Volume and
value of civil
litigation.

3. This Table does not take into account the appellate proceedings in appeal courts, nor does it include original proceedings before special tribunals constituted under several enactments. These special tribunals function more or less in the same manner as courts. They determine disputes between citizen and citizen and between citizen and the State. Their decisions affect the rights of parties. In general, such tribunals are accorded exclusive jurisdiction in matters placed within their purview. Their decisions are final subject to appeals or revisions wherever provided and are also subject to the writ jurisdiction of the High Courts. A very large number of citizens appear before these tribunals in disputes determinable by them.

Proceedings
before
special
tribunals.

4. Rent Control Acts, Land Reform measures and the like deal with disputes determinable by special agencies constituted for that purpose, and these agencies perform the functions which would otherwise have fallen upon the ordinary civil courts. No figures are available to show the number of persons concerned in these special types of

litigation but having regard to the far-flung nature of recent legislation, it is probable that the number exceeds those concerned in ordinary civil litigation.

Number of persons before criminal courts.

5. Table II gives an indication of the vast number of persons brought before courts as accused persons and witnesses every year. Complete figures of these are, however, not available. In addition to the immense number of persons actually brought before the courts, an even larger number is probably examined by the police or other departmental agencies during the investigation of offences.

Number of persons before the ordinary courts.

6. The broad facts set out above do not, however, portray a sufficiently clear picture of the impact of the volume of civil litigation upon the citizen. Each action concerns at least two persons, a plaintiff and a defendant. In cases which go to trial, which are nearly half of the total number, a large number of persons appear on either side as witnesses. After making allowance for different methods of disposal such as disposal *ex-parte*, disposal on admission, disposal on a compromise and disposal without trial, a conservative estimate of the number of persons who have to attend courts in any one year as parties and witnesses in the ordinary Civil Courts would be about twenty lacs. The number in criminal cases would exceed eighty lacs. If we further take into account the number of persons examined by the police and persons concerned in appellate and other proceedings (such as execution and insolvency) in the regular courts and special tribunals, the total may exceed two crores which amounts nearly to five per cent. of the total population of the country.

Proceedings to enforce constitutional rights.

7. In addition to the subordinate courts, where, generally speaking, original trials of causes take place, the highest court in the State possesses special jurisdiction which has assumed great importance in the post-Constitution period. The upsurge of national consciousness which led to Independence has to a great extent altered the psychology of the citizen. The change of his status from a subject in a dependency to a citizen of a democratic republic has reacted largely on the citizen's social, economic and political life. He is proudly conscious of the rights guaranteed to him by the Constitution; of his right to social and economic justice; and of his claim to equality of status and opportunity. In the context of his new freedom, the citizen displays a keenness in the assertion and protection of his new born rights which one would not have expected from him a decade ago. The attitude of the citizen has been encouraged by the changed aspect which the State has assumed. What formerly was a static machinery functioning largely for the purpose of the preservation of law and order, has now changed into a dynamic organisation ordering the social and economic life of the citizen. The constant interference by the State with the everyday life of the citizen however well

intentioned and beneficial, comes into repeated conflict, real or apparent, with the guaranteed freedoms and the citizen is naturally not content till he has the matter adjudicated upon by the courts. Thus, these recent changes in our constitutional, social and economic structure bring an increasing number of citizens to the courts.

8. It may also be observed that not all cases, civil or criminal get disposed of at the first hearing. In practically all civil suits disposed of after full trial, there are several adjournments; on each of these dates of hearing, the parties have in any case to appear in the courts. Witnesses also have to appear in the courts on several occasions as the courts do not always find time to record their evidence on the days fixed. In the result, a fair proportion of the large number of the persons who attend courts have to do so on more than one occasion.

Frequent
attendance
in Courts.

9. What has been said above is enough to show the vital importance of the proper functioning of the courts to the country. In the social welfare State towards which we are said to be moving, laws and tribunals which administer them will have a constantly growing role to play. The fanciful ideas of a few, who would abolish courts and lawyers, are but an idle dream. Not only must courts continue to exist, but they will have larger and an increasing number of functions to perform. A strenuous endeavour must therefore be made to ensure the discharge of those functions efficiently, and so as to cost the suitor and the witnesses, the least expenditure of their time and resources.

Importance
of judicial
reform.

TABLE I

Comparative Statement showing the number and value of Civil Suits instituted in the year 1954 in Courts of ordinary original jurisdiction

State	Not exceeding Rs. 10	Between Rs. 10 and Rs. 50	Between Rs. 50 and Rs. 100	Between Rs. 100 and Rs. 500	Between Rs. 500 and Rs. 1000	Between Rs. 1000 and Rs. 5000	Exceeding Rs. 5000	Incapable of valuation in money	Total Number of Suits Instituted	Total Value of Suits	REMARKS
I	2	3	4	5	6	7	8	9	10	11	12
Andhra	4,369	11,741	13,615	38,504	8,007	8,135	1,725	305	86,401	6,33,04,759	The figures shown against the Bombay State do not include the number and value of suits instituted in the High Court in exercise of its original jurisdiction.
Assam	318	2,288	1,720	3,722	994	918	176	19	10,205	70,23,654	
Bihar	24,003	48,809	17,555	29,789	6,850	3,050	1,934	133	1,34,173	10,03,97,123	
Bombay	2,128	13,464	20,753	38,135	12,649	11,649	3,872	8,207	1,10,857	12,21,20,000	
Hyderabad	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	19,484	2,16,21,901	
Madhya Pradesh	619	5,076	5,456	22,725	5,004	4,100	720	..	43,700	3,45,54,979	
Madras	6,872	26,864	16,313	35,165	7,212	6,849	1,981	79	1,01,335	7,38,49,008	
Mysore	303	33,624	15,313	13,216	2,572	2,129	440	2,199	29,796	1,37,49,051	
Orissa	216	1,712	2,396	6,801	1,537	1,428	238	48	14,376	1,68,88,222	
Punjab	508	1,915	3,164	10,005	2,850	1,961	494	144	21,241	2,41,44,193	
Rajasthan	324	4,413	6,413	22,947	5,219	3,412	573	352	43,693	2,94,57,410	"N.A." stands for "not available."

Saurashtra .	508	3,558	3,136	6,231	1,663	1,249	278	1,843	18,266	1,25,06,346
Travancore- Cochin	6,578		6,609	16,966	5,408	4,169	206	239	40,175	2,80,18,649
Uttar Pradesh	5,930	22,841	23,802	69,607	15,139	11,236	1,930	243	1,50,728	9,45,70,299
West Bengal .	35,627	73,065	28,669	40,384	7,879	8,403	3,459	2,467	1,99,953	19,51,30,811
	81,725 + 6578	2,19,170	1,54,914	3,54,465	82,965	70,688	18,026	16,278	10,24,293	83,73,36,467

NOTE : The Table does not give the particulars relating to PEPSU and Part C States.

TABLE II

Statement showing the number of Criminal Cases, number of accused persons in those cases and the number of witnesses who attended or were examined in the Courts of various States in the year 1953

Name of the State	Total number of cases brought to trial	Number of accused persons	Number of witnesses who attended the Courts	Number of witnesses examined	REMARKS
I	2	3	4	5	6
Andhra	3,13,300	4,38,914	..	2,04,439	*Does not include High Courts and Sessions Courts.
Assam	36,073	95,480	..	67,091	
Bhopal	12,534	24,643	..	..
Bihar	1,05,006	3,24,223	3,77,726	3,30,842	
Bombay	11,77,782	14,23,693	..	..
Coorg	3,511	..	..	..
Himachal Pradesh	5,080	9,367	..	..
Hyderabad	1,95,586	2,09,808	1,34,796	1,27,212	
Kutch	2,617	4,870	..	..
Manipur	392	..	..	..
Madhya Bharat	54,113	1,14,512	99,397	85,764	
Madhya Pradesh	1,34,163	2,79,355	1,69,122	1,61,540	
Madras	6,08,722	7,13,853	..	3,75,870*	

Mysore	91,335	1,33,597	..	68,408	**Does not include witnesses examined by the Magistrates under the Municipal Act. NOTE:—Figures relating to PEPSU are not available.
Orissa	.	.	.	.	.	.	.	51,340	..	..	1,09,484
Punjab	.	.	.	.	.	.	.	1,38,668	2,02,376	..	2,74,364
Rajasthan	.	.	.	.	.	.	.	78,650	2,37,555	..	..
Saurashtra	.	.	.	.	.	.	.	64,467	1,00,655	..	..
Travancore-Cochin	.	.	.	.	.	.	.	1,48,498	2,60,767	..	72,756
Uttar Pradesh	.	.	.	.	.	.	.	3,57,266	7,63,616	6,54,478	6,01,008
Vindhya Pradesh	.	.	.	.	.	.	.	16,126	..	..	..
West Bengal	.	.	.	.	.	.	.	3,57,061	5,08,124	3,04,069**	2,75,456*

4.—INDIGENOUS SYSTEM

Scope of
Enquiry.

1. The task assigned to us of suggesting ways and means for the improvement of our present system of judicial administration, does not preclude us from considering radical or revolutionary measures which may make it more suitable to our needs.

Criticism
of existing
system of
Judicial
Adminis-
tration.

2. It is said in some quarters that the present system of administration of justice does not accord with the pattern of our life and conditions. We are told that large masses of our population are illiterate and live in the villages. These conditions demand, it is said "a system of judicial administration suited to the genius of our country" or "an indigenous system". Even the Uttar Pradesh Judicial Reforms Committee of 1950-51 stated, though by a majority that "it cannot be denied that the rules of procedure and evidence which they (the British) framed to regulate the proceedings in court, were in some cases foreign to our genius and in many cases were made a convenient handle to defeat and delay justice".¹

General
support for
existing
system.

3. In the circumstances, it became our duty to elicit opinion on these views. The answers we have received state with almost complete unanimity that the system which has prevailed in our country for nearly two centuries though British in its origin has grown and developed in Indian conditions and is now firmly rooted in the Indian soil. It would be disastrous and entirely destructive of our future growth to think of a radical change at this stage of the development of our country. It has been pointed out that those who have supported a reversion to an indigenous system of judicial administration have not really applied their minds to the question. It would be ridiculous, it is said, for the social welfare State envisaged by our Constitution which itself is based largely on the Anglo-Saxon model to think of remodelling its system of judicial administration on ancient practices, adherence to which is totally unsuitable to modern conditions and ways of life. We may as well, it is said, think of rejecting modern medicine and surgery and content ourselves with what the ancients knew and practised.

Radical
changes not
necessary.

4. Nevertheless, we must not fail to distinguish between the essential principles of our present system and its subsidiary features like clumsy and cumbrous procedures. It should not be forgotten as pointed out earlier that those charged with fashioning our laws, have while regarding the English laws and institutions as a model, consciously and

¹Report, Page 1.

continuously attempted to modify and mould them to suit Indian life and Indian conditions. That attempt was continued throughout the period of British rule with the subsequent association in an ever-increasing degree of Indian legislators, Indian Judges and Indian administrators in the making of laws and the administration of justice. It may be that we have failed to make our laws and our court systems and procedures conform sufficiently to the needs of our people. To that extent, no doubt, they require modification and adjustment. We have endeavoured to give attention to these points of view; but such changes can only be made within the framework of a system suited to our present conditions and needs, which are the needs and conditions of a highly organized welfare society with a developing industrial economy. We have, therefore, in considering the changes which are necessary and practicable made a distinction between the fundamentals which must exist in any modern system for the administration of justice and the procedures and practices by which the system is to be operated. We agree with the observations of the Uttar Pradesh Judicial Reforms Committee¹ that "the need of the hour is that rules and procedures and evidence should be so simplified that justice may be available to the rich and the poor alike and that it may be prompt and effective". But simplification cannot mean a sacrifice of fundamentals and essentials. Perhaps, as pointed out in a note of dissent to the report of the Committee, "the real need of the hour is the inculcation of a higher sense of duty, a greater regard for public convenience, greater efficiency, in all those concerned in the administration of justice."² In any case whichever way our needs are looked at, little is to be gained by an insistence on what has been called an indigenous system or a system suited to the genius of our country.

5. However, we shall briefly endeavour to gather the essentials of such an indigenous system as existed in our country prior to the advent of the British and point out that the essentials of our ancient system were not very different from those of our present system.

It is undoubtedly true that a study of the past is very desirable when we are planning for the future. But it should not be forgotten that a system of judicial administration is a matter of slow growth and its advance is moulded by contemporary conditions and the existing social structure. As society advances from stage to stage its needs alter from time to time and any system which governs the functioning of society or its component parts would also call for progressive modification. In considering the ancient system and contrasting it with the present judicial system, we must always keep in mind the differences in the structure and conditions of society as it existed then and as it is today.

¹Report, Page 1.

²Report, Page 127.

Nature of indigenous system.

It is not easy to discover the details of the system of judicial administration which obtained in India prior to the introduction of the present system by the British. The materials upon which we can rely are scarce and fragmentary.

The Hindu System.

6. It is clear that there were two systems one of which may be designated the Hindu system.¹ The outlines of the system have to be gathered from various ancient books such as the Smritis, Commentaries and Digests. These books yield us valuable information but are by no means comprehensive; moreover they differ a great deal in regard to the details. As these books relate to different periods, it is not possible to reconstruct a well-defined system with reference to them. Many of its fundamental features can be derived from them. In his book on the Hindu Judicial system, Sir S. Varadachariar concludes that² "whenever, and wherever and so far as circumstances permitted, attempts were all along being made in Hindu India to administer justice broadly on the lines indicated in the law books".

The Muslim system.

7. The second system may be styled the Muslim system which was based upon the writings of the Muslim jurists and practices of Islamic countries. This system was, however, never in exclusive use in our country. Most of the Muslim rulers followed a policy of non-intervention in civil matters and permitted the Hindu institutions to function. However in cases where the dispute arose between a Muslim on the one hand and a Hindu on the other, or between two Muslims, the Muslim tribunals claimed exclusive jurisdiction. In the sphere of administration of criminal justice, the Muslim system prevailed subject to some exceptions. The system was not popular with the large mass of the people but was in vogue in large parts of the country at the time of the introduction of the present system based on the British model. It is, we think, unnecessary to consider the Muslim system in the present context.

Development of the Hindu system.

8. The Hindu system as outlined in the law books reveals a gradual development. In its early beginnings it was more or less a tribal institution the tribunal dispensing justice being the assembly of the village, the caste, or the family. These may be called the popular courts and they seem to have been the earliest tribunals in the country. They, in fact, were a part and parcel of the social structure.

¹In portraying the Hindu Judicial System, we have drawn largely from the following sources :

- (i) Berolzheimer : The World's Legal Philosophies.
- (ii) S. Varadachariar : Hindu Judicial System.
- (iii) Thakur : Hindu Law of Evidence.
- (iv) P. Sen : Hindu Jurisprudence.
- (v) K. P. Jaiswal ; Hindu Polity.
- (vi) N. C. Sen Gupta : Sources of Law and Society in Ancient India.
- (vii) N. C. Sen Gupta : Evolution of Ancient Indian Law.

The territorial unit was the village which in those days enjoyed a considerable measure of autonomy. There arose and developed courts, if such a term could be applied to them, of the family, the caste and the village. Though there is no authority for the view that these popular tribunals derived their powers from the king, such a view slowly came to be held.

It is not possible to gather with any certainty the exact scope of the functions of these tribunals. Colebrooke asserts that they indicated merely a system of arbitration. There is a suggestion in some texts that before resort could be had to the Royal courts, local remedies had to be exhausted; but whether this was ever the correct position, it is difficult to say. Most of the later Hindu rulers and the Muslim rulers were mainly interested in the collection of revenue and the retention of the authority of these organisations facilitated this task. Attempts were made for the integration of these popular courts with the Royal courts but they did not succeed principally because of the decay of the Hindu Royal power after the time of Harsha.

9. Though ancient writers have outlined a hierarchy of courts as having existed in the remote past, the exact structure that obtained cannot be ascertained with any definiteness; but later works of writers like Narada, Brihaspathi and others seem to suggest that regular courts must have existed on a considerable scale, if the evolution of a complex system of procedural rules and of evidence can be any guide.

Popular tribunals, particularly the village courts survived for a long time and existed even at the time of the commencement of the British rule in India. Their continuance was favoured by their antiquity and the absence of any other effective tribunals within easy reach; the structure of the village society in those days; the nature of the principal functions which these tribunals discharged which were conciliatory; and the non-interference by local rulers with the working of these tribunals.

In contrast to these popular tribunals, the Royal tribunals were subject to frequent changes. Except for the fact that ancient literature speaks of the King as the source of *dharma* and regards him as charged with the duty of protecting *dharma*, there is nothing to show that the king personally was in charge of the administration of the law. He administered law and justice generally through officers or the *sabhas* appointed for the purpose. But though the details of the working of these courts are not available, there is evidence that a procedure of a specified kind was being followed in these Royal tribunals. Obviously, systematized rules were not called for in the popular or village courts; but some sort of definite procedure seems to have obtained in the Royal courts. It must not also be forgotten that the

law enforced in those days was not, apart from specific edicts, statute law but was moral law. It was regarded as a sacred and religious duty to vindicate the truth and uphold the righteous and punish the wrong-doer.

Procedure.

10. Under the ancient procedure, every person had a right of approach to the judicial tribunals. The court was bound to hear him and take necessary action. There appears to have been no court fee for the institution of the suit, though there was provision for the payment of a small percentage of the value of the claim by the successful party. What may be called the abuse of the right of suit was checked by elaborate rules insisting on an early resort to court or the taking of certain other active steps by the party. Litigation was discouraged amongst persons standing in particular relationships. Fines and penalties could be imposed on persons who came forward with false and unfounded cases. On the criminal side, it was the duty of the officers of the King to bring before the court persons accused of certain specified offences.

Pleadings.

11. Rules also provided that following a plaint there should be a written reply by the defendant. A reference is made also to a procedure for clarification of the points in dispute analogous to the framing of issues. This was followed by the trial at which evidence was recorded before the final stage of decision by the court was reached.

The rules also provided for *ex parte* decisions in the case of the non-appearance of the defendant. A plaint could be amended at any time before the defendant appeared and put in his answer. The defendant had to make his answer in the presence of the complainant and it was the rule that the answer should meet the grounds raised by the plaintiff or the complainant and should be clear, consistent and free from obscurity. The answer could take the form of an admission, denial or special pleading or even a plea of a former judgment. In the case of an admission, a decree followed immediately; in other cases, evidence had to be led by the party on whom the burden of proof lay. The expression of "burden of proof" was understood in practically the same sense as it is today. Thakur in his Hindu Law of Evidence refers to the application of such important principles as the exclusion of oral by documentary evidence, the requirement that evidence should be direct and the exclusion of hearsay evidence in those courts.

Evidence.

12. Witnesses were examined by the court in the presence of the parties. Provisions also existed for the summoning of witnesses or the examination of witnesses on commission. The texts laid down that the judge should treat the witnesses gently, that none should be punished on mere suspicion and that conclusive evidence of guilt

Witnesses.

should be available before conviction. There is also a suggestion that the judge himself could undertake the examination of witnesses and that such an examination could be of a thorough-going character; quite possibly this was so for the reason that neither a police investigating agency nor the legal profession appears to have existed in those days. There is, however, no suggestion that the Hindu system corresponded to the inquisitorial procedure that at present obtains on the continent.

13. It may be noticed that the rules also provided for the impleading of the legal representatives of a deceased party.

Legal
Representatives.

14. The decision of the court was pronounced immediately after the conclusion of the trial. Even in those days, the difference in the consequences of a judgment on the merits after contest and a judgment passed *ex parte* seems to have been recognized.

Judgement.

15. It is not quite clear from the ancient books whether the decision of the Royal court was final or was subject to a review or appeal. In the case of the decisions of the popular courts, it seems likely that they could have been taken in appeal to the Royal courts. Sufficient indications, however, exist to show that where a court gave a decision in which the King did not personally participate, the matter could subsequently be brought before him. In certain cases, the matter could be re-heard, possibly on the basis of new evidence and a judgment could also be set aside on the ground of fraud.

Appeal
and
Review.

We have attempted only a brief survey of the structure and the features of the system as it existed in the past. To go into greater detail appears to us to be wholly unnecessary.

16. Even this brief picture is sufficient to show how unsound is the oft-repeated assertion that the present system of administration of justice is alien to our genius. It is true that in a literal sense the present system may be regarded as alien. It is undoubtedly a version of the English system modified in some ways to suit our conditions. The English system which had developed through the centuries was pruned of its historical anomalies and technicalities and made adaptable to the conditions in India. But it is easy to see that in its essentials even the ancient Hindu system comprised those features which every reasonably-minded person would acknowledge as the essential features of any system of judicial administration, whether British or other. We have already indicated that such features as the rules of pleading, the manner in which plaints were to be drawn, the devices to meet an abuse of the right of suit, the rules of evidence, the order in which litigation should proceed, the exclusion of

Similarities
with
present
system.

oral by documentary evidence, the rule that evidence should be direct, the rule that hearsay evidence should be excluded, the principle of the burden of proof, the provision for appeal or review are common both to the ancient and the present system. We can even hazard the view that had the ancient system been allowed to develop normally, it would have assumed a form not very much different from the one that we follow today.

Benefits of popular courts.

17. The reason for the success of the ancient system mainly lay in its popular courts. As we have seen these popular courts were founded on community or caste. There was no such centralization as now obtains by reason of the growth of a strong centralised system of Government. Each village was sufficient unto itself and managed its own affairs without any interference from the King. Their sustaining force was the respect which people had for customary law which, in fact, was the only law prevalent at that time. The group pattern of the then social organisation favoured their successful functioning.

The position today.

18. Can we in the present social structure think of a reversion to the earlier pattern of judicial administration? The law that is administered today is no longer the customary law. In fact, thousands of statutes and regulations control down to the minutest detail the lives and activities of every citizen of this country. The Legislatures both at the Centre and in the States have undertaken reforms of a far-reaching nature affecting the well-being of millions of citizens. Recently, it was authoritatively stated that between 1st January 1953 and 30th November 1957 Parliament had passed more than three hundred and fifty bills and in the four years 1953 to 1956, the State Legislatures passed two thousand five hundred and fifty-seven Acts out of which as many as two hundred and seventy-five Acts dealt with land reform.¹ In the post-Constitution period. Parliament has passed about six hundred Acts. In addition about eighty-nine Ordinances, twenty-one Regulations and sixty-two President's Acts have been promulgated. A Welfare State has necessarily to undertake legislation on an ever widening front, if the ultimate aim of a socialistic pattern of society operating within the domain of the Rule of Law is to be evolved by democratic process. The enormous legislative output of Parliament and the State Legislatures calls for trained personnel to implement them. No one can assert that in the conditions which govern us today the replacement of professional courts by courts of the kind that existed in the remote past can be thought of.

¹. Address of the President of India at the inauguration of the Indian Law Institute : Bulletin of the Indian Law Institute April 1958, page 1.

19. The statement that our present system of judicial administration is not in accord with the genius of our country has thererore no substance. The genius of our country has found expression in our Constitution which enshrines the Fundamental Rights of the people and the Directive Principles of State Policy as the necessary foundation for a new social order. We cannot see how the noble aims enshrined in the Preamble to our Constitution can ever be realized unless we have a hierarchy of courts, a competent judiciary and well-defined rules of procedure.

Present system in accord with our genius.

20. While we are aware that there are well-founded complaints against some aspects of the present judicial administration, we must emphatically state that the way to reform does not lie in the abandonment of the present system and in replacing it by another. The true remedy lies in removing the defects that exist in the present system and making it subserve in a greater degree our requirements for the present and the future.

Abolition impossible.

To a limited extent, however, it is possible to utilise some of the simple features of judicial administration that obtained in the past. We refer to the popular courts or as they are termed today, the nyaya panchayats. We deal with them in a later chapter in some detail, indicating both their limitations and the extent of their usefulness.

5.—THE SUPREME COURT

The role of
the Sup-
reme Court.

1. At the inauguration of the Supreme Court in 1950 it was pointed out, that it had the widest and the most varied jurisdiction among the highest Courts in the Commonwealth and Anglo-Saxon countries. Apart from the width and variety of its functions, it was required to exercise under article 32 of the Constitution a jurisdiction, which was altogether new to our country. It was called upon to stand as a protector of the fundamental rights of the citizen against executive and legislative action. The importance of the Court as the upholder of the rule of law and as the bulwark of the citizen's rights in a democratic constitution containing a bill of rights was emphasised by Chief Justice Kania at its inaugural sitting in the following words:

“Under the Constitution of India, the Supreme Court is established to safeguard the fundamental rights and liberties of the people. An independent Supreme Court as shown by the working of such Courts in other democratic countries will have far-reaching influence on the constitutional history and progress of the Union of India.”

Guardian
of funda-
mental
rights.

2. For the adequate discharge of its great and novel responsibilities the Court has repeatedly set before itself great ideals. Patanjali Sastry J. (as he then was) while rejecting the contention that a citizen should, before approaching the Supreme Court under article 32, first approach a High Court under article 226 in respect of the infringement of his fundamental rights, observed as follows:—

“This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibilities so laid upon it, refuse to entertain applications seeking protection against the infringements of such rights.”²

The same learned Judge as Chief Justice in a later case dealing with constitutionality of a statute said:

“If, then, the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's

¹Proceedings at the inaugural sitting of the Supreme Court of India on January 28, 1950; 1950 S. C. R. p. 7.

²Romesh Thappar v. State of Madras, 1950 S. C. R. 594 at p. 597.

spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the 'fundamental rights' as to which this Court has been assigned the role of a sentinel on the *qui vive*."¹

Similar pronouncements in other cases and its numerous judgments declaring the invalidity of legislation and executive action testify to the great traditions which the Court has laid at the threshold of its career.

3. In recognition of the role which the Supreme Court has to play as the highest judicial tribunal of the country, as the Court of last resort in civil and criminal matters and as the protector of the rights and liberties of the citizen, the Constitution provides adequate safeguards to ensure its being manned by an independent and efficient judiciary. Such a judiciary is a *sine qua non* under any system of government because of the inter-relation between the quality and the independence of the judge and the proper administration of justice. Its importance is far greater under a democratic constitution where the Court has frequently to determine the legality of the action of legislative bodies and executive authorities as between the State and the citizen.

Importance
of proper
personnel.

4. Realizing the importance of safeguarding the independence of the judiciary, the Constitution has provided that a Judge of the Supreme Court shall be appointed by the President in consultation with the Chief Justice of India and after consultation with such of the other Judges of the Supreme Court and the High Courts as he may deem necessary. He holds office till he attains the age of 65 years and is irremovable except on the presentation of an address by each House of Parliament passed by a specified majority on the ground of proved misbehaviour or incapacity. Thus has the Constitution endeavoured to put Judges of the Supreme Court above executive control.

Appoint-
ment and
removal of
Judges.

5. It is obvious that the selection of the Judges constituting a Court of such pivotal importance to the progress of the nation must be a responsibility to be exercised with great care. The Constitution of the Court must command the confidence not only of the people but also the Judiciary and the Bar as a whole, sitting as it does in appeal on matters decided by the High Courts in the several States. The Court must consist of Judges who taken as a body are, as lawyers and men of vision, superior to the body of Judges manning the High Courts. Such a result can be achieved and maintained only by the exercise of courage, vision and imagination in the selection

Proper se-
lection
imperative.

¹The State of Madras v. V. G. Row 1952 S.C.R. p. 597 at p. 605.

of Judges made with an eye solely to their efficiency and capacity.

Regional
and communal
influences.

Executive
interference.

Best talent
not mobilised.

6. Can we say that such a course has been followed? It is widely felt that communal and regional considerations have prevailed in making the selection of the Judges. The idea seems to have gained ground that the component States of India should have, as it were, representation on the Court. Though we call ourselves a secular State, ideas of communal representation, which were viciously planted in our body politic by the British, have not entirely lost their influence. What perhaps is still more to be regretted is the general impression, that now and again executive influence exerted from the highest quarters has been responsible for some appointments to the Bench. It is undoubtedly true, that the best talent among the Judges of the High Courts has not always found its way to the Supreme Court. This has prevented the Court from being looked upon by the subordinate Courts and the public generally with that respect and, indeed, reverence to which it is by its status entitled. It may not be inappropriate to call attention to the observations made by Chief Justice Kania at the time of the inauguration of the Supreme Court in regard to the standards to be observed in making appointments to the High Courts. They are in our view equally applicable to selections for the Supreme Court. He said:

"In order that the Supreme Court may have the full assistance in its work, the High Courts will have to be strong in their personnel. * * * * For some years before 1947, there was a policy to appoint members of different communities, in some proportion, in the services, including the High Courts. In theory, it appears to be now accepted that appointments will be only on merits. The policy, however, does not appear to have been completely abandoned. We hope that political considerations will not influence the appointments to High Courts. It is necessary that for the High Courts merit alone should be the basis for selection, if the High Courts have to remain strong and independent and enjoy the confidence of the people."

Position in
the U.S.A.

7. One may turn in this connection to the way in which appointments to the Supreme Court of the United States have, so far as we know, been made. Geographical or sectional claims have not been a test governing the selection. Nor have the 48 States constituting the federation been looked upon as areas to be represented on the

¹Proceedings at the inaugural sitting of the Supreme Court of India on January 28, 1950 : 1950 S. C. R. p. 10.

Supreme Court Bench. Attention may also be drawn to the elaborate procedure which is gone through before Judges are selected for the United States Supreme Court. It appears that even the representative institution of the Bar, the American Bar Association, is consulted.¹

8. The field for selection of Supreme Court Judges ^{Field of selection.} laid down by the Constitution is a very wide one. A person may be appointed a Judge of the Supreme Court, if he has been a Judge of a High Court for at least five years or if he has been an advocate of a High Court for at least ten years or if he is, in the opinion of the President, a distinguished jurist. One of the questions which aroused comment in the evidence given before us was the failure of the authorities to make the selection of a Supreme Court Judge from the two latter fields of selection. It was, however, generally recognised that we have ^{Jurists.} not produced in our country academic lawyers and jurists of note who could, as in the United States, be honoured with seats on the Supreme Court Bench.

9. As to the Bar, their exclusion from the field of ^{Exclusion of the Bar.} selection has, it appears, so far, been the result of the view of the appointing authorities that it will be somewhat hazardous to appoint to the Bench a person straight from the Bar without previous judicial experience. Indeed, the view has been expressed that restricting the field of selection to sitting or retired High Court Judges has, on the whole, worked satisfactorily and that there is, therefore, no need to take recruits from the Bar. A former Chief Justice of India has given expression to this ^{Need for judicial experience.} view in the following words:

"The present method of selecting judges from the judges of the High Court, retired or about to retire has, by and large, worked satisfactorily so far. If the selection is properly made, this method is calculated to ensure some judicial experience and some capacity to form a sound and balanced judgment and to express it with clarity, the High Court being a good training as well as a testing ground for potential Supreme Court Judges. Selection from the Bar may not ensure these essential qualities and qualifications. I have known several distinguished members of the Bar who would have made throughly bad judges."

The need for previous judicial experience on the part of a Judge of the Supreme Court was also stressed by a former Judge of the Federal Court.

¹American Bar Association Journal August 1957, Vol. 43 pp. 685—688 and 761. American Bar Association Journal February 1955, Vol. 41 No. pp. 125—128.

10. In our view, too great an emphasis seems to have been placed in the past on the need for judicial experience in the selection of Supreme Court Judges. Surely, if it was easy to know some distinguished members of the Bar who would have made thoroughly bad Judges it should be equally easy to recognise other distinguished members of the Bar who would have made extremely good Judges.

The position
in the U. K.
and the
U.S.A.

11. The experience in England and the United States does not seem to bear out this view. In England, normally, the Lord Chancellor and the Lord Chief Justice occupy their high judicial offices without previous judicial experience. In the United States, a large number of the Justices of the Supreme Court have been chosen from persons who had never held judicial office. Recently in delivering the Owen J. Roberts Memorial Lectures at the University of Pennsylvania, Mr. Justice Frankfurter reviewed the career of 75 out of the 90 Judges who have so far sat on the Bench of the American Supreme Court in its history of 167 years. In his analysis Justice Frankfurter did not include the careers of any of those appointed by either President Truman or President Eisenhower. He pointed out that out of these 75 Judges 28 had never had any judicial experience before their appointment to the Bench. Among the 28, he listed names of such eminence as Marshal, Story, Taney, Chase, Bradley, Fuller, Hughes, Brandeis and Stone. He pointed out, that out of the 16 Judges whom Justice Frankfurter considered to be the most eminent out of the 75, only six had prior judicial experience. He showed that a requirement of 5 years' judicial experience would have excluded 35 out of the 75 Judges. There will always, Mr. Justice Frankfurter concluded, be very few men at any time fit to transact the unique business that now comes before the Supreme Court. The country is entitled to the services of these men without requiring them to satisfy the three irrelevant tests of judicial service, regional representation or political apprenticeship.¹

American
experience.

Difficulties
of recruiting
from the Bar.

The importance of recruiting the Bench of the Supreme Court partly from the Bar appears recently to have received some attention. The Home Minister stated in Parliament that attempts made to secure the appointment of distinguished advocates to the Supreme Court had not succeeded. He went on to point out that successful lawyers earn a considerable amount, and if you want suitable and competent, impartial and able Judges, to man the Supreme Court, then their salaries should have some relation to the earnings of the successful lawyers.²

¹Manchester Guardian Weekly—March 28, 1957, p. 2.

²Lok Sabha Debates dated 20th August, 1956, Vol. VII, Col. 3826.

12. It is true that the earnings of the leaders of the Bar bear no proportion to the salaries paid to the Judges. The Supreme Court Judge in our country has also to retire at sixty-five on a very meagre pension. These facts, however, should not, in our view, prevent the Supreme Court Bench from being enriched by recruitment from distinguished members of the Bar, if care is taken to invite them to the Bench at an age when they would have a fairly long tenure on the Bench.

Selection of younger men.

13. Even in exercising a choice from the High Court Judges, the practice appears generally to have been to select Judges who have only a short time left on the High Court Bench. It has frequently been observed, that both, in the selection to the Bench of the Supreme Court as well as to that of the High Court, age and a certain amount of maturity are essential. It appears to us that this view not unoften favours experience at the expense of ability. We have known of very distinguished Judges and Chief Justices who were called upon to occupy their offices at a fairly young age when they were but rising junior members of the Bar. There is no reason why younger Judges of the High Courts who have shown marked ability should not be appointed to the Supreme Court Bench. It has been well-recognised that seniority is not a consideration in making appointments to what have been called selection posts in Government service. More weighty considerations arise in making appointments to the Supreme Court Bench and we feel, that in making selections from the Benches of the High Court prompt and unhesitating recognition should be given to merit and ability, regardless of considerations of seniority and experience. It must not be forgotten, that youth carries a freshness and vigour of mind which have their advantages as much as maturity and experience flowing from age.

Preference for age.

Need for experience over-stated.

14. The selection, mainly of persons who have retired or are about to retire from the High Court Bench as Judges of the Supreme Court, has resulted in those chosen having a very short tenure on the Bench. In our view, it is undesirable that a person who would have a short tenure of office should be chosen as a Judge of the Court. It is imperative in the interests of the stability of the judicial administration of the country that a Judge of the Supreme Court should be able to have a tenure of office of at least ten years. Too frequent a change of personnel has its disadvantages in a Court whose decisions lay down the law of the land and are binding on all the Courts in India. Certainty in the law and a continuity in the approach to some basic questions are fundamental requisites and these tend to be impaired if judicial personnel is subject to frequent changes. These objectives can best be achieved, in our opinion, by selecting the Supreme Court Judge at an age when he would have a term of at least ten years on the Bench.

Longer tenure necessary for judges.

15. Another method of ensuring longer tenure for Judges appointed to the Supreme Court would be the raising of the age of retirement to seventy years. Such a course, it may be urged, would have the two-fold advantage of combining a longer tenure on the Bench with the selection of Judges of maturity and experience. The question of the raising of the age of retirement of the Supreme Court Judges arises also in connection with the raising of the age of retirement of High Court Judges, which, we are recommending should be raised to sixty-five. It is true that in the United States a Judge of the Supreme Court holds office during good behaviour which means that he can continue to occupy the office for life. It is open to him to retire or resign on attaining the age of seventy years. The position in the United Kingdom is similar. In substance, in these countries there is no fixed retiring age for the Judges of the superior Courts.

Raising age
of retire-
ment.

16. Having given our careful consideration to this question, we do not feel justified in recommending the raising of the age-limit of retirement. The duties of a Judge of the Supreme Court are very onerous and the conditions as to the expectation of life and the age up to which persons can retain unimpaired their mental capacities are in our country very different from those obtaining in the United States of America and the United Kingdom. It is true that we do find retired Judges of the High Court and the Supreme Court in full possession of their mental vigour. But we have to consider the matter not upon an individual basis but on what happens in the vast majority of cases and on an average. It seems to us that the raising of the age limit of retirement of the Supreme Court Judges beyond sixty-five will be an experiment fraught with hazards.

Not favour-
ed.

Tenure of
Chief Jus-
tice.

17. What has been observed earlier in regard to the need for a longer tenure for the Judges applies with much greater force to the Chief Justice of India. Since the foundation of the Court, a period of eight years, there has been a rapid succession of Chief Justices of India. They have been as many as five in number. In contrast, it may be noted that during the entire history of the American Supreme Court covering a period of over one hundred and sixty years there have been as few as fourteen Chief Justices. The practice in the United States appears to be usually to appoint a person from outside the Court as a Chief Justice.

A continuity in the office of the Chief Justice of India appears to us to be essential in the interests of judicial administration throughout the country. His importance in the scheme of judicial administration outlined in our Constitution cannot be over-emphasized. On him rests the

tone and tradition of the highest Court of the land, the law laid down by which, is the law of the country and which sits in appeal over the decisions of the highest Court of each State. Apart from his onerous duties as the Chief Justice of the Supreme Court, he carries in a measure responsibility for the satisfactory administration of justice in the whole of India. He has, or should have a preponderating voice in the selection of the personnel of the High Courts all over the country. As the head of the judiciary he would lay down the principles and practices to be followed in the administration of justice all over the country.

It is obvious that a person with these manifold duties and functions would require some time to familiarize himself with them. He needs to go round the country to be in touch with the Bar and the judicial personnel, acquaintance with whom is essential to enable him to discharge his duties. In the quick succession to the office at present in vogue, a Chief Justice who has succeeded in familiarizing himself with his many tasks becomes liable to retire before he can have time to put into force the principles and policies which he considers beneficial. Only a Chief Justice who has a tenure of five to seven years can render that necessary and useful service which is expected of the Chief Justice of India.

18. This leads us to a related point upon which we have bestowed anxious consideration. It has been the practice till now for the seniormost puisne judge to be promoted to be the Chief Justice on the occurrence of a vacancy. It would appear that such a promotion has become almost a matter of course. We have referred to the high and important duties which the Chief Justice of India is called upon to perform. It is obvious that succession to an office of this character cannot be regulated by mere seniority. For the performance of the duties of Chief Justice of India, there is needed, not only a judge of ability and experience, but also a competent administrator capable of handling complex matters that may arise from time to time, a shrewd judge of men and personalities and above all, a person of sturdy independence and towering personality who would, on the occasion arising, be a watch-dog of the independence of the judiciary. It is well-accepted that the qualifications needed for a successful Chief Justice are very different from the qualifications which go to make an erudite and able judge. The considerations which must, therefore, prevail in making the selection to this office must be basically different from those that would govern the appointment of other judges of the Supreme Court. In our view, therefore, the filling of a vacancy in the office of the Chief Justice of India should be approached with paramount regard to the considerations we have mentioned above. It may be that the seniormost puisne judge fulfils

Method of
appoint-
ment.

these requirements. If so, there could be no objection to his being appointed to fill the office. But very often that will not be so. It is, therefore, necessary to set a healthy convention that appointment to the office of the Chief Justice rests on special considerations and does not as a matter of course go to the senior-most puisne Judge. If such a convention were established, it would be no reflection on the senior-most puisne Judge if he be not appointed to the office of the Chief Justice. We are in another place suggesting, that such a convention should be established even in the case of appointment of Chief Justice of the High Court. Once such a convention is established, it will be the duty of those responsible for the appointment, to choose a suitable person for that high office, if necessary, from among persons outside the Court. Chief Justices of High Courts, puisne Judges of High Courts of outstanding merit and distinguished senior members of the Bar should provide an ample recruiting ground.

Salaries of
judges in
India.

19. Under the Government of India (Federal Court) Order, 1937, the salaries of the Chief Justice of the Federal Court and a Judge of the Federal Court were fixed at Rs. 7,000 and Rs. 5,500 respectively. The Constitution which created the Supreme Court to take the place of the Federal Court and gave a greatly enlarged jurisdiction to it, however, fixed the salary of the Chief Justice of the Supreme Court at Rs. 5,000 and that of a Judge at Rs. 4,000. In addition to this salary, the Chief Justice and Judges have been granted the amenity of a free furnished residence. These lower salaries were fixed notwithstanding the increasing cost of living and the rising rate of taxation.

Abroad.

20. We may in this connection look at the position in the United States and the United Kingdom. The salary of the Chief Justice of the Supreme Court of the United States of America was raised from \$20,000 to \$25,500 by an Act passed on the 31st July, 1946. The salaries of the Justices of the Court were also raised from \$14,500 to \$25,000 by the same Act. In the United Kingdom also the salaries of the Lord Chancellor, the Lord Chief Justice and other Judges were raised in 1953.

It appears to us that the importance of the judicial office, its high place in the development of the nation and the nature of the work of the superior judiciary have not been sufficiently appreciated in our country. It is pertinent in this connection to quote the observations made by the Prime Minister of England, Sir Winston Churchill when introducing in the House of Commons a Bill for raising the remuneration of the Judges. He stated:—

“In a period where everybody feels the pressure of taxation and prices, when Members of the House of

Commons are quite naturally conscious of their own difficulties, and the whole country is gripped in the pincers of rearmament and the Welfare State; when our overseas balance, though greatly improved, is far from being finally established, anything in the nature of an increase in the salary and wages requires doubly accentuated scrutiny. Nevertheless, while under no pressure of any kind from the High Court Judges, we have felt it our duty to take this important step for reasons which I ask the House to allow me to place before them.¹

* * * *

It is 120 years since the salaries of the Judges were fixed. During that time, they have shrunk through taxation and the fall in the purchasing power of money to less than one-sixth of what they were originally. We are not proposing to restore them to their former level, but only to replace about one-fifteenth of their previous income. We are, therefore, acting in moderation. Stability is very important in the salaries of Judges. It is not likely that another 120 years will pass without some alteration, but there should at any rate be a fairly long period, perhaps, a generation before what we now decide be altered, except by tax reduction, so that those discharging these high functions, who have their whole lives to live within strict and rigid limits, should have a reasonable basis on which to work."²

He based his proposal for an increase on the need of guarding the independence of the judiciary from the executive in the following words:—

“The principle of complete independence of the judiciary from the executive is the foundation of many things in our island life. It has been widely imitated in varying degrees throughout the free world. * * * The Judge has not only to do justice between man and man. He also—and this is one of the most important functions considered incomprehensible in some large parts of the world—has to do justice between the citizens and the State. He has to ensure that the administration conforms with the law, and to adjudicate upon the legality of the exercise by the executive of its powers.

¹Parliamentary Debates (Hansard) House of Commons Debates dated 13-3-54 Vol. 525, Col. 1057.

²*Ibid.* Cols. 1060-61.

"Perhaps, only those who have led the life of a Judge can know the lonely responsibility which rests upon him. In criminal cases and in some civil cases, he may have the assistance of a jury, but it is on his own shoulders that even in these cases the heaviest burden lies. In other cases in which the honour and fortune of citizens are at stake, he has the sole responsibility of decision, and a heavy one it must be.

"The service rendered by judges demands the highest qualities of learning, training and character. These qualities are not to be measured in terms of pounds, shillings and pence according to the quantity of work done. A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and, though unwritten, has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct."

Finally he observed:

"The Bench must be the dominant attraction to the legal profession, yet it rather hangs in the balance now, and heavily will our society pay if it cannot command the finest characters and the best legal brains which we can produce; and heavily will our country pay in an epoch where our relative material power has diminished, we do not sustain those institutions for which we are renowned."

In making his proposals, the Prime Minister pointed out that though the Judges' salaries had been increased by £3,000 a year, yet the actual benefit to the recipient would be £734 a year, the difference being accounted for by tax deductions.

We have reproduced at some length this vivid description couched in inimitable language of the true role of the judge and the way of life which his duties impose upon him as these have in recent years tended to be increasingly overlooked in our country.

Much of what was said by the Prime Minister applies to the remuneration paid to our Supreme Court and High Court judiciary. Their remuneration was fixed at a time when the value of money was much higher. It was actually reduced at a time when with much heavier taxation and the rise in prices the actual amounts received and their purchasing power had shrunk to a small proportion of what they were originally.

Ibid. Cols. 1061-62.

²*Ibid.* Cols. 1063-64.

21. Notwithstanding these considerations we cannot ignore the economic and financial conditions of our country. We are at a most critical stage in our economic development. Our conditions demand that everyone should in the interests of the nation put forward his best effort for the lowest remuneration possible. These over-powering considerations make it inopportune to suggest any increase in the salaries of the Supreme Court Judges. But what we have said should serve to emphasize the importance of increasing the pensions payable to them and improving their leave conditions which in our view are very inadequate and indeed unfair.

22. In the matter of pensions the Judges of the Supreme Court are governed by the Government of India (Federal Court) Order 1937 which has been amended from time to time. The rules for working out the pensions under this Order are somewhat complicated; but as far as we can gather, a puisne Judge of the Supreme Court who retires after a total service of seven years including service as a judge of a High Court would receive a pension of about Rs. 844 per month. A Judge who has served for about ten years including the period of his service in the High Court would receive Rs. 1,278 and for a total service of twelve years including the period of service in the High Court he would receive a pension of Rs. 1,567. The maximum pension that a puisne Judge of the Supreme Court could receive would appear to be roughly Rs. 2,000 a month after service for a period of at least twenty years. The length of service, requisite for the maximum pension is such that very few of the Judges would be eligible to earn it.

Pensions of judges in India and abroad.

We might perhaps illustrate how the present rules of pension work with reference to some Judges who have retired. A Judge who retired as the Chief Justice of the Supreme Court after service as a Judge of a High Court and the Federal Court (with a total service of about 15 years) became entitled to a pension of Rs. 1,700 per mensem. Another Judge who retired after a total length of service of $10\frac{1}{2}$ years became entitled to a pension of a little less than Rs. 1,200. A third Judge of the Supreme Court who retired after a total service of 19 years which included five years as a Judge of the Supreme Court, became entitled to a pension of about Rs. 1,500 per mensem. The pension normally earned would, on an average, come to about a third of the salary.

23. One may compare these pensions with those paid to the Justices of the Supreme Court of the United States and the Judges of the Supreme Court in the United Kingdom. In the United States the pensions equal their salaries if they have put in a service of ten years. In the United Kingdom the pension averages about half of the salary paid to them.

Meagre pensions.

24. The meagre pension to which Supreme Court Judges are entitled under the present pension rules has two consequences. It deters eminent members of the Bar from accepting judgeships. The main inducement to a member of the Bar to sacrifice his large income and accept a judgeship is, apart from the high status and dignity of the office, the consideration that he would have more leisure and greater security in the matter of income even in his declining years. A Judge of the Supreme Court is not entitled after retirement to plead or act in any Court or before any authority within the territory of India. He has to depend during the declining years of his life on his savings and the pension to which he is entitled as a retired judge. The meagre pension has thus also the undesirable consequence of driving some of the judges who have retired to find some remunerative occupation which affects the dignity of the high judicial office they held.

The consequences.

Our recommendations.

25. In our view a person whom the State has deemed fit to appoint a Judge of the Supreme Court and who has served in that capacity till the age of 65 should from any point of view be assured of a pension on a scale which will at least maintain him in a reasonable degree of comfort. We have earlier suggested that a person should be appointed at an early age to the Supreme Court so that he can have a tenure of office of at least ten years. Unless he has been recruited directly from the Bar he would ordinarily have, when appointed, a service of at least five years as a Judge of the High Court. Considering all the circumstances we are of the view that the maximum pension of a puisne Judge of the Supreme Court should be fixed at least at Rs. 2,500 and of the Chief Justice at Rs. 3,000 for a service of 15 years including service, if any, as a Judge of a High Court. The rules will, of course, have to provide for proportionately lesser pension for shorter lengths of service. Such cases should, however, be rare if the recommendations we have made are accepted.

Leave privileges. Meagre leave allowances.

26. The rights in respect of leave of absence (including leave allowances) of the Judges of the Supreme Court are also governed by the provisions of the Government of India (Federal Court) Order, 1937. According to these rules the maximum leave that may be granted to a Judge of the Supreme Court during the whole period of service in the Supreme Court is one year out of which six months can be granted on medical certificate and six months on any other ground. But the leave allowance to which a judge is entitled is only at the rate of Rs. 1,110 per mensem.

The fact that a Judge of the Supreme Court enjoys long vacations may be a good ground for limiting the maximum period of leave which he may obtain during his tenure of office. It is difficult, however, to understand the meagre-

quantum of leave allowance granted to him. One should have thought that if a judge became entitled to leave, his leave allowances for the period to which he is so entitled would equal his salary. He is, it appears, at a disadvantage in this matter as compared to the High Court Judge who is entitled to leave on an allowance equal to his salary during the first month of his leave and an allowance of Rs. 2,200 per month thereafter. In case of a High Court Judge leave on half allowances works out at Rs. 1,100 per mensem. It also appears that the Judges of the Supreme Court are, in the matter of leave allowances, in a worse position than covenanted civil servants. A covenanted civil servant drawing a pay of Rs. 3,000 or Rs. 4,000 is entitled to leave on full average pay for the first four months of his leave. The great disparity between the salary and the leave allowances admissible to a Judge of the Supreme Court would undoubtedly have a tendency to induce them to continue to work even when they feel the need for a short rest and are not in a position to give their best to their work. This would obviously affect adversely the quality and volume of their judicial work. It is unnecessary to emphasize the desirability of avoiding consequences of this character.

Probable
consequences.

27. We are, therefore, of the view that the leave allowances of a Judge of the Supreme Court should be at least as liberal as those of a Judge of the High Court.

Increase
suggested.

It may be pointed out that in the United Kingdom there are no leave regulations governing the judges of the High Court and the Court of Appeal who constitute the Supreme Court of Judicature in England. Judges who are not well enough to perform their functions or who need rest take themselves away from work for a certain number of days and this period counts as a period during which they have been performing their duties. Evidently it is left to the good sense of the judges to decide when they should keep away from work. Such trust is not abused and we understand that absence from work occurs only when it is really necessary.

28. The question of a Judge of the Supreme Court taking up further employment under a State or the Union after retirement formed the subject of a considerable body of evidence recorded before us. As we have noticed the only bar imposed on a Judge of the Supreme Court who has retired is that he shall not thereafter plead or act in any Court or before any authority. In the result some Supreme Court Judges have, after retirement, set up chamber practice while some others have found employment in important positions under the Government. We have grave doubts whether starting chamber practice after retirement is consistent with the dignity of these retired judges and consonant with the high traditions which retired judges observe in other countries.

Employment
after re-
irement
under the
State.

And chamber
practice.

Ban on
employment
necessary.

29. But there can be no doubt that it is clearly undesirable that Supreme Court Judges should look forward to other Government employment after their retirement. The Government is a party in a large number of causes in the highest Court and the average citizen may well get the impression, that a judge who might look forward to being employed by the Government after his retirement, does not bring to bear on his work that detachment of outlook which is expected of a judge in cases in which Government is a party. We are clearly of the view that the practice has a tendency to affect the independence of the judges and should be discontinued. The Constitution has thought it fit to impose a ban on further employment either by the Union or a State of the Chairman of the Union Public Service Commission and the Comptroller and Auditor-General of India after they have ceased to hold office. Restrictions of a similar nature have also been imposed on the Chairman and Members of the State Public Service Commissions. In our view, it is even more necessary to safeguard the independence of the Supreme Court judges by enacting a similar provision barring further employment in their case, excepting of course their employment as Judges of the Supreme Court in the manner provided by article 128 of the Constitution.

Jurisdiction
of the
Supreme
Court.

30. We now turn to consider the jurisdiction of the Supreme Court, the manner of its exercise and the state of the Court's file. By article 136 jurisdiction of the widest amplitude has been conferred on the Supreme Court entitling it in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any Court or Tribunal in the territory of India. The pronouncement of the Supreme Court in *Dhakeswari Cotton Mills v. Commissioner of Income Tax, West Bengal*¹ explains the extent of this jurisdiction in the following words:

Under art.
136 of the
widest
amplitude.

"It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in this Court by the constitutional provision made in article 136. * * * It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this Article is that it is the duty of the Court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the decisions of these courts or tribunals final and conclusive."

¹A. I. R. 1955 S.C. p. 65 at 69, per Mahajan C. J.

This extensive discretionary jurisdiction conferred on the Supreme Court has, on the whole, been a most salutary provision which has led to the correction of grave injustice in many cases.

31. The exercise of the powers of the Supreme Court under article 136 in criminal matters, however, requires consideration. Its exercise in criminal matters.

In one of the earliest cases¹ which came before it, the Court in dealing with the scope of its jurisdiction under Article 136, seemed to have laid down principles analogous to those followed by the Privy Council in regard to the granting of special leave to appeal in these matters. Fazal Ali J., said in that case:

“The Privy Council have tried to lay down from time to time certain principles for granting special leave in criminal cases, which were reviewed by the Federal Court in *Kapildeo v. The King*.² It is sufficient for our purpose to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of this Court in granting special leave. Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.” Early pronouncements.

32. Though the Court prescribed in the beginning of its career these strict tests for the grant of special leave in criminal cases, it seems in its later decisions to have gone far in the direction of liberalising the grounds on which it would grant leave in these matters. The extent of the Court's interference with the dispensation of criminal justice by the Courts below will appear from some of its later decisions.

In *Mahesh Prasad v. State of Uttar Pradesh*³ a railway servant was convicted under section 161, Indian Penal Code and sentenced to one year and nine months' rigorous imprisonment and a fine of Rs. 200. The conviction and sentence were upheld by the Sessions Judge. A criminal Large interference.

¹*Pritam Singh v. The State*, 1950 S.C.R. 453, at pages 458 and 459.

²A.I.R. 1950 F.C. p. 80.

³A.I.R. 1955 S.C. p. 70.

revision petition to the High Court failed. On appeal by special leave granted under article 136 the Supreme Court in dealing with the matter observed:¹ “* * * * * this is an appeal on special leave and nothing so seriously wrong with the findings of fact have been shown, which call for interference by this Court.” Nevertheless the Court reduced the sentence of imprisonment to the period already undergone.

In another case² special leave was granted and was expressly restricted to the question of sentence only. Having heard the appeal the Court however observed³ as follows:

“It is not possible for us to interfere for the simple reason that * * * * * it was competent to the High Court to go into the question of sentence and it was well within the power of the High Court to enhance the sentence as it did.”

In yet another case⁴ the Supreme Court reduced the sentence in a case of a conviction for forgery and criminal breach of trust by a public servant. While holding that there was no reason “to interfere with the concurrent findings of fact thus arrived at by both the Courts”⁵ it still thought that the sentence was excessive and reduced it. These are only examples of similar interference by the Court in many other matters.

The consequences.

33. The manner in which jurisdiction under article 136 has been exercised in criminal matters in recent cases has, it appears from the views expressed to us, created a feeling in the litigant public and in the profession that most of the criminal matters disposed of by the High Court in appeal or in revision can be brought before the Supreme Court under article 136 with a reasonably good chance of obtaining at least a reduction of the sentence. Normally, the award of a proper sentence is a matter of judicial discretion and unless the exercise of this discretion has resulted in a miscarriage of justice, interference with the sentence by the Supreme Court under article 136 would be anomalous.

34. Nothing, perhaps, reflects more clearly the manner in which the Supreme Court has acted in granting special leave in criminal matters than the figures of admission of appeals on the file of the Court. It appears that out of 794 criminal appeals filed during the years 1950 to 1956

¹At p. 71.

²Bissu Mahgoob v. State of Uttar Pradesh, A.I.R. 1954 S.C. 714.

³At p. 715.

⁴Mangleshwari Prasad v. State of Bihar, A.I.R. 1954 S.C. 715.

⁵At p. 719.

Increase in appeals by leave.

as many as 548 were appeals instituted on special leave (vide Table III). It is not surprising, that notwithstanding the restricted right of appeal granted under article 134 the Supreme Court is being looked upon more and more as a final court of criminal appeal.

35. The way in which the Court has exercised its jurisdiction under article 136 in criminal matters has caused, Misgivings. misgivings in the minds of some members of the Court itself. In a minority judgment, Venkatarama Aiyar J.,¹ observed as follows:

"It is obvious that the intention of the Constitution in providing for an appeal on facts under Article 134 (1) (a) and (b) was to exclude it under Article 136 and it strongly supports the conclusion reached in A.I.R. 1950 S.C., 169 that like the Privy Council this Court would not function as a further court of appeal on facts in criminal cases."

While one may not agree with the soundness of the reasoning that the provisions of Article 134(1) (a) and (b) have the effect of excluding from article 136 the power of the Court to grant special leave to appeal on facts, there is no doubt that the way in which jurisdiction has been exercised under article 136 by the Supreme Court has considerably shaken the prestige of the High Courts as the highest courts of criminal appeal in the States.

It cannot be gainsaid that the intention of Constitution-makers was not to turn the Supreme Court into a Effect on
prestige of
the High
Courts. general court of criminal appeal as is shown by the limited jurisdiction conferred on the Supreme Court under article 134. That article has taken care to specifically provide that further power to entertain appeals in criminal matters may be conferred on the Supreme Court by Parliamentary legislation. A Chief Justice of a High Court has put this point of view with great force:

"The finality which formerly used to attach to the decisions of High Courts has practically disappeared, and this has to some extent unfavourably affected the prestige of the High Court Judiciary. Formerly, appeals to the Privy Council, especially in criminal matters, were so few that for all practical purposes the State High Court was the final Court of Justice, but the present tendency of the Supreme Court seems to be to convert itself into a revising Court of appeal and almost every case decided by the High Court is taken up to the Supreme Court. The

¹ *Aher Raja Khema v. State of Saurashtra*, A.I.R. 1956 S.C. p. 217 at

cost also is not prohibitive, and even if the High Court refused to grant leave the Supreme Court has been granting special leave under article 136 of the Constitution very liberally. The prestige of the High Court has, therefore, been reduced to that of the Court of a District and Sessions Judge during the pre-Independence days."

Jurisdiction
valuable.

36. At the same time there is no doubt that in some cases the exercise of jurisdiction by the Supreme Court under article 136 has prevented grave miscarriage of justice, even in cases the decision of which turned entirely on facts. It could not, therefore, be suggested that the powers conferred on the Supreme Court under article 136 cannot be beneficially exercised even in criminal matters. Indeed, the Supreme Court would be failing in its duty, if it did not act under article 136 in case of serious miscarriage of justice even though such miscarriage had arisen in cases decided entirely on facts. Nevertheless, in exercising this jurisdiction the Supreme Court has, in our view, constantly to bear in mind that the Constitution has, except in cases provided for by article 134, made the High Courts of the States the final courts of appeal in criminal matters, and that their interference under article 136 should not extend to matters of discretion like the award of sentences, the grant of bail and the like but should be restricted to cases of grave and real miscarriage of justice. No one can appreciate in a greater degree the importance of preserving the dignity and prestige of the High Courts as the highest tribunals of the States than the Supreme Court itself.

Restraint in
exercise
necessary.

Large num-
ber of Ap-
peals in
labour
matters.

37. Another feature of the recent exercise of the Supreme Court's jurisdiction under article 136 is the large number of cases in which the Court had to grant special leave to appeal against decisions of various labour tribunals. As will appear from the Table at the end of the Chapter, the number of applications for special leave in labour matters has been progressively on the increase. In 1956, as many as 257 special leave applications against decisions of labour tribunals were granted and up to the 31st of October, 1957, 148 such applications were allowed.

The conse-
quences.

Delays.

Insufficient
assistance
to the Court.

38. The situation created by these large number of appeals admitted in labour matters causes concern in two respects. It has the natural effect of clogging the work of the Supreme Court. Notwithstanding the recent increase in its strength, it is not surprising that the disposal by the Court is not equal to the rising institutions with which it is faced. The graver aspect, however, of the matter is that labour matters are being thrust upon a Court which has not the means or materials for adequately informing itself about the different aspects of the questions which arise in these appeals and therefore finds it difficult to do

adequate justice. In many of these cases, the Supreme Court has not even the assistance of a properly written judgment such as it would have in appeals from the High Courts. Equally grave are the delays caused by these appeals in the disposal of industrial matters which essentially need speedy disposal.

39. Though the Court has made repeated efforts to deal with these matters expeditiously, there are naturally a large number of pending appeals in labour matters on its file. These matters have in a sense been forced upon the Court, inasmuch as, the Court could not refuse to entertain appeals against decisions which appeared to be arbitrary and capricious and made in disregard of well accepted principles of law or natural justice. It will be noticed that the large number of applications for special leave in these matters made to the Supreme Court synchronised with the abolition of the labour appellate tribunal. The new labour legislation constitutes tribunals against the decisions of which no appeal lies. Not unnaturally, therefore, in most cases of unjust or arbitrary decisions there are applications for special leave to the Supreme Court. The aggrieved party approaches the Supreme Court because the jurisdiction of the High Court under article 226 is too narrow to afford him relief in these cases. Under article 226, the High Court can only quash an order made by these tribunals but cannot make its own decision and substitute it for that of the tribunal. The High Court would, generally speaking, quash these orders only in cases of excess of jurisdiction or an error of law apparent on the face of the record or a contravention of the principles of natural justice or the like. It is, therefore, imperative that the legislature should intervene and provide for an adequate right of appeal in these matters. Such a right of appeal could be provided either by constituting tribunals of appeal under the labour legislation itself or by conferring a right of appeal to the High Court in suitable cases. We do not however mean to suggest that the special leave jurisdiction of the Supreme Court in such matters should be curtailed in any manner. We wish to emphasise, that even if the right of appeal to the High Court or any other tribunal is provided, the jurisdiction of the Supreme Court under article 136 must continue unrestricted.

Reasons for their increase.

Alternative remedy necessary for litigant.

40. We have not before us any substantial body of opinion calling for the enlargement of the jurisdiction of the Supreme Court under article 134. A view has, however, been expressed by the Government of Madras that the limited right of appeal now conferred in cases of persons sentenced to death by clauses (a) and (b) of article 134(1) should be enlarged and that in all cases in which the accused persons are sentenced to death, there should be a right of appeal to the Supreme Court, without the need of a certificate from the High Court. It was

Criminal Appellate Jurisdiction

Suggested enlargement.

suggested that Parliamentary legislation to this effect under article 134(2) should be undertaken.

Not acceptable.

41. In our view adequate grounds have not been made out for the proposed enlargement of the right of appeal. Even in cases not covered by clauses (a) and (b) of article 134(1), the High Court has the power to certify a case as fit for appeal to the Supreme Court under clause (c). There is no reason to suppose that cases in which accused persons are sentenced to death other than those falling under clauses (a) and (b) of article 134, if they are fit ones for appeal, are not being certified as fit cases under clause (c) of article 134(1). There is also the safeguard provided by the wide powers of the Supreme Court under article 136 which will not fail to be exercised in cases of death sentences where a miscarriage of justice has occurred. The proposal of the Madras Government is based on the view that all cases where the extreme penalty of the law has been awarded should be examined by the Supreme Court. We are not inclined to accept this view. For over a century such cases have been dealt with by the High Courts subject to the superintendence of the Privy Council under its special leave jurisdiction and there is no reason why the High Courts should not continue to deal with such cases in the same manner.

Dissenting Judgments.

42. There has been considerable controversy over the question whether the present constitutional provisions which enable dissenting judgments or opinions to be delivered by Judges of the Supreme Court should be replaced by a provision making it obligatory on the Supreme Court to express a single judgment or opinion as used to be done by the Judicial Committee of the Privy Council. The matter may be dealt with separately in regard to judgments as distinguished from advisory opinions under article 143 as differing considerations may arise in regard to them. The main ground on which a single judgment is advocated is that:

"expression of dissenting views cannot fail to create confusion in the minds of the lawyers and the litigant public, encourage attempts to persuade the Supreme Court in later cases to go back upon its earlier expressed view and cause difficulties and embarrassment to the Supreme Court judiciary."¹

On the other hand, the importance of dissenting judgments has been emphasised as being of great value in the development of law and to the legal profession. It is said that the minority view of today tends very often to be the view of the majority in the future. The expression of his views by the dissenting Judge tends to stimulate reasoning and build the law.

¹Shri S. C. Isaacs, Senior Advocate, Supreme Court in his replies to the Questionnaire.

43. In the early years, many dissenting judgments were delivered in the Supreme Court expressing in many cases different and conflicting views on legal principles. Even the Judges who concurred delivered separate judgments sometimes reaching the same conclusion on different grounds. It is true that these separate and conflicting expressions of views led on several occasions to a failure by subordinate courts and members of the profession to appreciate the law laid down by the Supreme Court. This in its turn tended to considerable uncertainty in the law laid down by the Court which under article 141 is binding on all courts in India.

Early practice of the Court.

44. Recently, however, the Court has favoured the practice of delivering a single judgment as the judgment of the Court in cases where all the Judges are agreed, and when there is a difference of opinion, a majority judgment expressing the views of the majority with one or more dissenting judgments. The highest tribunals of all Commonwealth countries deliver more than one judgment and even concurring Judges express their views in separate judgments though they may reach the same conclusion. The same practice governs the Supreme Court of the United States. The Judicial Committee of the Privy Council delivers one judgment because of the peculiar nature of its jurisdiction. We are, therefore, of the view that the balance is clearly in favour of permitting separate and dissenting judgments wherever the Judges feel such a course to be necessary. Realizing, however, the need and the importance of a clear definition of the law so that there may be no misapprehension as to the true legal principles on the part of the subordinate courts, the Court has already started the practice of delivering a single judgment of the Court in a large majority of the cases.

Present practice.

45. The need for clear advisory opinions under article 143 is even greater than a clear definition of the law governing the land under article 141. In dealing with a recent reference under article 143 the Court delivered a majority opinion with a dissenting opinion on one point only by one of the Judges. The Court has, it would appear, appreciated the desirability of clear answers to the questions put to it by the President under article 143.

Advisory opinions.

46. In our view no constitutional change is called for in the matter of separate and dissenting judgments and opinions by the Supreme Court.

No change necessary.

47. In view of the very wide jurisdiction of the Supreme Court it would be instructive to observe how it has been able to cope with the work before it and the present state of its file. We append at the end of the chapter tabular statements showing the number of civil

State of the Court's file.

appeals, criminal appeals, and article 32 petitions instituted, disposed of and pending in the Supreme Court during the years 1950 to 1955 and upto the 15th November, 1956. (Tables II to IV). We also append Table showing the various classes of proceedings pending in the Supreme Court on the 1st of January, 1958 according to their year of institution (Table V). A statement showing civil and criminal appeals and petitions under article 32 which are ready for hearing but could not be put on the lists for disposal till the 1st of January, 1958 is also annexed (Table VI).

Arrears.

48. The statements show that under article 32 applications have been pending for more than 3 or 4 years. Ordinary civil appeals and other matters raising constitutional questions more than four years old are also pending. Even some criminal appeals of 1955 have remained undisposed of. The effect of the recent increase in the strength of Supreme Court does not seem to have yet made itself felt on the pending file.

Of the 2126 civil appeals only 274 were admitted by special leave; but of the 794 criminal appeals as many as 548 were instituted by special leave. It is obvious that in addition to the time taken in hearing the appeals themselves, the disposal of special leave applications must have occupied a great deal of the court's time.

On the 1st January, 1958, nine petitions under article 32 pending from 1954 or earlier years were ready for hearing but had not been listed. Of the twenty-three ordinary civil appeals pending from 1953 and earlier years two were ready and four were part-heard on that date, eighteen civil appeals raising constitutional issues pending from 1954 were also ready for hearing. Out of the hundred and eighteen appeals of 1955 which were pending on that date thirty-eight appeals were ready but not listed. Eighteen ordinary criminal appeals of 1955 and ninety-four of 1956 were also ready at the commencement of 1958. Out of the forty-five criminal appeals filed from 1953 to 1955 in which constitutional issues arise, twenty-four were also ready for hearing. All these ready cases have not yet been listed, presumably for want of time.

Adequacy of strength.

49. The state of work in the Supreme Court does suggest the question whether the strength of the Court is adequate. The initial strength of the Court was fixed by the Constitution at eight Judges including the Chief Justice. Having regard to the provisions of the Constitution which require matters involving a substantial question of law as to its interpretation to be heard by a Bench of not less than five Judges the Court used generally to function in two Benches: a Constitution Bench of five Judges and a Division Bench consisting of three Judges which dealt

with ordinary civil and criminal matters. Recently (in January, 1957) by an Act of Parliament¹ the strength of the Court was raised to eleven Judges including the Chief Justice. This increase in the strength now enables the Court to function simultaneously in three Divisions, a Constitution Bench of five Judges and two Benches of three Judges dealing with ordinary civil and criminal appeals. The revised rules of the Court now permit a Division Bench to be constituted with two Judges.

50. Considering the average disposal of the Court per year it would appear that despite the increase in its strength it may not be able to clear the existing volume of arrears. The figures indicate that the pending cases include as many as 481 appeals under article 132 which have to be disposed of by a Bench of five Judges. It may be that several of these raise identical questions of law and are capable of being disposed of together. But even so it would seem that taking its present rate of institutions and disposals the Court will be adding to its arrears of work. It may also be mentioned that the figures in the Tables do not include civil appeals in which certificates have been granted and which have been admitted by the High Courts under Order XLV, Rule 8 of the Civil Procedure Code, as such appeals are not numbered in the Supreme Court until the record has been received in the registry of that Court.

Strength may not be adequate.

51. At the same time the number of future institutions in the Court may be less as a result of the recent amendment in the election law which has provided for appeals to the High Court and if appropriate legislation recommended by us for appeals in the labour matters is enacted. It may also be that by appropriate changes in the rules, the Court may be able to save its Judge-power by instituting a system of preliminary hearing by a single Judge, or a Bench of three Judges for article 32 applications and by leaving contested interlocutory and miscellaneous matters also to be disposed of by such Benches.

Future trends.

In the circumstances it would, we think, be advisable to watch the progress of work in the Court for some time before forming a judgment on the impact of the recent increase in its strength on its file of pending matters. Only then can a decision be reached on the need for further increasing the strength of the Court.

52. Our recommendations on the Supreme Court can be summarised as follows:—

Summary of recommendations.

(1) Communal and regional considerations should play no part in the making of appointments to the Supreme Court.

¹Supreme Court (Number of Judges) Act, 1956 (55 of 1956).

(2) An effort should be made to recruit distinguished members of the Bar directly to the Supreme Court Bench by inviting them to accept the appointment at a time when they can look forward to a fairly long tenure on the Bench.

(3) In the interests of stability of judicial administration a Judge of the Supreme Court should have a tenure of at least ten years.

(4) It is not desirable to raise the retiring age of Supreme Court Judges.

(5) A person appointed as Chief Justice of India should have a tenure of at least five to seven years.

(6) The practice of appointing the senior-most puisne Judge of the Supreme Court as Chief Justice of India is not desirable. Instead, the most suitable person whether from the Court, the Bar or from the High Courts should be chosen.

(7) The pensions payable to judges of the Supreme Court should be increased so that a puisne Judge who retires after serving for 15 years (including service as a High Court Judge) has a pension of at least Rs. 2,500 and a Chief Justice Rs. 3,000.

(8) The pension may be proportionately less for a shorter period of service.

(9) The leave privileges of the Judges of the Supreme Court should be at least as liberal as those of the Judges of the High Court.

(10) It is not consistent with the dignity of the Judges of the Supreme Court to start chamber practice after retirement.

(11) 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.

(12) It is not necessary to enlarge the jurisdiction of the Supreme Court in criminal matters.

(13) Although the exercise of the jurisdiction under article 136 of the Constitution by the Supreme Court in criminal matters sometimes serves to prevent

injustice, yet the Court might be more chary of granting special leave in such matters as the practice of granting special leave freely has a tendency to affect the prestige of the High Courts.

(14) The file of the Supreme Court is being clogged with appeals on labour matters and relief should be given to that Court by enabling parties to file appeals in these matters either to the High Court or to a special tribunal constituted for the purpose.

(15) No constitutional amendment is necessary in the matter of separate and dissenting judgments or opinions being delivered by the Supreme Court.

(16) The Court may consider the desirability of instituting a system of preliminary hearing in article 32 petitions and of enlarging the powers of a single Judge or of a Division Bench to deal with contested interlocutory and miscellaneous matters.

TABLE 1

Statement regarding Petitions for Special Leave to Appeal in Labour Matters, 1950-1957 (31st October, 1957)

Year	Registered	Granted	Dismissed
1950	19	18	1
1951	20	13	9
1952	9	3	6
1953	59	23	36
1954	51	21	30
1955	50	37	20
1956	291	257	34
1957 (upto 31st October)—	189	148	16
GRAND TOTAL	695	513	150

TABLE II

Statement showing the number of Civil Appeals (including appeals from the decisions of tribunals and those filed by special leave) instituted, disposed of and pending in the Supreme Court of India during the years 1950 to 15th November, 1956

Year	Pending at the beginning of the year	Instituted	Total for disposal	Disposed of	Pending at the close of the year	REMARKS
1	2	3	4	5	6	7
1950	..	157	157	26	131	(A) Includes 188 appeals relating to tax matters (Income Tax, Sales Tax and Agricultural Tax), 76 appeals from the decisions of tribunals other than the High Courts and 34 Election Appeals. Out of 2126 appeals 274 are by special leave.
1951	131	529	660	117	543	
1952	543	218	761	483	278	
1953	278	262	540	176	364	
1954	364	257	621	288	333	
1955	333	360	693	99	594	
1956	594	343	937	100	837*		*Pending on 15-11-1956.
		(A) 2126				

TABLE III

Statement showing the number of Criminal Appeals instituted, disposed of and pending in the Supreme Court of India during the years 1950 to 15th November, 1956

Year	Pending at the beginning of the year	Instituted	Total for Disposal	Disposed of	Pending at the close of the year	REMARKS
1	2	3	4	5	6	7
1950	26	26	26	10	16	(A) This figure includes 548 appeals instituted by special leave.
1951	16	73	89	53	36	
1952	36	112	148	78	70	
1953	70	97	167	75	92	
1954	92	154	246	140	106	
1955	106	152	258	92	166	
1956	166	180	346	105	241*	*Pending on 15-11-1956.
		794 (A)				

TABLE IV

Statement showing the number of petitions under art. 32 of the Constitution instituted, disposed of and pending in the years 1950 to 1956 in the Supreme Court of India

Year	Pending at the beginning of the year	Instituted	Total for disposal	Disposed of	Pending at the close of the year	REMARKS
1	2	3	4	5	6	7
1950	..	648	648	196	452	
1951	452	686	1138	1013	125	
1952	125	477	602	529	73	
1953	73	401	474	340	134	
1954	134	671	805	403	402	
1955	402	382	784	488	296	
1956	296	232	528	100	428*	*Pending on 15-11-1956.
		3497				

TABLE V

Statement showing the various classes of proceedings pending in the Supreme Court on 1-1-1958, according to the year of Institution

	1950	1951	1952	1953	1954	1955	1956	1957	TOTAL
1. Article 32 Petitions . . . . .	..	..	4	4	13	162	82	110	375
2. Appeals involving interpretation of Constitution—									
(a) Civil . . . . .	..	..	..	..	18	118	80	212	428
(b) Criminal . . . . .	..	..	..	1	12	10	22	8	53
3. Special Leave Petitions—									
(a) Civil . . . . .	..	..	..	17	7	4	9	90	127
(b) Criminal . . . . .	..	..	..	..	..	..	..	43	43
Ordinary Civil Appeals	6	..	8	9	84	143	197	533	980
Ordinary Criminal Appeals . . . . .	..	..	..	..	..	18	94	131	243
Transfer Petitions . . . . .	..	..	..	..	..	..	..	2	2

TABLE VI

Statement showing the number of petitions under article 32 of the Constitution of India, regular Civil and Criminal Appeals and Civil and Criminal Appeals involving Constitutional matters that are ready but not listed till 1-1-1958 in the Supreme Court of India

Petitions under article 32	Civil Appeals		Criminal Appeals	
	Ordinary	Constitutional	Ordinary	Constitutional
9 Out of 13 pending from 1954 or earlier are ready but not listed.	Out of 23 pending from 1953 or earlier 2 are ready and 4 are part heard and awaiting formation of the Bench which heard them.	All the 18 appeals pending from 1954 are ready but not listed. Out of the 118 appeals of 1955 pending, 38 are ready but not listed.	All the 18 appeals pending from 1955 are ready but not listed. All the 94 appeals of 1956 are ready but not listed.	One appeal of 1953 was posted several times but adjourned. Out of the 12 appeals of 1954 six are ready but not listed. All the 10 appeals of 1955 are ready but not listed. Out of 22 appeals of 1956 seven are ready but not listed.

6.—HIGH COURTS

Scope of enquiry-arrears and general questions.

1. The question of the very heavy arrears pending in some of the High Courts has created a grave situation and rightly agitated the public mind a great deal. It is therefore necessary to deal broadly with the causes that led to the accumulation of these arrears and suggest measures of general application for remedying the situation. There are also some general questions of importance regarding the High Courts which may conveniently be dealt together with the problem of arrears. There are special problems facing the High Courts in particular States, with which we shall deal in the chapters dealing with individual States.

As a result of the re-organization of States in 1956, there are at present fourteen High Courts in India, including the High Court of Jammu and Kashmir, manned by about two hundred Judges. The pendency in the High Courts by far and large has shown a rise from year to year particularly in the post-Constitution period. The problem of arrears, however, exists in a very accentuated form only in certain High Courts. But even in the other High Courts, though the arrears are not very heavy, the disposals have fallen far short of what they should be in a properly regulated court.

Increase of work.

2. The problem of arrears in the High Courts must, in our opinion be viewed against the very large increase in the work of these Courts in recent years, particularly during the period following the Constitution. Two main causes of this increase need mention. Firstly, the growing volume of ordinary litigation following the economic and industrial development of the country, has considerably added to the normal work of all the Courts. We append a Table (Table I) showing the extent of the increase under various heads. Secondly, there has been an expansion of the High Courts' special jurisdiction under a variety of fiscal enactments like the Income tax and Sales tax Act and other special laws. The fact of such expansion was noticed by the High Courts Arrears Committee as far back as 1949. A very recent example of the conferment of the special jurisdiction on the High Courts will be found in the Representation of the People Act by which the High Court is empowered to hear appeals from the decisions of Election Tribunal.

Normal work.

Work under special Jurisdiction.

Work under the Constitution

3. The fundamental rights conferred by the Constitution and resort to the remedies provided for their enforcement have contributed largely to the increase in the volume of work in the High Courts. Applications for the enforcement of fundamental rights, applications seeking to restrain the

usurpation of jurisdiction by administrative bodies and applications or suits challenging the constitutionality of laws have made large additions to the pending files of the High Courts. It has to be observed that many laws have come in for challenge in the Courts on the ground of their inconsistency with the Constitution. The complexity of recent legislation has resulted in a large number of novel and difficult questions having been brought before the High Courts. Their decisions have not only taken longer time, but have led not infrequently to references to Full Benches which necessarily divert the available judge-power from what may be called normal judicial work. As a result of this large addition to their work, the disposal of ordinary civil and criminal work in the High Courts has suffered very considerably. This increase of work and its specially difficult and novel character can well be regarded as an important cause of the accumulation of old cases.

Complexity
of work.

Paucity of
strength of
High
Courts.

4. Governments could not have been unaware, at any rate from 1950 onwards, that the files of the High Court were being loaded with a large amount of additional work. The large number of writ applications and applications questioning the constitutionality of enactments and rules framed thereunder must have come directly to the notice of the Governments. Responsible persons cannot also have failed to notice that the disposal of these complicated and in a sense novel matters consumed a great deal of the time of the High Courts which had the natural consequence of clogging its normal and usual work. At any rate, with the experience gained within a year or two after the coming into force of the Constitution, when the effect of the laws conferring special jurisdiction upon the High Courts had begun to make itself felt, it should have been the duty of both the High Courts and the Governments to have examined the scale of the requirements of the High Courts as to their strength and to have taken steps well in advance to add to it before the Courts were swamped by the rising tide of arrears. That unfortunately does not appear to have been done. Only during the last year or so has the gravity of the matter been appreciated to its full extent by the Governments concerned and the strength of the High Courts has been increased by the addition of partly permanent and partly additional Judges. Perhaps if these steps had been taken earlier, the country would not have been faced with the problem of arrears in its present acute form.

Unsuccessful
efforts to
add to
strength.

5. It does appear that in some cases the Chief Justices of the High Courts, conscious of the growing accumulation of work in their Courts, did make an endeavour to obtain additional judge-strength for their Courts. Their efforts seem, however, to have been defeated by a baffling procedure which seems to be in vogue in considering the need for additional Judges. It appears that when the Chief Justice of a High Court makes a recommendation for increasing the

Faulty tests
of assessing
necessary
strength.

strength of the Court on the ground of the increase of work, the matter goes first to the State Government and then to the Home Ministry who in their turn consult the Chief Justice of India before reaching a decision. The final authority competent to authorise the increase in the strength is the President. It appears that the persons handling the proposal in the Ministry have little or no knowledge or experience of courts and do not appear to be aware even of the distinction between civil revision petitions, civil miscellaneous petitions, first appeals or writ applications in the matter of the duration of the hearing. We have been informed that when a request for additional judges was made by one High Court, the proposal was considered on the basis that the rate of disposal of second appeals, civil revision petitions and civil miscellaneous petitions was a proper criterion for determining the number of Judges necessary for disposing of first appeals. It is obvious that such a method of examination would be hopelessly faulty and it is not surprising that in the result, the High Courts have been denied during the period of stress from 1950 onwards, the necessary judge-strength. This is one of the important causes of the accumulation of arrears. We take the view, that it should be a convention, that if the Chief Justice of a State makes a request for the appointment of additional Judges and if the need for such additional Judges is accepted by the Chief Justice of India, the Chief Justice's request should be acceded to.

Suggested
convention.

Not only has the necessary addition to judge strength been withheld, but in several cases a course of action has been pursued, which has resulted in depleting these Courts even of their normal strength.

Delays in
filling va-
cancies.

6. It appears that the delay in filling vacancies in the High Court has been responsible in a considerable measure for the accumulation of arrears in these Courts. It used to be the practice in the past to select persons appointed to fill vacancies well ahead of the expected vacancy, so that, the successor would take his seat immediately on the retirement of his predecessor. Of late, however, vacancies have remained unfilled for months. We set out below a few instances of the delays that have taken place between the occurrence of the vacancy and its being filled up. Naturally, such delays have resulted in a considerable loss of judge-days in the working of the High Courts, with the necessary consequence of a rise in the volume of the accumulated work.

STATEMENT SHOWING THE DELAYS IN FILLING UP VACANCIES IN THE HIGH COURTS OF (1) ALLAHABAD, (2) PUNJAB AND (3) PATNA.

(1) Allahabad

Date on which vacancy occurred	Date of appointment	Period for which there was no Judge
1	2	3
28-12-1950	1-6-1951	5 months
26-1-1951	1-6-1951	4 months
3-7-1951	8-8-1952	13 months
21-10-1951 (Addl. posts sanctioned.)	14-11-1952	13 months
20-5-1952	23-12-1952	7 months
14-10-1952	6-4-1953	6 months
4-11-1952	6-4-1953	5 months
24-12-1952	14-12-1953	12 months
9-2-1953	6-5-1954	15 months
20-2-1953	23-8-1954	18 months
31-3-1953	23-8-1954	17 months
12-2-1954	11-11-1954	9 months
24-3-1954	11-11-1954	8 months
15-9-1954	31-3-1955	7 months
11-1-1955	31-3-1955	3 months
24-3-1955 (Addl. posts sanctioned)	31-3-1955	2 weeks
TOTAL		142½ months

(2) Punjab

1	2	3
8-12-1952	13-3-1953	3 months 5 days
28-10-1953	24-5-1954	6 months 26 days
1-4-1956	14-1-1957	9 months 13 days
14-1-1957	5-8-1957	6 months 21 days
19-3-1957*	8-8-1957	4 months 17 days
TOTAL		26 months 11 days

*Recommended for two additional posts but only one Additional Judge sanctioned.

(3) Patna

I		2	3
19-2-1951	.	13-4-1951	2 months 4 days
1-6-1952	.	11-12-1952	6 months 10 days
Sept. 1952	(Addl. posts sanctioned.)	12-12-1952	2 months 11 days
9-1-1953	.	4-4-1953	2 months 25 days
3-2-1953	.	13-4-1953	5 months 10 days
3-9-1953	.	29-8-1954	11 months 26 days
1-12-1954	.	12-5-1955	5 months 11 days
10-1-1955	.	13-5-1955	4 months 3 days
30-4-1956	.	3-9-1956	4 months 3 days
20-1-1956	(Addl. posts sanctioned)	3-9-1956	7 months 14 days
17-5-1957	.	20-10-1957	5 months 13 days
3-2-1952	8-1-1953 (None appointed in a vacancy on leave preparatory to retirement)		11 months 5 days

	Years	Months	Days
TOTAL	5	8	15

NOTE—

- Uttar Pradesh*— (1) The loss of working strength of the High Court by reason of the delays is roughly equivalent to the absence of 12 Judges for 12 months.
- Punjab*— (2) There was a loss of 2 Judges for over one year.
- Patna*— (3) The loss was roughly equivalent to the absence of 5 Judges for one whole year.

It is difficult to appreciate, why matters which could expeditiously be dealt with prior to 1947, so that, hardly a case arose when there was an appreciable interval between the vacation of office by a Judge and his successor taking his seat, should be subject to such great delays at the present time. We have not been able to ascertain the causes of these delays satisfactorily. However, it appears that a considerable time is lost in correspondence between the authorities concerned as to the fitness of the persons to be appointed. A Chief Justice of a High Court told us that the delay in the appointment of Judges was in a large measure due to what he called "disputes as to the selection of the successor". It is known that the appointment of an Additional Judge of a High Court was held up for over a year merely by reason of a difference of opinion between the Chief Justice of the High Court and the executive as to the person to be appointed. Whatever be the cause, we are of the view that such delays are inexcusable and should not occur.

7. Frequently judges have been deputed for non-judicial work. Many disputes or unusual occurrences give rise to a demand for a judicial inquiry and these are generally met by deputing a High Court Judge for the purpose. Though the confidence of the public and the Government in the ability and integrity of the High Court Judges thus demonstrated is gratifying, yet the frequency with which such work is thrust upon them adds to the pending files of the High Courts.

Deputation of judges for non-judicial work.

Instances have been brought to our notice of the High Court Judges having been taken away on deputation for considerable periods. In one High Court during a period of ten years, a Judge was away on deputation for as long as six years. Though such lengthy absences may be rare, cases of Judges being asked to undertake other work during term-time for a period of a few weeks or months are not uncommon.

We are aware that the deputation of High Court Judges for the performance of such duties is necessary in the public interest. But it is imperative that the authorities should take care in such cases and particularly, when such duties are likely to take a substantial period of time, to keep up the strength of the Court.

8. We must next refer to an important factor which, in our view, has considerably aggravated the situation, caused by the accumulation of arrears. We refer to the selection of unsatisfactory judicial personnel. We have visited all the High Court centres and on all hands we have heard bitter and revealing criticisms about the appointments made to High Court judiciary during recent years. This criticism has been made by Supreme Court Judges, High Court Judges, retired Judges, Public Prosecutors, numerous representative associations of the Bar, principals and professors of Law Colleges and very responsible members of the legal profession all over the country. One of the State Governments had to admit that some of the selections did not seem to be good and that careful scrutiny was necessary. The almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have proceeded on no recognizable principle and seem to have been made out of considerations of political expediency or regional or communal sentiments. Some of the members of the Bar appointed to the Bench did not occupy the front rank in the profession, either in the matter of legal equipment or of the volume of their practice at the Bar. A number of more capable and deserving persons appear to have been ignored for reasons that can stem only from political, or communal or similar grounds. Equally forceful or even more unfavourable comments have been made in respect of persons selected from the services. We are convinced that the

Unsatisfactory appointments.

views expressed to us show a well-founded and acute public dissatisfaction at these appointments. The observations made by Chief Justice Kania referred to by us elsewhere that merit alone should be the basis for selection to the High Court judiciary seems to have been completely overlooked.

The untoward consequences

9. The selection of a person on considerations other than of merit has far-reaching repercussions. Such a Judge would naturally not receive from members of the Bar, who would be no strangers to his capacity, the full measure of co-operation which is needed for the proper administration of justice; nor would a Judge so appointed generally have that amount of confidence in himself which alone can contribute to the efficient discharge of his duties. These circumstances are bound to affect adversely the quantity and the quality of the work turned out by such a Judge. It is axiomatic that the lowering of judicial standards must adversely affect the efficient administration of justice. It has been stated in some quarters that the larger the number of Judges, the lower is the proportionate output of work. We are of the view that such a generalisation is not based on any acceptable data; but what seems to have led to lower output of work by Judges is the appointment of persons who are not satisfactory. Whether a Judge of a High Court is selected from the Bar or from the services, he should be the fittest person available to hold that office. If this cardinal principle is overlooked in making the appointment, and persons of indifferent capacity are appointed, the work turned out by such persons will naturally not come up to the proper standards. If, therefore, there has been in some cases a proportionately lower output of work when a larger number of Judges are appointed, the fall in the work is clearly attributable to the circumstance that the persons added were not fitted for the office. The inevitable effect of appointments of this character to the High Court Bench on the disposal of work and the mounting arrears is obvious.

Constitutional provisions and the machinery for appointment

10. The Constitution provides a machinery for the appointment of High Court Judges in article 217. It provides for the appointment being made by the President after consultation with the Chief Justice of India, the Governor of the State and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court. Inquiries have shown that in the case of all the appointments made to the High Court Bench after 1950, the constitutional procedures laid down by article 217 have been followed and that most of the persons have been appointed with the concurrence of all the persons consultation with whom is required. Some of the persons appointed have not however been persons recommended by the Chief Justice of the High Court. We were informed that two of the appointments to judgeships in the High Court of Calcutta had been made in recent years against

the recommendation of the Chief Justice of that High Court. We also became aware of a very recent case when a person was appointed to the High Court Bench in Allahabad against the view of the Chief Justice of that Court. Instances were also mentioned to us when out of a panel of names submitted by the Chief Justice, the last in the order of merit has been selected for appointment.

11. We understand that the constitutional procedure prescribed by article 217 is worked administratively in the following manner: Working of the procedure.

The Chief Justice forwards his recommendation to the Chief Minister who in his turn forwards this recommendation in consultation with the Governor to the Minister of Home Affairs in the Central Government. If, however, the Chief Minister does not agree with the recommendation of the Chief Justice, he makes his own recommendation. It appears that in such a case, the Chief Justice is given an opportunity for making his comments on the recommendation made by the Chief Minister. This practice is not, however, invariably followed, so that, in some cases it happens that the recommendation made by the Chief Minister does not come to the knowledge of the Chief Justice. The rival recommendations are then forwarded to the Minister of Home Affairs who, in consultation with the Chief Justice of India, advises the President as to the selection to be made. The person recommended by the Chief Minister may be, and occasionally is, selected in preference to the person recommended by the Chief Justice.

12. It is obvious that this procedure places the Chief Justice in an extremely awkward position. Though he is expected to be responsible for the transaction of the judicial business of his Court by Judges possessing appropriate qualifications, the procedure in force results, at times, in the rejection of the persons recommended by him and the appointment instead of another person whom he considers unsuitable. A Chief Justice may thus find such a person appointed for a judgeship of his Court at the instance of the local executive and against his own preference. He may be put in the position of having to carry on the work of the Court with Judges, who are incapable of rendering proper assistance or are otherwise unsuitable. The position would be further aggravated by the knowledge of the newly appointed judge that he has been appointed to the bench by the executive against the recommendation of the Chief Justice. The effect of such a situation or even the possibility of such a situation arising, naturally weighs upon the mind of the Chief Justice in making his recommendation. It may well deter him from recommending someone whom he has reasons to know the executive will not favour or lead him to recommend someone who, he believes, would be acceptable to the executive. Difficult position of the Chief Justice.

Selections made with the concurrence of the Chief Justice.

13. The figures made available by the Home Ministry to us, however, show that in the vast majority of cases, the Chief Justices of the various High Courts have concurred in the appointments made to the High Courts after 1950. How is it then that the Chief Justice of the High Courts have happened to agree to the appointment of the unsatisfactory personnel of which, as stated above, we have indubitable evidence?

A possible explanation.

14. The explanation, perhaps, lies in what has been stated to us by the Chief Justice of India.

"In olden days in the matter of the appointment of High Court Judges, the Chief Justice of the High Court had a preponderating voice and, generally speaking, the recommendations made by him, as the person responsible for the working of the High Court, used to find support of the Governor, who in such matters could act in his individual discretion. Now, the Governor has to be guided by his Ministers and it is usually felt that nowadays the Chief Minister thinks that it is his privilege to distribute patronage and that his recommendations should be the determining factor. 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 unceremoniously turned down. The Chief Minister now has a hand, direct or indirect, in the matter of the appointment to the High Court Bench. The inevitable result has been that the High Court appointments are not always made on merit but on extraneous considerations of community, caste, political affiliations, and likes and dislikes have a free play. This necessarily encourages canvassing which, I am sorry to say, has become the order of the day. The Chief Minister holding a political office dependent on the goodwill of his party followers may well be induced to listen and give way to canvassing. The Chief Justice, on the other hand, does not hold his office on sufferance of any party and he knows the advocates and their merits and demerits and a recommendation by the Chief Justice is, therefore, more likely to be on merit alone than the one made by the Chief Minister who may know nothing about the comparative legal acumen of the advocates."

A Judge of the Supreme Court has stated as follows:—

"The methods of selection also make for a lowering of morale and standards. The habit of touting for

high judicial office and producing chits and recommendations from this person of influence and that of carrying back-stair intrigue for appointments is growing and is, to my mind, revolting and dangerous. Also political considerations, and worse, are creeping in and Chief Justices are finding it increasingly difficult to resist this sort of pressure. That ought to be stopped forthwith."

A Judge of a High Court has stated:

"If the State Ministry (Minister in the State Government) continues to have a powerful voice in the matter, in my opinion, in ten years' time, or so, when the last of the 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 politicians."

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.

15. Apart from this very disquieting feature, the prevalence of canvassing for judgeships is also a distressing development. Formerly, a member of the Bar was invited to accept a judgeship and he considered it a great privilege and honour. Within a few years of Independence, however, the judgeship of a High Court seems to have become a post to be worked and canvassed for.

16. The Chief Justice of a High Court outlined to us the procedure followed in his State in regard to the selection of High Court Judges. According to him, the question is first discussed at a meeting between the Chief Justice and the Chief Minister during which the Chief Justice suggests names and the Chief Minister gives his opinion on the proposal. Thereafter, some discussion takes place and an informal understanding is reached between the two before formal proposals are sent up. He stated that from his experience of such conferences, it was clear that political and communal considerations did affect the mind of the executive at the time of the discussion of the names. We have no doubt that in other States, a somewhat similar procedure is followed before the making of a formal recommendation by the Chief Justice. It is not surprising therefore that the concurrence of the Chief Justice has been obtained to many unsatisfactory appointments. In substance, having regard to the position in which he is placed, the Chief Justice surrenders his better judgment and yields to the wishes of the Chief Minister.

17. This is a grave state of affairs and it is for consideration whether it is advisable and practicable to prevent altogether the State executive from having a voice in the selection of the High Court Judges. It has been

stressed upon us by a large body of opinion that consultation with the Governor provided by article 217 should be omitted. We have given very anxious consideration to this matter and feel that it will not be right to recommend that the State executive should not be consulted in the matter of appointments. It must be remembered that the appointment to a judgeship is made by the President who is himself the head of the executive. The High Court is the highest judicial organ of the State and it is the State exchequer which pays for its maintenance. It would, therefore, be unreasonable not to allow the State executive to express its views with reference to a person recommended for judgeship by the Chief Justice of the State High Court. While the Chief Justice would be the most competent person to evaluate the merit and efficiency of a person recommended, there may be, and frequently are, other matters relating to the person recommended which the State executive alone would be in a position to know and of which they may inform the Chief Justice. It may be that the local position of the person proposed, his character and integrity, his affiliations and the like, which may have a considerable bearing upon his efficient functioning as a Judge may not all be within the knowledge of the Chief Justice. For these reasons, it seems to us reasonable and necessary that where the Chief Justice recommends a person for a judgeship, the State executive should have an opportunity to offer its comments upon that recommendation. It appears to us, however, that it should be left to the Chief Justice on whom lies the responsibility of the efficient working of the Court to determine whether or not a person is competent to be a Judge or from which of the sources recognised by the Constitution a judge should be drawn to fill a particular vacancy. The consultation with the local executive and the information which it may supply should be limited to other factors such as we have mentioned above. We are also clearly of the view that it should not be open to the State executive to propose a nominee of their own and forward the name of such nominee to the Centre. If the State executive disagrees with the recommendation of the Chief Justice by reason of the nature mentioned above, it should be open to it to disagree with the recommendation and request the Chief Justice to make a fresh recommendation.

18. In order to avoid delays it would be advisable that the Chief Justice of the State should forward direct to the Chief Justice of India a copy of the recommendation made by him to the executive of the State.

19. Having regard to what has been stated above, it is in our view very essential, that the hands of the Chief Justice in making his recommendation should be strengthened. Instead of the constitutional provision requiring a consultation with the Chief Justice in the matter of the appointment of judges, it should require an appointment of a judge being made on the recommendation of the Chief Justice of the State. If the Chief Justice is assured

State Governments not to make rival nominations.

Steps to avoid delay.

Recommendation of the Chief Justice to be necessary for appointments.

that no appointment can be made unless he recommends the person, the fear which the Chief Justice at present has of executive interference and the tendency to enter into compromise with the executive which have been noticed above will disappear.

20. It may be asked whether the acceptance of this suggestion will not place the Chief Justice in a dominating position, able as it were, to dictate in regard to the person to be appointed and lead to arbitrary and even capricious appointments by the Chief Justice. It may be urged that Chief Justices may also be moved on occasions by considerations of communalism and favouritism. In order to avoid contingencies of that character, we further propose, that the constitutional provision should be amended so as to require not merely consultation with the Chief Justice of India but his concurrence in the proposed appointment. The Chief Justice of India would naturally keep himself informed about persons suitable for appointment to the Bench at the Bar as well as in the Services and will be in a position to prevent unsatisfactory appointments being made on the recommendation of the Chief Justices of the States if ever such occasions arise.

An additional safeguard.

Concurrence of the Chief Justice of India essential.

21. The changes we propose have the effect of placing the State executive in the position, as it were, of informing the Chief Justice of the State and the Chief Justice of India of their views about the proposed nominee but leaving the responsibility of the appointment squarely on the shoulders of the Chief Justices of the State and the Chief Justice of India. This, it appears to us, is necessary. As pointed out earlier, the responsibility for the efficient working of the High Court rests on the Chief Justice of the Court and it should not be possible to thrust upon him a colleague whom he does not consider to be sufficiently equipped.

Effect of proposed changes.

22. The relevant portion of Article 217 would in the light of the amendments we have suggested read as follows:

Constitutional amendment recommended.

"217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Governor of the State and with the concurrence of the Chief Justice of India, and in the case of appointment of a Judge other than the Chief Justice on the recommendation of Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty years."

23. It may be convenient to deal at this stage with the manner of appointment of Chief Justices of the State High Courts, particularly having regard to the increased responsibility which will devolve on the Chief Justice under the proposed constitutional amendment.

Appointment of Chief Justice.

Importance
of the office.

24. In dealing with the question of the appointment of the Chief Justice of the Supreme Court, we have already made reference to the importance of a Chief Justice in a Court and the qualifications, personality and independence of outlook required by a person occupying the office of the Chief Justice. A great deal of what has been stated there applies to the Chief Justices of the State High Courts.

Present
practice
unsatisfac-
tory.

25. At present it has become almost a matter of routine for the senior-most puisne Judge to become the Chief Justice of the State High Court on the retirement of the Chief Justice. It is obvious that the senior-most puisne Judge, even though a very competent judge, may not be suitable for being appointed a Chief Justice. A Chief Justice of the Court needs, apart from judicial competence, administrative ability and a personality so as to be able to assess and regulate the subordinate judiciary and win the regard of the executive. In our view, therefore, on every vacancy occurring in the office of the Chief Justice, the question of a fit successor should be examined by the Chief Justice of India in the light of the qualifications needed. The senior-most puisne judge should succeed to the office only if he has the necessary qualifications. It is easy to visualize the difficulties which would arise in the event of an incompetent senior-most puisne judge being appointed Chief Justice. The Chief Justice will not have the confidence and respect of his puisne judges and the Court will lack cohesion. There will be absence of team work which is essential to efficiency and despatch and it may well happen that there may be conflicts between the Judges of the Court. We have in the course of our inquiry come across at least two instances of High Courts, in which these conditions have arisen by reason of the appointment of the senior-most puisne judge as Chief Justice. We feel therefore that the Constitution should provide for the concurrence of the Chief Justice of India in the appointment of the Chief Justice of High Court.

Consequen-
ces.

Chief Jus-
tice from
outside
the State.
The case
for.

26. A large body of evidence before us has suggested, that it should be made an invariable practice to fill a vacancy in the office of Chief Justice by appointing a judge from outside the State. Such course, it is said, will have the advantage of giving the Chief Justice of India a wide choice in recommending a person suitable for that office. It has also been pressed upon us that bringing a Chief Justice from outside the State will have a very healthy influence, in that, it will promote a sense of unity in the country and prevent the Chief Justice being swayed by local connections and local influences. It may be mentioned that Chief Justices from outside the State have been appointed in some of the States and these appointments have proved a success. Though the analogy may not be very pertinent, we may refer to the practice of appointing Governors who do not belong to the State, which has been in vogue since the advent of the Constitution.

27. On the other hand it has been urged with considerable force, that it would not be fair, that competent persons on the Bench of the State High Court should be shut out from the chance of occupying the office of the Chief Justice in their own States. It has also been pointed out that the proposed practice may prevent members of the Bar from accepting appointments as judges, the opportunity of serving as Chief Justices in their own States being denied to them. And against.

28. On the whole we are of the view, that it would be difficult to lay down such an inflexible practice. It should, we think, be clearly understood, that the senior-most puisne judge of a Court, should not merely by reason of his seniority have an expectation of succeeding to the office of the Chief Justice. In every case of a vacancy in the office of the Chief Justice, the senior puisne judge should be appointed to the office, only if he has the necessary qualifications. Indeed the Chief Justice of India may well bear in mind the desirability of appointing a Chief Justice from outside the State by reason of the consideration we have mentioned. Even in cases where the senior-most puisne judge is fit to occupy the office, it would be doing no injustice to him to leave him out and appoint him to a similar office in another State. No inflexible rule but may be desirable.

29. An important cause of the fall in the standards of the High Court judiciary which is undoubtedly responsible in a measure for the accumulation of arrears is said to be the difficulty of inducing members of the Bar to accept judgeships. The Bar must remain, as it has been for over a century and more, the main recruiting ground for the High Court Bench. Conditions, therefore, which make recruitment from the Bar difficult must, if we were to maintain the standards of the bench, be altered. The difficulty of inducing the leading members of the Bar to accept seats on the Bench was noticed by the Chief Justice of India in his speech at the inauguration of the Supreme Court. He said: Difficulty of recruiting from the Bar.

“Over thirty years ago the offer of a judgeship to a member of the Bar was considered a high honour and the culminating apex of his career as a lawyer. A judge was respected by the people and by the Government. His position and status were recognised in all spheres. In those days ** ** every one's attitude towards the Court was of adoration and almost of worship. That honour and the life of comparative ease were considered sufficient compensation to balance the financial loss which a good practitioner suffered by accepting a judgeship. Unfortunately, during the last twenty years, that respect for position, status and dignity of the judge has not been fully maintained. Without any compensatory benefit or advantage it is difficult to persuade a good practitioner to accept a

judgeship. We hope and trust that with the inauguration of the Republic the honour due to the position and status of a judge of a High Court and Supreme Court will be fully restored. Unless leading members of the Bar accept judgeships, it will be difficult to strengthen the Bench and the hopes of producing great judges may not be realised."¹

Decline in
respect for
the judiciary

30. The hopes expressed by the Chief Justice of India have not been realised. In the opening years of the Republic views were expressed by important persons which led to an impression in the public mind that judges, law courts and lawyers were superfluous institutions which hindered the progress of the social welfare State, which is the ideal of our Constitution. These views were repeated in some of the States by persons of lesser importance. Thus, instead of appreciating the more important role, which law and those administering it must play in a democratic social welfare State the public came to look down upon law, lawyers and those holding judicial office and regard them as obstacles to the progress of the nation. Indeed not infrequently, judicial pronouncements were treated with scant respect and commented upon in assemblies and public platforms.

We specifically invited opinion on the question whether, among other causes, the decline in the standards of the High Court judiciary was due to decreasing respect in Governmental circles for the lawyer and for the judicial office. The almost universal view is that the way in which the lawyer and the judicial office are looked upon in Government circles has been the undoubted cause, not only of the refusal of leading members of the Bar to accept judicial office but also of a demoralisation and a loss of self respect in the judiciary itself, which has led to a decline in the efficiency of their work. A Judge of the Supreme Court has described how the judiciary has been affected:

"The first (namely, decreasing respect in Governmental circles) is purely psychological but is important. When men are looked up to and respected, they rise to the occasion and live up to the expectations required of them. But, if they are constantly sneered at and pushed aside while some worthless self-serving demagogue with nothing like their erudition and learning is fulsomely worshipped (until he is set aside by another), a feeling of disgust for high office is naturally engendered and many find it difficult to put forth their finest effort under these conditions."

A distinguished member of the Bar expressed himself thus:

"Whatever may happen to the future of the High Court, Government should see to it that they do

nothing which may bring the High Court into disrepute I do not want even the highest in the land to throw aspersions on the High Court or the Supreme Court. And once it is done, perhaps, the contagion would spread and the respect that we demand from every one will not be available to the High Court No observations should be made by the highest in the land to discredit the High Court in any way."

An eminent person intimately connected with judicial administration observed that "there are deeper reasons which give rise to the feeling that our High Court judiciary has considerably gone down in public estimation". After dealing with the method of appointment of High Court Judges, he stated that:

"There is an insidious and calculated attempt on the part of the executive to bring down the prestige of the High Court Judges. In the old days, in all public functions, the High Court Judges used to be assigned prominent places; but now, they are hardly taken any notice of and if any notice is taken at all, they are relegated to the background. In the warrant of precedence they are gradually being demoted. In the matter of amenities they are far behind the ministers. This visible deterioration of the external trappings of the office of High Court Judges has naturally, to a certain extent, affected public respect for them. All these matters have contributed to the public feeling that High Court judiciary is not what it used to be."

These extracts reflect in substance what has been said in varying ways by a large number of witnesses of status and experience.

31. Though we have called attention to this matter in connection with the High Court judiciary, the same observations apply to the attitude of the executive towards the subordinate judiciary and even the Supreme Court.

32. The causes of this attitude of the executive towards the judiciary lie perhaps in the conditions which have supervened after the enactment of the Constitution. Cause of the attitude.
Applications by the citizen to enforce his fundamental rights and other applications to the High Courts by the citizen under article 226 of the Constitution against arbitrary administrative action have given frequent occasion to the judiciary to pronounce upon the validity of legislative action and the correctness of executive conduct. This, in its turn, seems to have created an erroneous impression in the minds of some members of the legislatures and the executive that the judiciary is sitting in judgment as it were on the propriety of legislation and trying to put obstacles

in the way of executive action designed to help the country in its onward march. Such an impression is based on a misconception of the function of the judiciary under the Constitution and the power of judicial review which is enjoined upon it. It becomes the duty of the judiciary whenever the legislature or the executive has travelled beyond the scope of its power to say so and prevent their unconstitutional action.

The true
role of judi-
ciary.

33. The Supreme Court of India has found it necessary to refer to the attitude thus adopted towards Courts of law. The Chief Justice of India observed:¹

“Our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution. . . . If, then, the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader’s spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the “fundamental rights” as to which this Court has been assigned the role of a sentinel on the ‘*qui vive*’. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. *We have ventured on these obvious remarks because it appears to have been suggested in some quarters that courts in the new set up are out to seek clashes with the legislatures in our country.*”

Similar trends have manifested themselves in the United States but they have not been allowed to go unchecked. Referring to such ill-informed criticism the President of the American Bar Association observed:²

“Our system of Government is no stronger than our courts, and our courts are no stronger than the strength of the public’s confidence in them.

* * * *

“The American people have not hesitated to rebuke powerful and popular presidents who struck out against the courts and especially the Supreme Court of the United States, and our people are not likely to be swayed by the hysterics of the lunatic. But there is danger indeed when the courts are assailed by sensible and well-intentioned citizens who have let their disagreement with individual decisions lead them into irresponsible criticism of the courts as an instrument of government.”

¹. State of Madras v. V. G. Row, A.J.R. 1952 S.C. 199.

². By Charles S. Rhyne, on “Defending our Courts” The Duty of the Legal Profession”—American Bar Association Journal, Feb. 1958—as reported in The Lawyer—May 1958 pp. 64-65.

It is well to stress again that our court system is not above censure. *No organ of government is.* None of our institutions are perfect. As Mr. Justice David Brewer of the Supreme Court said in 1898:

"It is a mistake to suppose that the Supreme Court is either honoured or helped by being spoken of as beyond criticism.

But there is a vast difference between criticism stemming from constructive analysis of particular decisions and the uninformed, misleading statements and insults which are currently being hurled."

"The stake of the public at large in this matter is tremendous. A respected and strong judiciary and a respected and strong Bar are essential to maintain our system of freedom under law."

34. It appears to us that these aspects of the matter need to be impressed upon the members of the legislatures and the executive at the Union level and in the States. It is necessary for all to realise that the role assigned to the judiciary under the Constitution is an essential one and that the high ideals, the attainment of which is aimed at by our Constitution, social and economic justice, equality, freedom and dignity of the individual, will be impossible of achievement unless the judiciary fearlessly discharges its duties in every complaint of excess of power by the legislatures or the executive, brought to its notice. A proper realization of these aspects at the highest level can alone bring about a change in the attitude towards the judiciary. We trust that what we stated will be appreciated and measures taken in all directions so that the judiciary—superior as well as subordinate—may enjoy the dignity and the respect to which it is justly entitled and which alone can be an incentive to a proper discharge of their duties.

General
realisation
of the role
of the judi-
ciary ne-
cessary.

35. There is undoubtedly a feeling among the members of the Bar that the present salary of High Court Judges are too low to attract the members of the Bar in the front rank to judgeships. This has been stated by a substantial body of opinion to be the cause of the fall in the standards of the High Court judiciary. 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:

Judicial
salaries.

Complaints
of inade-
quacy.

"They (the Judges) deal with questions of public and private importance which may involve also large

sums of money. It may be mentioned that the work done by a judge requires a technical equipment of the highest kind and the five hours of work in the court requires very great concentration. It is impossible to expect a counsel who makes an income of twelve to fifteen thousand rupees a month to accept the post of Rs. 3,500 with a pension of about Rs. 1,200 on retirement when he is sixty. It must not be forgotten that an income is not earned merely for the earner but also for his family as also for making a provision both for himself and for his family in the future. The increase in the salary of judges, which I have suggested, namely, Rs. 6,000, still involves a very substantial sacrifice from a counsel in his practice. But the sacrifice would be made at the figure I have suggested provided the pension was not less than at least fifty per cent of the salary. The force of all that I have stated before, was brought home to the British Government as regards the Judges in England and as I have stated in my evidence, the revised scales of pay show that both parties in a Welfare State recognise the necessity of paying the judges a substantial salary and a pension."

The witness stated that out of the monthly salary of Rs. 3,500 a High Court Judge after payment of taxes (income-tax and super-tax), insurance, house rent and expenses for maintenance of a car, which are unavoidable items of expenditure, gets a net income of about Rs. 14,000 per year, that is, a little less than Rs. 1,200 per month to meet all the other expenses of the upkeep of a family, education of the children and a host of other miscellaneous items of expenses. This view was endorsed by an experienced Chief Justice who thought that the judge's salary was "wholly unattractive. Not only is the amount far smaller than what the practitioner can easily earn at the Bar, but it is also inadequate for maintaining a decent standard of living and discharging one's obligations to one's children as regards their education and marriage". During the Constituent Assembly Debates, it was admitted by Dr. Ambedkar that the terms and conditions of a Judge's service were unattractive.

36. We have endeavoured to find out in the course of our inquiries the volume of practice of leading lawyers in various parts of the country in the changed conditions now prevailing. It appears that excepting in the principal towns of Calcutta and Bombay, the income of the leading members of the Bar other than those who by their reputation and status have established an inter-State or an all-India practice, does not exceed in a substantial measure the sum of Rs. 3,500. If that is the position in most of the States, we do not think that a case has been made out for recommending an increase of the High Court Judge's salary, though as we shall point out later, their pensions and leave conditions require to be altered.

Not inadequate except in Calcutta and Bombay.

37. How then is the problem of recruitment of judges from the Bar to be dealt with in places like Calcutta and Bombay? It is obviously not practicable that High Court Judges in some States should have higher salaries than in other States. We think that a solution can be found in selecting Judges from the rising juniors of the Bar.

A possible solution.

Appointment at an earlier age.

38. We have been informed that difficulties arise in recruiting High Court Judges from the Bar because judgeships are offered to promising members of the Bar at a very late stage of their career. We have no doubt that if a rising lawyer whose practice is growing and who is likely in a few years to attain the status of a senior or a leader at the Bar, is offered a judgeship at an early stage of his career, he would accept it. We have at the moment instances of selections of persons at an early age to the benches of the Calcutta and Bombay High Courts who have turned out to be able and even distinguished judges. We were not surprised at instances brought to our notice of leading members of the Bar in different States who had been offered judgeships at a late stage and at ages which would not give them a sufficient number of years on the Benches to earn their full pension and who had declined them. It was generally agreed that if these members of the Bar had been offered judgeships at an earlier age they would have accepted them.

Judgeships offered too late.

39. We have been told that a view prevails among the appointing authorities that a member of the Bar is too immature to be appointed a judge unless he has reached the age of about 55. Such a view is, in our opinion, unsound. It is unnecessary to emphasize that in our country, as well as in various other countries, many youthful judges have proved to be a great success. We are of the view that efforts should be made in all the States and particularly in the States of West Bengal and Bombay to induce members of the Bar to accept seats on the Bench round about the age of 45. Normally, a member of the Bar in good practice at that age is but a rising junior and it would not be difficult to induce him to accept a judgeship with the prospect of earning a full pension.

Youth not a disqualification.

40. It may also be mentioned that apart from what we have stated, recruitment to the High Court Bench from the bar would not, notwithstanding the disparity of income at the Bar and the Bench, present such difficulties if certain standards are preserved in inviting members of the Bar to join the Bench. We have been told that in at least one High Court, the cause for a number of refusals by members of the Bar in good practice to accept judgeships had been the indiscriminate manner in which some junior members of the Bar were invited to become judges to the neglect of the senior or leading members. In a normally worked High Court, the senior practitioner would regard it an

Necessity for maintaining standards in making appointments.

honour to be invited to become a judge and would naturally feel slighted if his juniors are invited in preference to him and he is invited to join the Bench later. Invitations to juniors in preference to seniors came perhaps to be made by reason of the failure of the Chief Justice of the High Court to realise the importance of the convention or it may be by reason of the Chief Justice's recommendation not being approved by the executive. Whatever be the case, such a practice must be deprecated. Not only does it lead to difficulties in recruitment but it destroys respect for the bench at the Bar and co-operation between them.

Personality
of the Chief
Justice.

41. The personality of the Chief Justice plays a great part in the proper recruitment to the Bench from the High Court Bar. It is known that even in Calcutta and Bombay, Chief Justices who inspire respect at the Bar have been able to induce members of the Bar to accept seats on the Bench at a sacrifice.

Age of
retirement.

42. It would be convenient, before we discuss the questions of pension and leave conditions of the High Court Judges, to discuss the question of the age of their retirement. A very large body of opinion has maintained that the age of retirement should be raised. Some have advocated it being raised to sixty-two or sixty-three while a large volume of opinion is in favour of its being raised to sixty-five. It has been pointed out that apart from the Judges of the High Court appointed to the Supreme Court many High Court Judges have after retirement been appointed to the membership or the chairmanship of various tribunals and have functioned efficiently till the age of sixty-five. The information gathered by us shows that a large number of retired judges of the High Courts have been in Government employment of some kind or other after retirement. The recent constitutional change which permits retired judges to practise in the Supreme Court has resulted in a fair number of them setting up practice in the Supreme Court. The figures of the last census show that the average expectation of life for males in this country has risen during the years 1931—1951 from 26.91 to 32.45 years. The rise would necessarily be much higher in the well-to-do classes of the population. In recognition of this, one of the States has recently raised the age of retirement of its Government servants generally from fifty-five to fifty-eight years. No doubt, we have been told of a few cases in which the High Court Judges have not been able to reach even the age of 60 years with their physical or mental capacity, unimpaired. These, however, are exceptions. We think that we are justified in concluding that the average and the normal High Court Judge would be able to discharge his duties efficiently even if the age-limit is raised to sixty-five years. It will be remembered that there is no age-limit for the retirement of High Court Judges in other countries and where the age limits exist they are higher than sixty-five years. So great

To sixty-five.

is the importance attached to a judge's ripe experience that Justices of foreign countries who have visited India have often expressed surprise at the age-limit of retirement which prevails in our country. These considerations lead us to recommend that the age limit of High Court Judges be raised to sixty-five years.

43. It may be said that the raising of the age of retirement to sixty-five would by levelling the age of retirement of High Court Judges with that of Supreme Court Judges make it difficult to recruit to the Supreme Court Bench, Judges of the High Court who have retired or are about to retire at the age of about sixty as has hitherto been done.

Recruitment
to the Supreme
Court.

We have already indicated elsewhere that the appointment of High Court Judges at a late age to the Supreme Court is not necessarily an advantage. If judges are selected at a younger age from the High Court for the Supreme Court we shall have among other things succeeded in having in the Supreme Court, judges with long tenures.

No doubt, the higher age of retirement in the Supreme Court which gave a five years longer tenure of office than in the High Court was an inducement to High Court Judges to accept a seat on the Supreme Court Bench. It may happen that if there were the same age of retirement for both Courts, there not being any very substantial difference in the salary of the judges of the two Courts, a Judge of the High Court may well prefer to continue to be where he is which would probably be his home town with a family house and family connections. This may happen notwithstanding the fact that the judgeship of the Supreme Court carries a greater status as the judgeship of the highest Court in the land. In order that no difficulty may be experienced in obtaining adequate personnel for the Supreme Court, it should be either a condition of service or a well established convention that it would be the duty of a Judge appointed to the High Court to accept the office of a Supreme Court judge, if and when he is called upon to do so. We do not see any difficulty in laying down such a condition of service or establishing such a convention.

Possible
difficulties
and their
solution.

44. The course we have suggested will have the important additional advantage of preventing unseemly canvassing or "candidateship" for being appointed to the Supreme Court. It may be mentioned that such practices as have been mentioned in a passage already quoted in connection with appointments to the High Court do prevail, though not happily to the same extent in the case of Supreme Court judgeships.

Prevention
of canvass-
ing.

45. We have given anxious consideration to the question whether the higher age of retirement should be made applicable to the judges who are now in office. It appears to us that it would be inappropriate to apply it to the existing judges as it would be varying the terms and conditions on which they accepted their appointments. Such

Higher re-
irement
age to apply
only to jud-
ges appoint-
ed in future.

privileges as they would have, on their retirement such as the right to practice and to accept employment under Government will have to remain unaffected.

Pensions
inadequate.

46. We have already indicated that it is essential that in the matter of pensions of High Court Judges the State should take a much more liberal attitude. A member of the Bar who has served for twelve years as a Judge of the High Court becomes entitled to the maximum pension of Rs. 16,000 per annum which amounts to Rs. 1,333-1/3 per month. The pension would, of course, be subject to the usual taxes. It is extremely unlikely that a member of the Bar who has qualified for a full pension by accepting office at an early age would have saved enough out of his earnings at the bar to be able to supplement his pension. It has already been pointed out that there is very little prospect of the judge being able to save anything substantial from his salary during the tenure of his office. It is not surprising that with pensions so low, the large majority of retired judges are driven to employment or practice at the Bar after retirement.

Increase re-
commended.

47. In dealing with the question of pensions to the Supreme Court Judges we have referred to the liberal scales on which pensions are paid in the United States and in the United Kingdom. We shall advert at a later stage to the undesirability of permitting retired High Court Judge either to seek employment or to practise in the Supreme Court. In order that the retired High Court Judge may after retirement be able to live in comfort without having to seek other avenues of income we would recommend that the pension of the Chief Justice of a State High Court should be fixed at Rs. 2,000 and of a Puisne Judge at Rs. 1,750 per month. In view of the longer tenure of office which we have recommended, the minimum period for earning the full pension may remain what it is at present, namely, twelve years. The increase in the pension which we are recommending should, we think, make a substantial difference, particularly when we bear in mind that the judge will, if our recommendation is accepted, retire at the advanced age of sixty-five years. The additional financial commitment involved in the increase of the pension is in our view essential. It may also be pointed out that the increased cost to the State will not be substantial as the pension will be paid for a shorter period of years having regard to the increased age of retirement.

Leave pri-
vileges.

48. In dealing with the rights in respect of leave of absence of the Supreme Court Judges we have recommended that they should be at least as liberal as those of the High Court Judges. The provisions with regard to leave admissible to High Court Judges are contained in

Chapter II of the High Court Judges (Conditions of Service) Act, 1954. We do not propose to set out these provisions which are somewhat complicated nor do we propose to recommend any change in the amount of the leave to which they are entitled. We, however, understand that under the present conditions a High Court Judge becomes entitled to leave on full allowances for a period not exceeding one twenty fourth of the length of his actual service. This is subject to certain restrictions as to the total length of leave he can avail of at any one time. Curiously enough, however, full allowances under the rules mean his full salary only for the first month of his leave and a sum of Rs. 2,200 per month during the remaining period of leave admissible to him on full allowances. It is difficult to appreciate the reason for the rule. It prevents a judge from accumulating his leave, for, if he accumulates it for three or six months, he would get his full salary only for the first month of the accumulated period and for the remainder, it may be Rs. 2,200 per month for a period; and for the last remaining period Rs. 1,100 per month as leave on half-allowances. This leads, we are informed, to judges taking advantage of their leave privileges as soon as leave becomes due and being averse to allow it to accumulate. The dislocation of the work of the Court which such a practice would cause can be easily imagined. There is no reason why the rule as to half the leave being on full allowances and the remaining half on half allowances should not apply whatever the length of the period of leave to which a judge becomes entitled, so that he may get his full salary during the period to which he is entitled to full allowances and half his salary during the period to which he is entitled to leave on half allowances.

Increase of
leave allow-
ances.

49. The recent change in article 220 of the Constitution which has the effect of permitting a retired judge of a High Court to practise in the Supreme Court and other High Courts has evoked considerable comment and disapproval. We had occasion to deal with the question of the undesirability of retired Supreme Court Judges being permitted to take employment under Government or to carry on chamber practice. Similar considerations apply with equal force to retired High Court Judges. As was observed by a leading counsel in Bombay in the course of the evidence given before us:

Practice
after retire-
ment.

"To allow the judges to practise either in Courts or by way of giving advice is an extremely retrograde step gravely affecting the independence of the judges * * * * There are big clients appearing before you as a judge and you contemplate them as your future clients and the fact that you are shut out from going to Court or arguing has not prevented opinions being given charging Rs. 10,000 or Rs. 15,000 or even Rs. 20,000. But if you give him substantial pension and make his tenure otherwise satisfactory, there is no

temptation for him to practise. We must fairly recognize that democracy must pay the price and without independent judiciary democracy cannot survive * * * Large business is not confined to any one State and secondly a judge should not look in his work to anything beyond doing his work as a judge."

We have already pointed out the undesirability of retired Supreme Court Judges practising by way of giving advice. The possibility of their being able to advise rich clients after their retirement may tend to affect their independence on the Bench. In any event, if judges are to be permitted to practise by giving advice after retirement, the public would be apt to think that in dealing with the cases of rich litigants whom they may hope after retirement to be asked to advise, the judges do not act impartially.

Bar to be re-introduced.

50. The limited right to practise which is now conferred by the amended article 220 has resulted in a number of Chief Justice and Judges of the High Courts practising in the Supreme Court. Any impartial observer will, we think, be convinced that this practice greatly detracts from the dignity of the Courts and the administration of justice generally. Not infrequently in the course of the arguments of a case, the retired judge or Chief Justice has either to comment upon or rely on a judgment to which he himself has been a party. With the raising of the age to sixty-five and the increased pensions we have recommended, it should not in our opinion cause any hardship to retired High Court judges if they are prevented from practising in any Court whatsoever.

Bar on employment after retirement.

51. In connection with the Supreme Court judges we have discussed the undesirability of retired judges being permitted to take employment under Government after retirement. The same considerations apply to retired judges of the High Court. In their case also, we recommend the enactment of a constitutional bar to Government employment after retirement as in the case of the Chairman and members of the Union Public Service Commission. Such a bar will not of course apply to a High Court Judge at any stage being appointed a Judge of the Supreme Court.

Recruitment from the Judicial Service.

Qualifications.

52. We may at this stage mention the need of an amendment to sub-clause (2) (a) of article 217, the interpretation of which has recently led to the appointment of unsuitable service personnel to the High Court. Under that clause, a person who has for at least 10 years held a judicial office in the territory of India is qualified for appointment as a Judge of a High Court. The term "judicial office" has not been defined in the Constitution, though the expression "district judge" and "judicial service" have been defined. If "judicial office" has reference to the holding of office in the judicial service of a State, not only would a person

who has been a district judge or a subordinate judge for 10 years be eligible to be appointed to the High Court Bench but even a District Munsif or a Civil Judge (Junior Division) who has occupied that office for 10 years would be so eligible. He would be eligible even though he has never worked as a subordinate judge or a district judge. One may compare with the present constitutional provision section 220(3) of the Government of India Act, 1935, which provided that:—

“A person shall not be qualified for appointment as a Judge of a High Court unless he ...

Position
under the
Government
of India Act
1935.

* * *

(c) has for at least five years held a judicial office in India not inferior that of a Subordinate judge or a judge of a Small Cause Court.”

Normally, a subordinate judge or a civil judge, senior division, as he is termed in some States exercises unlimited pecuniary jurisdiction and handles cases of a complex and difficult kind. Though a subordinate judge may not be a member of the Higher Judicial Service that is, the holder of the office of a district judge as defined in the Constitution he would, by training and experience, be competent to deal with important matters. He would have been vested with jurisdiction under special enactments. He would also have the experience of criminal trials as an assistant sessions judge. He would further generally have exercised civil appellate powers. It is thus apparent that the provision in the Government of India Act, 1935, ensured that only a judicial officer with considerable experience in different classes of judicial work was eligible for elevation to the High Court Bench.

However, under the Constitution a member of the judicial service who has not gained such varied experience would still be eligible for appointment to the High Court Bench. In most of the States, posts of Legal Rememberancer, Deputy Legal Rememberancer, and Assistant Legal Rememberancer in the Law Department of the State Secretariat are borne on the judicial cadre. A judicial officer may be taken up as an Assistant Legal Rememberancer and in course of time it would be possible for him to earn his promotion in the judicial service on the length of his service in the Secretariat. In the course of our inquiry, we came across some of the officers of the judicial service working in the Secretariat who have been appointed as district judges in the judicial service without ever having performed the duties of a district judge. Notwithstanding the absence of experience as higher judicial officers, these judicial officers would under the constitutional provision be eligible for appointment as Judges of the High Court. In fact, recently, an officer in the Law Department of a State Government whose judicial experience was confined to work as a munsif has been appointed to the High Court Bench.

It is obvious that the discharge of their duties in the Secretariat in the various posts held by them would not give to such officers experience in the performance of judicial functions and cannot fit them for appointment to the High Court. It is true that they would have, in the performance of their duties dealt with complicated questions of law and advised Government on these questions. That, however, is a training very different from the training which persons in the Higher Judicial Service receive by having to hear cases from day-to-day, forming opinions as to the credibility of witnesses and reaching decisions in contested matters with lawyers appearing on either side.

Varied judicial experience essential.

53. We are of the view that experience of actual judicial work of a varied kinds is essential to a judicial officer before he can be considered fit to be appointed to the High Court Bench. In our opinion it is essential that a judicial officer in order that he may be eligible for appointment to the High Court should have the experience of working as a district judge for at least three years. As a district and sessions judge, he would have experience of a variety of work covering different branches of the law, would have exercised both civil and criminal appellate powers and would also have experience of the trial of Sessions cases. A District Judge would also have experience of judicial administration inasmuch as he would be in overall charge of the civil and in many cases, criminal courts in his district. We, therefore, recommend that sub-clause (a) of clause (2) of article 217 of the Constitution may be substituted by the following:

Amendment suggested.

“(a) has for at least three years exercised judicial functions as a district judge.”

Having dealt with the main causes of the accumulation of arrears in the High Court we shall now proceed to suggest measures both for increasing the strength of such of the High Courts as need strengthening in order to enable them to cope with their normal work and for the reduction and removal of the arrears.

Strength of High Courts to be increased

54. The large increase in the volume of annual institutions which has been referred to earlier must now, we think, be taken as a permanent feature. This position accordingly necessitates a thorough revision of existing ideas regarding the number of judges required for each High Court. The strength of some of the High Courts has been increased from time to time. In doing this, however, the post-Constitutional developments which have thrown a much heavier burden on the High Courts have, in our view, not been adequately taken into account. To expect the existing number of judges in the various High Courts to deal efficiently with the vastly increased volume of work is, in our opinion, to ask them to attempt the impossible. As pointed out to us by a senior counsel, if there is a congestion on the roads due to an increase in traffic, the remedy is not to blame the traffic but to widen the roads.

The first essential therefore, is to see that the strength of every High Court is maintained at a level so as to be adequate to dispose of what may be called its normal institutions. The normal strength of a High Court must be fixed on the basis of the average annual institutions of all types of proceedings in a particular High Court during the last three years. This is essential in order to prevent what may be termed the current file of the Court falling into arrears and adding to the pile of old cases. The problem of clearing the arrears can be satisfactorily dealt with only after the normal strength of each Court has been brought up to the level required to cope with its normal institutions. We suggest that the required strength of the High Court of each State should be fixed in consultation with the Chief Justice of that State and the Chief Justice of India and the strength so fixed should be reviewed at an interval of two or three years. Such a review will be necessary not only by reason of changing conditions but because the implementation of our recommendations made elsewhere will lead to a quicker disposal of work in the subordinate courts which, in its turn, will result in an increase in the work of the High Courts.

Normal strength to be increased.

Periodical re-fixation necessary.

55. Before we turn to the important problem of clearing off the arrears, it is necessary to appreciate what should be regarded as "arrears". Every case pending in a court cannot be put in the category of arrears. In order to enable a court to function normally from day to day throughout the year, it must have what is called a normal file of pending cases. It has also to be remembered that a case, be it a civil or criminal appeal or any other proceedings, cannot be heard as soon as it is instituted. Some time must elapse before cases get ready to be heard and the time varies with the nature of each case and the volume of its record. Generally speaking, however criminal cases require less time for becoming ripe for hearing than civil matters. Having examined the figures of average duration of various types of cases coming before the High Courts, we are, of the view that the target practicable under the circumstances, though by no means an ideal one, for the disposal of civil matters, such as second appeals, and letters patent appeals, should be one year, for first appeals two years and for criminal matters and writs and civil revision petitions, six months from the date of institution. We realise that the standards we have suggested have some arbitrariness about them, but in the nature of things that cannot be avoided. In our view, only those cases which have been pending for periods of time longer than those mentioned above should be classed as arrears.

What are arrears ?

Standard time limits for disposal.

56. We must next deal with the difficult task of devising effective measures to deal with the arrears so as to bring the pending file of each court to its normal proportions within the shortest possible time. In suggesting measures to deal with arrears, we assume that the permanent

Measures for clearing arrears.

strength of the High Courts fixed in the manner stated above will only be sufficient to deal with a current pending file which, having regard to what we have said above will mean the file of cases which have been pending for a period shorter than that mentioned in reference to each type of cases.

Appointment
of additional
Judges.

57. We are of the view that the provisions of article 224 of the Constitution should be availed of and additional judges be appointed for the specific purpose of dealing with these arrears. The number of such additional judges required for each High Court for the purpose of dealing with the arrears will have to be fixed in consultation with the Chief Justice of India and the Chief Justice of the State High Court after taking into consideration the arrears in the particular court, their nature and the average disposal of that court. The number of additional judges to be fixed for this purpose should be such as to enable the arrears to be cleared within a period of two years. The additional judges so appointed should, in our view, be utilised as far as possible exclusively for the purpose of disposing of arrears and not be diverted to the disposal of current work. *Pari passu* with the disposal of the arrears, the permanent strength of the High Court will have to be brought up to and maintained at the required level, care being taken to see that their normal disposal keeps pace with the new institutions and that they are not allowed to develop into arrears. The appointment of additional judges for the exclusive purpose of dealing with the arrears is, in our view, called for in a large number of High Courts.

Not to be
used for cur-
rent work.

Merit to be
sole crite-
rion.

58. These additional judges would have to be selected either from the Bar or the judicial service. Having regard to the grave situation which has arisen by the accumulation of arrears and the urgent necessity of clearing them in the shortest possible time, we must emphasise that the choice of additional judges must fall only on the most competent persons available at the Bar or in the service. Merit and character alone should weigh with the appointing authority and the selection should not be permitted to be affected in any manner whatsoever by regional, sectarian, communal or any other extraneous considerations.

One unit of
selection
for the
country.

59. Further, the whole country must be treated as a single unit for the purpose of selection as it is vitally important that the best available talent which the country is capable of providing be mobilized for the task of meeting a situation which has undoubtedly assumed the proportions of an emergency. If suitable persons of the necessary merit and character are in the opinion of the appointing authority not available in the State, the authority should not hesitate to draw upon persons available in other States. Selections from the Bar must necessarily be of persons of outstanding merit commanding a large practice who may

well be willing to make a pecuniary sacrifice and render public service by accepting these judgeships. An effort should be made to persuade suitable senior practitioners to accept these judgeships at least for a short period as a public duty. Their position at the Bar must be of such eminence that it could not be suggested that acceptance by them of judgeships was likely to increase their earnings on their reverting to the Bar.

60. We envisage that in some States persons of the required standing and competence may not be available and the State Chief Justice may not have information as to the talent available elsewhere in the country. Our further proposal, therefore, is for the creation of an *ad hoc* body presided over by the Chief Justice of India to draw up a panel of names of suitable persons both from the Bar and the Service in each State.

Creation of an *ad hoc* body to prepare a panel of names.

We have already stated that in appointing these additional judges due regard will have to be had to the availability of suitable persons both from the Bar and the services. It may be that the senior members of the Bar may not be willing to accept a position which would involve a considerable sacrifice on their part. It may further happen that one may not find suitable persons at the next lower levels of the Bar. In such cases, suitable talent will have to be looked for in the services. In short, both these sources of recruitment should be treated as one field of selection with an eye solely to appointing the fittest men available from the entire field. During our tour of the country we have observed that the judicial services in certain States do not yet possess men of the calibre needed to make competent High Court Judges. In some States, even the Bar suffers from want of the necessary talent. It is in view of these deficiencies that we recommend that the country as a whole be treated as one single field of selection.

61. We are conscious that a mere increase in the number of permanent judges and a temporary addition to the strength of the Bench will not be enough to eradicate the evil of accumulated and accumulating arrears. We have in another place suggested that the pecuniary limit of the appellate jurisdiction of the district judges should be immediately increased to Rs. 10,000/- in all the States. Certain States have already, by legislation, effected this change. However, even in some of those States in which the limit of such appellate jurisdiction has been raised to Rs. 10,000/- the change applies only to suits filed after the new legislation. In the result not only are the files of the High Courts in such States clogged with first appeals valued below Rs. 10,000/- but fresh appeals are still being filed against decisions in suits filed before the new legislation came into force. In the State of Uttar Pradesh the

Increase in number of judges not sufficient.

Transfer of pending first appeals to the district courts.

number of such appeals is about three-eighths of the pending file of first appeals. It is, therefore, necessary that the States concerned should enact fresh or amending legislation which would transfer appeals of this nature pending on the file of the High Court to the lower appellate courts for disposal and prevent fresh appeals of this nature being filed in the High Courts. States in which the appellate limit of the District Judge has not been raised to Rs. 10,000/- will have to undertake similar legislation. This legislative change will relieve the High Court file of a very substantial number of pending first appeals and reduce in a considerable measure the number of institution of first appeals in the High Courts. We have dealt with the implications of this proposal in detail in another Chapter.

Administrative measures.

62. We are also of the view that measures must be taken to conserve the available judge-power and use it in as an economical a manner as possible. We think that this can be achieved by mere administrative changes like the increase of the powers of single judges, amendment of rules regarding the preparation of paper-books, proper scrutiny of appeals at the stage of admission and other matters. We have dealt with such administrative measures in detail in later Chapters.

Vacations.

63. Of late, the question of vacations has figured somewhat prominently before the public eye and the impression seems to have gained ground that the vacations enjoyed by the High Court are a luxury which the country can ill afford. There is a considerable misapprehension in the minds of the public and others concerned with regard to this question. Judicial work is so exacting and requires such concentration that a certain amount of rest and leisure is essential in order to enable a Judge to perform his functions satisfactorily. Vacations are not peculiar to the High Courts in India. All the world over, members of the highest judiciary enjoy vacations which are not of a shorter duration than those enjoyed in India. Thus in England in 1947, a Judge of the King's Bench Division worked for approximately 166 days in the year and in the Chancery Division for 168 days while the average number of working days in a year was approximately 180 days according to the Evershed Committee (Interim Report, page 45, para. 141). The Committee recommended an increase of eighteen working days. In effect therefore the Committee contemplated only 198 or approximately 200 working days in a year. It is also a mistake to think that vacations are only necessary for the judges. The Bar has consistently and strenuously opposed the reduction of the vacations. In order that the judges should do their work well, a strong and competent Bar is essential and the quicker the disposal of the judges, the harder the Bar has to work. A member of the Bar has not only to work in Court presenting his case but he has also to spend

hours in preparation so that the presentation of the case may be as concise and as effective as possible and, therefore, members of the Bar need a vacation as much as, if not more than, the judges.

Needed by
the Bar and
the Bench

The question might be looked at also from the point of view of the effect that the cutting down of the vacations will have on the future recruitment of judges. Every Chief Justice today finds it extremely difficult to induce leading members of the Bar to accept a judgeship. The salary of a judge has been cut down. The pension he would get on retirement in terms of the value of money today would afford him a bare maintenance. Therefore, the only reason why a member of the Bar would accept a judgeship today would be because a judgeship would give him a certain status and dignity and would give greater leisure than he would have had if he had continued at the Bar. If the privileges enjoyed by the judges are to be further whittled down, the High Courts of the future will have to be manned either wholly by judges from the service or recruited from members of the Bar occupying the second line. In England, all parties are agreed in maintaining the rights and privileges of judges because they realise that the High Court can only function properly, provided the judges are recruited from the best talent available at the Bar.

Effect of
curtailment
or recruit-
ment from
the Bar.

64. Even so we realise that in the context of the present times, when all the sections of the nation are called upon to work harder than before, the judges cannot lag behind in responding to this call. Therefore, some reduction in the vacations is inevitable. We think that all the High Courts should immediately give effect to the proposals of the High Court Arrears Committee that the number of the working days of the High Court should not be less than two hundred. We wish to make it clear that the work during these two hundred days should be judicial work in Court and the working time should be of five hours. We say this because in some High Courts, Judges do not sit for five hours in Court and do administrative work or retire to their chambers to dictate judgments. Judgments should, if possible be pronounced forthwith by dictation in open courts on the conclusion of the case or if a further consideration is required they should be reserved over the week-end. Once this target of working 200 days is achieved, it must be left to each High Court to decide how its vacation should be arranged.

Two hundred
working
days in the
year.

65. We have learnt with considerable misgiving of the reported proposal of Government to introduce legislation fixing the vacation of the High Courts. We think that such legislation would be highly objectionable in principle. It would constitute a serious interference with the independence of the High Courts and a grave encroachment upon

Legislation
to regulate
working days
undesirable.

the right of the Chief Justice and the Judges to regulate the affairs of the High Court. This legislation may well constitute a precedent for other legislation in future, by which Parliament may attempt more and more to interfere with the working of the High Courts. We need hardly emphasize that the independence of the judiciary in India depends upon the strength, status and prestige of the High Court and nothing should be done to lead the public to think that the High Courts are nothing more than a department of Government.

It may also be pointed out that legislation may compel Judges to sit in court for a certain number of days; it cannot provide for how much work they should do during those days or the quality of work they should turn out. These are matters which must, in the ultimate analysis, be determined by the conscience and good sense of the judges and it is only a sense of public duty and a lively consciousness of the high status and dignity of their office and its responsibilities that must make the Judges of the High Court realise that heavy arrears in a Court are a blot on the fair name of the judicial administration and in many cases a denial of justice to the citizen. We are sure that if an appeal is made to the High Courts to arrange their vacations so as to achieve the target we have indicated, the appeal will meet with a ready response.

Hours
work.

of 66. The question of hours of work in the High Courts has been the subject of some comment. It appears that normally the working hours of the High Courts in certain States like Andhra Pradesh and Madras are five and a quarter hours; in some other States, the Courts work for five hours while in one of the High Courts the working hours are only four. In our view, having regard to the nature of the work which the High Court Judges do, it would not be reasonable to expect them to work in court for a period longer than five hours a day. The Courts which are working for less than five hours a day should forthwith bring up their working hours to five. It has to be remembered that apart from work in Court, Judges do a great deal of work outside court hours in writing their judgments, examining authorities and reading papers relating to matters which are to come on for hearing before them. A certain number of judges have also in addition to the court and other work to do administrative work. All these considerations will have to be kept in mind in fixing the number of court hours. The Evershed Committee recommended a five-hour working days for the courts but it also recommended a reduction to enable the judges to read the papers in advance. We have recommended elsewhere the general adoption of the practice of reading papers in advance without a reduction in the hours of court sittings. The acceptance of that recommendation would render the raising of the number of court working hours impracticable.

67. The question of the Courts not working on Saturdays has also excited comment. It has been asked that at a time when the conditions in the country require every one to put forth his best effort why should the Judiciary not work on Saturdays also. A comparison is drawn in this connection between Judges and Ministers and other officials working on Saturdays. The subordinate judiciary, it is pointed out, also works on Saturdays. This criticism, we think, misses the essential difference between the work done by executive officers or the subordinate judiciary and the superior Judiciary. The work of a Judge in the Supreme Court and the High Court calls for concentrated attention for a period of four and a half or five hours every-day. That is a very taxing effort; far more taxing than that involved in work of the other officials mentioned above. It has also to be remembered that in reaching his decision, the Judge has to act solely on his own responsibility. In many cases the Judge of the Superior Court is not only deciding the rights of particular parties but laying down the law which may bind the citizens in the Courts in that State in the case of a High Court and the whole country in the case of the Supreme Court. It is but appropriate that for the efficient discharge of this heavy responsibility, the Judge of the superior Court should have his Saturday free to himself to ponder over the cases pending decision and inform himself of the law in connection with them. Those acquainted with the way in which the Judges of the Supreme Court and the High Courts work should be aware that Saturdays and Sundays are not free days for the Judges. Most of the Judges are to be found on Saturdays in the Court premises either working in the library or dictating judgments in cases in which hearings have finished. Some of them do similar work at their residence. Dictation of judgments and looking into papers relating to work for the ensuing week also consumes the larger part of a Sunday of these Judges. Saturday sittings.

As we have said above it should be enough to fix a target of two hundred working days. Once the target is achieved, it should be left to the Courts to decide their vacations and free days. Not practicable.

68. However, mere formal adherence to notified court hours is not enough. It has come to our notice during our visits to the various High Court centres that the notified working hours are not observed and judges frequently start their Court late or rise earlier than the closing time. Apart from the loss of judge-power occasioned by these lapses, such a practice lowers the dignity of the Court in the public eye. The public and the lawyers expect punctuality above all from the Court. We may refer in this connection to the observations of Chief Justice Vanderbilt:¹

"The most irritating delay of all to the lawyer and the layman alike is the delay of the judge in getting Punctuality.

¹American Bar Association Journal 1954 p. 31.

on the bench in time in the morning. The jurors have to be there, the lawyers have to be there, and so do the litigants, the witnesses and the newspaper reporters—everybody except the judge. I am speaking only of my own state in the old days, and there are some New Jersey lawyers here who know I am not exaggerating. You could hear peals of laughter emanating from the judge's chambers, and when His Honor emerged about half an hour later, he would seriously tell us he had been detained by important work in chambers. But you knew, despite his solemn assurance, that he had been listening to some story-teller recounting the jokes he would tell in his next speech."

While it may not be necessary to ring a bell to ensure punctuality as is done in at least two High Courts, much can be done in this regard by a Chief Justice possessing personality.

An all-India cadre of judges—the case for.

69. The question of establishing an all-India cadre for Judges of the High Court with the incidence of a free transfer from one High Court to another has been pressed upon us by a substantial body of evidence. The importance of such a course was emphasized on two grounds. It was suggested that if a substantial number of Judges composing High Courts in all the States were persons who came from outside the State, it would greatly tend to develop a feeling of unity throughout the country and as the States Reorganization Commission has said "help in arresting parochial trends". With this end in view the Commission recommended "that at least one third of the number of Judges in a High Court should consist of persons who are recruited from outside the State". They also pointed out that the acceptance of their suggestion will have the advantage of extending the field of choice of High Court Judges and also the "advantage of regulating staffing of the higher Judiciary as far as possible on the same principles as in the case of Civil Service."¹ The second ground on which a transferable cadre of Judges was suggested was that a judiciary so recruited would be more independent having less local connections. As a leading member of the Bar put it:

"The large section of it (the Bar) to-day would applaud any move which makes the judiciary transferable because then these local considerations etc. established through contact in clubs, social societies etc. would just disappear. * * * * A transfer from different States and from time to time would at least have the effect of breaking up undesirable connections".

A further consideration which affects the smaller High Courts and which tends largely in favour of the acceptance

¹States Reorganisation Commission Report, page 233 (para. 861).

of this suggestion is that these High Courts have experienced difficulties in constituting Division Benches for hearing some cases as one or more of the Judges recruited from the State had been interested in the case at an earlier stage either as counsel or as a party or happened to be related to one or more of the litigants. In fact we found several cases on the files of the High Courts of Assam and Orissa undisposed of by reason of this difficulty. At the time we visited these States the strength of the High Court of Assam was two Judges and that of Orissa four Judges.

70. Judges of the High Court are under article 222 of the Constitution transferable from one High Court to another by the President after consultation with the Chief Justice of India. This power has been rarely exercised. In fact some evidence before us stated that such a power was likely to affect the independence of the High Court judiciary inasmuch as State executive may make efforts to obtain the transfer of a judge who for some reason or other had not found favour with it.

Transfer-
ability of
Judges.

71. It is no doubt true that judges recruited from the State itself have local connections and probably know some of the litigants whose cases come before them. We are dealing elsewhere generally with the need for the judges to keep themselves detached and mix less freely at clubs and social gatherings so that their contacts may not be such as to embarrass them in the discharge of their duties, and, what perhaps is more important, that the public may not consider that a judge may not be impartial by reason of his contacts or connections. It may be that in some cases the existence of such contacts and connections has led to a belief that justice has not been done as impartially as it should have been.

Local con-
nections and
the need for
transfers.

72. We are, however, unable to say that as a whole, members of the High Court judiciary recruited from within the State have failed to maintain that attitude of detachment and impartiality which is expected of them. Indeed, it would only be fair to them to say that by and large they have fully adhered to the traditions of their high office. It appears to us, therefore, that the argument based on the need for the judges to have less local connections has not much force. Even persons appointed to the High Court Bench from outside would in the course of a few months form connections in the State to which they are appointed though perhaps not to the same extent. It would, we think, be unjust to treat members of the Bar or the Service appointed to the High Court judiciary as suspects who need to be moved from place to place to keep them to correct standards.

Free trans-
fers inad-
visable.

73. A unified cadre of High Court Judges with free transfers all over the country would undoubtedly greatly help to break down the barriers of regionalism which unfortunately hold sway in many parts of the country. At

Unified
cadre de-
sirable but
not free
transfers.

the same time we have to consider carefully the effect which the suggested measure would have on recruitment to the High Court bench from the Bar in a State. The local Bar has for years rightly been a recruiting ground for the High Court Bench and during recent years recruitment from the Bar has been on the increase. As far as we can visualize, the Bar must remain the main recruiting ground for the future. We have already dealt earlier with the difficulties which are at present being experienced in making selections of judges from the Bar and have suggested measures for making satisfactory selections from the Bar. We feel that the difficulty of recruiting leading men from the Bar will be greatly accentuated, if the acceptance of a judgeship involves the probability of transfer from the home State to another State as an ordinary incident of that office. We are therefore averse to making a recommendation which is likely to affect adversely recruitment of competent persons from the local Bar.

Outside
element.

74. We are, however, suggesting elsewhere a scheme for an All-India Judicial Service, which like the all-India Administrative Service, will supply members to the higher Judiciary of all States and be recruited on an All-India basis. If this recommendation is accepted, it will result in a certain number of service Judges of the High Courts being persons drawn from outside the State. It should also be possible, as has happened recently in some cases, to recruit as judges members of the Bar from outside the State. It sometimes happens in the smaller States that the local Bar has not men of outstanding stature who could be invited to be judges of the High Court. Even in the larger States it may become necessary on occasions to appoint persons with special knowledge and experience in certain branches of law. In such cases members of the Bar from outside the State may be invited to the Bench. We have also recommended that where the senior-most puisne Judge does not have the very special qualifications needed by a Chief Justice, a Judge from outside the State should be appointed the Chief Justice. The recent creation of various zones in the country and the efforts to treat the States forming part of these zones as one unit for various purposes would, we hope, lead to the States forming part of each zone to be the recruiting ground for appointments to the High Court from the members of the Bar in these States. It is hoped that in this manner the expectation of the States Reorganisation Commission that at least one third of the High Court Judges would be persons drawn from outside the State will be realized.

Zonal ap-
pointments.

75. In the early British days and till very recently, the British and the Indian Judges maintained as a rule a tradition of isolation and aloofness, declining to mix freely with members of the public and the executive at clubs and other social functions. That was the British tradition of the Judges living, in the words of Sir Winston Churchill,

Aloofness
necessary in
judges.

"their whole lives * * * * within strict and rigid limits".¹ So zealous were these Judges to guard their independence and the public confidence in their impartiality, particularly in reference to the executive, that it was said of one High Court that the Chief Justice and Judges would not approach the precincts of the Government House. There was a comment that such an attitude was not justified and was unnecessarily rigid. On the other hand, there was a considerable body of opinion favouring the view that judges should remain in isolation. "But if it was an extreme position, it was an extreme position in the right direction because there might be an extreme position in the other direction, which would not be for the good of the State."²

76. We have indeed in recent years reached what was called "an extreme position in the other direction". Far from avoiding the precincts of the Government House, Judges have come to treat invitations from the Government House as "commands." Newspapers tell us of Chief Justices and Judges being "granted" interviews by Ministers. Though a few Judges still maintain the old isolation, a large majority sees nothing incorrect in freely mixing with the executive.

Falling off
in standards.

The attitude of judges in regard to contacts with the public seems also to have completely altered. It has become frequent for judges, newly appointed to the bench, to accept invitations to entertainment not only from representative associations but from individual members of the Bar and even from private citizens. We have been told of a High Court Judge appointed to the Supreme Court Bench being entertained at a party by a private citizen. Indeed, some individual members of the Bar seem to have made it a practice to entertain all incoming Judges. It was said in the evidence before us that these things "which used to happen in Delhi at one time" are now happening in other places.

77. It appears to us that such behaviour by the judges should lead to a loss of the high respect in which the judges should be held by the community. If the public is to give profound respect to the judges, the judges should, by their conduct try and deserve it. Not by word or deed should they give cause for the belief that they do not deserve the pedestal on which we expect the public to place them. It appears to us that not only in the performance of his duties but outside the Court as well, a Judge has to maintain an

Restraint
and dignity
necessary.

¹Parliamentary Debates (Hansard) House of Commons Debates, dated 23-3-54, Vol. 525, Col. 1061.

²Shri C. C. Biswas, House of the People Debates, Vol. II, Part II Col. 2728.

aloofness amounting almost to self-imposed isolation. In the words of an eminent Statesman, Sir W. Churchill :

“A form of life and conduct far more severe and restricted than that of ordinary people is required from Judges and, though unwritten, has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct.”¹

It has to be realised that if the public is to believe that justice is being impartially administered, judges cannot rub shoulders with one and all in a manner which any other person may do. Their public activities and even their pronouncements outside the Court have to be consistent with the isolation which their office demands. The lapse in the observance of these essential rules of conduct has undoubtedly, in some measure, affected the prestige of the judges in the public eye.

In the United States, the Bar, alive to the dignity and conduct which should be maintained, has formulated² what have been called the “Canons of Judicial Ethics”. The Judges in our country have followed the unwritten British Code of Conduct which is not the less strict by reason of it not being written.

Conduct on
the Bench.

78. The unwritten code of conduct which governs a Judge applies to him in a greater degree in the performance of his duties on the bench. In the course of the evidence we were told of some Judges taking too aggressive a part in the course of trials, sometimes taking upon themselves the task of questioning witnesses and frequently interrupting the arguments of counsel. The adoption of such a course cannot fail to have an unfortunate effect on the Bar and the litigating public. It has been said :

“A Judge who intervenes too much could drain the case of all joy from the point of view of the advocate who whether he had won or lost comes out of the court an exhausted person.”

Though intervention in order to appreciate counsel's argument is necessary and desirable, a volley of questions repeatedly asked may lead the advocate entirely off the track and ruin his argument. Undue interruption is not unusual particularly in case of Advocate-Judges in the Supreme Court and the High Courts. We do not for a moment suggest that the Court should not control the proceedings by asking counsel to restrict his arguments to the points which really arise and to avoid repetition. If such a control were not practised, we would have the other

¹Parliamentary Debates (Hansard) House of Commons Debates, dated 23-3-54 Vol. 525, Col. 1062.

²In 1924 by the American Bar Association and amended from time to time.

extreme in which very often senior counsel indulge in prolix and repetitious arguments without interruption by judges. In this matter, we have to strike the golden mean between the "talkative" judge and a judge of "the strong silent type". The part which a Judge has to play has been aptly described by the Court of Appeal in the following words:¹

"The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a Judge and assumes the robe of an advocate; and the change does not become him well. Lord Bacon spoke right when he said that patience and gravity of bearing is an essential part of justice; and an over-speaking Judge is no well-tuned cymbal."

79. On the Chief Justice will fall the responsibility of utilising the judge-power at his disposal to its optimum capacity. Each Court will, in the nature of things, consist of quick Judges and slow Judges, judges with experience in certain classes of work and others. As stated by Chief Justice Vanderbilt:²

"Every judge if he is to do his best should be assigned wherever possible the kind of judicial business in which he excels".

There may be Judges who have not had enough training in criminal work and dislike it. The disposal by such Judges of criminal work is bound to be slow and unsatisfactory. The same results will follow if a Judge familiar with criminal work is put or to dispose of the civil file. These matters are of particular importance as we have in many High Courts matters of a specialised nature like the income-tax and sales-tax references. We found that in some of the High Courts, these considerations were being completely disregarded, so that matters were dragging on at a considerable length before Judges unaccustomed to deal with them.

Best utilisation of judge power.

In the present state of congestion of the files in the High Courts it is also essential that each Court should make use of its most experienced and competent Judges to deal with admissions. If matters are examined carefully at the admission stage and only deserving cases admitted there

Senior Judges to deal with admission.

¹Jones v. National Coal Board 1957, 2 All E. R. 154 at p. 159.

²The Challenge of Law Reform, p. 87.

will be a great saving in the time of the court. The figures that have been placed before us show that a large percentage of matters admitted—in some cases as much as 70 or 80 per cent—are eventually dismissed. A careful examination of these matters at the admission stage and the weeding out of cases which have no merit in them, would obviously lead not only to a saving in the judge-power but also a saving of considerable expense to the litigants. A strong and capable judge dealing with admissions could, after a careful hearing at the admission stage, restrict the matters admitted to cases which really deserve a reconsideration.

Administra-
tive duties
of the High
Court.

80. It should not be forgotten that one of the most important duties which a High Court performs is the administrative duty of supervising the work of the subordinate courts. The subordinate judiciary in the State can function with efficiency only if the High Court seriously scrutinizes the work of subordinate judicial officers, attends to the needs of subordinate courts like the provision of court-houses, the transfer of judges, the supply of law books and the like. Our inquiries have revealed that the importance of these duties is not recognised and that they are neglected in some of the High Courts. Indeed, views have been expressed in some quarters that the High Courts' function ends with the disposal of the cases pending before them and that the supervision of the lower judiciary and the imparting of a tone to the judicial administration in the whole State by a watchful supervision of the subordinate courts is no part of the legitimate function of the High Court. Such a view is entirely erroneous. It should not be difficult for the High Court to perform its administrative duties if the work of supervision over subordinate courts is distributed among several judges, there being an overall supervision on general questions by the Court as a whole. It appears to us that the laxity of supervision by the High Court has in a large measure contributed to a considerable decline in the efficiency of the subordinate judiciary, in some of the States.

Benches of
High Courts.

81. We had earlier occasion to make a Report¹ on the desirability of the High Court of a State sitting in benches at different places in the State. We then reached the conclusion that the efficiency of the administration of justice should be the paramount consideration governing this matter and that this consideration weighed overwhelmingly against the creation of benches of the High Courts. The structure and composition of the Courts should not be permitted to be influenced by political considerations. That this has happened in the past in certain cases can be no valid ground for the extension of that policy. We are of the view that we should firmly

¹Fourth Report of the Law Commission.

set our face against the constitution or creation of benches. Such a course would lead to an impairment of the efficiency of the High Court with the inevitable consequence of the lowering of the standards of administration of justice. Since the Report was made, we have visited all the principal centres where the High Courts sit and the evidence given before us has confirmed us in the view taken by us in that Report. We re-affirm the reasons given and the conclusions stated in that Report in regard to this question.

82. Our conclusions regarding High Courts may be summarised as follows:—

Summary of recommendations.

(1) There has been a large increase of arrears in the High Courts and disposals have fallen short of what they should be in a properly regulated court.

(2) The arrears can be partly attributed to the increase in both the normal work of the High Court and also the expansion of its special jurisdiction under various Acts.

(3) The coming into force of the Constitution has also greatly added to the work of the High Courts.

(4) The strength of the High Courts was not increased in time to prevent the arrears from accumulating.

(5) Any proposals made by the Chief Justice of a State for increasing the strength of the High Court, if it has the concurrence of the Chief Justice of India, should be accepted without demur or delay.

(6) The difficulty arising from a shortage of judges has been aggravated by the delays in making appointments to vacancies as have occurred.

(7) The frequent deputation of Judges for non-judicial work without the provision of a substitute is also responsible for the High Courts being undermanned and if such deputation is likely to last for a substantial period of time, arrangements should be made to appoint a substitute.

(8) Many unsatisfactory appointments have been made to the High Courts on political, regional and communal or other grounds with the result that the fittest men have not been appointed. This has resulted in a diminution in the out-turn of work of the Judges.

(9) These unsatisfactory appointments have been made notwithstanding the fact that in the vast majority of cases, appointments have been concurred in by the Chief Justice of the High Court and the Chief Justice of India.

(10) Consultation with the State executive is necessary before appointments are made to the High Court.

(11) While it should be open to the State executive to express its own opinion on a name proposed by the Chief Justice, it should not be open to it to propose a nominee of its own and forward it to the Centre.

(12) The role of the State executive should be confined to making its remarks about the nominee proposed by the Chief Justice and if necessary asking the Chief Justice to make a fresh recommendation.

(13) It would be advisable for the Chief Justice of a State to send a copy of his recommendation direct to the Chief Justice of India to avoid delays.

(14) Article 217 of the Constitution should be amended to provide that a Judge of a High Court should be appointed only on the *recommendation* of the Chief Justice of that State and with the *concurrence* of the Chief Justice of India.

(15) The senior puisne Judge should not be automatically appointed as the Chief Justice unless he possesses the qualifications we have referred to.

(16) While there is no need to have a rule that the Chief Justice of a State shall always be from outside the State, yet when a vacancy arises in the office of the Chief Justice of a High Court, the fittest person should be selected, if necessary from outside.

(16A) The appointment of the Chief Justice of a High Court should be with the concurrence of the Chief Justice of India.

(17) The decreasing respect in governmental circles for the judiciary and the courts has to some extent made recruitment to the High Court bench difficult.

(18) Ill-informed criticism of the judiciary by responsible persons has adversely affected its prestige.

(19) The existing salaries of High Court Judges are not so inadequate as to deter competent men from accepting judgeships, except perhaps in Calcutta and Bombay.

(20) The difficulty caused by the low salaries of judges can be counteracted by offering judgeships to rising junior members of the Bar at a comparatively early age.

(21) However, indiscriminate invitations to junior members of the Bar overlooking the claims of seniors

tend to destroy respect for the Judges and subsequently deter competent seniors from accepting judge-ships.

(22) There should be a convention or condition of service that a High Court Judge should not decline to accept the office of a Supreme Court Judge if called upon to do so.

(23) The retiring age of High Court Judges should be raised to sixty-five, in the case of appointments to be made hereafter.

(24) The pension of the Chief Justice of a State High Court should be fixed at Rs. 2,000 per month and that of a Puisne Judge at Rs. 1,750 per month for 12 years of service.

(25) The Judges of the High Court should be allowed to draw their full salary for the period for which they are entitled to leave on full allowances and half salary for the period of leave on half allowances.

(26) High Court Judges should not be permitted to practise in any court after retirement.

(27) 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 under the State.

(28) Sub-clause (a) of clause 2 of article 217 should be amended so as to permit the appointment to the High Court of only those judicial officers who have exercised for at least three years judicial functions as a district judge.

(29) The permanent strength of the High Courts should be refixed after taking into consideration the recent increase of their work.

(30) The strength so fixed should be reviewed at intervals of two to three years.

(31) All proceedings pending in a High Court beyond the period specified in paragraph 54 *ante* should be classified as arrears.

(32) Additional Judges should be appointed for the sole purpose of clearing these arrears within a period of two years.

(33) Such Judges should not be diverted to the disposal of current work. These additional Judges should be appointed from amongst the most competent persons available at the Bar or in the service.

(34) For the purposes of such recruitment the entire country should be treated as one unit.

(35) An effort should be made to persuade suitable senior practitioners to accept judgeships for at least a short period as a public duty.

(36) An *ad hoc* body presided over by the Chief Justice of India should be created to draw up a panel of names of persons suitable for appointment to the High Court.

(37) Legislation should be immediately undertaken for transferring all First Appeals valued below Rs. 10,000 now pending in the High Courts to the district courts.

(38) The measures set out in detail by us in the Chapter on Civil Appeals to meet the situation created by such transfer should be undertaken.

(39) The available judge-power of the High Courts should be conserved and used in an economic manner by increasing the power of Single Judges and resorting to other methods which we have set out in detail elsewhere.

(40) The Judges should be assigned to deal with those branches of work in which they are most competent.

(41) The work of admission should be entrusted to senior and specially competent Judges.

(42) Cases should be admitted only after careful scrutiny.

(43) The High Courts should work for at least 200 days in the year. Once this is done, it should be for the High Courts to regulate their vacations as they think best.

(44) Legislation for regulating the vacations of the High Courts is undesirable.

(45) The Judges should sit in court and do judicial work for at least five hours on every working day.

(46) Judges should not be required to sit in court on Saturdays as these are not really free days for them.

(47) The Judges of the High Courts should set an example of strict punctuality on the bench.

(48) The practice of retiring to chambers for dictating judgments or doing administrative work during court hours is not desirable.

(49) It is not desirable to have an all-India cadre of High Court Judges in the sense that Judges should be easily transferable from one High Court to another.

(50) The other measures suggested by us should however suffice to bring Judges from various parts of the country to the bench of one High Court.

(51) The zones might serve as a common recruiting ground for the Judges of the High Courts in that zone.

(52) Judges should bear in mind that their office demands from them a certain reserve and restraint in their social life.

(53) While Judges should control the hearing of the case they should guard themselves against intervening too much and too often.

(54) The High Court Judges should realise that the task of supervision and control of subordinate courts, that is, administrative work is a very important branch of their duties.

(55) Setting up of benches of the High Court at different centres in a State is undesirable.

TABLE

Comparative table showing the institutions of certain categories of proceedings in the High Court of some States during the years 1945, 1950 and 1955

Nature of proceedings	Year	Name of the State											Remarks
		Assam	Bihar	Bombay	Madhya Pradesh	Madras	Andhra	Orissa	Punjab	Travancore Cochin (Kerala)	Uttar Pradesh	West Bengal	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
FIRST APPEALS :— from decrees.	1945	14	293	N.A.	120	1144	..	37	437(B)	740(C)	74	378(B)	(A) Includes Appeals against Appellate Orders.
	1950	27	487	732	169	N.A.	..	74	234	979	520	339	
	1955	36	552	935	198	934	539	46	272	795	552	345	(B) Prior to partition of the State.
SECOND APPEALS :— from decrees	1945	236	1886	N.A.	866	2715(A)	..	275	2454(B)	671(C)	515	1860(B)	(C) Relates to the Malayalam year 1121 corresponding to 1945-1946.
	1950	91	2272	1416	869	N.A.	..	709	881	930	2422	1012	
	1955	158	2014	1596	1061	1372	1001	282	1080	1165	2967	1650	The abbreviation "N. A." stands for "Not available."

LETTERS PATENT SPECIAL APPEALS	&	1945	Nil	20	N.A.	17	80	..	2	231	Nil(C)	49	25(B)
		1950	Nil.	27	53	31	N.A.	..	10	91	Nil.	46	21
		1955	Nil.	13	96	166	133	201	7	170	Nil.	509	9
CIVIL REVISIONS		1945	Nil.	1047	N.A.	536	1672	..	212	N.A.(B)	1324(C)	3006	916(B)
		1950	88	919	1193	848	N.A.	..	271	672	1120	1711	1098
		1955	77	1231	2035	1040	1399	1576	268	946	709	1807	2909
APPEALS ORDERS :— including against orders	AGAINST	1945	45	473	N.A.	283	403	..	78	475(B)	1273	N.A.	476(B)
	appeals	1950	31	476	225	211	N.A.	..	75	269	441	457	204
	appellate	1955	61	418	268	272	126	450	87	557	274	689	420
ORIGINAL SUITS :		1945	Nil.	10	N.A.	5	38	..	Nil.	179(B)	Nil(C)	97	1910(B)
		1950	10	19	1996	1	N.A.	..	25	333	Nil.	50	5203
		1955	4	28	582	15	261	Nil.	10	112	Nil.	35	3702

7.—HIGH COURTS—ORIGINAL SIDE

Original jurisdiction of the High Courts in the presidency towns. 1. The three chartered High Courts of Calcutta, Madras and Bombay exercise ordinary original civil jurisdiction within the respective limits of the three presidency towns. The source of their original jurisdiction is to be found in the Indian High Courts Act of 1861 and in the Letters Patent of 1865. In addition to their ordinary original civil jurisdiction, the High Courts also exercise original jurisdiction in admiralty, matrimonial, testamentary matters and intestate succession.

In Calcutta, In Calcutta, the local limits of the High Court's jurisdiction extend over a small but highly important part of the city which is surrounded by the Circular Road. Alipore is the judicial headquarters of the 24-Parganas district, a separate judicial district although lying within the limits of the Calcutta Municipal Corporation; while Howrah which is also a separate judicial district has a separate municipality. Thus, in Calcutta there are three different civil and criminal jurisdictions operating in different areas of the same city.

In Madras and Bombay. In Bombay, the ordinary original civil jurisdiction of the High Court extends to Greater Bombay as defined in the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. In Madras also, the original jurisdiction of the High Court extends over the territorial limits of the municipal corporation of the city of Madras.

Under the Letters Patent, the three High Courts had ordinary original civil jurisdiction in all matters irrespective of value except those cognisable exclusively by the Presidency Small Cause Courts. On the criminal side, the High Courts were also the courts of session to which offenders accused of serious crimes committed within their respective territorial limits could be committed for trial.

Establishment of City Civil Courts. 2. Inroads were made upon the ordinary original civil jurisdiction of the three High Courts with the establishment at different times of the City Civil Courts in the three presidency towns. Madras took the lead in restricting the original jurisdiction of the High Court by the establishment of a civil court for the city of Madras as early as 1842. The Madras City Civil Court started with jurisdiction in respect of suits or other proceedings of a civil nature not exceeding Rs. 2,500 in value. This limit was gradually raised until it reached Rs. 10,000 in 1950-51. By Madras Act X of 1955 it has been further raised to Rs. 50,000 so that the original jurisdiction of the Madras High Court is now confined only to matters exceeding Rs. 50,000 in value. In Bombay, the city civil court for Greater Bombay came

into existence with the passing of Bombay City Civil Court Act of 1948. The jurisdiction of this Court was initially Rs. 10,000 and was raised to Rs. 25,000 with effect from the 20th January 1950. In Calcutta, the city civil court was established in 1957 in exercise of the powers given to the State Government under Section 3 of the City Civil Court Act of 1953. The pecuniary jurisdiction of the city civil court is limited to suits and proceedings not exceeding Rs. 10,000 in value excepting certain types of suits comprehensively described as 'commercial causes' in respect of which its jurisdiction is restricted to suits and proceedings not exceeding Rs. 5,000 in value. This Court has, however, no jurisdiction in respect of suits and proceedings relating to or arising out of mortgages or charges or liens on immovable property or suits relating to or arising out of endowments.

Continuance
of the original
side.

3. A controversial question relating to administration of justice in the presidency towns is whether the original civil jurisdiction of the three High Courts should continue unrestricted as it was before the establishment of the city civil courts or whether it should be restricted, as it has been, since the establishment of these courts. Views have also been expressed advocating the total abolition of this jurisdiction. These questions are closely connected with the examination of the way in which the city civil courts in the three presidency towns have functioned since their establishment.

We have given this matter our earnest attention and have elicited the opinions of leading members of the original and appellate side Bar in all the three towns of Calcutta, Madras and Bombay. The opinion amongst the legal profession has been and is sharply divided. Representatives of those who practise on the original side as also the representatives of the attorney's profession have maintained that the continuance of the original civil jurisdiction of the High Court is necessary in the interests of the high standards of judicial administration in these cities and that the trading and commercial communities who form the bulk of litigants on the original civil side of the High Courts are in favour of its retention. A contrary view has been expressed by some of the advocates on the appellate side and those practising in the subordinate courts in whose opinion the original side is "an anachronism which has outlived its usefulness and should therefore be abolished in its entirety."¹

4. The arguments of persons who are opposed to the retention of the original side may be summed up thus:—

The case for
abolition.

The administration of justice in the presidency towns as well as in the mofussil should follow a uniform pattern.

¹ Report of the Judicial Reforms Committee for the State of West Bengal, page 8.

Uniformity
of expense.

There is no reason why a litigant in Calcutta, Madras or Bombay should have the privilege of having his cases decided by a High Court Judge when the same privilege is denied to a litigant in the mofussil. Further, the nature of litigation both in the cities and the mofussil is generally the same. There is, for instance, no difference between a suit on a mortgage or on a promissory note instituted in a mofussil court and a like one filed in the High Court. This is an additional reason for bringing the system of administration of justice in the presidency towns on a par with that prevailing in the mofussil. It was also stated that the High Court should only be a court of appeal and that the time of its highly paid judges should not be consumed in hearing original cases some of which would be of a small value and of an unimportant nature. The costs of litigation on the original side where the dual system of attorney and counsel is compulsory were said to be very heavy and beyond the capacity of the average litigant. A complaint was also made against the "complex and archaic procedure" which is followed on the original side.¹

Views of
the Trevor
Harries
Committee.

5. The question whether the original side of the Calcutta High Court should be retained was referred for consideration to the Judicial Reforms Committee for the State of West Bengal. That Committee reached the conclusion "after giving the matter the fullest consideration" "that the Original Side of this Court should not be abolished in its entirety. We are convinced that there is a genuine demand for it particularly in the commercial community and its abolition would be a real loss to the litigant public of Calcutta."²

No reasons
for abolition.

6. We have examined all the arguments for and against the retention of the original civil jurisdiction of the three High Courts and we do not feel that satisfactory reasons have been shown for its complete abolition. We are conscious that the judicial power of the High Courts need not and should not be spent over cases which though not technically be small cause claims yet are in fact petty cases; we agree that for the disposal of such simpler cases of a low valuation, a cheaper tribunal is both necessary and desirable. But that principle has already been accepted by the establishment of the city civil courts in Calcutta, Madras and Bombay. But the argument that the administration of justice in the three presidency towns should be placed on a par with the system in the mofussil by a total abolition of the High Court's original civil jurisdiction seems to us to demand uniformity at the expense of efficiency where it is really needed and where the litigant

¹ It must be stated, however, that this complaint was directed only as the Rules of the Calcutta High Court. The rules of practice and procedure on the original side in both the Bombay and Madras High Courts have been revised and simplified from time to time and no comment was directed against them.

² Report, page 15.

has persistently expressed himself in favour of its maintenance. It is argued with a great deal of emphasis that there is scarcely any difference between a suit, for instance, based on a promissory note or on a mortgage filed in the High Court and a similar suit filed in the court of subordinate judge in the district. Why then, it is asked, should the litigant in the mofussil not have the same privilege of having his case decided by the High Court? Alternatively, it is questioned, why should the litigant in Calcutta, Madras and Bombay have the advantage of a cheaper tribunal which his opposite number in the mofussil has not?

7. These arguments overlook the basic fact which has been conceded even by the opponents of the continuance of the original civil jurisdiction of the High Courts in the presidency towns that the administration of justice on the original side of that court is far more efficient than that in the corresponding courts in the mofussil. This is only natural as the tribunal in bringing its mind to bear upon the disputes in the cities is far better equipped and better trained than any tribunal in the mofussil. What then is the justification for depriving the litigants of this efficient system and the efficient tribunal, the benefit of which they have enjoyed for over a century? Are we out, in the name of uniformity, to lower the standards of our administration of justice? This demand for a levelling down, as it were, so as to downgrade the litigant in the city to the level of the litigant in the mofussil is the more surprising in view of litigants in the city repeatedly expressing willingness to pay any additional costs that they may have to bear by reason of the continuation of the prevailing system. If financial and other conditions permit, we would feel justified in giving the litigant in the mofussil a better deal by giving him a more efficient system and a more efficient tribunal. The case, if any, should be for a levelling up and not for a levelling down of judicial efficiency.

The value of the original side.

Levelling down undesirable.

8. The higher cost involved in the payment of the higher remuneration to High Court Judges to deal with disputes which are being dealt with in the mofussil by lower paid subordinate judges can be justified on two grounds. We have noticed elsewhere the surplus revenue which States make out of the Administration of Justice. In view of this surplus, the reason for economy in the remuneration of judges does not appear to us to have much substance. It has further to be remembered that the manner in which an efficient High Court Judge deals with a money claim or commercial cause or any other suit, always provides a useful model which both the judiciary and the Bar in the mofussil can copy with advantage. It would be detrimental to the sound administration of justice to destroy such models as now exist in the three presidency towns.

Higher cost justified.

9. The High Court in the exercise of its original civil jurisdiction does not ordinarily deal with suits on simple

Complexity
of commer-
cial liti-
gation.

pronotes or mortgages executed by village agriculturists and written by indigenous village bondwriters or suits for declaratory and consequential relief or possession of agricultural land or houses as in the mofussil. A very large proportion of the work particularly in Calcutta and Bombay comes under the compendious term "commercial causes". These are claims for money arising out of the daily transactions of merchants, bankers, traders, large business and financial houses, and corporations. They relate to the construction of mercantile and technical documents drafted by trained attorneys, to the export and import of merchandise, to contracts of affreightment and carriage of goods by land, contracts of insurance, banking, agency, mercantile usage, infringement of trade marks and like matters. In the Calcutta High Court, 3,686 and 3,535 suits were filed on the original side respectively in 1955 and 1956. They were of the following classes:

<i>Nature of suit</i>	1955	1956
Suits for money or movable property including commercial suits.	2,201	2,194
Suits for immovable property.	2	7
Suit for specific relief.	36	31
Mortgage suits.	159	72
Testamentary suits.	17	10
Makrimonial suits	34	33
Admiralty suits.	5	1
Other suits.	*1,232	**1,187
	3,686	3,535

These figures indicate that a substantial volume of litigation on the original side arises out of commercial causes. The administration reports of the Madras and Bombay High Courts do not give a similar classification of original suits but we were informed by witnesses that a majority of suits on the original side in those places was of a commercial nature. It cannot be controverted that the trained advocates and attorneys who practise on the original side and the Judges presiding on the original side constitute a most efficient system for quick and satisfactory disposal of the highly intricate litigation arising in these large industrial and commercial cities.

Limitation
of the city
civil court.

10. It might be argued that even if these be the facts, it is not necessary that the High Court should try such cases. They can be dealt with satisfactorily by a sufficient number of the judges of the city civil court recruited from members of the Bar practising exclusively on the original side and having experience of that class of work. This is

*Includes 4 suits under the Hindu Marriage Act.

**Includes 21 suits under the Hindu Marriage Act.

true only upto a point and its acceptance is implicit in the creation of the city civil court with a limited jurisdiction. It is difficult to recruit suitable members of the Bar to be judges of the city civil court. In Madras, the principal judge of the city civil court is a senior district judge while all the other judges are members of the State Judicial Service. In Calcutta also, the newly established city civil court has judges all of whom are district judges. Only in Bombay, a fairly large proportion of the judges of the city civil court is from members of the Bar. The rest are senior district judges.

The pay of a judge of the city civil court in Bombay is, however, higher than that of a district judge. The principal judge is paid Rs. 2,500 per month and other judges Rs. 2,000 per month with the additional privilege that in the case of the principal judge the age of superannuation is extended to sixty years. Even so, there have been instances in Bombay of city civil court judges having resigned and resumed practice on the original side after serving for a few years. The difficulties experienced in recruiting suitable members of the Bar to the High Court Bench in Calcutta and Bombay in particular have been brought to our notice and referred to by us elsewhere. The problem of finding the right type of judges for dealing with cases of the type described above will become more acute if the original civil jurisdiction of the three High Courts is abolished and transferred to the city civil courts.

11. One important fact needs also to be remembered that the litigant public in Calcutta and Bombay is in favour of the retention of the High Courts' original civil jurisdiction because it has greater confidence in the High Courts. The Trevor Harries Committee in West Bengal had before it the views of all the Chambers of Commerce in Calcutta. The representatives of some of them also appeared before the Committee and made it clear that all the associations except one desired the continuance of the High Court's jurisdiction for various reasons. The Committee said:

Retention
favoured
by the
commercial
community.

"We have tried to consider this question of the continuance or abolition of the Original Side purely from the point of view of the litigant public and we have not allowed our minds to be influenced by the probable effect of our views on the interests of the various classes of Advocates and Attorneys and Solicitors. Practitioners are servants of the litigant public and their interests must be subordinate to the interests of the litigants. We have approached the question from the point of view of efficiency, expedition and expense and having given the matter our most careful consideration we are of opinion that the Original Side of the Calcutta High Court should not be

abolished but should continue to function and have exclusive jurisdiction over particular classes of cases.”

In Bombay also, the opinion of the commercial community has generally been in favour of the retention by the High Court of its original civil jurisdiction. A leading member of the Bombay Bar stated:

“It cannot be disputed that the confidence which the public has in the High Court—I believe it will long continue—cannot be inspired by Judges whose tenure is not the tenure of the High Court Judge.”

Another very senior member of the Bar in Bombay stated that the litigation on the original side was mostly commercial litigation and that the city civil court had been established in spite of the opposition of the Chambers of Commerce of Bombay. The litigants' confidence in the original side of the High Court is reflected in the very small number of original side appeals from decrees passed by a single Judge on the original side. It is probable that the appeals brought from an inferior court to which the original jurisdiction of the High Court may be transferred *in toto* would considerably exceed the appellate work that now arises out of the same category of cases disposed of on the original side. If that happens, a cheaper tribunal would by no means be a measure of economy either for the litigant or for the State.

Extension
of original
jurisdiction.

12. It might be suggested in this connection that confidence in the justice administered by the High Court is not restricted to the litigant in the presidency towns and that even litigants outside these towns share such confidence. Why then on principle, should not the areas of the State outside the three presidency towns be included in the High Court's original jurisdiction, at least in respect of cases exceeding a certain valuation, say Rs. 20,000? If such a measure were within the bounds of practical possibility, it would certainly be a change which we would favour. But it needs little thought to envisage the practical difficulties involved in such a proposal. Apart from an increase in the work in the High Courts, which requires additional judges, the hardship and inconvenience in bringing to the High Courts, original suits from distant mofussil areas would far outweigh the advantages of the original side and defeat the principle of justice being brought as near the litigant as possible. It would also mean to the mofussil litigant the heavy costs of travel from his town to the seat of the High Court and of bringing his witnesses and possibly his legal advisers also. It would, therefore, be neither prudent nor practicable to thrust upon the mofussil litigant the luxury of having his original cases decided by the High Court.

Desirable
but not
practicable.

¹ Report, page 12.

13. A further argument advanced in support of the abolition of the original jurisdiction is that the system obtaining on the original side is expensive and that the cost of litigation on the original side far exceeds the cost in the courts of the districts or in the city civil courts. It should be remembered that in the city civil courts and other subordinate courts *ad valorem* court fees are payable whereas on the original side of the three High Courts no such fees were payable until very recently. The *ad valorem* scale of court fees was introduced on the original side of the Madras High Court from 1950 and in Bombay also *ad valorem* court fees became payable on the original side soon after the establishment of the city civil court. So far, therefore, as the payment of court fees are concerned, the High Court and the other courts have been brought on the same level. The Calcutta High Court still retains a low scale of court fees on the original side. There is, however, no clear evidence which can lead us to a definite conclusion that the costs which a litigant has to incur on the original side are generally higher than those incurred by a litigant in the same class of suit or proceeding in the district court or in the city civil court. In fact, we were told by witnesses having experience of the original side work both in Bombay and Madras that the twin objectives of making litigation cheaper and of ensuring greater despatch with which the city civil courts had been created had by no means been achieved and that on the contrary while the costs had not diminished, long delays occurred in the disposal of cases in the city civil courts.

Original Side
litigation
costly.

Costs not
excessive.

14. The attack against the original side on the ground of excessive costs arises mainly from the existence of the dual system which requires the employment of two sets of lawyers, namely, the advocate and the attorney. We have dealt with the question of disproportionate costs which the dual system is alleged to involve in the Chapter on the Bar. We do not wish to repeat here what has been stated there. Dealing with this charge the All India Bar Committee stated in its report:

The dual
system.

"There is a good deal of controversy as to whether the costs on the Original Side of the High Courts are really heavier than the costs actually incurred on the Appellate Side or in the District Courts. The costs charged by the Advocates on the Appellate Side or by the Advocates or Pleaders in the District or other Subordinate Courts have no reasonable relation whatever to the costs calculated on the basis of the Court-Fees Act. In Harries Committee's Report is given an instance where in a suit pending before a District Judge the costs allowed amounted to Rs. 3,900 whereas it transpired in the case that the actual costs of the litigation of the plaintiffs were over Rs. 72,000. On the Original Side there is a system of taxation and it is known how much the client had to pay the Solicitor,

whereas on the Appellate Side and in the Subordinate Courts there is no scale of fee fixed by the court which the client has to pay to the Advocate or Pleader. It cannot therefore be said with any amount of certainty that the costs of a litigant on the Original Side are in excess of the costs which a litigant in the District Court actually incurs. In any case, if the costs are heavy by reason of the dual system, then the remedy lies in minimising the costs and not in putting an end to the system itself.¹

The same view was expressed by the Trevor Harries Committee as regards the Original Side of the Calcutta High Court:

"It is said that the cost of litigation on the Original Side far exceeds that in the district courts. Costs on the Original Side are subject to strict taxation and no Attorney or Solicitor can recover from his client any sum greater than the costs allowed on taxation. In the mofussil and indeed on the Appellate Side of the Court the costs of litigation are very different from the costs allowed under orders of this Court. It is admitted on all hands that the costs allowed to litigants in the mofussil and on the Appellate Side of this Court bear no relation whatsoever to the actual costs incurred. It is therefore extremely difficult to say with certainty what the costs of a suit in the mofussil or the costs of an appeal on the Appellate Side of this Court really are. The costs allowed by the rules of this Court form a very small percentage of the costs actually incurred and for which the parties are liable."²

The costs are said to be excessive because of the double set of legal practitioners required on the original side. So far, however, as the attorney is concerned, elaborate rules have been made for the taxation of costs not only between party and party but also between attorney and client whereas on the appellate side or in the district and subordinate courts no rules exist for the taxation of costs between advocate and client. In the case of a dispute between the attorney and the client as regards the former's costs, the attorney's bill is laid for taxation before the Taxing Master and the attorney can recover from the client only such costs as are allowed by the Taxing Master according to the rules made by the High Court in that behalf. The High Courts have made rules reducing the costs from time to time. In the Rules of the Calcutta High Court, there is a provision for taxation on a reduced scale in mortgage suits in which the total sum due towards principal does not exceed Rs. 4,000 and in suits for partition of property not

¹ Report Page 31, paragraph 78.

² Report pages 10-11.

exceeding Rs. 20,000 in value. The Rules of the Bombay High Court go a step further and provide for quantification of costs in various kinds of suits and proceedings instead of costs being calculated on items of work done by the attorney. Similarly, in the taxation of costs between party and party, the costs of attendance of Counsel in all matters where attorneys have a right of audience are not allowed unless the Judge certifies that it was a fit case for employment of Counsel. Rule 89 of Chapter VI of the Bombay High Court, Original Side Rules contains a long list of matters disposed of by a chamber judge in which attorneys can be heard and costs of Counsel in attendance are not allowed as between party and party. In Madras, with the levy of uniform *ad valorem* court fees in the High Court as well as in the city civil court and the non-existence of the dual system, it makes little difference to the litigant in the matter of costs whether the suit is dealt with in the city civil court or on the original side of the High Court.

15. We are not, therefore, inclined to accept the view that the abolition of the original side is justified on the ground of excessive costs. As a matter of fact, with the establishment of the city civil courts in Bombay and Madras, matter involving Rs. 25,000 and Rs. 50,000 or less have been taken away from the original side of the High Courts. As we have stated earlier, whether the creation of such courts has conferred any benefit upon the litigant or not is a matter on which there is a considerable difference of opinion. But as the All India Bar Committee has pointed out, the point to be noted is that the cases that now remain in the Bombay High Court and also in the Madras High Court are of a very substantial value and the parties to these suits can well afford to pay for the efficient service they prefer to have.

16. As stated earlier, the difficulty of archaic procedural rules and the resulting delay in the costs was brought to our notice in regard to the original side of the Calcutta High Court. That is not a matter of fundamental importance. The High Court at Calcutta can take steps to revise its rules so that the clumsy and dilatory procedures may be removed as has been done in Madras and Bombay. We are, therefore, of the opinion that the original side of the Calcutta, Bombay and Madras High Courts should not be abolished but should be retained.

17. We have incidentally referred to the city civil courts in the three presidency towns while dealing with the original civil jurisdiction of the High Courts. We are satisfied that for the disposal of cases not exceeding Rs. 10,000 in value, a court of this type is desirable and necessary. Whatever be the criticism against such courts, their creation is now a fact accomplished and it will be a retrograde step to abolish them altogether. There is, however, a strong

current of opinion against the sudden increase in the jurisdiction of the city civil courts in recent years—from Rs. 10,000 to Rs. 25,000 in Bombay and to Rs. 50,000 in Madras. In Calcutta, the court has come into existence only since February 1957 with a very limited jurisdiction and it is too early to judge the results of its working. We shall, however, examine the working of these courts in Madras and Bombay since the increase in their jurisdiction.

In Madras.

18. In Madras, it was strongly pressed upon us that the increase in the city civil court's jurisdiction had not resulted either in the reduction of costs to the litigant or in the quicker disposal of suits; that on the contrary, while costs had not been reduced, long delays had occurred in the disposal of cases in that court. It was said that the only benefit which the court had conferred was upon the State by enabling it to effect a saving in the remuneration of the judiciary. So far as costs are concerned, court fees at uniform *ad valorem* rates are now payable in the High Court as well as in the city civil court. The dual system which in Calcutta and Bombay is held responsible for the alleged higher costs on the original side does not prevail in Madras. With the sudden increase in the jurisdiction of the city civil court from Rs. 10,000 to Rs. 50,000, the bulk of the original side work was taken away from the High Court and transferred to the city civil court with the result that the lawyers who were till then practising exclusively on the original side had moved to the latter. This they could do with ease because in Madras (as in Bombay) the city civil court is located in the premises of the High Court itself. Even so, as described to us by a senior advocate on the original side, not only were there long delays and unmethodical work in the city civil court but the progress even of the work in respect of which the High Court still retained its original jurisdiction had considerably slowed down. When the jurisdiction of the city civil court was Rs. 10,000, it was presided over by one or two judges; but their number was increased to about eight judges when the jurisdiction was raised to Rs. 50,000. What happens on any day before a judge of the City Civil Court has thus been described to us:

"There is a huge pile of papers there and about 35 or 40 suits are posted for final disposal. They are all called on, and sometimes the learned Judge gives a fresh date and adjourns about 20 of them. Then he keeps 9 or 10 of them in the hope that he will be able to finish them off in the day but at about 4 or 5 o'clock he finds that he could not finish them and (the parties in) those which are not finished are relieved and asked to come again and invariably it happens in each court that there will be four, five or even six part-heard cases every day."

19. As regards the original side of the High Court, a senior practitioner explained that as, in addition to the original suits above Rs. 50,000, the High Court has to deal with matters arising under the Banking Companies Act, the Insolvency Act, guardianship matters, liquidation matters and the like, the lawyers practising on the original side have to keep moving between that court and the city civil court. It was said that "the very object of attempting to save the time of the High Court has been defeated." The Bar, we were told, had made a representation to Government against the sudden increase in the city civil court's jurisdiction but Government's reply was not encouraging. The Bar was told that it was more a matter of sentiment than anything else and that the view of the Government was that litigants in Madras should not have the privilege of having their cases decided by the High Court, which the mofussal litigants did not have.

20. In Bombay, the principal judge of the City Civil Court placed before us some elaborately worked-out statistics to show that the delays in his court were due mainly to the insufficient number of Judges. The contrary view was, however, expressed by representatives of the original side Bar who pressed for a restoration of the High Court's original jurisdiction in matters exceeding Rs. 10,000 in value. The court started in 1948 with four judges. The number was increased to six in 1951 after the jurisdiction was raised to Rs. 25,000 and from 1955 onwards nine judges are working in that court. In spite of this increase, according to the evidence of the principal judge, heavy arrears had accumulated at the end of 1956. The principal judge did not state that the delay was due to the original side procedure which is followed in the city civil court. On the contrary, his view was that that procedure led to expedition. His main complaint, however, was that although there had been a sudden rise in the number of institutions since 1951, there had been no corresponding increase in the number of judges. The principal judge gave us figures which are furnished in the accompanying Table (Table I) showing the average disposal of ordinary civil suits per day. However, the accompanying comparative Table (Table II) seems to indicate that shortage of judges may not be the only reason for the delay in the city civil court. The proportion of uncontested and contested cases to the total number of suits disposed of in the city civil court and in the High Court must be specially noted. Normally, only three judges sit on the original side to dispose of not only all ordinary civil suits but all other proceedings arising on the original side including company matters, land acquisition references and testamentary and matrimonial suits. The suits in the High Court which would be of more than Rs. 25,000 in value are likely to be more strenuously contested. A comparison of the two

In Bombay.

TABLE I

Table showing the average disposal of suits per day in the city civil court

Serial No.	Year	Suits instituted inclusive of transferred suits from the High Court	Suits disposed of	Total number of working days	Number of working days per year on Civil Side	Average of Judges sitting	Average disposal per day
1	2	3	4	5	6	7	8
1	1948	902	166	62	56	1.2	3
2	1949	2325	1274	282	204	1.4	4
3	1950	2400	1664	317	216	1.5	5
4	1951	3300	2385	609	190	3.2	4
5	1952	3558	2917	578	192	3.0	5
6	1953	2603	2516	492	196	2.5	5
7	1954	3000	2397	584	196	3.0	4
8	1955	3184	3242	363	193	4.5	4
9	1956	2940	3090	805	193	4.2	4
10	1957 ending June	1552	1448	393	88	4.5	4
		25764	21099				

NOTE.—This Table does not include the average disposal per day in respect of matters under Arbitration Act, Public Trust Act, Displaced Persons (Debts Adjustment) Act, etc. and the matters required to be disposed by a Judge sitting in chambers under the rules of the Bombay City Civil Court.

TABLE II

Comparative Table showing the institution, disposal and pendency of original suits in the City Civil Court, Bombay and the High Court, Bombay (in exercise of its ordinary original civil jurisdiction) during the years 1953, 1954 and 1955

Court	Pending at the beginning of the year			Total for disposal			Disposed			of			Pending at the close of the year			Pending over a year					
	1953	1954	1955	1953	1954	1955	Without contest	1953	1954	1955	After contest	1953	1954	1955	Otherwise	1953	1954	1955	1953	1954	1955
City Civil Court	4268	4386	5041	6902	7438	8291	2405	2168	2918	95	193	266	16	29	58	4386	5048	5049	2744	3112	2946
High Court	2369	2520	2349	3918	3902	2910	9421	1075	571	456	478	492	..	..	..	2520	2349	1847	1584	1573	1583

Tables will show, however, that the increase in the jurisdiction of the city civil court has not led to quicker disposal of cases but has, on the contrary, caused greater delays. Although the city civil court follows the original side procedure, the dual system is not compulsory in that court. The principal judge explained to us that only about thirty per cent of the work in the city civil court was done by the members of the original side Bar. Thirty per cent of the work was attended to by practitioners who had migrated from the small cause court and another thirty per cent by practitioners who were displaced persons. He also admitted that judges of the city civil court experienced difficulty in controlling counsel with the same degree of firmness as the High Court and that if the evidence or the arguments were sought to be restricted, criticisms were levelled against the judges that they tried to brow-beat the witnesses or that they wanted a compromise of the case. Whatever be the reasons, from the evidence available to us, we are led to the conclusion that the increase in the jurisdiction of the city civil court from Rs. 10,000 to Rs. 25,000 has not resulted in either the cheapening of litigation or in quicker disposal.

Recommendation. 21. We are of the view that the High Court's jurisdiction should be restored in all cases exceeding Rs. 10,000 in value. The number of such cases between Rs. 10,000 and Rs. 25,000 is not very large as will be seen from the following Table.

In Bombay. Table showing the number of suits instituted in the City Civil Court, Bombay, valued between Rs. 10,000 and Rs. 25,000 and the number of such suits pending disposal as on the 1st February 1957.

Year	Instituted	Suits pending as on 1st February, 1957
1950	46	Nil
1951	541	20
1952	493	15
1953	461	79
1954	514	179
1955	504	205
1956	464	250
	3023	748

In Calcutta. 22. Although the city civil court has been functioning in Calcutta since February 1957, its jurisdiction is very much lower than in Madras and in Bombay, being only upto five thousand rupees in commercial causes. It is true that opinion of commercial institutions in Bengal to which we have already referred was insistent on their liti-

Raising jurisdiction of city civil court.

gation being dealt with exclusively by the High Court. It was this insistence which led the West Bengal Judicial Reforms Committee to recommend that the city civil court's jurisdiction in commercial cases should not exceed five thousand rupees. We have, however, in another place, examined the extraordinary conditions that prevail on the original side of the High Court in Calcutta notwithstanding the increase in the strength of that court from time to time. Year by year, till 1956, the number of institutions has been considerably in excess of the number of disposals with the result that in 1953, the number of one-year old suits pending on the original side of the Calcutta High Court was over nine thousand. In view of this state of affairs, we think it is imperative that that court should be relieved even of commercial suits upto the value of ten thousand rupees. This measure may also be supported on the ground that having regard to the fall in the value of money, stakes in suits upto the amount of ten thousand rupees in the presidency towns cannot be said to be large. The small cause courts in Calcutta and Bombay have jurisdiction extending upto two and three thousand rupees. We would, therefore, recommend that the city civil court, Calcutta, be also invested with jurisdiction to deal with suits of value not exceeding Rs. 10,000 including suits on mortgage.

We further recommend that suits not exceeding that value at present pending in the High Court be transferred to the city civil court for disposal by an appropriate legislative measure. When the City Civil Court Act was passed in Bengal in 1953, provision was made in it prohibiting transfer to that court of pending litigation in the High Court within the limits of the jurisdiction conferred on the city civil court. This was rather unfortunate. The evidence before us disclosed that the Act which was passed in 1953 had come into force only early in 1957. We have been informed that the court had to carry on only with new institutions and that some of the judges of that court were without work. The transfer of cases pending in the High Court, which we have recommended, will appreciably relieve congestion in the High Court and find work for the judges of the city civil court.

Transfer of pending suits to that court.

23. Our recommendations can be summarised as follows:—

Summary of recommendations.

(1) The High Courts of Calcutta, Madras and Bombay should continue to exercise their ordinary original civil jurisdiction.

(2) Such jurisdiction should extend to all matters exceeding Rs. 10,000 in value.

(3) The jurisdiction of the city civil courts in Madras and Bombay should be reduced to Rs. 10,000.

(4) The restrictions upon the jurisdiction of the Calcutta City Civil Court as to commercial causes and mortgage suits should be abolished and that court should be empowered to try cases of all types upto a value not exceeding Rs. 10,000.

(5) All cases pending on the original side of the Calcutta High Court falling within the jurisdiction of the city civil court should be transferred to the latter.

8—ADEQUACY OF JUDICIAL STRENGTH

1. Laws' delays are proverbial and perhaps, as old as law itself. One reads of them in Herodotus. Complaints about them are at present being loudly voiced in Europe and America.

Laws, delays. An ancient complaint.

2. In an organized society, it is in the interest of the citizens as well as the State that the disputes which go to the law courts for adjudication, should be decided within a reasonable time, so as to give certainty and definiteness to rights and obligations. If the course of a trial is inordinately long, the chances of miscarriage of justice and the expenses of litigation increase alike. Delays result in witnesses being unable to testify correctly to events which may have faded in their memory, and sometimes in their being won over by the opponent. Relief granted to an aggrieved party after a lapse of years loses much of its value and sometimes becomes totally infructuous. Such is the basis of the ubiquity of the comment "Justice delayed is justice denied".

Importance of speedy disposal of cases.

But speedy justice does not mean a hasty or even a summary dispensation of justice by persons not qualified to administer it. What has to be ensured is that the determination of facts in controversy and the application to the facts so determined of the appropriate legal principles should not be unduly delayed. Applying these standards, there is great scope for improvement in the working of our judicial machinery.

3. It is inevitable that the preparation of a case, before it is finally heard by the court, should take some time. Our system of trials, as in England and in U.S.A., contemplates a full discovery of facts before the trial. Therefore, a large number of preliminary steps, like the service of process which brings the contending parties together, the filing of written statements, inspection, interrogatories, the giving of further particulars, the filing of documents which are designed to ensure a full discovery of facts and preventing surprise, the framing of issues so that the matters for the determination of the court may be crystallised, have all to be gone through before a case becomes ripe for hearing and can be put on the list of "ready cases" for trial. These steps are essential to an orderly search for truth. These stages in the career of a suit necessarily mean time. When the suit is ready for hearing, time has to be given to the parties to produce their evidence so as to enable the court to investigate fully into their rights and liabilities.

Time necessarily spent on preliminary steps.

Time lag
inevitable.

4. The final adjudication of the dispute must, therefore, involve a certain lapse of time from the date of its being brought before the court. The time so taken will depend on several factors, such as, the nature of the suit, the number of parties and witnesses, the competence of the presiding officers and so forth. We must not forget that however similar the facts of two cases may be, every case is entitled to individual attention for its satisfactory disposal and any "mass production" methods or "assembly line techniques" in the disposal of cases would be utterly incompatible with a sound administration of justice. Nevertheless, taking into account the normal time required for its various stages, a proceeding should be capable of being disposed of in a given length of time. Broadly speaking, therefore, we think, it should be possible to lay down limits of time within which judicial proceedings of various classes should, if our system of administration of justice is to function with efficiency, be normally brought to a conclusion in the courts in which they are instituted.

Possible to
lay down
time limits.

Time limits
in civil
cases.

5. Having regard to the general course of judicial work in civil courts, normally, a regular contested suit in a munsif's court should be disposed of within a year and in a subordinate judge's court within one year and a half; small cause suits should be disposed of within three months, regular contested appeals in district courts within six months and miscellaneous civil appeals in such courts, within three months.

In criminal
cases.

6. We are of the view, that criminal cases in magisterial courts should be disposed of within two months and committal proceedings within six weeks from the date of the apprehension of the accused. Sessions cases should be disposed of within three months from the date of the apprehension of the accused. Criminal appeals and revisions should be disposed of within two months in the court of session and within six months in the High Court from the date of their institution.

Standards
arbitrary.

7. No doubt there is some degree of arbitrariness about the standards we suggest but, in the nature of things, that cannot be avoided. It may, however, be stated that the standards laid down by us are in a way based on actual experience as these standards have been achieved in some of the States.

Figures of
average
duration.

8. We give below a comparative Table showing the average duration of various kinds of contested matters in different classes of courts in the various States in India, during the years 1953 to 1955. We have not received the administration reports for the year 1955 from all the States, but wherever possible, we have made use of the figures made available to us.

Table showing average duration in days of contested suits and contested civil appeals in the courts of munsifs, subordinate judges and district judges in the various States for the years 1953-55

Name of the State	Full trial cases in munsifs' courts			Full trial cases in courts of Subordinate Judges			Full trial cases in District Judges courts			Contested appeals before Sub-judges			Contested appeals before District Judges		
	1953	1954	1955	1953	1954	1955	1953	1954	1955	1953	1954	1955	1953	1954	1955
I	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Andhra	O.S-392 S.C-139	O.S-365 S.C-131	O.S-391 S.C-147	O.S-578 S.C-138	O.S-620 S.C-227	O.S-523 S.C-213	463	386	500	211	244	279	410	424	315
Assam	O.S-858 S.C-333	O.S-490 S.C-215	.. ..	O.S-739	O.S-370	..	..	126	..	381	537	..	582	310	..
Bihar	O.S-498 S.C-182	O.S-504 S.C-189	.. ..	O.S-713 S.C-222	O.S-763 S.C-211	.. ..	877	1114	..	277	349	..	534	658	..
Bombay (a)	O.S-662 S.C-254	O.S-559 S.C-253	O.S-448 S.C-254	..	..	..	422	386	436	..	..	..	436	518	446
Kerala (Travancore- Cochin)	O.S-856 S.C-191	O.S-747 S.C-173	O.S-731 S.C-251	..	..	O.S-801 S.C-70	1064	1039	1048	..	..	467	291	339	329
Madras	O.S-421 S.C-139	O.S-491 S.C-137	O.S-721 S.C-187	O.S-601 S.C-176	O.S-725 S.C-178	703 312	345	437	460	245	394	381	340	651	391
Madhya Pradesh	O.S-321 S.C-234	O.S-336 S.C-243	.. ..	406	522	..	562	588	..	..	..	..	251	249	..
Orissa	O.S-489 S.C-170	O.S-561 S.C-232	O.S-597 S.C-252	O.S-566 S.C-306	O.S-678 S.C-377	O.S-754 S.C-359	869	816	779	469	581	645	612	628	656

(a) In Bombay, the figures of average duration of full trial cases relate to both the courts of civil judges, senior division and civil judges, junior division.

I	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Punjab				O.S-285 S.C-86	O.S-238 S.C-82	O.S-224 S.C-85	301	195	252	144	131	136		281	214
Uttar Pradesh	O.S-477 S.C-154	O.S-565 S.C-160	O.S-537 S.C-154	O.S-502	O.S-541	O.S-618	417	552	708	277	305	369	303	308	295
West Bengal	O.S-416 S.C-177	O.S-423 S.C-178	O.S-399 S.C-175	O.S-530 S.C-193	O.S-630 S.C-189	O.S-699 S.C-272	438	483	306	184	154	207	146	200	261

NOTE.—The figures given in this Table have been taken from the reports on the administration of justice published by the High Courts of the various States.

It will be noticed that the figures of average duration vary in different States and during different years even in the same State. Taking, for example, regular contested suits in munsif's courts, the average duration in Andhra Pradesh is about one year, in West Bengal about fourteen months, in Madras fourteen months to two years, in Uttar Pradesh fifteen to eighteen months, in Orissa sixteen to twenty months, in Bombay about fifteen to twenty-two months and in Madhya Pradesh ten to eleven months. The average duration of a contested case in subordinate judges' courts is higher, because cases of higher value which are often complicated are usually tried in these courts. Thus, in Andhra Pradesh the average duration of regular contested suits in subordinate judges' courts ranges from seventeen to twenty months, in Madhya Pradesh fourteen to seventeen months, in Uttar Pradesh about seventeen to twenty months, in West Bengal eighteen to twenty-three months, in Madras about twenty to twenty-four months and in Bihar about twenty-four to twenty-five months. As regards the small cause matters, the average duration ranges from four to six months in Madras, four to seven months in Andhra Pradesh, six to seven months in Bihar, six to eight months in Kerala, six to nine months in West Bengal, four to eleven months in Assam, eight to nine months in Bombay and six to twelve months in Orissa. The average duration of regular civil contested appeals before district judges ranges from five to nine months in West Bengal, between ten to fifteen months in Andhra, between eleven to twenty-two months in Madras and seventeen to twenty-two months in Bihar. It is about ten months in Uttar Pradesh and about eight months in Madhya Pradesh. The average duration of such appeals in the courts of subordinate judges is somewhat lower than in the district judges' courts.

9. The figures relating to average duration do not, however, necessarily give a correct picture of the state of affairs in these States. If comparatively lighter suits are disposed of and heavier suits are allowed to remain pending, the figures of average duration may be relatively low. Again, if recently instituted suits are taken up in preference to older ones, the average duration will be lower. It is not uncommon on the part of the judicial officers to give preference to lighter suits neglecting the more difficult ones, in order to satisfy the standards of minimum disposal of work prescribed by some High Courts. This will be evident from the Table relating to the age of pendency of regular suits in the subordinate courts in various States.¹

A misleading test.

The test of average duration is still more misleading in criminal matters as, in the calculation of it, there always enter a large number of disposals of petty matters which take very little time, being disposed of at the first hearing on a plea of guilty.

¹ Chapter on Delays.

It will be noticed that in civil matters the standards that we have indicated are not difficult of fulfilment and, indeed, largely our courts are not very far from these standards.

We also give below a Table showing the average duration in days of criminal cases in various classes of courts in the different States during the years 1953—1955. A scrutiny of this statement reveals, that barring a few States, the time limits suggested by us for the disposal of criminal cases also are not difficult of achievement.

Table showing average duration in days of cases in various classes of courts during the years 1953-55

State	Courts of Magistrates			Courts of Session			Remarks
	1953	1954	1955	1953	1954	1955	
Andhra							
Sub-Divisional Magistrates . .	23·5	23	22	12	78		
Sub-Magistrates . .	12·0	9	9				(b) I.P.C. 82·3 Spl. laws, 28·9
Bihar . .	51·6(b)	55·8(c)	N.A.	139·9	124·9	N.A.	(c) I.P.C. 82·4 Spl. and local laws 35·01
Hyderabad . .	33·8	36·14	34·17	44·9	40·71	40·6	
Kerala (Travancore-Cochin) . .	N.A.	N.A.	N.A.	51	82(a)	65(a)	(a) From the date of receipt of records in the court of Session.
Madhya Pradesh . .	44·4	48·2	N.A.	79·9	83·6	N.A.	
Madras							
Sub-Divisional Magistrates	29	19	19	79	76	66	
Sub-Magistrates]	12	8	6				(d) In stipendiary magistrate's court 33·8 In district magistrate's court 27·2
Mysore . .	(d)	(e)	(f)	85·9	70·3	75·6	(e) In stipendiary magistrate's court 35·9 In district magistrate's court 27·6
Orissa . .	29·1	31·1(g)	32·0(h)	139·9	155·8	138·3	(f) In stipendiary magistrate's court 33·7 In district magistrate's court 26·3
Punjab . .	21	11	15	97	74	58	
Uttar Pradesh . .	23	22	22	134	120	149	(g) I.P.C. 50·7 Spl. and local laws 15·7 (h) I.P.C. 49·9 Spl. and local laws 17·3

NOTE.—The figures given in this Table have been taken from the reports on the administration of justice published by the High Courts of the respective States.

What are
arrears.

10. Having suggested the standard time limits within which various classes of judicial proceedings should be concluded in the courts of the first instance, we may proceed to define what should be regarded as "arrears". We think that all matters which have not been disposed of within the time limits prescribed should be treated as "arrears". Thus, more than one year old suits in munsifs' courts, more than one and a half year old suits in subordinate judges' courts, small cause suits more than three months' old, civil appeals more than six months' old and miscellaneous appeals more than three months old, should be deemed to be "arrears".

Unfortunately, it appears that that is not the attitude of some of the High Courts. In Bihar, a subordinate judicial officer is not required to explain the delay in the disposal of a pending suit unless it is three years' old; and, in parts of Kerala, a suit is not considered an "old suit" until its duration is five years. Such an attitude is clearly opposed to the sound administration of justice and needs to be corrected.

We set out below Tables showing separately the volume of work in the courts of munsifs, subordinate judges and district judges in the various States during the year 1956. Unfortunately, there are some discrepancies in the figures supplied to us. Besides, it has not been possible for the States to give us figures of more than three months' old small cause suits, more than six months' old civil appeals and some other figures so as to enable us to estimate with accuracy the volume of arrears in our courts in the light of what we have defined to be "arrears". But, we have been able to get figures of various classes of proceedings that are more than one year old, a scrutiny of which should give a fairly accurate idea of the magnitude of arrears in our courts. A comparison of the number of pending proceedings over a year old with those below one year gives us an idea of the volume of "arrears". The greater the number of proceedings more than a year old, the larger the volume of arrears. One has also to have regard in this connection to the total number of pending proceedings.

Comparative Table showing the institution, disposal and pendency of certain categories of civil proceedings in the courts of munsifs or officers of corresponding cadre in the various States for the year 1956.

Name of the State	No. of Officers	Civil Suits					Small Cause Suits				
		Pending at the beginning of the year	Institution	Disposals	Balance		Pending at the beginning of the year	Institution	Disposals	Balance	
					Below one year	Above one year				Below one year	Above one year
1	2	3	4	5	6	7	8	9	10	11	12
Andhra	57	19084	23100	23123	12381	8294	7894	38643	38640	7543	354
Assam	16	6264	9813	9983	4815	1136	..	..	..	..	..
Bihar	116	46620	71945	83796	28639	7240	4987	12137	12696	5256	90
Bombay	N.A.										
Madhya Pradesh	152	18141	28807	28322	13320	5306	634	2420	2466	555	33
Madras	72	20497	34602	37067	16087	3748	24948	76364	87482	13775	447
Mysore (A)		8438	19187	19802	7406	467	849	4354	4388	812	3
Orissa	37	8957	7828	8412	5050	3940	1096	2863	3026	948	50
Punjab	N.A.										
Rajasthan	62	12551	25299	24132	10625	3093	647	2161	2274	513	21
Travancore-Cochin (Kerala) (B)	53	31227	27721	28535	9359	21054	3361	11477	11224	3182	432
Uttar Pradesh	140	126800	139602	146988	59191	60223	6111	16076	17806	2720	1658
West Bengal	87	53664	106899	113151	33709	17840	3706	10007	9996	3396	470

NOTE.—The figures given in this Table have been furnished to us by the High Courts of the respective States.

Comparative Table showing the institution, disposal and pendency of certain categories of civil proceedings in the courts of munsifs or officers of corresponding cadre in the various States for the year 1956—contd.

Miscellaneous Civil Cases and Petitions

Name of the State	Pending at the beginning of the year	Institution	Disposals	Balance		Remarks
				Below one year	Above one year	
1	13	14	15	16	17	18
Andhra	22075	166605	167433	18975	2272	
Assam]	876	2022	1988	836	73	
Bihar	6827	25386	17067	6006	110	
Bombay	N.A.					
Madhya Pradesh	6519	14788	14959	5263	1085	
Madras	10537	326014	296872	37854	1825	
Mysore (A)]	1502	3944	3879	1515	52	(A) The figures shown against the State relate to the official year 1955-56.
Orissa	1442	5306	5169	2380	472	
Punjab						
Rajasthan	1956	4640	4381	1842	373	
Travancore-Cochin (Kerala) (B) .	12515	567518	567402	11764	867	(B) Do.
Uttar Pradesh	16165	39072	42280	11779	1178	
West Bengal	8769	17832	17458	7787	1726	

NOTE.—The figures given in this Table have been furnished by the High Courts of the respective States.

Comparative Table showing the institution, disposal and pendency of certain categories of civil proceedings in the courts of subordinate judges or officers of corresponding cadre in the various States in the year 1956

Name of the State	Civil Suits						Small Cause Suits					Miscellaneous Civil Cases & Petitions				
	No. of Off-ccrs	Pending at the beginning of the year	Insti-tution	Disposals		Balance	Pending at the beginning of the year	Insti-tution	Disposals		Balance	Pending at the beginning of the year	Insti-tution	Disposals		Balance
				Below one year	Above one year				Below one year	Above one year				Below one year	Above one year	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Andhra Pradesh	38	3302	2287	2491	1548	1640	2508	8534	8170	2669	223	11145	54109	53364	10293	1597
Assam	8	1435	718	708	584	644	..	..	..	..	..	283	498	463	186	22
Bihar	37	4560	269	3345	2048	1915	1887	4120	4145	1754	137	1409	3423	3306	1093	170
Bombay																
Madhya Pradesh	152	18141	28807	28322	13320	5306	634	2420	2466	555	33	6519	14788	14959	5263	1085
Madras	30	2907	1815	2200	1206	1101	2345	5963	6585	1683	121	8654	53686	54424	6294	1622
Mysore (A)		780	804	849	543	192	1148	5360	5181	1317	10	719	1636	1587	678	90
Orissa	14	1227	590	1034	447	542	770	1572	1553	665	37	560	1406	1427	580	243
Punjab																
Rajasthan	33	7330	8655	8077	4573	3335	3961	7713	7966	2878	830	1279	2354	2345	950	337
Travan-coche-Cochin (Kerala) (B)	6	377	1077	813	336	265	22	170	170	21	1	93	10459	10177	298	77
Uttar Pradesh	120	5779	5427	6254	2016	2936	4780	15018	14873	4234	691	3893	9726	9992	1858	769
West Bengal	36	6723	3224	3291	2781	4496	1307	2909	2465	1786	189	1499	3926	3591	1614	278

NOTE.—The figures given in this Table have been furnished by the High Courts of the respective States.

Comparative Table showing the institution, disposal and pendency of certain categories of civil proceedings in the courts of munsifs or officers of corresponding cadre in the various States for the year 1956

Name of the State	Civil Appeals					Civil Miscellaneous Appeals					Remarks
	Pending at the beginning of the year	Insti-tution	Dispo-sals	Balance		Pending at the beginning of the year	Insti-tution	Dispo-sals	Balance		
				Below one year	Above one year				Below one year	Above one year	
*1	18	19	20	21	22	23	24	25	26	27	28
Andhra Pradesh	2257	1953	2062	1822	526	1025	N.A.	695	291	39	
Assam	713	727	282	613	319	100	231	152	105	3	
Bihar	1757	916	3330	1003	1071	124	214	646	149	10	
Bombay	..	..	..	..	..	..	..	..	..	..
Madhya Pradesh	..	..	..	..	..	..	..	..	..	..
Madras	1635	956	2209	1461	454	249	616	652	250	37	
Mysore (A)	1401	1795	1591	1390	215	125	263	273	114	1	(A) The figures shown against the State relate to the official year 1955-56.
Orissa	435	455	657	194	165	39	64	69	38	2	
Punjab	..	..	..	..	..	..	..	..	..	..
Rajasthan	257	497	606	86	62	74	103	144	25	8	
Travancore-Cochin (Kerala)(B)	..	1499	760	265	474	..	..	46	4	4	(B) Do.
Uttar Pradesh	12172	16758	15331	6367	7232	1071	1792	1781	731	351	
West Bengal	2429	175	2766	962	1673	332	79	1739	428	99	

NOTE.—The figures given in this Table have been furnished by the High Courts of the respective States.

Table showing the different classes of civil proceedings instituted, disposed of and pending in the courts of the district Judges in the various States in the year 1956

Name of the State	No. of Officers	Civil Suits					Miscellaneous Civil Cases and Petitions					Remarks
		Pending at the beginning of the year	Insti-tution	Dispo-sals	Balance		Pending at the beginning of the year	Insti-tution	Dispo-sals	Balance		
					Below one year	Above one year				Below one year	Above one year	
Andhra Pradesh	33	720	756	636	562	278	3397	13595	13183	3477	332	
Assam	7	31	37	25	24	11	143	284	159	210	1	
Bihar	14	87	91	52	63	56	1865	2875	2548	1619	499	
Bombay												
Madhya Pradesh	37(A)	816	638	541	315	598	1923	3222	3509	1036	600	(A) Includes Add. Dt. Judges.
Madras	15	146	144	132	99	47	1499	10896	11094	1218	83	
Mysore (x)		394	232	169	198	259	394	729	664	350	107	
Orissa	10	56	67	36	50	10	331	480	392	203	185	
Punjab												
Rajasthan	16	308	135	127	95	221	597	1308	1218	507	180	
Travancore-Cochin (Kerala) (y)	22(B)	5042	2004	2333	1221	3492	7785	114609	114421	7563	410	(B) Includes Add. Dt. Judges.
Uttar Pradesh	39	359	974	807	836	190	1886	6827	6620	1695	398	
West Bengal	30	312	643	245	447	136	4160	6077	4246	4128	1839	

NOTE.—The figures given in this Table have been furnished by the High Courts of the respective States.

Table showing the different classes of civil proceedings instituted, disposed of and pending in the courts of the district judges in the various States in the Year 1956

Name of the State	Civil Appeals					Civil Miscellaneous Appeals					Remarks
	Pending at the beginning of the year	Insti-tution	Dispo-sals	Balance		Pending at the beginning of the year	Insti-tution	Dispo-sals	Balance		
				Below one year	Above one year				Below one year	Above one year	
Andhra Pradesh	1912	3596	3245	1889	374	952	N.A.	568	381	3	(x) For the official year 1955-56. In Addition to D. Js. of Mysore tried small cause suits the details of which are given below :
Assam	304	263	214	160	127	55	121	102	68	3	
Bihar	3533	4178	2009	2455	534	680	1489	967	640	55	
Bombay											
Madhya Pradesh	4979	4059	3682	2708	2648	944	1286	1229	707	294	
Madras	1799	2979	1909	1393	166	186	518	398	226	13	
Mysore (x)	457	213	156	391	123	58	126	102	81	1	
Orissa	1106	906	823	662	469	175	413	324	238	24	
Punjab											
Rajasthan	1634	2729	2487	1477	449	415	805	748	372	100	
Travancore Cochin (Kerala)(y)	7661	5286	6856	3192	2899	979		1143	681	271	
Uttar Pradesh	11683	15300	13660	8862	4461	1474	3118	2736	1486	370	
West Bengal	3218	4242	1006	2912	1002	1238	4987	1106	3117	182	

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Note.—The figures given in this Table have been furnished by the High Courts of the respective States.

Comparative Table showing the institution, disposal and pendency of various categories of criminal proceedings in the Courts of Session in the various States in the year 1956.

Name of the State	No. of Officers	Sessions Cases				Criminal Appeals				Criminal Revisions						
		Pen- ding at the beginning of the year	Insti- tution	Dis- posals	Balance		Pend- ing at the beginning of the year	Insti- tution	Dis- posals	Balance		Pend- ing at the beginning of the year	Insti- tution	Dis- posals	Balance	
					Below one year	Above one year				Below one year	Above one year				Below one year	Above one year
Assam	13	235	490	506	214	6	378	1079	1000	451	..	127	324	335	110	
Bihar	85	658	1702	1725	622	13	1592	5481	5454	1552	67	Not shown	2719	3434	1066	1 ²
Bombay																
Travancore- Cochin (Kerala)	22	73	439	370	142	..	97	462	402	157	..	174	141	99	..	..
Madhya Pradesh	79	561	1412	1322	622	29	1357	5512	5289	1359	224	1241	3495	3355	1238	143
Madras	34	231	1499	1556	—215	—(G)	228	6413	4061	—236	—(G)	N.A.	228	232	—21	—(G)
Mysore	10	33	171	158	46	..	184	634	624	194	..	47	119	111	55	
Orissa	19	168	428	401	190	5	246	1514	1165	588	7	47	279	229	27	
Punjab																
Rajasthan	37	363	1207	1110	435	25	513	2645	2563	580	15	389	2691	1520	436	24
Uttar Pradesh	169	3584	8919	8250	3593	660	8450	23845	22970	7965	1360	1909	4994	5053	1591	259
West Bengal	59	149	969	918	196	4	477	4954	1763	546			1541	1405	236	

NOTE.—The figures given in this Table have been furnished to us by the High Courts of the respective States.

(E) Includes Cases pending for over one year.

(F) Includes cases pending at the beginning of the year.

(G) We have been informed that in Madras no Criminal proceeding of any category would be pending for over a year. The discrepancy in the figures relating to Sessions Cases cannot be explained. The discrepancy in the figures relating to criminal appeals is due to the fact that the disposals by transfer to the Courts of Magistrates have not been taken into consideration.

Courts of
munsifs &
subordinate
judges.
Adequacy of
strength.

11. Taking the courts of munsifs first, it will be noticed, that in all the States, except in Madhya Pradesh and Rajasthan, the judicial officers have been able to keep pace with the current institution of regular suits. In some of the States, the disposal has substantially exceeded institutions. As regards the small cause suits, except in Andhra Pradesh—where it fell short by three suits which may be ignored—Kerala and West Bengal, the Disposals have kept pace with the institutions. Taking next the subordinate judges' courts, it would appear that in so far as regular suits are concerned, except in Assam, Kerala, Madhya Pradesh and Rajasthan, these courts have also been able to keep pace with current institutions. Likewise, in small cause suits also, except in Andhra Pradesh, Mysore, Orissa, Uttar Pradesh and West Bengal, these courts have, on the whole, been able to cope with institutions. These facts tend to show, that except in a few States, the existing strength of munsifs and subordinate judges, seems to be, on the whole, adequate to cope with the current file. We have dealt with this aspect of the matter in greater detail in our chapters dealing with individual States.

Old suits
in munsifs'
courts.

12. The real problem requiring attention is the large volume of the pending old suits in the States, which seem to be the accumulations of the last many years. Taking the munsifs' courts first, of the total number of pending suits, the percentage of more than one year old suits is seventy in Kerala, over fifty in Uttar Pradesh, forty-seven in Orissa and thirty-five in West Bengal. Similarly, the percentage of old suits in the courts of subordinate judges is sixty-two in West Bengal, sixty in Orissa, fifty-nine in U.P., fifty in Madras, fifty in Andhra, forty-four in Kerala, forty-two in Rajasthan. Elsewhere, we have also shown the age of pending regular suits as on the first January, 1955, in subordinate courts in the various States, which reveals that quite a large number of suits has been pending for many years. Thus, though the present strength of judicial officers might, broadly speaking, be said to be adequate to deal with the current file, intensive efforts are necessary to rid the files of the incubus of these old suits, which has assumed alarming proportions in several States.

In sub-
ordinate
judges'
courts.

Strength
adequate
to cope with
institutions
but not
arrears.

13. The magnitude of the problem will appear in a truer light when we remember that, generally, out of the total disposal, only about twenty to twenty-five per cent of the suits are disposed of after full trial. The rest of the suits are disposed of without contest, and include cases summarily dismissed under Order IX of Civil Procedure Code or otherwise, suits decided *ex-parte* or on admission of the claim and suits compromised after the defendant has entered an appearance. The major part of the courts' time is naturally taken by the disposal of contested cases. We have not been able to obtain detailed figures showing

the disposal of cases after full trial in various States during the year 1956. But we may broadly take the proportion of contested cases to be a fourth of the total number of cases disposed of. Elsewhere, we have noted, that the uncontested suits are normally disposed of within one year. We can, therefore, rightly infer that the large number of suits pending over one year consists mainly of contested suits. Bearing in mind the rate at which judicial officers were able to dispose of contested cases during the year 1956, we have tried to calculate in the accompanying Tables the number of years that will be needed to dispose of the pending old suits in the various States, if the entire subordinate judiciary devoted the whole of its time solely to the disposal of these old cases. Column five of these Tables shows the number of years that would be required for the disposal of these "old cases" and the serious proportions of the problem. No doubt, these calculations omit to consider various factors so that the estimates may err on either side. But these statements do help to give us a broad and roughly correct idea of the situation which has to be met.

Estimate
contested
disposals.

Strength
necessary
for clearing
arrears.

14. In regard to district judges' courts also, the position is far from satisfactory. It is apparent from the two Tables which show separately criminal and civil work done by them in various States during the year 1956, that they have been unable to keep pace even with the current

District
judges
strength—
inade-
quate.

Table showing the number of years that would be taken by the existing strength of munsifs to clear off the arrears of old cases

Name of the State	Disposal during the year 1956	Approximate contested disposal	No. of more than one year regular suits on 1-1-57	Approximate number of years needed to dispose of more than one year old cases if all the munsifs devoted the whole of their time to the disposal of these suits
1	2	3	4	5
Andhra Pradesh	23123	5781	8294	1.4
Assam	9983	2496	1136	0.4
Bihar	83796	20949	7240	0.3
Bombay	N.A.			
Kerala	28535	7134	41054	2.9
Madhya Pradesh	28322	7080	5306	0.7
Madras	37067	9267	3748	0.4
Mysore	19802	4950	467	0.09
Orissa	8412	2103	3940	1.8
Punjab	N.A.			
Rajasthan	24132	6033	3093	0.5
Uttar Pradesh	146988	36747	60223	1.6
West Bengal	113151	28288	17840	0.6

NOTE.— The figures given in columns 2 to 4 of this Table have been furnished by the High Courts of the respective States.

Table showing the number of years that would be taken by the existing strength of subordinate judges to clear off the arrears of old regular suits

Name of the State	Disposal of regular suits during the year 1956	Approximate contested disposal during the year 1956	More than one year old regular suits on 1-1-57	Approximate No. of years that would be necessary to clear off more than one year old regular suits
1	2	3	4	5
Andhra Pradesh . . .	2491	623	1640	2.6
Assam	708	177	644	3.6
Bihar	3345	836	1915	2.2
Bombay	N.A.	N.A.	N.A.	N.A.
Kerala	813	203	265	1.3
Madhya Pradesh . . .	28322	7080	5306	0.7
Madras	2200	550	1101	2.0
Mysore	849	212	192	0.9
Orissa	1034	258	642	2.4
Punjab	N.A.	N.A.	N.A.	N.A.
Rajasthan	8077	2019	3335	1.6
Uttar Pradesh	6254	1563	2936	1.7
West Bengal	3291	823	4496	3.4

NOTE.—The figures given in columns 2 to 4 have been furnished by the High Courts of the respective States.

institutions in most States. The inference is irresistible that the existing strength of the higher judicial service is inadequate to deal even with the current file, much less with the arrears which seem to have been progressively accumulating in the course of the last few years.

It has to be remembered that the district judge's role is a very responsible one. He is the head of the district judiciary and in addition to his normal judicial work, the primary responsibility for supervising and controlling the judicial work in the district also rests upon him. These form an extremely important part of his duties. Elsewhere, we have been at pains to emphasise the imperative need for very strict superintendence over the subordinate courts. If the district judge is to adequately discharge his duties of supervision and control, it is essential that he should be given relief in his judicial work. Unfortunately, the present trend is in the direction of an increase of his judicial work under various special Acts. It is abundantly clear, therefore, that the judiciary at the level of the district judges is heavily deficient in strength in most of the States.

15. Our conclusions on the statistical data surveyed by us may now be summarized: Firstly, in most of the States, the existing strength of civil judiciary at the level of munsifs and subordinate judges seems to be roughly adequate to deal with the current file. Secondly, at the level of district judges the judiciary is largely deficient in numbers, so that the existing strength is unable to cope even with the current institutions. Thirdly, the pendency of old suits is very high in most of the States.

We are of the view that it is necessary to establish in most of these States temporary additional courts at all the three levels for such periods of time as may be necessary. To these temporary courts must be assigned exclusively the task of disposal of the old suits.

It is difficult for us to estimate the number of temporary additional courts needed for each State. We feel that there should be an increase in the permanent strength of the higher judiciary at the district judge level in all the States. The extent of this addition to the permanent strength will have to be determined having regard to the conditions in each State.

16. The root cause of the progressive accumulation of old cases in several States is that, in the past, in spite of the growing volume of work, the strength of the judiciary was not proportionately increased. The existing accumulation of arrears is also partly due to additional work thrown on judicial officers by recent legislation. The area of work to be covered by the judicial officers has been greatly widened. The Employees State Insurance

Need for temporary additional courts.

Causes of accumulation of arrears.

Delay in appointment of additional judges.

Act, Displaced Persons (Compensation and Rehabilitation) Act, the Administration of Evacuee Property Act, the Land Reforms Acts and the Hindu Marriage Act, are some of the Acts which have brought fresh work to the judiciary even at its lower levels. The proceedings under these Acts are not treated as regular suits and the judicial officer seldom gets credit for the volume of work which he turns out under these heads. Attention to this special work, naturally, leads to the ordinary suits or appeals being kept aside and accumulated. We have referred to these facts in order to emphasize that the statistical data furnished by the administration reports do not always give a correct picture of the work which a judicial officer is called upon to do. All suits and proceedings other than regular suits and regular appeals appear to be classified under a miscellaneous head; and there is a tendency to assume that all miscellaneous work is of a lighter and easier description. In point of fact, most of such work is definitely not of that nature.

17. The inadequacy of the strength of the subordinate judiciary has been pointed out by the various High Courts from time to time in their administration reports. The Madhya Pradesh High Court in its report for the year 1954, on the administration of civil justice, attributed the rise in the average duration of cases among other things to "inevitable re-grouping of Courts, keeping of some Courts vacant for want of judges, heavy sessions and criminal work".¹ In Uttar Pradesh, year after year, the High Court has observed, that the work in subordinate courts, both civil and criminal, has been increasing rapidly but the addition to the strength of judiciary has not kept pace with the increase in the volume of work. They have also pointed out that courts had frequently to be kept vacant for want of officers and that the judicial officers who were doing magisterial work were entrusted with other work with the result that they were unable to devote themselves to regular trial work. In West Bengal also, the High Court has repeatedly referred to the mounting arrears in subordinate courts, though it do not seem to have made specific observations as to the inadequacy of the judicial officers in the annual administration reports. In Orissa, the delay in the disposal of pending cases was attributed to the availability of a lesser number of officers than was necessary. Similar observations have been made by the Patna High Court also.

It is, therefore, abundantly clear that the inadequacy of judicial officers has been repeatedly brought to the notice of State Governments through the administration reports issued by the High Courts. The High Courts have also from time to time made representations to the government seeking for an increase in the cadre of the subordinate judiciary.

¹ Report, page 6.

Observations
of U. P.
Judicial
Reforms
Committee.

18. In Uttar Pradesh, the problem of inadequacy of strength received specific attention during the enquiry conducted by the Judicial Reforms Committee. The Committee observed:

“As we will show hereafter, the civil judiciary is under-manned and consequently over-worked. Where a Munsif previously handled a file of about 200 cases, he has now to deal with a file of even 700 or 800 cases. The condition in the courts of Civil Judges is no better.”¹

In dealing with the strength of the judiciary, the Committee stated:—

“We are of the opinion that considering the amount and nature of work that is coming before the civil courts, the cadre should be substantially increased as early as possible if the arrears, which are accumulating from day to day, are to be cleared off. It may also be mentioned that besides this temporary phase of accumulated arrears, the work has gone up both in volume and complexity and the old cadre of civil judicial officers will not be sufficient to deal with the volume of work now coming before the civil courts. What is required, therefore, is a permanent increase in cadre and also some increase for the time being to deal with the accumulated arrears. Civil work has been falling into arrears year by year since 1942. This is due to the fact that after the entry of Japan into the War and the enactment of a large number of new laws creating new offences, for example, under the Defence of India Act and Rules, criminal work to be done by Sessions Judges and Assistant Sessions Judges increased enormously with the result that these officers who are also District Judges and Civil Judges, were unable to give sufficient time for the disposal of civil work. This is clearly reflected in the figures of pending file of regular suits and civil appeals in the courts of District Judges and Civil Judges.....

“It will be seen, therefore, that the number of pending suits in 1949 was almost double of the number pending in 1942. Same is the case with appeals. The reason for this is that Civil Judges and District Judges have been busy in disposing of criminal work, with the result that many Civil Courts remained lying vacant and many a time Civil Judges were working as Assistant Sessions Judges without doing any appreciable civil work. The cadre could not unfortunately be increased to cope with the increased criminal work thrown on Sessions and Assistant Sessions Judges in the last five years. Similarly the institution, which was just above 4,100 in 1942, has

¹Report of the Uttar Pradesh Judicial Reforms Committee (1950-51), page 15.

gradually increased and was just above 5,900 in 1949, i.e. an increase of about 40 per cent in civil suits. Institution of appeals also rose from just over 2,200 in 1942 to over 4,300 in 1945, but then it came down to 2,900 in 1949. Even so, it is 25 per cent. above the figure for 1942. The reason why the number of appeals has come down since 1945 is that a number of Munsifs have had to be kept vacant and additional Munsifs' Courts could not be created and the Munsifs did thus not dispose of as much work as they should have done. Similarly, if we compare the figures in the Munsifs' Courts, the state of affairs will be found to be the same."¹

Proceeding further, the Committee stated :

"In recent times there has been a great increase in the duration of cases. This increase in duration in subordinate courts started some time after the beginning of the last war due, to a large extent, to the fact that very many new laws were introduced leading to new types of cases both in the criminal and civil courts. Then came the transfer of power in 1947 leading to a shortage in the cadre of officers required for the disposal of judicial work, the civil, criminal and revenue. There was also an increase in crimes and criminal work due to the troubles following in the wake of the partition of 1947. This led to a sudden appointment of a large number of young men to make up the deficiency in the cadre with the natural result that the quality of the officers also deteriorated to a certain extent. It has resulted in a good percentage of the cadre consisting of inexperienced officers of less than five years' standing. Over and above this, there is no doubt that so far as the administration of civil justice is concerned, there is an actual shortage of officers to carry on the day-to-day work. In old days a pending file of 200 was considered sufficient for a Munsif and whenever a file went above 300 or so, an Additional Munsif was provided. In those circumstances, it was expected that a suit would not last for more than six months to a year in the Munsif's court. At the present time, a pending file of 300 to 400 is not considered too high for a Munsif while some of them have a pending file of even 700 to 800. In the case of Civil Judges 50 used to be a normal file but now it is generally over 100 and sometimes even 200 or 400. No option is, therefore, left to the officer who fixes dates sometimes six months ahead and sometimes dates have to be fixed only for the fixation of dates. Adjournments cannot be avoided in this state of circumstances. Then if the file of an officer is overburdened, he has to deal with interlocutory matters in a large number of cases every

¹Report of the Uttar Pradesh Judicial Reforms Committee, pages 0-21.

day which occupies most of his time. The cases also become old and it is common experience that with the duration of the case parties procure more voluminous evidence and create greater complexities. It is, therefore, imperatively necessary before the entire administration of justice collapses because of the tremendous weight of arrears which cannot be cleared off, to increase the cadre of judicial officers considerably to dispose of the work lying unattended."¹

Shri T. R. Misra, a former Judge of the Allahabad High Court who was a Member of the Committee made some important observations in his note of dissent:

"There is an undoubted shortage of Judges and Magistrates and there is urgent need of making this shortage good as soon as possible. There should be one Munsif for a file of 250 Munsiff's suits and one Civil Judge for a file of 75 or 80 Civil Judge's regular suits. If Civil Judges are required to do criminal work also, extra officers should be provided.... As far as I am aware the work in most of the courts is much too heavy for a single officer to cope with expeditiously and satisfactorily. Most of the Munsifs have a pending file of 500 to 1000 regular suits which means the work of two to four Munsifs. The criminal work with District and Sessions Judges and Civil and Assistant Sessions Judges has also considerably increased. Partly owing to this increase and partly owing to the faulty manner in which it is arranged civil work is greatly dislocated causing much avoidable trouble, expense and delay to the parties. So long as this heavy burden is not removed or appreciably lightened by the appointment of more officers, Government's object to give cheap and speedy justice to the people of the State cannot be achieved."²

Inadequacy
of judicial
personnel
in Uttar
Pradesh.

19. Very recently, the High Court of Allahabad has made a reference to the Government of Uttar Pradesh emphasising the need for a considerable increase in the strength of the judicial officers.

On the basis of statistics, the High Court found that in not less than sixteen districts there were more than one hundred sessions trials pending. Some of the courts had as many as two hundred to two hundred and twenty-seven sessions trials pending, and most of those cases were pending without a date for disposal having been fixed. The file in the courts was so heavy that there were many sessions trials including trials for offences punishable under section 304, 395 or 397 in which no date for hearing could be fixed for at least a year. In several districts, over five hundred criminal appeals and revisions

¹Report of the Uttar Pradesh Judicial Reforms Committee 1950-51), pages 21-22.

²Ibid, page 127.

were pending, of which nearly half had been pending for more than a year. On account of the heavy sessions work, the disposal of criminal appeals was almost casual. Even criminal appeals were kept pending without a date being fixed for hearing.

The position with regard to civil suits in the courts of civil judges was equally deplorable. For instance, out of four hundred and twelve suits triable by a civil judge in Agra, ninety had been pending for three years and seventy-eight for four years; out of three hundred and seventy-five in Meerut, seventy had been pending for three years; out of one hundred and forty-one in Mathura, fifty-one had been pending for two years and twenty-eight for three years. In many courts of civil judges and munsifs, there were so many regular suits ready for final hearing that dates could not be fixed for final disposal and some of them had to be adjourned *sine die*. The cause list of some of the munsifs showed that no dates for final disposal could be fixed within the next three months; for instance, one thousand five hundred and sixty-nine suits in Meerut, eleven hundred in Mathura, one thousand three hundred and seventy in Ghaziabad and other places had been adjourned *sine die*. Of these, a large number of suits had been pending for three years and four years. The position with regard to civil appeals was no better.

The figures furnished by the High Court of Allahabad to the State Government afford ample support to the conclusions reached by the Judicial Reforms Committee of Uttar Pradesh as long back as 1952, that pending files of practically every judicial officer in that State was twice or thrice of what it used to be formerly.

The High Court has summed up the position as under:—

“The existing strength of judicial officers in a district is sufficient to cope with the institution in only nine to ten districts; all other districts require additional help so that the disposal should not be less than the institution. Institution of civil suits is decreasing, largely as the result of a change in the law on account of which suits which were previously instituted in civil courts are now instituted in revenue courts; consequently, the number of existing officers in more districts may suffice to cope with the institution in future. If no regard is to be had to this decrease in the institution (which has just now begun to be felt), it seems that about three hundred and fifty officers would be required to cope with the institution as against the existing number of two hundred and sixty-five officers; in other words, about eighty-five officers more would be required to prevent the arrears increasing. With the expected decrease in the institution the number would be less, but some additional officers will be required.....

in all other districts one officer or more would be required to clear off the arrears. No less than two hundred and seventy five officers would be required if the existing arrears were to be cleared off in one year; if they were to be cleared off in two years, the number of officers required would be one hundred and thirty seven.....

The largest number of officers required is in the court of Munsifs because the heaviest arrears are in suits triable by a Munsif. Roughly about half the number of officers required to clear off the arrears should be Munsifs, the number of civil judges required would be about half that of Munsifs and the number of Civil and Sessions Judges, about one-third."

The High Court proceeds to state—

"The Court takes a very grave view of the delay with which cases are disposed of in civil courts and sessions courts. It reflects no credit on the administration of Justice that sessions trials (barring those for capital offences) take about a year and a half for disposal, civil suits take more than a year for disposal in the trial court, civil appeals are not disposed of for two and three years and criminal appeals also take a long time for disposal. The delay in the disposal of a suit and a civil appeal means that the aggrieved party is left without any redress for many years. In many cases it would be hardly worthwhile filing a suit in a civil court for redress. If the administration of civil justice is not to be reduced to a farce, urgent measures are necessary to prevent the delay. The judicial officers are as a rule making the fullest use of their time and the Court does not think they can dispose of substantially more work. They are generally punctual in attendance and barring a few isolated cases they do full day's work every day. The accumulation of arrears is due mostly to inadequacy of officers of all grades and the Court would urge Government to take into immediate consideration the question of increasing the numbers of officers of all grades."

The Court further observed:

"There have been occasions when there has been considerable delay in the consideration of the proposal for filling up vacancies in the Lower Judicial Service and the Higher Judicial Service. Great delay has occurred in the past. For instance the Public Service Commission held examination for recruitment of officers in the Lower Judicial Service in January, 1956, but Government orders for their appointment were received in June 1957. The Court proposed on 28th November, 1955, the filling up of vacancies in the Higher Judicial Service, Government sanctioned the number of officers to be recruited on 20th April, 1956

the Selection Committee sent the list of candidates to Government on 17th July, 1956, and it was not until on 27th April, 1957, that Government issued orders for their appointment and posting. The Court wrote on 14th May, 1957, for re-employment of retired District and Sessions Judges and Government's approval was received on 26th July, 1957."

20. Nor is this wanton neglect to maintain the judiciary at the requisite strength, a feature peculiar to the State of Uttar Pradesh.

The Chief Justice of the Calcutta High Court in dealing with the aspect of inadequacy of judicial personnel has observed:—

Inadequacy
of judicial
personnel
in West
Bengal.

"There is undoubtedly great congestion of work in the subordinate courts and particularly at Alipore. Only a very small part of that congestion might have been avoided, but the bulk of it was bound to occur and it will continue to persist so long as the numerical strength of the subordinate judiciary is not adequately increased. Very recently the High Court, after a careful consideration of the actual needs, recommended that the strength of the Higher Judicial Service, including the deputation posts comprised therein, should be raised from 36 to 62, but the State Government agreed to increase it by only 9 members. At Alipore particularly, the civil work of the Additional District Judges and Subordinate Judges holding the powers of Assistant Sessions Judges is continuously interrupted by their having to preside over Sessions trials."

The learned Chief Justice went on to observe that in view of the increasing pressure of judicial work, it has been found impossible to spare judges for inspection work. He further stated:—

"The cadre of each of the two Services (The West Bengal Higher Judicial Service and the West Bengal Civil Service (Judicial) includes a number of deputation posts which are posts outside the judicial line proper. The number of deputation reserve or posts in the Higher Judicial Service is 10, that of Subordinate Judges 9 and that of Munsifs 18. The necessity of supplying officers for these posts, which are not allowed to remain vacant, naturally reduces the number of officers available for judicial work in the courts. If the full complement of Munsifs required for manning all the Munsifs courts had been provided and similarly the strength of the cadre of District and Additional District Judges as also of the Subordinate Judges maintained at the required strength, the system might have been worked without any difficulty being caused to the courts. As matters stand, however, till

very recently, the numerical strength of the Munsifs was much less than the minimum required for officering all the courts, and when I came to office I found that as many as 13 courts of Munsifs had been lying vacant without any presiding officer for 8 or 9 years. The position has since improved to a certain extent, but even at the present day, 6 courts of Munsifs are lying vacant, excluding the courts at Alipur Duars. What happens and has been happening for a long time is this. The posts of deputation reserve, included in the cadre of the Higher Judicial Service but outside the judicial line proper, are kept continuously filled and the necessary personnel have to be supplied. But the higher posts in the judicial line, such as District and Additional District Judges, cannot also be kept vacant and, therefore, since the remainder of the permanent members of the Higher Judicial Service are not sufficient to fill all the posts, Subordinate Judges have to be promoted in order to make up the deficiency. Of 34 confirmed Subordinate Judges, as many as 23 are now acting in the Higher Judicial Service. The promotion of so many Subordinate Judges for acting appointments in the Higher Judicial Service necessarily creates vacancies in the ranks of the Subordinate Judges and those have to be filled by promoting Munsifs. The drain thus caused on the body of Munsifs cannot be made good by promotion, because there is no lower rank of judicial officers from which promotions can be made and therefore some of the courts of Munsifs have to lie vacant. The recruitment of judicial officers in this State lies entirely in the hands of the State Government. On account of the Courts' insistent demands pressed on the State Government during the last few years, they have now recruited a fairly large number of Munsifs, although the full complement has not yet been reached. But the officers thus made available are still very junior officers, either officers of only a few years' experience, or probationers who have not yet completed their training. The accelerated promotion of a large number of Subordinate Judges which has been forced by the circumstances has been responsible for the depletion of officers of requisite standing, available for work either as Subordinate Judges or as Munsifs. Munsifs of a few years' standing are now acting as Subordinate Judges; and for the 22 stations which require senior Munsifs with a higher pecuniary jurisdiction, it has been possible to provide only 16. As the whole pressure of deputations to reserve posts and promotions to the Higher Judicial Service or to the ranks of Subordinate Judges in the West Bengal Civil Service (Judicial) has fallen on the ranks of Munsifs, the Court has been compelled by sheer necessity to withdraw probationers from their training and post them in courts for judicial work, so

that as few courts may remain unprovided with presiding officers as possible. Of the Munsifs recruited in 1955, none has completed his training, but all are sitting in court except one who has been re-posted to resume his training. Of the 15 recruited in 1956, 11 have had to be withdrawn to sit in Court after undergoing training for periods ranging between 7 days and a little over 5 months and only 4 could be kept under training, one of whom again has had to be re-posted to sit in Court in a temporary leave vacancy. The choice before the Court was either to keep the courts of Munsifs vacant or to appoint probationers to preside over them. The Court has chosen the latter alternative as the lesser of the two evils, because to leave about 15 courts without any presiding officer would create a very serious situation.

“.....The State Government again, are frequently proposing that some member or members of the Judicial Service should be spared for some special post or duty. In the case of the members of the Higher Judicial Service occupying the rank of District Judges, they do not even require the concurrence of the Court. The manner in which requests for members of the Judicial Service are made for the purpose of their appointment in special posts outside the cadre tends to create the impression, which I hope is unfounded, that the needs of the courts are regarded as only of a secondary importance and it is thought that they can be properly left to carry on with such officers as may remain to them after the needs of other departments have been met.”

In conclusion, he observed—

“The one measure which is called for more urgently than any other and which will enable the High Court to fill in vacancies in the subordinate courts is the increase of the cadre of both the Higher Judicial Service and the West Bengal Civil Service (Judicial) to the requisite numerical strength, as recommended by the Court. As matters stand now, a fairly large number of the courts of the lowest jurisdiction, viz., the courts of the Munsifs are still lying vacant and a fairly large number of courts of both Subordinate Judges and District Judges are, in the majority of cases, being held by persons promoted to those posts before they had acquired the requisite length of experience and, in certain cases, by persons whose qualifications might have been more adequate. The state of things cannot be remedied, unless the High Court is provided with the full complement of officers of such strength that not only can it keep all the posts filled, but it can also accord promotion to the higher posts only to persons who have acquired the requisite

experience and have given evidence of the requisite qualifications. The necessity of obtaining the consent of the Executive for the creation of Additional Judgeships does not cause any appreciable delay in this State because, where there is congestion of work, it has not been found difficult to persuade the Executive that Additional Judgeships are required. But it is no use creating Additional Judgeships if no officers are available for filling them by. The real difficulty is shortage of personnel and the Court finds it useless to recommend the creation of Additional Judgeships, as it knows perfectly well that no officers can be found to preside over additional courts."

**Grave
Conditions.**

21. Our purpose in reproducing at very great length the observations made by the High Court of Allahabad and the Chief Justice of West Bengal is to point attention to this grave state of affairs in regard to the administration of justice which prevails in some of the States. In at least two of the States, the conditions reflect little credit on the State Governments and, particularly, on those in the Government in charge of judicial administration. Under the Constitution administration of justice and the constitution and organisation of courts other than the High Courts are the responsibility of the State administration. The facts revealed indicate, on the one hand a gross neglect by the state administration of their duty in establishing the necessary number of courts and on the other, a complete failure on the part of the State to carry out its obligations to provide trained and proper judicial personnel for presiding over the courts. The States in question cannot even urge financial stringency as an excuse for, the figures reveal that these States have been making substantial gains out of the revenue earned by them by way of Court fees. It is a matter for serious consideration whether in order to prevent what appears to be virtually a breakdown in the system of judicial administration the Central Government should not, by an amendment of the Constitution, be given a greater measure of control over some aspects of judicial administration in the States. This suggestion is made on the basis that such control exercised by the Centre would tend to prevent such deplorable conditions arising.

**Failure of
State
Governments.**

22. One should have thought that the problem of continually rising arrears could have been easily met by a quick and watchful awareness of the situation as it developed and the immediate creation of additional courts to deal with the increasing work. It is surprising that some of the State Governments should have failed to appreciate their responsibility in the matter, notwithstanding the repeated attempts by the High Courts and other authorities to make the State Governments alive to the true situation.

23. Having regard to the delays that inevitably occur on account of the Government taking a long time to examine in detail the proposals for the creation of additional courts, we would suggest that the High Courts may be generally empowered by the State Governments to create additional courts subject to certain limits whenever they consider that additional work justifies the creation of a new court. As the High Court is responsible for the administration of justice in the State and is in a better position than the State Government to assess the need for additional courts to relieve congestion of work, it could well be trusted to exercise this power satisfactorily. This, in our view, will help in some measure to obviate the delays that occur in the State Governments sanctioning proposals for the creation of additional courts.

Powers to High Court to create additional courts.

24. The High Courts and the district courts will have to keep a close watch on the files of the subordinate courts. It may be that in some cases a limit will have to be set on the number of cases that each presiding officer should normally be expected to dispose of. In fixing this limit, the nature of the work in different places and the conditions of work will have to be borne in mind. If it is found that officers presiding in some courts are overburdened with work, relief may be given to them by a judicious arrangement of the work which would relieve their burden and transfer their work to some other judicial officers. But the increase in the files may indicate that a re-arrangement of work will not be a remedy and that what is needed is the establishment of more courts. In such cases, it will be the duty of the district judge to apprise the High Court of the situation. The High Court would then take prompt action to establish more courts, if the power to do so were left to it, as we have suggested. In our view, it is essential to leave such powers in the hands of the High Courts to ensure the number of courts being kept at the required level and to prevent the files of courts being loaded with heavy arrears.

Close watch by superior judicial authority necessary.

25. As stated earlier, with the data before us it is not possible for us to estimate with any accuracy the strength of judicial officers necessary in each State to cope with the current files and the old pending cases. These are matters which should be carefully examined by the respective High Courts.

26. We would, however, suggest that the following broad principles be borne in mind in determining questions of the adequacy of the strength of the subordinate judiciary.

(1) The strength of the subordinate judiciary should be sufficient to enable it to dispose of suits, criminal trials, appeals, revisions and other proceedings within the limits of time set out in paragraphs 5 and 6 *supra*.

(2) The High Court should immediately undertake a careful examination of the requirements of the judicial personnel of various classes in the light of the volume of work in the subordinate courts.

(3) The strength of the subordinate judiciary should be fixed so that it will be sufficient to dispose of the current institutions within the target time limits.

(4) The cadre strength of the judicial officers should be fixed after making due allowance for leave, promotion, deputation vacancies and also for the training of the judicial officers.

(5) Until the cadre strength is fixed inclusive of deputation requirements, the present strength of the cadre should not be depleted for making ex-cadre appointments.

(6) No court should be allowed to be without a presiding officer; there should be a reserve (included in the leave and deputation reserve) to meet unforeseen contingencies.

(7) The annual administration reports should specifically examine these features; such periodical examination would serve to keep the attention focussed on the adequacy of judicial personnel, which is one of the basic requirements of the administration of justice.

(8) Temporary additional courts should be established wherever necessary to dispose of the accumulation of arrears. This should be done without any delay.

(9) The High Courts should be empowered, subject to certain limits, to create temporary additional courts wherever they consider it necessary, without reference to the State Governments.

(10) The High Courts and district judges should be careful to see that a subordinate court is not overburdened with work. Wherever the pendency of suits is very high, the district judge should redistribute the work or, in the alternative, ask for an additional hand to clear off the arrears.

9.—SUBORDINATE JUDICIARY

PERSONNEL

1. As has been said repeatedly elsewhere, the problem of efficient judicial administration, whether at the level of the superior courts or the subordinate courts, is largely the problem of finding capable and competent judges and judicial officers. Delays in the disposal of cases and the accumulation of arrears are in a great measure due to the inability of the judicial officers to arrange their work methodically and to appreciate and apply the provisions of the Procedural Codes. If judicial officers do not realize, for example, the importance of what has been laid down in Rules 1 and 2 of Order X and fail to ascertain, before the commencement of the hearing, the facts which are admitted and denied by either party and the real issues in a suit, it is not surprising that the hearing takes, perhaps, twice or thrice as long as it would have taken, if the rules laid down in the Code had been properly followed. The court hears the suit from day to day, or over a number of hearings spread, sometimes, over several months, without a firm grip on the points which really arise for decision and is entirely at the mercy of the legal practitioners appearing before it, some of whom also are often not alive to the real points to which evidence and arguments should be directed.

Competent
judicial
officers
necessary.

2. Indeed, it was said that nine out of every ten of the difficulties brought to our notice in connection with the operation of our system of Courts had their origin in the inefficiency or inexperience or the inadequacy of the judicial personnel. However well framed the substantive law and carefully designed the procedural law, the proper application and working of these laws lies largely in the hands of the officers presiding over the courts. Even if these laws were perfect, we would need adequately trained and capable judicial officers to apply and administer them. Without such personnel, administration of justice can never be satisfactory.

Problem
of reform
one of
personnel.

3. Similar views were expressed by the Civil Justice Committee who summed up the position in these words:¹

Views of
the Rankin
Committee.

“Witnesses of eminence who speak with authority have in emphatic terms expressed their opinion before us that delay in the proceedings of civil courts in India is to a considerable extent due to want of any proper system in training the Judges.”

¹Report, page 181, para. 1.

Problem
more acute.

4. As we shall point out later, the problem has since grown in dimensions, because there is unmistakable testimony that the standards of the judicial officers recruited from the bar and other sources have, during recent years, fallen in a substantial degree for various reasons. That has been almost the unanimous view expressed by the witnesses before us. It is thus obvious that no scheme of reform of judicial administration will be effective or worth-while, unless the basic problem of providing a trained and capable judicial personnel, is satisfactorily solved.

Before we can suggest adequate measures for raising the level of judiciary, we have to examine the causes which have led to the decline in its efficiency.

Causes of
decline.
Diversion of
talent to
fields
other than
law.

5. We have, in dealing with the question of the decline of standards at the bar, dealt at some length with the causes which have led to that situation. The Bar at the lower and the higher levels has been the principal recruiting ground for judicial officers. It is not surprising therefore, that a fall in the efficiency of the Bar has necessarily brought about in its wake a decline in the efficiency of the judiciary. We have described elsewhere how the opening of various other opportunities of employment leading to a sure income have led away young students to various All-India services and other occupations and has depleted the Bar of the talent which formerly used to flow into it. We have suggested measures which we hope will lead to bringing back to the profession of law an adequate proportion of our able young graduates and also measures for giving them a training in law which will turn them into efficient members of the bar. The adoption of those measures should result in improving the calibre of the recruits to the lower as well as the higher judiciary and thus help to remove one of the causes of the decline in its efficiency.

Expansion in
recruitment.

6. A very important circumstance which had led to inexperienced judicial officers being placed in charge of important duties is the very large number of recruits which has to be taken every year. Increase in the volume of both civil and criminal work and the increase in the personnel necessitated by the separation of the judiciary from the executive have added considerably to the volume of recruitment. The evidence before us shows that a large proportion of those available to fill the increased number of posts are far below the required standards. The result has been the enforced recruitment of persons without the adequate equipment or capacity. The Chairman of the Bihar Public Service Commission stated that while in a particular year as many as seventy-five persons had to be recruited as munsifs, he could find only twenty-five persons who were really suitable and a large number of persons not really qualified had to be recommended because of the needs of the Service. A senior Chief Justice stated that the experience in his State of the competitive

examinations held at the State level for recruitment to the judiciary had been most discouraging. He observed: "Hardly does any junior lawyer actually practising in the courts offer himself as a candidate, nor does any fresh law graduate of any promise. The great majority of those who apply are persons who took a law degree years ago but have since been employed in some minor post under the Government such as posts in the Co-operative or Jute Department and who have never been inside a Court of Law. The marks they obtain are truly miserable and the only reason why any selection is made from amongst them at all is that no men of a better class can be found."

7. Further, it would appear that in several States, particularly in the southern States, a fairly large number of appointments have been made to the subordinate judiciary on communal and regional grounds, with the idea of giving representation to certain communities or regions in these services. The selection for these reasons of men of inferior ability in preference to more qualified persons has resulted in further lowering of the standards of those who were selected from a depleted field of selection not able to provide a sufficient number of suitable men.

Selection communal and regional grounds.

8. In the matter of scales of pay and remuneration, the judiciary compares unfavourably with the executive branches of the Government. It is true that, generally speaking, the scales of pay of the judicial officers and the corresponding executive officers are identical in many of the States. However, it has to be remembered that the executive officers are, by and large, recruited at a much younger age than the judicial officers. The entrant to the judicial service is required to be a graduate in law and in most of the States it is also necessary that he should have practised for a certain number of years at the Bar. On the other hand, for recruitment to the executive branches of Government service, a degree in arts or science is, generally speaking, sufficient. In the result, a person entering the judicial service does so when he is about twenty-six or twenty-seven years of age and at a time when his contemporaries who have entered the executive service of the Government have already acquired a certain seniority in the service and have come to draw a higher salary. It will thus be seen that a person joining the judicial service starts with a lower remuneration than what he would have received if he had entered the executive service a few years earlier. It has also to be noted that owing to the lesser proportion of superior posts in the judicial service promotions come less quickly to the judicial officers, and a person who has entered the service as a munsif, assuming that he is fit and fully qualified, takes much longer time to become a district judge than would an equally competent deputy collector to reach the position of a collector. Again the judicial officer, having started at a later age, has a shorter span

Inadequate remuneration.

of service than the executive officer and this affects his pension and other retirement benefits.

Difference of status between the judicial and the executive officer.

9. An important factor which detracts from the attractiveness of the judicial service is the inferiority of the status of the judicial officer compared with that of the executive officer. Our attention was drawn to this fact by an experienced Chief Justice in the following words:

"One reason why meritorious young men or young practitioners of some standing keep away from the judicial service is the comparative inferiority of the status of district judicial officers *vis-a-vis* officers of the district executive. Formerly, the district judge, like the district magistrate, used to be a member of the Indian Civil Service and his position in the district was superior to that of the district magistrate. Under the present system, the district magistrate is a member of the Indian Administrative Service which is a service of an all-India character, while the district judge is a member of the higher judicial service which is a State service. The difference in the category of the cadres to which they belong is reflected in the status they occupy in relation to each other and in the estimation of the public. *Vis-a-vis* the district magistrate, the district judge feels small and is treated as a person of little consequence. Nor can the district judge attain the sense of independence which he might have acquired, if he had not been under the administrative control of the State Government in regard to his service."

Extension of field of selection. All-India competitive examination from fresh law graduates.

10. If we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable persons. A radical measure suggested to us was to recruit the judicial service entirely by a competitive test or examination. It was suggested that the higher judiciary could be drawn from such competitive tests at the all-India level and the lower judiciary can be recruited by similar tests held at State level. Those eligible for these tests would be graduates who have taken a law degree and the requirement of practice at the Bar should be done away with.

Such a scheme, it was urged, would result in bringing into the subordinate judiciary capable young men who now prefer to obtain immediate remunerative employment in the executive branch of Government and in private commercial firms. The scheme, it was pointed out, would bring to the higher subordinate judiciary the best talent available in the country as a whole, whereas the lower subordinate judiciary would be drawn from the best talent available in the State.

11. In support of these ideas, it was pointed out that the requirement of a three to five or six years' practice at the bar insisted upon in most of the States for entrance to the judicial service serves no useful purpose. It is difficult, if not impossible, under the conditions at present prevailing in the legal profession for a person to have any experience or training worth the name in the period of three to five years which he is supposed to spend in practising at the Bar. The average practitioners at the Bar cannot in that short period have any worth while idea of work or practice at the Bar. It is only the exceptional young man, favourably situated and having the advantage of a senior member of the Bar interested in him, who gathers any experience at all at the Bar in so short a period of time. Such an exceptional person would naturally not care to be a competitor for entrance into the subordinate judicial service. Those who do strive to get into the judicial service after three to five years at the Bar are the disappointed persons who have failed to make a living in the profession and have no hopes of prospering in it. The disadvantage of recruiting from persons who had been failures at the Bar was pointed out by the Chairman of the Bihar Public Service Commission:

Bar not a suitable recruiting ground.

Recruitment of failures.

"I have come to the conclusion that during the three to five years of practice at the mofussil Bar the young man deteriorates more or less completely."

The Civil Justice Committee¹ also was of the opinion that

"The rule in force in certain provinces requiring the candidates to have practised at the Bar for a period of three years or more furnishes no guarantee that the candidates have acquired any really useful experience."

In most cases, what is usually described as recruitment from the Bar is really recruitment from among the disappointed members of the bar who have failed to make any headway in the profession. It was pressed upon us that if we are able to attract to the judicial service the really capable young men from the Universities and subject them to a two years' training, we could have much more competent judicial officers than the so-called recruits from the Bar.

12. Recruitment to the higher judiciary at the all-India level in the manner suggested would be a powerful unifying influence and serve to counteract the existing growing regional tendencies. In this connection, attention may

Unity of the country.

¹Report, page 183, para. 8.

be drawn to the observations made by the States Reorganisation Commission in regard to the creation of the All-India Services as a major compelling necessity for the nation. The Commission observed:¹

"The *raison d'être* of creating All India Services, individually or in groups, is that officers on whom the brunt of responsibility of administration will inevitably fall, may develop a wide and all-India outlook. ... The present emphasis on regional languages in the Universities will inevitably lead to the growth of parochial attitude, which will only be corrected by a system of training which emphasises the all-India point of view."

The case of
recruitment
from the
Bar.

13. As against the views indicated above there was a very substantial body of opinion which still favoured the retention of the system of recruitment from the Bar. It was not unnatural that the majority of the practising lawyers who appeared before us as witnesses should express themselves in favour of the retention of this system. But we also had in its favour an expression of views from several members of the High Court judiciary. It was said that in some States, at any rate, the system of recruitment of the munsifs or lower grade subordinate judges from the Bar had worked satisfactorily. It was suggested that it was not so much the field of selection that was at fault. The system had not yielded good results by reason of the unsatisfactory methods of selection from that field. The view was expressed that though a junior at the Bar of three to five years standing may not gather much practice, he would still be familiar with the way in which work is being done in a lawyer's office and the manner in which matters are conducted in the law courts. It was pointed out above all that a young man who had spent some years at the Bar would have rubbed shoulders with a variety of men, would have gathered a knowledge of men and affairs and would have lived in a free atmosphere quite different from that in which a man who has locked himself up in service after graduation would have lived in.

Criticism of
competitive
examina-
tions.

14. It was also urged that taking a distinction in a competitive examination was not necessarily a proper test of fitness for a judicial officer whose work requires, more than anything else, practical knowledge and experience and a capacity for understanding the minds and motives of the ordinary man. It was pointed out that in the practice of law, men who had taken Honours and earned high distinction at the University had frequently failed and men who had no such distinction in their academic career had risen to the top.

¹. Report of the States Reorganisation Commission, page 232, paras 858 and 859.

15. It has not been very easy for us to balance these considerations, but we are definitely of the view that a proportion of the higher judiciary should be recruited by competitive examination at the all-India level so as to attract the best of our young graduates to the judicial service. This measure will enlarge the field of selection and bring into the higher judicial service a leaven of brilliant young men who will set a higher tone and level to the subordinate judiciary as a whole. The personnel so recruited will be subjected to an intensive training. The rest of the higher judiciary should, in our view, be recruited in part directly from senior members of the Bar, and partly by promotion from the lower subordinate judiciary.

All India recruitment to the higher judicial service necessary.

16. As to the lower subordinate judiciary, we are of the view that we shall be able to recruit better personnel if the selection is made by a properly conducted competitive examination of a practical nature. The age limits should be so fixed as to enable persons at the Bar of about three to five years standing to compete.

Lower subordinate judiciary. Recruitment from the Bar after practical test.

We shall, in later parts of this chapter, deal with the details of the schemes we have formulated in regard to the field of recruitment and the method of recruitment to be adopted in each case.

EXISTING DESIGNATIONS AND METHODS OF RECRUITMENT TO THE JUDICIAL SERVICE

It is necessary at this stage to examine the existing organisation of the judicial service in our country.

17. The designations and remunerations of judicial officers vary from State to State. Except in Madhya Pradesh, the State judicial service has been divided into two classes—the Higher or Superior Judicial Service and the Civil Service (Judicial Branch). In Madhya Pradesh alone all judicial officers in the subordinate judiciary constitute one service. The Higher or Superior Judicial Service comprises the posts of district and sessions judges, additional district and sessions judges, and other posts to which officers of the status of a district judge are generally appointed, such as the legal remembrancer, the chief presidency magistrate, the chief judge of the court of small causes. The lower branch of the judicial service variously known as the State Civil Service (Judicial) or the State Judicial Service (Junior Branch) comprises the posts of munsifs and subordinate judges. In our view, it would be desirable to do away with the differences in nomenclature. We would recommend that the higher and the lower branches of the judicial service should be designated in all the States as State Judicial Service Class I and the State Judicial Service Class II.

The judicial services.

Existing organization.

Higher
judicial
service.
General
uniformity

Variations.

In U. P.
and Rajas-
than.

18. There is, generally speaking, a uniformity of nomenclature in the designations of the posts included in the higher judicial service. However, in Uttar Pradesh and Rajasthan, additional district judges are designated "Civil and Sessions Judges" and in Bombay they are designated "Assistant Judges". In Uttar Pradesh and Rajasthan, "Civil and Sessions Judges" who are paid a much lower salary than district and sessions judges, try all criminal cases like a sessions judge and on the civil side, they hear all civil appeals which a district judge is normally competent to hear. Thus these civil and sessions judges perform almost the same duties as the district and sessions judges except that they are not entrusted with the performance of administrative functions. The similarity of their functions with those of the district and sessions judges led the Uttar Pradesh Judicial Reforms Committee to recommend¹ the unification of the cadre of civil and sessions judges with that of the district and sessions judges.

In Bombay.

In Bombay, assistant judges initially exercise the powers of an assistant sessions judge and after having gained some experience of criminal work they are invested with the powers of additional sessions judges. Their jurisdiction in civil appellate work and original appellate criminal work is the same as that of a district and sessions judge. They also possess original civil jurisdiction upto a pecuniary limit of Rs. 15,000, but, in practice, they do not do any original civil work.

19. Under the Code of Criminal Procedure, a court of session is constituted for every sessions division in charge of a sessions judge. Additional sessions judges and assistant sessions judges may also be appointed to exercise jurisdiction in one or more of such courts. The powers of assistant sessions judges are usually conferred on subordinate judges who belong to what, we propose, should be called the "State Judicial Service—Class II".

State judicial
service
class I.

The expressions "District Judge", "Additional District Judge", "Assistant District Judge", "Sessions Judge", "Additional Sessions Judge", "Assistant Sessions Judge", "Judge of the City Civil Court", "the Chief Presidency Magistrate" have also been used in the Constitution.

In our view, it would be convenient to have in the higher judicial service proposed to be designated "State Judicial Service—Class I", only two main designations—namely, "District and Sessions Judge" and the "Additional District and Sessions Judge". Particular posts like those of the chief presidency magistrate and others bearing special designations will be borne on the same cadre. As we have

¹Report, page 23.

suggested elsewhere in this chapter, a uniform scale of pay for all the posts in the State Judicial Service Class I (higher judicial service), it would be desirable that, as far as practicable, all posts corresponding to the posts of additional district and sessions judges should be brought under the two designations we have mentioned. The State Judicial Service Class I would, therefore, according to our recommendation, include all the posts of district judges, additional district judges and corresponding posts like those of the Legal Remembrancer and others usually filled by officers of the status of a district judge.

20. The State Judicial Service—Class II (now given the nomenclature of the State Judicial Service Junior Branch II. or the like) will comprise two grades of officers. At present, we have first the munsifs whose pecuniary jurisdiction, generally speaking, extends in most States up to Rs. 5,000 and in some of the States like Bombay and Madhya Pradesh up to Rs. 10,000. Secondly, we have the higher grade of officers in this class, namely, subordinate judges who have, generally speaking, unlimited pecuniary jurisdiction. Though in a fair number of States, the designations of "Munsif" and the "Subordinate Judge" prevail, various other designations are in use in other States. In Uttar Pradesh, subordinate judges are known simply as civil judges. In Bombay, munsifs are designated as civil judges (junior division) and subordinate judges as civil judges (senior division). In the Punjab, the designation of munsif is not used and officers of this grade are known as "subordinate judges—class 1 to 4". In Madhya Pradesh, the designations of "Subordinate Judge" and "Munsif" are not in vogue. All munsifs are known in that State as civil judges and above them come the additional district judges who on the civil side exercise unlimited original pecuniary jurisdiction and civil appellate powers, and on the criminal side exercise the powers of sessions judges.

Munsifs and subordinate judges.

21. In view of the more or less uniform functions performed by the judicial officers so variously designated, it would, we think, be advisable to aim at a uniformity of designation. There is, however, a fundamental difference in the general scheme of distribution of judicial business between the lower grade of officers (munisifs) on the one hand, and the higher grade of officers (subordinate judges) on the other. The first has limited pecuniary jurisdiction while the second, generally speaking, has unlimited pecuniary jurisdiction. We would, therefore, suggest that the State Judicial Service—Class II should consist of civil judges who should be designated as civil judges of the senior and junior divisions. Officers corresponding to munsifs would be designated as civil judges (junior division) and those corresponding to subordinate judges would be designated as civil judges (senior division).

Suggested designations.

United
cadre
of civil and
criminal
judiciary.

22. In Bombay, Madras and Andhra Pradesh and some other States, the two cadres of civil and criminal judiciary have been integrated and an officer of the status of a munsif is posted as a judicial magistrate or as a sub divisional magistrate. With the enforcement of the separation of the judiciary from the executive, a similar integration of the cadres of civil and criminal judiciary can be brought about in other States also. It will thus be possible to integrate the entire judiciary, civil and criminal, into a single cadre. Whenever magisterial powers are conferred on a judicial officer of the status of a civil judge (junior division), he should be designated as magistrate, and if he combines both the functions of a civil judge and magisterial functions, his designation would be that of a Civil Judge (Junior Division) and a Magistrate.

Methods of
recruitment.

23. Examining next the methods of recruitment now in vogue in the different States, one finds broadly speaking, two patterns. Some States employ the method of a competitive examination open to law graduates without the requirement of experience at the bar while others insist upon a certain number of years' experience at the bar and select their recruits not by a competitive test but by a system of selection made by the Public Service Commission and the representative of the High Court.

By competi-
tive
examina-
tions.

24. In Uttar Pradesh, West Bengal, Bihar, Rajasthan and Assam, the munsifs are recruited by a competitive examination conducted by the Public Service Commission. A *viva voce* test forms part of the examination. A Judge of the High Court or a representative deputed by it, is associated with the Commission in the conduct of the *viva voce* test. A list of the successful candidates arranged in the order of merit based on the result of the examination is forwarded to the Government. The Government then proceed to make appointments from the list, giving effect to the quotas reserved for the backward communities and the Scheduled Castes.

By inter-
views.

25. In the States of Andhra Pradesh, Bombay, Kerala, Madhya Pradesh, Madras and Orissa no examination is held. The candidates are interviewed by the members of the Public Service Commission and a High Court Judge or a representative of the High Court. The selection of the candidates is made on the basis of such an interview.

The role of
the Service
Commis-
sions.

26. It becomes necessary at this stage to advert to the comments made by a number of witnesses who appeared before us on the role of the Public Service Commission in the selection of the subordinate judiciary and the manner in which its functions are discharged. We have noticed that in all the States, the Public Service Commission does play a part in the selection either as the body conducting the examination which generally includes a *viva voce* test or as participating in the interviews which result in the selection of the candidates. Indeed, article-

234 of the Constitution provides that in recruiting persons other than district judges to the judicial service, the Governor has to act *inter alia* "in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court". It appears to us that the matter has to be approached from two points of view. It has to be considered whether the Public Service Commissions in the various States are bodies appropriate to be entrusted with the task of selecting the subordinate judiciary; and whether these duties are being satisfactorily discharged by them.

27. Having regard to the important part played by the Public Service Commission in the selection of the subordinate judiciary, we took care to examine as far as possible the Chairmen and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence, from the points of view of either efficiency or of impartiality. There appears to be little doubt that in some of the States appointments to these Commissions are made not on considerations of merit but on grounds of party and political affiliations. The evidence given by members of the Public Service Commissions in some of the States does create the feeling that they do not deserve to be in the responsible posts they occupy. In some of the southern States, the impartiality of the Commissions in making selections to the judicial service was seriously questioned. Some of the State Governments there have, in order to rectify what they call "social inequalities", framed rules designed to give opportunities of representation to certain communities in the Public Services in the State. It appears that in these States, the Commissions are, in addition to conducting examinations for candidates to judicial office, required to go further and regulate the communal representation in order to smoothen out the "social inequalities". It is not surprising that Commissions when entrusted with such a task should come in for adverse criticisms and charges of partiality. No doubt, the members of the Commissions who gave evidence before us indignantly repudiated such suggestions and asserted that communal considerations played no part in the recommendations for appointments made by them. However, the evidence of experienced lawyers and some of the judges clearly established that the impression in the public mind was that the Commissions did discharge among other functions that of redressing communal inequality in the State Judicial Service. Indeed, a Chief Justice of one of these States seemed to think that it is legitimate that when selection is made to judicial office, the State should take account of the alleged communal inequality and that selections made by the Public Service Commission on the basis of remedying such inequality, should not be complained of.

Not always satisfactory.

Inferior Personnel.

Communal considerations.

In our view, it would be a contravention of the constitutional provisions to impose upon the Public Service Commissions a task of this kind. Under article 320 of the Constitution, the duty of the Public Service Commission lies in conducting examinations for appointments to the services of the Union and of the State. The Constitution nowhere provides that it is to be the duty of the Commissions to go further and to give effect to a policy of the Government in regard to safeguarding the interests of communities in the Public Services. It is not surprising that public confidence in some parts of the country in these Commissions should have been undermined by their having been led to accept as a part of their duties the regulation, as it were, of communal representation in the judicial service.

Communal
representation.

28. This is perhaps not an inappropriate place to refer to the application of what can only be described as the vicious doctrine of communal representation in the judicial services of the State. The Constitution provides broadly in article 16 for equality of opportunity for all citizens in matters relating to appointment to any office under the State. It makes an exception to the rule to enable provision being made by the State "for the reservation of appointments or posts in favour of any backward class of citizens not adequately represented in the services under the State". There is thus no warrant for splitting up the judicial cadre or the vacancies to be filled in the judicial cadre into quotas for specified communities. It is obvious that such a practice would result in destroying the efficiency of the judicial service. Yet, we found, at least in one southern State, certain general notifications in force which had the effect of allocating quotas in the judicial service to the different communities in the State, presumably according to the proportion of their population. This seems to have resulted in the fantastic position of the entire population of the State, excepting one community which had a percentage of 4 in the population, being regarded as backward communities. The result of a selection made to the judicial office was that candidates belonging to the so called backward communities far inferior to those of other communities were appointed to the posts in preference to superior candidates. We cannot too strongly deprecate these practices which, apart from being unconstitutional, have tended to destroy the efficiency of the judicial service. A competitive test, or indeed any other test, will have no meaning if it is to be worked in combination with a system of what may be called selective communal representation.

Constitutional
propriety doubtful.

Unsatisfactory
selection.

Legitimate
reservation—
its limits.

29. Whatever the method of selection adopted, the only reservations which can be legitimately made are those in favour of backward classes mentioned in article 16(4) of the Constitution and even in their case, the reserved seats

should be filled by persons selected in the order of merit from among those who have been subjected to the test.

30. A troublesome question which has given rise, in more than one State, to some friction between the Public Service Commissions and the High Courts is the part which the High Court, represented by a judge of the Court or a representative deputed by it, should play in the selection of judicial officers. It is at the *viva voce* test stage that the judge or the representative of the High Court is called in to assist the Commission. A High Court judge participating in these tests is really in the position of a technical expert who should have a preponderating voice in the selection of the judicial personnel. His importance in this respect is recognised by some members of the Public Service Commission. Indeed a member of the Union Public Service Commission who had for a long period been a member of the State Public Service Commission stated that "an interview is not a proper method of selecting persons for the judiciary". In his view, it should be for the High Court to select the judicial officers. In a number of States, the dominant position of the High Court judge advising the Commission in the selection of judicial personnel has been recognised and most of the nominees recommended by the judge are accepted by his colleagues of the Commission participating in the test. In some States, however, the position has been different. It appears that the total number of marks allotted to a *viva voce* test is divided in such a manner that the High Court judge's view of the candidate's ability on the basis of the marks given to that candidate could be over-ridden by the members of the Commission participating in the test whose share of the total marks would be larger. In the result, the judge's view of the eligibility of the candidate does not prevail. It is, therefore, not surprising that in these circumstances the High Court judges in some of the States have refused to participate in conducting the test. As has been stated "this method appeared to have been abandoned, because, as is generally believed the role of the Judge was reduced to that of a supernumerary spectator and the High Court naturally declined to accept such a position."¹ One may in this connection draw attention to a provision in the Madhya Pradesh Judicial Service Recruitment Rules, 1955, which is as follows:

"21 (2). The Governor may, if he thinks fit, appoint a Judge of the High Court to be present at the interview. This judge so appointed shall advise the Commission on all points on which the Commission may require his advice, but he shall not be responsible for selection of the candidates."

Probably for the reasons mentioned above, we found that in the States of Assam, Uttar Pradesh and West Bengal,

¹Report of the Committee on the Separation of the Judiciary from the Executive, Madras, 1946, page 52, paragraph 147.

Role of the High Court in selections.

the Registrar of the High Court or the Law Secretary of the State is associated with the Commission at these *viva voce* tests. The participation of an official of that status in the selection would naturally have the effect of making the technical assistance needed for the selection of the judicial personnel of not much value. We hold the definite view that so long as these *viva voce* tests or interviews form part of the method of selection, a High Court judge of experience should be invited to participate in the conduct of these tests and have a preponderating voice in their result. It will have to be realized that in participating in these tests, the judge will not be discharging the duties of his office but will be lending his assistance as an honoured technical adviser in the making of the selection.

Judge to have a preponderating voice.

Competitive test preferred.

31. Earlier, we have referred to the two broad patterns on which the method of recruitment has proceeded. We have also indicated, in our opening remarks, our general preference for a competitive test as a sound method of selection. It is true that the method of selection by interviews by the High Court has given satisfaction in some States like Bombay but we have also heard complaints about the working of this system in some States.

Limitations of the interview method.

32. A number of witnesses have emphasised the importance of leaving the selection of the judicial cadre entirely to the High Court. It has been said that the selection by the High Court on whom the responsibility for the administration of justice in the State rests would be the ideal method of making these selections. While fully accepting the position of the High Court *vis-a-vis* the administration of justice in the State, we feel a difficulty in accepting the method of selection by High Court judges at interviews as a satisfactory method for the selection of judicial personnel. A large number of the candidates for these services would be junior lawyers practising in the mofussil whose work the High Court Judge would have no opportunity of knowing or assessing. In regard to these candidates, therefore, the High Court will have to rely largely on reports of their competence and suitability from subordinate judicial officers. Further, a High Court judge or judges interviewing a candidate for fifteen minutes or half an hour would hardly be in a position to arrive at a satisfactory conclusion as to his fitness though they may be assisted by reports from the subordinate judiciary. A great deal of diversity of opinion exists as to the effectiveness of these interviews as tests of fitness. It, not infrequently, happens that a candidate with some personality and good manners is able to impress the interviewing judge or judges when a man of real merit who is self-conscious and diffident fails to impress them. There is moreover the element, however small, of the possibility of personal influences being brought to bear on the interviewing judge or judges.

33. Having regard to all these considerations, we think, that by far the best method is that of a written examination which would help to eliminate a large number of candidates. Such of those who survive the written tests can be called for an interview which may form part of the test. A competitive examination has for long been an accepted method of testing ability for various occupations in life and there is no reason why it should not measure a candidate's ability for judicial office.

Written competition test suggested.

34. It may be mentioned that the Civil Justice Committee were also of the opinion "that a modified form of competition * * * among the nominated candidates should be one of the elements in the selection of munsiffs....."¹ They made this recommendation "with the less hesitation as persistent complaints were made that recent nominations in several provinces have not been made from the best material available. It seems that if competition in some form is introduced, criticism of this kind will be disarmed".²

Views of the Rankin Committee.

35. We shall consider next the important question of the nature of the written examination to be held. We have already dealt in part with the question of the field for recruitment to these services and expressed our preference for recruitment from among persons who have had experience at the Bar for a period of three to five years. It is obvious that subjecting candidates who have already taken a law degree and spent some years at the Bar to a written examination in legal subjects in the ordinary manner will not result in a satisfactory selection. The young man who has spent some time at the Bar can hardly be expected to devote time and attention to text books and law reports and answer question papers of the type usually set at law examinations. Even if he prepares himself for such a test, it would only enable the young lawyer with a good memory to score better in the examination and not bring to the fore the young man with a real aptitude for legal and judicial work. What we therefore suggest is a test of a practical nature. To quote the Civil Justice Committee,³ "an examination should be held to test the candidate's practical acquaintance with law and procedure with special reference to his ability to draft pleadings, appreciate evidence and write judgments. A simple method would be to give the candidate records of some decided cases. He should then be required to draft the issues and write the judgment, discussing the law including the case-law applicable to the facts". The candidate may be provided with bare Acts and law reports so that he may not

Nature of the written examination.

Practical test recommended

¹Report, page 183, para 9.

²*Ibid.*, para. 10.

³*Ibid.*, page 183, para 8.

be forced to rely on his memory and have ample opportunity of verifying the law. The emphasis will not be so much on a knowledge of the law as on its application with the aid of books, to a given set of facts. It may be pointed out that examinations of this nature are being held in the State of Uttar Pradesh for recruitment to the higher judicial service.

Service Commission to conduct examination.

Appointment of examiners.

36. A further important question for consideration is the authority to be entrusted with the holding of the examination. We have already noticed the provisions of articles 234 and 320 of the Constitution which require consultation with the Public Service Commission in regard to appointments to the subordinate judiciary and which entrust the duty of holding the examinations generally to the Public Service Commissions. In view of these provisions, we think that the examinations can well be conducted by the Public Service Commissions provided, however, that its nature and scope are defined in rules framed with the concurrence of the High Court. It would, we think, also be advisable to take the further precaution which is found in the rules prescribed in Uttar Pradesh and Bihar that the examiners should be selected in consultation with or with the concurrence of the High Court. Such a course will assure the selection of suitable and competent persons for the purpose of setting and valuing the papers at the examination.

Examiners from outside the State.

37. Some very responsible witnesses before us gave expression to the complaint that examiners selected from inside the State were apt to be the subject of influence and pressure and that it would be desirable to make it a rule to select as far as possible examiners from outside the State. We have no means of judging the correctness of this complaint. It may, however, be judicious in order to obviate all suggestions of partiality, to have a fair proportion of examiners from outside the State.

Case for *viva voce* tests.

The case against.

38. We have noticed above the divergence of views in regard to the utility of a *viva voce* test forming part of the examination. Speaking generally, it appears that members of the Public Service Commission attach great importance to it and such of them as we have examined have stated, that it has yielded very satisfactory results. On the other hand, there is the view expressed by members of the legal profession and of the judiciary, that these tests give only a superficial and imperfect idea of a candidate's merit. Not infrequently, the candidate with a certain amount of presence of mind and readiness of wit is able to show himself at advantage in these tests as compared with those possessing more substantial but less showy qualities. There is also the view that these tests by reason of the intangible elements on which they are based make it easy for the play of patronage and nepotism. The possession of a personality is a matter of substantial importance in the

making of an efficient judicial officer and that such tests have for long been an accepted part of such examinations. We recommend their continuance. However, in order that these tests may operate satisfactorily, it is necessary to provide that the marks allotted to them should not be disproportionate to the total number of marks in the examination. As to what the actual proportion should be is a detail which must be left to be dealt with by the rules governing the examinations. Nor should a minimum requirement in the *viva voce* test be insisted upon. Instances are known of persons who have failed to obtain good marks in the *viva voce* tests having made very efficient and successful executive and judicial officers. We have already indicated the importance of associating a High Court judge in the holding of the *viva voce* test and giving him a preponderating voice in the result of the test.

Viva Voce
tests to
continue.

No require-
ment of
minimum
marks.

39. We have already indicated that recruitment for the lower subordinate judiciary should be made from among law graduates who have practised for 3 to 5 years at the Bar and whose age may not exceed 30 years. However, in the southern States such as Andhra Pradesh, Kerala, Madras and Mysore, a certain number of vacancies in the cadre of the lower judiciary is reserved for the ministerial servants particularly of the courts. These ministerial servants are required, in order to be eligible, to possess a law degree. In three of the southern States it is also necessary that they should have passed the Bar Council examination. Being ministerial servants in courts or departments concerned with law, they have a certain amount of knowledge of the practical working of the law. There is, however, a considerable body of opinion that this class of persons bred in the atmosphere of the offices of courts where unhealthy practices prevail should not be eligible for appointment to judicial office. On the other hand, opinion has been expressed by distinguished retired judges and others that judicial officers drawn from the ministerial services have in the course of time turned out to be distinguished members of the judiciary. It is unnecessary for us to express any definite view in regard to these rival opinions. The only question for our consideration is whether the reservation now being made in the southern States of a certain number of posts for the ministerial services should continue. We are of the view that it should not. Persons in the ministerial services who have been at the Bar for the minimum prescribed period and are within the age limit prescribed would continue to be eligible to compete at the examination for recruitment to the lower judicial service. A reservation is unnecessary to meet cases of this character. However, in order to make it possible for ministerial servants to be able to compete, a higher age limit as compared with that for direct recruits from the Bar has sometimes been prescribed. This is clearly undesirable. If the ministerial servants wish to compete in these examinations, it should be open to them to do so on

Recruit-
ment from
ministerial
services.

No reser-
vation for
the minis-
terial staff.

the same conditions as other law graduates who have practised at the Bar.

Minimum qualification three years' practice.

40. Having regard to the considerations mentioned above, we are of the view that three years' practice at the Bar should be prescribed as one of the minimum qualifications of eligibility for entry into the lower judicial service (civil judge junior division) recruited at the State level.

Age limit for entry—maximum thirty.

41. The age limit up to which candidates are recruited to this service varies in different States from twenty seven to thirty five, it being as high as forty in the case of ministerial servants. A person should be able to complete three years' practice at the bar when he has reached the age of twenty six or twenty seven years. The maximum age limit therefore for entry into the judicial service may well be fixed at thirty years. On the basis that the existing rules regarding the age of superannuation remain unaltered, he will have the opportunity of being in service for a period of at least twenty five years. It appears to us unnecessary to fix a minimum age at which a candidate would become eligible for admission to the service.

Training essential.

42. The mere selection of a suitable person by the application of the tests we have described does not obviously complete the process of bringing into the service the competent judicial officer that is needed. The law graduate, notwithstanding his experience of a few years at the Bar, will still require a course of training before he can be entrusted with the work of a judicial officer. Dealing with this aspect of the matter, the Civil Justice Committee observed as follows:—

"It seems to us that it is most undesirable that young munsif should have to learn from his munsarim or reader from whose domination, he generally finds it difficult to shake himself free. We would therefore recommend that a training course for this class of officers should be held at headquarter stations for a period of, say, three months preferably during the vacation and instructions should be given by a retired officer from the provincial civil service."¹

At the present day, the importance of training seems to be even greater than it was thirty years ago. Not only has the volume and variety of the work increased but the pace at which a munsif has to perform his duties has quickened. Unless a young officer is given the proper training, he is likely to acquire by reason of his inexperience, un-businesslike habits which he may find it difficult to shed later on and which may prevent him from becoming an efficient judge. A certain amount of training in the administrative work of a court is also essential to a fresh entrant into the service from the Bar, if he is not to be at the mercy of his office clerks.

¹*Ibid.*, page 187, para. 19.

43. The length of the period of training given to the recruits at present varies from State to State. In Bihar and West Bengal, a two year period of training is provided. In the other States like Andhra Pradesh, Madhya Pradesh and Madras, where the recruitment is from persons who have had experience at the Bar, the period of training is six months. The State of Uttar Pradesh provides for a training from four to six weeks only. In Bombay and Rajasthan, there is no provision at all for any training. In some of the States, however, the period of training prescribed has, in practice, turned out to be merely a theoretical requirement. In Uttar Pradesh and in West Bengal, in spite of the relevant orders providing for periods of training, it has, in many cases, been dispensed with on account of the shortage of officers and the immediate need for filling vacancies which had arisen.

Length of training.

44. The pattern of training is, broadly speaking, the same in the States where training is contemplated as an essential part of a judicial officer's career. Detailed and comprehensive schemes for training have been worked out in Bihar, Madras, West Bengal and Madhya Pradesh. They are designed to enable the probationer to familiarize himself with (a) actual trial work, civil and criminal; (b) revenue work; (c) conduct of cases; and (d) administrative work. The trainees are put in charge of a senior district and sessions judge whose duty is to guide them during the period of training and report on their work.

Period and nature of training.

45. As we are recommending recruitment from persons who have spent a minimum of three years at the Bar, it will be convenient to examine the method of training adopted in Madras where recruitment is made from members of the Bar and to suggest changes wherever we consider such changes necessary.

Training in Madras.

46. In that State, generally the recruit is given training for three months in the revenue department and for an equal period, in the judicial department. He is first trained in one or the other of the two departments depending upon considerations of administrative convenience. But it is learnt that an attempt is being made to give the revenue training first. We set out the manner in which he is put through this training. The probationer is attached to a Karnam for three weeks and to a village headman for one week so that he may have knowledge of their day to day work with particular reference to the maintenance of village accounts. For the next three weeks, he gets training in survey work and the maintenance of land records and other documents like field maps and village maps. He is then attached to a Firka revenue inspector for a week and to a minor irrigation overseer for two weeks. His remaining period of training in the revenue department is spent in the taluk office where he studies various land records and understands the general background of the maintenance of Government accounts.

Revenue training.

Its importance.

The importance of training in revenue work cannot be overemphasized. A fresh recruit to the service cannot satisfactorily discharge his duties in disposing of civil and criminal matters without an adequate knowledge and appreciation of rural conditions. A large part of the munsif's work consists in dealing with land disputes and a knowledge of revenue matters is indispensable to the satisfactory disposal of these matters.

Police training.

47. The revenue training is followed by a short training of about two weeks with a circle inspector of police when the recruit gets an opportunity to study the general working of the police department with special reference to the investigation and prosecution of cases. He acquires a knowledge of the regulations under which action has to be taken in the event of a disturbance of law and order. In a later chapter, we refer to an argument that separation of the judiciary from the executive should not be effected, because the separated magistracy is unaware of the difficulties of the police in investigation, and in making evidence available against the accused and is prone to exact too high a standard of proof. We emphasize in that connection the need for a fairly full acquaintance with police methods of investigation and prosecution of cases as a part of the training of the judicial officer dispensing criminal justice. It may be that in that view, the period of training in police department may have to be longer than two weeks.

Judicial training.

48. Then follows a period of training in the judicial department for a period of three months. During this period, the trainee is first asked to watch the proceedings in courts, civil and criminal, at the district headquarters and is then given the work of trying simple civil and criminal cases.

Administrative training.

49. The training in administrative work proceeds side by side with the training in the judicial work. The probationer is required to gain an intimate knowledge of the actual working of the different grades of courts and their offices. He has to acquire a thorough knowledge regarding the maintenance of the different registers, the preparation of statistical returns, the scrutiny of complaints and the checking of court fees, the preparation of decrees and the system of distribution of processes. He has to familiarize himself with the working of various departments like Nazarat, accounts, copying department, record room and the like. He is also required to have a thorough knowledge of financial rules and to acquaint himself generally with administrative work and office routine. This departmental training is essentially of a practical character.

The period of training may not, however, necessarily proceed in the order described above and may be intermingled or proceed in two departments at the same time.

depending upon the exigencies and convenience of the trainee as well as the departments concerned.

It may, in some cases, be necessary to send the trainee for training in some other department as well. This will have to depend on local conditions.

50. It is difficult to lay down definitely the period of training in all cases. It may, however, be observed that in view of our recommendation that recruitment of the judicial officers should be from the Bar, we consider a period of training ranging between six months and one year as sufficient. The period and the nature of the training may, however, be adjusted from time to time and in particular cases by the High Court by reason of variations in the local conditions and having regard to the background of the officers.

Period of training to be six months to one year.

51. We, however, wish to make it perfectly clear, that in no event should the training be dispensed with or its period reduced to less than six months. We would emphasize, that a training such as we have envisaged, is as essential to the making of a properly equipped judicial officer as the test of an examination to which he is to be subjected. We were informed, that even in States where a training is provided, there was a tendency on the part of the selected officers and their superior officers to regard it as unimportant and a matter of routine. This is to be deprecated. The training should be entrusted in our view to a selected district judge who would make periodical reports to the High Court about the trainees in his charge and their progress. Any want of attention to a judicial officer at the vital stage when training is being imparted to him will result in greatly impairing the competence and efficiency of the lower judiciary which we are aiming to raise.

Not to be shortened or dispensed with.

To be imparted by selected officers.

52. We may next consider the constitution of the higher judiciary and their recruitment and training.

Creation of an All India Judicial Service.

Earlier we have expressed our view that a proportion of the higher judiciary should be recruited by a competitive examination at the all-India level, so as to attract to the judiciary, capable young graduates fresh from the Universities. We shall now proceed to discuss the scheme in detail.

53. We are concerned at this stage in considering recruitment to what we have earlier designated as the State Judicial Service Class I, which will comprise of posts of district judges, additional district judges and corresponding posts usually filled by officers of the status of a district judge. These posts are at present filled partly by promotion from the subordinate judicial service which we are designating as State Judicial Service Class II, and partly by direct recruitment from experienced members of the

Recruitment to the higher judiciary.

Percentage to be reserved for the Indian Judicial Service.

Bar. The proportion of direct recruits from the Bar to those promoted to these posts varies from State to State. The highest percentage amounting to fifty per cent is to be found in Bombay and Kerala. In Assam and Bihar, the direct recruits from the Bar average thirty-three and one third per cent and in Uttar Pradesh the percentage is twenty-five. In other States, the percentage varies from twenty-five to fifty per cent. In order to bring into the higher judicial service a fair proportion of brilliant young men who will set a higher tone and level to the subordinate judiciary as a whole, we propose that forty per cent of these posts should be filled by persons who would be recruited by a competitive examination held at the all-India level. These selectees will be subjected to a training and occupy subordinate posts borne on the cadre of the State Judicial Service Class II for a period of years before they are brought to State Judicial Service Class I. This scheme will no doubt have the effect of reducing the percentage of direct recruitment from the Bar in some of the States and also reducing the number of posts which are now available to persons from the subordinate judicial service (state judicial service, Class II) for promotion to the higher judiciary. These reductions have to be faced and accepted as they are necessary in the interests of the efficiency of the higher judiciary and the judiciary as a whole.

Selection by an All India examination.

54. We have already referred in more than one place to the poor intellectual calibre of the law graduates who eventually find their way into our judicial service through the avenue of the Bar. We have also mentioned how the cream of our youngmen are drawn away into the Union, the State and private services. The problem, therefore, is to tap, as it were, the source of recruitment at the right time and at the right level so that we will be able to attract a number of these brilliant University graduates to the judicial service.

It appears from the figures made available to us by the Union Public Service Commission that a substantial proportion of students offering themselves for the I.A.S. examination are interested in law and take optional papers in different branches of law. Though we have not been able to obtain complete figures, we have no doubt that a fair proportion of the candidates offering themselves at this examination are law graduates. Why should not then we seize the opportunity of recruiting some of them to the judicial service?

Service Judges vs. Bar Judges

55. This brings us to the controversy of the merits of the service or professional judge as compared with the judge drawn from legal practitioners. In most of the Continental countries, the professional Judge holds the sway. The reverse is the position in the Anglo-Saxon

countries. India has for a long time occupied an intermediate position, both in regard to the subordinate as well as the higher judiciary. Ours has been a tradition of the blend of these two types of judges.

56. The scheme which we suggest is in some respects similar to that under which Indian Civil Service officers were recruited to judicial posts after having entered the Service by a stiff competitive test. That similarity has evoked a great deal of criticism and opposition from the witnesses we examined as it was said that officers of the Indian Civil Service who went to the judiciary were by no means successful judges. A distinguished lawyer stated that "good I.C.S. Judges were extremely few and exceptions". Apart from the comment on their work, the Indian Civil Service judges have left unpleasant memories behind them because of their association with our erstwhile British masters. It has been said of them that "We had to suffer them for most of them were British, and our masters. They defended the Empire on the Bench just as their executive counterparts defended it in the general administration."

Resemblance to the I.C.S.

Consequent opposition.

57. Notwithstanding all that has been said against the civilian judges, one may not forget that some of them have been great judges, whose judgments are remembered and quoted with appreciation even to this day. Even after Independence, civilian Judges have occupied the responsible office of Chief Justice of some of the High Courts and have been considered suitable for appointment to the Bench of the Supreme Court.

Merits of the I.C.S. Judges.

58. Though a competitive examination will be the method of selection and the persons selected will have had no experience at the Bar, in our view, the scheme we propose takes care to avoid the disabilities from which the Indian Civil Service judges suffered. To begin with, he had very often no legal qualifications other than those which had been given to him as a part of his training. These officers served for a number of years in the executive which clearly gave them an executive bias. Moreover, it was the general belief that the less able of them who were, as it were, found wanting on the executive side were taken up in the judiciary. We are, however, proposing to take only law graduates as recruits to the proposed service. Further, they will have no period of service in the executive as in the case of the civilian. In our scheme, they will, from the commencement, be earmarked for appointment to the judiciary so that they will be imbued, as it were, with a judicial bias.

Its defects avoided.

59. The great advantage that the Indian civilian had, was the intensive and varied course of training which he had to undergo. At the time of his first entry into service, his training was confined to matters pertaining to the revenue and criminal administration alone, but when he

Merits of training.

was taken over to the judicial side, generally an equally intensive training in civil law was given to him for a period of not less than eighteen months. There can be no doubt that a similar intensive judicial training given to a judicial officer who possesses a law degree can be of the greatest value. If a law graduate recruited by a competitive examination is subjected to a carefully devised scheme of training which would include the practical working of the courts, there is no reason why he should not make as successful a judicial officer as a person recruited after a few years' experience at the Bar. After all, experience at the Bar is only a manner of training and an equally satisfactory training may be given by the adoption of other methods. Indeed, it can be claimed that a planned and systematic training such as is contemplated by us for the judicial officer selected for the Indian Judicial Service may be more effective than the uncertain and spasmodic training which may be received during the course of a few years' practice at the Bar. These and the other considerations referred to earlier have led us to the conclusion that in the interests of the efficiency of the subordinate judiciary, it is necessary that an All India service called the Indian Judicial Service should be established. This will need action being taken in the manner provided by article 312 of the Constitution.

Creation of an all-India Judicial Service recommended.

Method of recruitment : competitive examinations—standards.

60. The personnel constituting the Service could be selected through a combined competitive examination relating to the Indian Administrative Service and other allied Services. Candidates competing for the Indian Judicial Service will have to be law graduates and will have to offer at least two optional papers in law. The standards insisted upon in their case will be the same as in the case of the Indian Administrative and the Indian Foreign Service. As to the age limit, having regard to the requirement that the candidate should be a law graduate, we are of the view they should be recruited from the age group of twenty-one to twenty-five years.

Allotment to other States.

61. As in the case of the other All-India Services, persons selected for the All India Judicial Service will be allotted to a particular State and will form part of the judiciary of that State for the rest of their service. However, in order to foster an all-India outlook which is of vital importance to the nation, we suggest that as a rule the Indian Judicial Service officers should be allotted to States other than their own States.

Training.

62. An officer selected for the Indian Judicial Service should, in our view, be given an intensive training for a period of two years before he starts his judicial career. To begin with, he will undergo the training that is at present being given to persons selected for the Indian Administrative Service in the Training School. It is essential that for a period, the training of the future executive officers and the future judicial officers should proceed *pari passu*

In the I.A.S. School.

and in association with one another. We have found that in maintaining the efficiency of judicial administration, the district judge has to depend a great deal upon the executive officers for their co-operation. It has been generally noticed that a district judge borne on the cadre of the Indian Civil Service is able to secure the co-operation of the other officers in a larger degree than a district judge belonging to the State service. This perhaps is psychological. However, that may be, we must make use of every factor which may help to make judicial administration more efficient. Officers of the Indian Judicial Service, if trained in close association with those of the Indian Administrative Service, will in the future stages of their career as judicial officers, be able to obtain all necessary co-operation from their colleagues of the Indian Administrative Service.

The course which has been prescribed for the one year period of probation of the Indian Administrative Service officer, includes a study of the principles of the Constitution, of the Indian criminal law, general administrative knowledge, such as, Indian History in its social, political and economic aspects, general principles of administration, organization of Government institutions and the regional language of the State to which he is allotted. These subjects would, in our view, be equally useful to a judicial officer. We may, however, suggest that in order to render this period of training in the Indian Administrative Service School of more practical value to the Indian Judicial Service officer, some additional subjects like Economics and Commercial law with particular reference to the civil procedure, company law, insolvency, banking and insurance, should also be included in the course of instruction at the school.

63. The training at the Indian Administrative Service School for a year should be followed by a further period of intensive training in the State to which the officer is allotted. The officer will be subjected to this training side by side with members of the subordinate judiciary recruited at the State level. We have earlier prescribed the nature of this training. This period of training for the Indian Judicial Service officer in the State will have, however, to be longer, by reason of his unfamiliarity with courts of law. It should, we think, extend to a period of one year which will include a three months' training in the revenue matters, a two months' training in the police department and five months under a selected district judge. It may be advantageous to give the officer some idea of how cases are prepared by posting him for training for a short period under the Government Pleader or the Public Prosecutor. In order that the officer may have some idea of work in the High Court, we also recommend that he should work as a legal assistant to a selected High Court judge for a period of two months. During this

Training in
the States.

In the
District.

In the High Court.

period he will be able to familiarize himself with the High Court procedure beginning with the institution of civil and criminal matters upto their final disposal. He would also be able to train himself by preparing exhaustive notes and summaries in some matters to be heard by the judge to whom he is attached. This personal contact with the High Court judge will enable him to get an intimate understanding of how complicated legal problems are approached and dealt with in the High Courts. He would also be able to watch the methods of work of experienced judges. The period of training in the High Court should also familiarize the officer with the methods by which the work of the subordinate courts is reviewed. At the end of a training such as we have suggested, the officer could well be entrusted with the responsibility of doing judicial work.

Work as a magistrate.

64. After the training, the officer will be posted as a magistrate. Care will have to be taken in States where separation of the judiciary from the executive has not yet been effected to see that he is under the control and supervision of the High Court and not the executive. This should present no difficulty. Cases could be transferred to him from time to time for disposal. After a period of

As a munsif.

not less than three years has been spent by him as a magistrate exercising progressively increasing powers, the officer can be posted to the civil side starting as a junior civil judge. In some of the States where separation has been effected, the posts of magistrates and munsifs are borne on the same cadre. In these States, the officer will work as a munsif for not less than three years before he is promoted to higher posts and works as a subordinate judge or senior civil judge or an assistant sessions judge as the case may be. After three or four years' experience in these higher posts, he will be fit for being posted as a district and sessions judge.

and subordinate judge.

Promotion as district judge.

Emoluments in subordinate posts.

65. In the scheme we have proposed, the emoluments of the posts in the Indian Judicial Service will be the same as those in the Indian Administrative Service. These officers will therefore draw a higher remuneration when working as magistrates, munsifs and subordinate judges than their counter-parts in the State services. On appointment, however, as district and sessions judges their remuneration will be the same as that of persons occupying these posts who are not members of the Indian Judicial Service.

As District Judge.

Our main purpose in recommending the institution of an All India Service is to bring men of talent into the higher judicial service. These officers will, therefore, after their training for two years, have to be taken quickly through the rungs of the subordinate judicial service so as to reach the position of district and sessions judges in a period of about ten years.

66. It may appear somewhat unjust that an Indian Judicial Service officer should rise to the position of a district and sessions judge in the short period of about ten years while a person recruited as a junior civil judge at the State level should have fifteen to twenty years in service before he can attain that position. We do not think that this would be unjust. It must be remembered that the young man who has preferred to enter the service at the State level could have, if he had chosen, attempted to enter the service at the all-India level. He has not chosen to do so probably because he did not command the talent, which would have enabled him to enter it by that door or has not been successful in his effort. What is clear is that the entrance to the service at the all-India level will remain open to every one who chooses to attempt to enter it by that door. Further, it has to be remembered that every officer recruited as a civil judge (munsif) does not reach the post of a district and sessions judge. That post is a key post in the judicial administration of the State. A district and sessions judge is the highest judicial authority in the district and is responsible for its judicial administration in all aspects. Normally only one in ten persons recruited as munsifs can aspire to reach this selection post.

Rapid promotion - a possible criticism.

67. A further question which needs consideration is whether All India Service element which we have proposed can be integrated into the State Judicial Service. We see no difficulty in bringing this about. Such an integration is in force in the case of other all-India Services and identical principles can be made applicable to this case. In the Indian Administrative Service and the Indian Police Service the cadre strength at the higher levels is made up of seventy-five per cent. of directly recruited personnel at the all-India level and twenty-five per cent. personnel filled by promotion from the lower ranks recruited at the State level. The scheme, we envisage, will be on the following lines:—The recruitment at the lowest level of the judicial machinery viz., of civil judges junior division (munsifs) will be made at the State level. Persons so recruited will be eligible for promotion to the higher posts of civil judges senior division (subordinate judges). The State Judicial Service Class I (the higher judicial service) will consist of the offices of the district and sessions judges, additional district and sessions judges, civil and sessions judges, chief presidency magistrates and other posts for which an officer of the status of a district and sessions judge is necessary. In so far as State Judicial Service Class I (higher judicial service) is concerned, we would suggest that forty per cent. of these posts be reserved for members of the Indian Judicial Service which we have proposed. Of the remaining sixty per cent. thirty per cent. may be left to be filled by promotion from ranks of State Judicial Service Class II (subordinate judicial service) and thirty per cent. to be filled up by direct

Integration with the State Services.

Forty per cent. of superior posts to be reserved for the I.J.S.

Thirty per cent. for promotion.

Thirty per cent. for direct recruitment from the Bar. Smaller States. recruitment from members of the Bar of sufficient seniority and standing. The proportions we have recommended may, however, have to be suitably altered in the smaller States like Assam and Orissa where the number of district judges is small. Another method of dealing with such States would be to have a combined cadre for two States, a big State and a small neighbouring State being taken together.

Opposition to the scheme. In experience 68. The scheme of recruitment to the higher judicial service, partly by the constitution of an all-India Judicial Service, met with considerable opposition from some members of the subordinate judiciary and from certain bodies representing the subordinate judiciary who have sent representations to us. It was urged that the personnel recruited at the all-India level will be deficient in experience as compared with the personnel recruited by promotion from the subordinate judiciary. We have dealt separately with this aspect of the matter. It is true, that the recruits at the all-India level will have shorter judicial experience before they reach the level of district and sessions judges but this will be amply compensated for, by the greater talent they will possess and the more intensive training to which they will be subjected.

Unfairness to the State Services. 69. A further objection to our proposal was that it would unfairly affect the chances of promotion to the higher judicial service which persons in the lower judicial service now have and that in the result, the lower subordinate judiciary will be deprived of all incentive to efficient work. It appears to us that the reservation of thirty per cent. of posts to be recruited by promotion, which we propose will not substantially reduce the posts now available to the subordinate judiciary in the higher judiciary. The Table set out below shows the number of posts in the lower State judicial service and the higher State judicial service in the various States during the year 1955.

Table showing the number of posts in the State Judicial Service and Higher Judicial Service in various States in the year 1955, and the allocation of posts in the Higher Judicial Service to Indian Judicial Service etc

Name of the State	State Judicial Service		Higher Judicial Service		Total of 4 & 5	Percentage of posts in Higher Judicial Service	Allocation of posts in the Higher Judicial Service		
	Munsifs	Subordinate Judges	Assistant District Judges & corresponding posts	District Judges			I.J.S. Promotion	Direct Recruitment	
I	2	3	4	5	6	7	8	9	10
Audhra	54	18	..	10	10	12.2	4	3	3
Assam	22	7	5	5	10	25.6	4	3	3
Bihar	232	71	..	41	41	11.9	17	12	12
Bombay	231	30	31	25+37 posts with pay between Rs. 1000—1600	93	26.2	37	28	28
Kerala	53	6	13	9	22	27	8	7	7
Madhya Pradesh	95	41	..	14	14	9.3	6	4	4
Madras	117	31	..	19	19	11.3	7	6	6
Mysore	52	18	..	10	10	12.5	4	3	3
Orissa	46	15	..	12	12	16.3	5	4	3
Punjab	123	..	..	21	21	14.6	9	6	6
Rajasthan	80	30	20	18	38	25.6	14	12	12
Uttar Pradesh	163	59	45	39	84	27	34	25	25
West Bengal	121	49	..	44	44	20.6	18	13	13

Objection
answered.

70. The above Table shows that the percentage of posts in the higher State judicial service ranges between 10 to 20 per cent. of the total number of posts in the judicial services of the State. It will thus appear that only a small proportion of the officers in the lower judicial service can expect to reach the higher judicial service. The Table also shows the number of posts that will be filled if our proposal is accepted by recruits of the Indian Judicial Service by personnel promoted from the subordinate judiciary and by direct recruitment from the Bar. An examination of columns three and nine reveals that the number of posts that will be available to persons promoted from the subordinate judiciary will not be small. The posts borne on the higher judicial service cadre must necessarily be regarded as selection posts which may be filled only by persons of adequate merit and ability. These posts cannot be regarded as posts to which an officer should expect promotion in the normal course. We have elsewhere expressed our strong disapproval of the present method of promoting officers merely on the basis of seniority.

The apprehensions of lower State subordinate judiciary are, no doubt, accentuated by the state of affairs which now prevails in a number of States. Apart from promotion having been regulated by mere seniority, the large demand for judicial officers had led to abnormal expectations of promotion to the higher cadre of members of the lower subordinate judiciary.

No injustice
to the State
Service.

71. Comparing the situation which will result from the adoption of our proposal with the position in other departments where officers of the all-India Services are recruited, one finds that only twenty-five per cent of the cadre strength at the higher levels is available for persons promoted from the lower services. The percentage therefore which we have fixed does, in our opinion, no injustice to members of the subordinate judicial service. In fact, we should have been inclined to fix a higher percentage for the Indian Judicial Service element in order to achieve our purpose of raising the tone and level of the judiciary but for the consideration that a certain percentage of these posts should be open to the really talented men available in the lower judicial service. It may be that when the scheme, which we have proposed is found to yield satisfactory results, a case would have been made out for the increase of the percentage of recruits at the all-India level to a higher figure.

Raising pro-
portion
of the
Indian
Judicial
Service.

In any case to suggest that an essential scheme of reform affecting the subordinate judiciary as a whole should be held up in order that the existing personnel may not lose their chances of promotion would be "to disclose an incapacity to see things in proper focus".

A criticism.

72. It was observed by a Chief Justice in reference to our proposal that "If the higher status or the higher salary is kept limited to the direct recruits, the inevitable result

will be that a higher caste of officers will spring up within the Service in no time and the members of that caste, being recruited directly to the higher subordinate judiciary at very young ages, will soon form a block at the top, to whom all further preferment will necessarily be limited..... The former, being appointed directly to the topmost rank of the district judiciary at a comparatively early age, would soon acquire a position of seniority and would be earning a much higher remuneration, while the promotees from the lower subordinate judiciary, who are older men of much longer judicial experience, would be straggling far behind, unless proper adjustments of rank and salary were made. In my view, it will be a combination or assemblage of incompatibles. Very young men, recruited directly by the method of a competitive test, men of middle age, recruited directly from the Bar and men of fairly advanced ages, recruited by promotion will make a very miscellaneous company which is likely to breed a sense of mal-adjustment, if not jealousies or contempts."

73. In the scheme, proposed by us, there is not any disparity of remuneration after the direct recruits, or those otherwise recruited, have reached the higher judiciary. No doubt, during the period of the direct recruits' tenure of posts in the lower judicial service, he will be drawing a higher remuneration than the magistrates or munsifs or subordinate judges in the service. There will undoubtedly be a disparity of age between direct recruit and the person who may be recruited by promotion from the lower services or from the Bar. Such a disparity, however, exists in many services in which recruitment takes place at different levels and from different sources and has not so far led to any disharmony or inefficiency. As the prospects of promotion of the recruits, direct or otherwise, would be equal, the more capable of them being promoted to the selection posts it may well be that the district and sessions judge drawn from the cadre of the subordinate judiciary may, in preference to a direct recruit occupying a like position, be selected to be a judge of the High Court as has happened in the past. Answered

74. A somewhat faint objection to the scheme proposed by us was raised on the ground that a person recruited at the all-India level sent to a State other than his own would be unfamiliar with the language of the State and will not, therefore, ably and efficiently discharge his duties as a judicial officer. We have already recommended that the training, which he has to receive, should include a knowledge of the regional language of the State to which he is allotted. In fact, a similar situation arises in respect of officers of the other all-India Services like the Administrative and the Police Services, when officers posted to one State come from another State. We have not been informed of any difficulties having been experienced by these officers in discharging their duties on this score. Language difficulties.

Other
objections.

75. It has also been suggested that, if the emoluments of the posts in the Indian Judicial Service are the same as those in the Indian Administrative Service, the more capable candidates may prefer the Administrative Service or the Foreign Service or the Police and other Central Services as the qualification of a degree in law will not be necessary for competing in those Services. We do not think that there is any force in this suggestion. So far as the Indian Police and other Services are concerned, the remuneration offered to those selected to them will be less than the remuneration which an Indian Judicial Service officer will get. Moreover, the Indian Judicial Service will have attractions of its own, some of them not available even to members of the Indian Administrative Service who will have a comparable remuneration. A judicial officer, unlike an executive officer, lives a life of independence unaffected by the frowns and favours of a superior. Indeed, we were informed by the Chief Justice of a State that he had met some I.A.S. officers who would like to be transferred from the executive service to the higher judicial service, if such a transfer was possible. An officer of the Indian Judicial Service may rise to the status of a High Court Judge, the like of which cannot be attained by an officer in the I.A.S. or the I.F.S.

Direct
recruitment
from the
bar
necessary.

76. We have already indicated that the proportion of direct recruits from the senior members of the Bar to posts of the State Judicial Service-Class I should be thirty per cent. We have stated earlier the proportions in which direct recruitment from the Bar take place in various States. There is a clear advantage in having different fields of recruitment so that one may be able to catch talent from any field. It has happened that persons who did not succeed in being appointed munsifs have, in later years, been recruited as assistant or district judges, or even after long practice at the Bar as High Court judges. It is, therefore, only fair that the Bar which has so far been the main recruiting ground to the judicial service should have an appropriate quota of direct recruitment to the higher judiciary. Though the percentage of thirty which we have suggested means a reduced quota in some of the States, it is, we consider, a fair proportion, having regard to the scheme of direct recruitment at the all-India level suggested by us.

Qualifica-
tions.

77. In most of the States, the prescribed qualifications for direct recruits to the higher judicial service are seven years' practice at the Bar and age between thirty-five and forty-five years. In Orissa, however, the required length of practice at the Bar is ten years and in Madhya Pradesh the maximum limit of age is forty years. We are of the view that the requirement of a practice of seven years and an upper age limit of forty years should be uniformly adopted in all the States.

78. In our view, it is not necessary to prescribe any period of training for persons recruited direct from the Bar in this manner. Recruits from the Bar, with a minimum practice of seven years and in many cases with much longer practice, will ordinarily be completely familiar with court procedure and like matters. We have referred to this matter as we found that in some States the rules require these recruits to undergo training for a period of one year.

Not raining
cessary

79. An analysis of the pay structure of the judicial service in various States reveals considerable disparity in the pay scales as to (1) the minimum and the maximum of the scales, (2) length of the time-scale of the pay, (3) rates of increments, and (4) the stages of the efficiency bar. Taking, for example, the pay scales of munsifs, the minimum starting salary ranges between Rs. 220 in Bihar to Rs. 350 in Uttar Pradesh. In Orissa, a munsif starts at Rs. 230, in Kerala, Mysore, Rajasthan and West Bengal at Rs. 250, and in Andhra Pradesh, Bombay and Madras at Rs. 300. Likewise, the maximum of the scale ranges between Rs. 500 in Mysore to Rs. 850 in the Punjab and Uttar Pradesh. There is also considerable difference in the length of their pay scales; the pay scale in Assam and Bihar is spread over twenty one years and in Mysore over eleven years. Apart from differences in the amount of increments, there are also differences in the intervals between increments; thus munsifs and subordinate judges in Andhra Pradesh and Madras, and subordinate judges in Assam get biennial increments, whereas elsewhere all judicial officers get annual increments. One also notices considerable differences with regard to the stages at which the efficiency bar is enforced. In Uttar Pradesh, the efficiency bar is placed after the fourth and the fourteenth year of service, in Bihar after the eighth and the fourteenth year, in Andhra Pradesh and Madras after the ninth year, in Kerala and the Punjab after the eleventh year, and in West Bengal after the tenth and the eighteenth year of service. Likewise, there are differences in the pay scales of subordinate judges, additional district judges, district judges and officers of corresponding rank.

Pay scales
of judicial
officers—
Diversity in
pay scales.

80. It is, in our view, desirable that officers doing exactly the same work, and having precisely the same qualifications should, as far as possible, be paid the same remuneration for similar work in different States. There is in our view no justification for the diverse scales of pay and increments now in force.

Uniformity
desirable.

81. While dealing with the main causes of the decline in the standards of the subordinate judiciary, we pointed out, how an officer of the judicial branch of the State Civil Service is at a disadvantage in regard to his emoluments in comparison with a member of the executive branch. This is mainly due to the fact that generally an entrant

Munsifs.
Starting pay
too low.

to the judicial service starts at a higher age than his counter-part in the executive branch. Thus, in States where practice at the Bar is necessary for entry into the service, a young man can enter it at the earliest at the age of twenty-six or twenty-seven. He has thus to make a substantial outlay in expenditure and spend some years in acquiring the necessary special qualifications for the judicial service. On the other hand, an entrant to executive service need not spend money or time in equipping himself. Entering the service immediately after graduation at the age of twenty-one, he has a start of five years over a judicial officer. These are very weighty reasons for fixing the initial salary of a recruit to the judicial service at a somewhat higher level than that of his counter-part in the executive service. But unfortunately this position is not always recognised. We consider it is desirable and necessary that, when people are recruited somewhat later in life on account of their special qualifications, they ought to be started at a minimum salary higher than that paid to ordinary graduates recruited immediately after completion of their university courses. We have already noticed the starting pay of judicial officers in the several States. In our opinion, the starting salary of munsifs in all the States, with the exception of Uttar Pradesh, falls far below of what, in our opinion, should be the minimum adequate starting salary.

Biennial increments not desirable.

82. We noticed with some surprise that the scales of pay of munsifs and subordinate judges in Andhra Pradesh and Madras and of subordinate Judges in Assam provide for biennial increments. The scheme of biennial increments is not so innocuous as it may appear. Although the biennial increments are double the normal annual increments, yet it does cause some hardship to the officers concerned without any substantial benefit to the State. This will be clear from the comparative statement below which shows the amount payable by way of salary to a judicial officer during the first eight years of his service under the two different scales, one providing for annual increments and the other for biennial increments:

No. of years	Total salary per year (300—50/2—700) biennial	Total salary per year (300—25—700)
1	3600	3600
2	3600	3900
3	4200	4200
4	4200	4500
5	4800	4800
6	4800	5100
7	5400	5400
8	5400	5700
	36,000	37,200

Difference is Rs. 1200/- .

Thus, during eight years of the service of a judicial officer, the State Government gains Rs. 1200 i.e. Rs. 150 per year. But for a judicial officer the additional three hundred rupees every alternate year means a great deal. The principal object of giving increments to a public servant is to enable him to meet his increasing responsibilities and expenditure as he grows in age. The principle of biennial increments does not seem to take into account psychological factors, so important in the maintenance of the efficiency of the services. Annual increments have become almost a normal feature of the service under the State. We, therefore, recommend that the scales of pay for judicial officers should invariably provide for annual and not biennial increments.

83. The great responsibility of the work which a judicial officer is called upon to discharge needs no emphasis. In some States, as has been pointed out, the munsif's jurisdiction extends up to Rs. 10,000 and as a judicial magistrate of the first class, the same officer is competent to inflict a sentence of imprisonment up to two years. Judicial integrity is of the greatest importance and to expect persons discharging responsible functions to live on low salaries not commensurate with their office and responsibility is unrealistic and ignores present day living conditions. Elsewhere, we have also dealt with the difficulties which judicial officers, as a class, have to face in the matter of securing residential accommodation and how, in some parts of the country, a very high percentage of their salary has to be spent towards house rent alone. Considering these facts and circumstances, we are of the view that the scales of pay should be substantially higher than it is at present in order to enable an officer to maintain a proper standard of living and avoid obligations which may be embarrassing to him in the discharge of his duties. We, therefore, recommend that the pay scale of a civil judge, (junior division) should be fixed at Rs. 350—25—400—(confirmation)—30—520—EB—30—700. The scale is spread over thirteen years with an efficiency bar after the seventh year of the service.

Suggested
pay scale
for munsifs.

84. There is an equally striking disparity in the scales of pay of subordinate judges. In Bombay, they have a pay scale of Rs. 695—45—875; in Uttar Pradesh Rs. 750—25—850; in Mysore Rs. 500—25—600; in Madras and Andhra Pradesh Rs. 500—50/2—700; in Assam Rs. 500—50/2—800 and in Bihar they have a long pay scale of Rs. 350—15—380—30—770—40—850. In some States like Uttar Pradesh and Rajasthan, subordinate judges and munsifs are borne on the same scale of pay which ranges between Rs. 300 to Rs. 850 in Uttar Pradesh and Rs. 250 to Rs. 750 in Rajasthan. In the Punjab, there is no distinction between munsifs and subordinate judges; there is only one cadre comprising of

Subordinate
Judges.

subordinate judges who are classified as subordinate judges Class I to Class IV, according to the extent of their pecuniary jurisdiction. They are all borne on pay scale of Rs. 300—30—510—EB—30—600—40—720—EB—40—800—50—850. It will be noticed that in a large number of States like Andhra Pradesh, Madras, Bihar, Assam and Orissa, there is considerable overlapping in the pay scales of munsifs and subordinate judges. Thus, in Madras and Andhra Pradesh, munsifs are in the scale of Rs. 300—700 and subordinate judges in the scale of Rs. 500—700. In Bihar, the munsif's scale is Rs. 220—750 and the subordinate judge's scale is Rs. 350—850. Similarly, in Assam munsifs are in the pay scale of Rs. 250—750 and subordinate judges are in the scale of Rs. 500—800. Likewise, in Orissa, munsifs are in the scale of Rs. 200—750 and subordinate judges are in the scale of Rs. 300—850. The result of this overlapping is that, if a munsif is promoted as a subordinate judge, he gets very little financial advantage, because all that is done is to fix his pay in the new scale above the actual salary that he was getting as a munsif. We may illustrate the position. A munsif in Bihar who after ten years of service gets Rs. 445 per month, on promotion as a subordinate judge would get only Rs. 470 in the scale of subordinate judge. The only other advantage that he would derive is that he will go into a scale, the maximum of which is slightly higher than that of a munsif. In States where the pay scales of munsifs and subordinate judges are the same, the promotion of a munsif would merely amount to a change in designation without any change in remuneration. Promotions such as these are merely nominal and can hardly instil in the officer the increased sense of responsibility which is necessary on elevation to a higher post.

A subordinate judge occupies a very important position in the judicial hierarchy. His pecuniary jurisdiction is unlimited and he has to try complicated suits, often of large value. Appeals against his decisions are generally heard by the High Court. In many places, a senior subordinate judge also hears civil appeals transferred to him by the district judge. They are also invested with powers of assistant sessions judges and in that capacity they try sessions cases and also hear appeals against convictions by second and third class magistrates. Elsewhere, we have also recommended that they should be invested with powers to try cases under the Indian Succession Act, Land Acquisition Act and other special enactments.

85. Having regard to the important nature of their work, we think it unreasonable and inadvisable to put subordinate judges on the same scale of pay as munsifs. The difference in the duties entrusted to them is so substantial, that to put them on the same scale of pay as munsifs, is to ignore completely their special role in the

administration of justice. The higher degree of their responsibility requires a separation of the scales of pay of subordinate judges and munsifs so that when a munsif is promoted as a subordinate judge, it should be a promotion for him, in status as well as in remuneration.

Pay scales of subordinate judges to be different from that of munsifs.

Unless promotions are accompanied by manifest advantages, they are likely to be treated merely as a matter of routine and can scarcely stimulate an officer to enter upon his new work with greater vigour and enthusiasm. A real promotion would have the unmistakable advantage of affording satisfaction to the individual officers and enhancing their morale. We, therefore, recommend that a subordinate judge should have an altogether distinct scale of pay which should not overlap the munsif's scale of pay.

86. The existing pay scales of subordinate judges and officers of corresponding rank are not commensurate with the nature and magnitude of the work they are expected to perform. We feel that they ought to be placed in a scale not below what is usually given to a senior Class I officer, that is, Rs. 600—40—1000—1000—50—1100. This pay scale is however spread over 14 years and we do not think it is desirable to put a subordinate judge who is likely to be a senior man of advanced years on such a long time scale. This scale should therefore be modified to Rs. 700—50—1000 with a length of six years. The scale of pay begins at the point where the munsif's scale ends. We, therefore, recommend the above mentioned scale for civil judges (senior division) and the officers equivalent to that rank.

Suggested pay scale.

87. In a large number of States, the pay scales of the district judges have been equated with the senior scale in the Indian Administrative Service viz., Rs. 800—50—1000—60—1300—50—1800. In some States like Andhra Pradesh and Madras they start on Rs. 1000. In Mysore, however, the pay scale of a district judge is Rs. 900-50-1300, and in Assam Rs. 850—50—1500. In Kerala, their scale of pay is Rs. 850—1300. These pay scales are in our view too low. It has to be remembered that even in States like Assam and Mysore the Indian Administrative Service officers are paid at higher scales. The district judge, who is the head of the district judiciary is paid a remuneration substantially less than that paid to the head of the district executive, the collector. We recommend that in these States, the pay scale should be raised so as to correspond to the Indian Administrative Service scales of pay, as has been done in the rest of India.

District judges.

Pay Scales to correspond with those of Collectors.

88. We may, however, point out a practical difficulty which the members of the subordinate judiciary have to face. Even in States where the scales of pay of the district judges are on par with those of the Indian Administrative Service, in point of fact very few district

Starting pay of District Judges.

judges ever reach the maximum of the scale i.e. Rs. 1800. District Judges, we found, generally retire on a pay ranging between Rs. 1000 to Rs. 1300. This arises from the fact that unlike the other services, promotions in the judicial service are extremely slow and are obtained after a long period of service. Various factors contribute to the delayed promotions in the judicial service. Firstly, the proportion of higher posts to the subordinate posts is very small; secondly, unlike the executive services in which there has been increasing expansion on account of the States' growing welfare activities, there has not been much expansion in the judicial service; thirdly, unlike the other services, there is direct recruitment from the Bar to the extent of 25 to 50 per cent. to the higher judicial service. With the field of promotion restricted by these causes in a large number of the States, a judicial officer is not promoted to be a district judge, until he has been in service from fifteen to twenty years or even longer. While it is possible for an Indian Administrative Service officer to reach the maximum of his scale viz., Rs. 1800, within a period of 25 years' service, a District Judge cannot ordinarily reach the maximum of his scale on account of his promotion to be a district judge at a later stage in his service. An Indian Administrative Service officer is generally recruited between 21 and 24 years of age. He gets into the senior scale by the sixth year of service, he can reach the maximum of his scale at the age of about forty-nine and can earn his maximum pay for a period of six years. Generally, a person does not however enter the judicial service till he is at least twenty-six or twenty-seven years of age. He can therefore have a maximum span of twenty-eight years of service before he reaches the age of superannuation. Within this comparatively short span of service, promotions take an extraordinarily long time for the reasons mentioned earlier. If a judicial officer is promoted to be a district judge at the age of 45 years and if he starts on a salary of Rs. 800 he will never be able to reach the maximum of Rs. 1800 and on his retirement at fifty-five he will be drawing a salary of Rs. 1350 only. Even if the age of retirement is raised to 58 as recommended by us elsewhere he will, perhaps, be drawing Rs. 1500 at the age of retirement. The improvement in the scale of salary of district judges has, therefore, been wholly illusory. There is not much meaning in having a scale in which people cannot ordinarily reach the maximum. It is obvious that no member of the subordinate judiciary can be appointed a district judge at an age which would ensure a service of twenty years as a District Judge so that he may reach the maximum of his pay i.e., Rs. 1,800. We, therefore, recommend that suitable adjustments be made in fixing the starting salary of officers promoted as District Judges.

In some States, the effect of late promotions is sought to be obviated by providing for a higher initial salary

based on some advance increments proportioned to the length of service. Thus, in Orissa the initial pay of an officer promoted as district judge is fixed at the stage in the time scale of pay above the officer's pay in the lower rank plus increments at the rate of one increment for every three years of service subject to a minimum increase of Rs. 200 and a maximum increase of Rs. 300. Similar rules obtain in Bombay with the difference that the maximum increase in the initial pay above the minimum of the scale cannot exceed Rs. 200.

In order that a judicial officer should derive real benefit from his pay scale, he should on promotion, be made to start not at the minimum of the scale, but on that pay in the time scale which would correspond to his having reached that post at the end of a certain number of years of service in the lower ranks. This method of calculating the starting salary obtains in the all-India Services, where a person on entering the senior scale gets as his initial salary a higher pay than the minimum of the time scale corresponding to the length of his service. We have devised the accompanying Table on the lines of the all-India Service scales of pay indicating the starting salary of the promotees from one grade of judicial officers to another grade. We may, however, emphasise that it shows the minimum that a judicial officer should get after a certain length of service. Thus, if a civil judge (junior division) is promoted to the senior division or if a civil judge (senior division) is promoted as district judge, before completing 7 years of service he should still get the minimum of the scale of his new post.

SCALES OF PAY

Probable Page	Length of service in years	Pay of Civil Judge (Junior)	Pay of Civil Judge (Senior)	Pay of District and Sessions Judge
1	2	3	4	5
28	1	350		
29	2	375		
30	3	(Confirmation) 400		
31	4	430		
32	5	460		
33	6	490		
34	7	E. B. 520		
35	8	550	700	800
36	9	580	750	850
37	10	610	800	900
38	11	640	850	950
39	12	670	900	1000
40	13	700	950	1060
41	14	700	1000	1120
42	15	700	1000	1180
43	16	700	1000	1240
44	17	700	1000	1300
45	18	700	1000	1350
46	19	700	1000	1400
47	20	700	1000	1450

I	2	3	4	5
48	21	700	1000	1500
49	22	700	1000	1550
50	23	700	1000	1600
51	24	700	1000	1650
52	25	700	1000	1700
53	26	700	1000	1750
54	27	700	1000	1800
55	28	700	1000	1800

89. In the case of persons appointed to the Judicial Service Class I directly from the Bar, appropriate rules may empower the State Governments to fix the initial salary in each case at a suitable stage in the time scale, on the recommendation of the High Court. We are aware that this will mean some extra expenditure for the States. But considering the important part the officers of the higher judiciary play in the administration of justice and having regard to the responsibility placed on them, it is only fair that they should get the real benefit of the scale of pay already prescribed for them.

Additional district judges.

Pay to be uniform with that of district judges.

90. At this stage, we may point out that in a number of States, somewhat lower scales of pay have been prescribed for the additional district judges and the corresponding posts. The reason apparently is that the State Governments want to have their work done cheaply. Thus in Bombay, there are no less than four different scales for posts in the higher judicial service. While the district judges are in the Indian Administrative Service scale, assistant judges get the scale of Rs. 700—50—1,000, the chief judge of the small cause court and the chief presidency magistrate are on the scale of 1,600—100—1,800 and the presidency magistrates are on the scale of Rs. 1,000—30—1,300. The judges of the city civil court are paid Rs. 2,000, and the chief judge Rs. 2,500. In Madhya Pradesh, additional district judges are in the scale of Rs. 600—25—850, which is almost equivalent to that of subordinate judges in other States. In Uttar Pradesh and Rajasthan, Civil and sessions judge are in the scale of Rs. 600—50—800 and Rs. 500—30—800—50—900 respectively. These scales of pay overlap to a certain extent the pay scales of subordinate judges and munsifs. In Assam additional district judges get Rs. 800—50—1,150 and in Bihar Rs. 800—50—1,500. The civil and sessions judges in Uttar Pradesh and Rajasthan, assistant judges in Bombay and additional district judges elsewhere do practically the same judicial work as a district judge, except that a district judge has administrative duties. There is, we think, no justification for putting them on a pay scale lower than that of district judges. We have already recommended that the State Judicial Service

Class I, should have only one cadre consisting of district judges and additional district judges. If they are to be borne on the same cadre, it is only appropriate that they should be put on the same scale of pay. There would appear to be no justification for maintaining a difference in the pay of officers doing substantially the same work. We therefore recommend the discontinuance of separate scales of pay for the additional district judges and the corresponding posts. There should be only one class of posts in Judicial Service Class I with a uniform scale of pay, that is, Rs. 800—50—1,000—60—1,300—50—1,800.

91. Our recommendations with regard to the revision of pay-scales of judicial officers will no doubt result in some additional financial burden on the States. In the Table set out below we have made an attempt to work out the higher expenditure involved in the carrying out of our recommendations.

Financial implications of the proposed scales of pay.

The additional expenditure has been as calculated as follows. We have first arrived at the average expense involved in the pay scales of judicial officers in each State on the basis of the following formula :—

$$\text{Minimum} + (\text{Maximum} - \text{Minimum}) \times \left(\frac{3}{4} - \frac{X}{60}\right)$$

X being the number of years taken to reach the maximum minus five.

Munsifs

Sub Judges

Name of State

Scale of pay

Av. cost of post

Revised av. cost

Diff. + —

No. of Munsifs

Diff. of cost per year

Scale of pay

Av. cost of post

Revised av. cost

Diff. + —

No. of Sub-Judges

Diff. of cost per year

1	2	3	4	5	6	7	8	9	10	11	12	13
Andhra	300—50/2—500— EB—50/2—700	527	572	+45	54	(+)29,160	500—50/2—700	640	920	+280	18	(+)60,486
Assam	250—250—300—25— 400—EB—25— 650—20—750	492	572	+80	22	(+)21,120	500—50/2—800	690	920	+230	7	(+)19,320
Bihar	220—25—395— EB—25—545— EB—25—670— 20—750	458	572	+114	232	(+)317,376	350—15—380—30— 770—40—850	575	920	+345	71	(+)293,940
Bombay	300—300—320— 20—500—EB— 30—650	498	572	+74	231	(+)2,05,128	695—45—875	833	920	+87	30	(+)31,320
Kerala	250—15—400— E.B.—25—500	400	572	+172	53	(+)1,09,392	450—30—600	563	920	+357	19	(+)81,396

Additional District Judges or corresponding posts,
including posts of D. Js. carrying less than IAS scale

Total

Remarks

Scale of pay
Add. D. J. S.

Av. cost
of post

Revised
av. cost

Diff.
+
—

No. of
Officers

Diff. of
cost
per year

14

15

16

17

18

19

20

21

1000—60—1300—50—1800 . 1467 1317 (—)150 10 (—)18,000 71,640

(a) ADJ 800—50—1150 1050 1317 (+)267 5 (+)16,020 }
(b) DJ 850—50—1500 . 1251 1317 (+) 66 5 (+)3,960 } 60,420
= 19,980

ADJ—800—50—1500 . 1220 1317 (+)97 25 (+)29,100 6,40,416

(a) Asstt. Judge—
700—50—1000 920 1317 (+)397 29 (+)1,38,156 }
(b) Presidency Mag.
& Other Judges.
1000—30—1300 1200 1317 (+)117 37 (+)51,948 } 4,26,552
= 1,90,104

800—50—1000 953 1317 (+)364 9 (+)39,312 2,30,100

I	2	3	4	5	6	7	8	9	10	11	12	13
Madras	300—50/2—500— EB—50/2—700	527	572	+45	117	(+)63,180	500—50/2—700	640	920	+280	31	(+)104,160
Madhya Pradesh	250—25—400— EB—20—600	448	572	+124	95	(+)1,41,360	*ADJ.600—25—850]	767	920	+153	41	(+)75,276
Mysore	300—25—500	440	572	+132	52	(+)82,368	500—25—600	577	920	+343	18	(+)74,088
Orissa	230—15—260— 25—435—EB— 25—610—EB— 30—700	472	572	+100	46	(+)55,200	300—860	@580	920	+340	15	(+)61,200
Punjab	300—30—510— E.B.—30—600— 40—720—EB— 40—800—850	612	572	(—)40	82½	(—)39,360	300—30—510— E.B.—30—600— 40—720—E.B.— 40—800—850	612	920	+308	41½	(+)1,51,536
Rajasthan	250—25—500— EB—25—750	500	572	+72	80	(+)69,120	250—25—500— EB—25—750	500	920	(+)420	30	(+)151,200

	14	15	16	17	18	19	20	21
1000—60—1300—50—1800 .	1467	1317	(—)150	19	(—)34,200	1,33,140		
..	..	..	..	..	..	2,18,604		
D.J.S. 900—50—1300	1180	1317	+137	10	(+)16,440	1,72,896		*Additional District Judges have been treated as Subordinate Judges, because their scale is comparable with Subordinate Judges, pay scale.
..	..	..	..	..	..	1,16,400		
..	..	..	..	..	..	1,12,176		@As the data with regard to the scale of increments is not available, the average cost has been arrived at by different formula <u>Max+Min-</u>
Civil & Additional Sessions Judges. 500—30—740—E.B.— 30—800—50—900	753	1317	(+)564	20	(+)1,35,360	3,55,680		

Av. cost of post 2

£ In Punjab there is no separate class of Munsifs. They are all Subordinate Judges (123) of (class I to IV). Sub Judges class I alone are comparable to Sub judges in other states. It is therefore assumed 1/3 of 123 would be sub judges in the proposed scale 700—50—1000.

I	2	3	4	5	6	7	8	9	10	11	12	13
Uttar Pradesh .	350—350—375— 25—400—E.B.— 30—700—E.B.— 50—850	633	572	(—)61	163	(—)119,316	350—350—375— 25—400—E.B.— 30—700—E.B.—50— 850	633	920	+287	59	(+)203,196
West Bengal .	250—25—475— E.B.—25—675— E.B.—700	490	572	+82	121	(+)119,064	750—25—850]	827	920	+93	45	(+)54,684

	14	15	16	17	18	19	20	21
a. CSJ 600—50— 800—50—1200		980	1317	+(337)	45	(+)1,81,980	} 2,34,972	
b. DJS 800—50—1000—75 —1750—50—1800		1383	1317	(—)66	39	(—)30,888 = (+)1,51,092		
..	1,73,748	

We understand that such a formula has been adopted by the Central Ministry of Finance for working out the average cost of posts. The average cost of various posts thus arrived at has been compared with the average cost of the proposed pay scales, and on the basis of the difference, the extra cost to the State resulting from the acceptance of our recommendations as to pay has been worked out as shown in column 20 in the Table. We may, however, point out that the calculations are only illustrative. There have been considerable changes in the strength of judicial officers in a large number of States on account of the recent reorganisation. As we have not got up to date figures of the reorganised strength of subordinate judiciary, it has not been possible to work out the precise additional expenditure for every State. The calculations are based on the statistics relating to the strength of judicial officers as it existed in 1955.

We have commented elsewhere on the propriety of the States making profits out of the court fees levied on the civil litigant and made recommendations for their reduction so as to make the receipts from court fees equal the cost of the administration of civil justice. It should not, therefore, be difficult for the States to meet the additional expenditure arising from the increased scales of pay.

92. A disconcerting feature of Government service which tends, not infrequently to sap the morale of the officer is the lack of the recognition of his work. This is truer of the judicial than of other services. The work of a judicial officer is easily capable of precise evaluation. It is unlike the work of the executive officer which needs such qualities as initiative, capable of only a subjective appraisal. The work of a judge involves duties and produces results which are capable of an objective appreciation. An appellate Court on a scrutiny of a dozen judgments or orders of a judicial officer, forms a fairly accurate opinion of his capacity, industry and knowledge. The superior officer, whether a district or a High Court Judge, can with equal certainty weigh the officer's ability to arrange his work so as to cause the minimum of inconvenience to the public, while utilising his time to the best advantage; his capacity to control the subordinate staff; and supervisory work over all the departments of the court.

Judicial work
capable of
objective
appraisal.

93. As already explained, the judicial set up, in common with other administrative organisations, has a hierarchy of officers with increasing powers and responsibilities. The majority of higher posts are filled by promotion from the lower ranks. The salary scales also provide for efficiency bars; i.e., stages at which an officer's ability is examined and which he is prevented from crossing, unless

his work is considered satisfactory by the superior authority. These devices are intended to ensure that posts needing greater capacity are filled only by persons of merit and ability. They are essential for ensuring that at all points of the administrative machinery are placed men of suitable ability and requisite capacity.

It was however universally admitted, at all centres visited by us, that this very salutary system of checks at different stages devised for maintainnig efficiency had been almost wholly discarded in promoting officers to judicial posts. Ability has yielded place to mere seniority. Very seldom indeed has it been the case that a promotion has been denied to an officer, though he may not happen to be suited to carry the increased responsibility of superior post. Almost invariably officers are selected for promotion solely on the ground of seniority. Automatic promotions.

94. It should be obvious that such a practice is bound to affect the morale of the entire service. When an officer who is known to be "just good enough" is promoted to a post, it is not surprising that men of ability and brilliance should lose all incentive to do their best and be content with being carried along the stream. Only in the State of Bombay, we were told that even officers in the junior cadre were selected to be assistant judges, provided they displayed an exceptionally high level of talent. We were not informed of such "out-of-turn" promotions in any other State. On the contrary in some States, we were informed of cases of persons being promoted to the posts of district and sessions judges, notwithstanding the fact that the High Courts, after careful consideration, had pronounced them to be unfit for such promotions. The consequences.

95. A record of service of each judicial officer is maintained by the High Court. This takes the shape of an annual statement of the work done by the officer, with comments of the superior officer (the district judge in the case of the subordinate judiciary) on the ability of the officer to handle his file, his capacity to conduct proceedings with a sense of responsibility, and on his approach to and appreciation of the legal problems dealt with by him. In addition, the district judge who inspects the office obtains a close knowledge of the officer's ability to run the administrative side of his office. The High Court, through one or more of its judges, scrutinises these details and also records its own impressions. In some High Courts there also exists the practice of the judges recording their impressions on the judicial work of the officer, gathered from the hearing of an appeal or revision from the officer's judgments. These comments also form part of the personal file or confidential report of the officer. There is thus available a valuable record which cannot fail to indicate the judicial officer who deserves promotion. It is extremely Record of service not scrutinised.

unfortunate that this necessary and useful record is treated as waste paper instead of being weighed and acted upon. Instead of his work and ability being recognized by quick promotion the only reward that an officer gets is a posting to a heavy station with an accumulated file of arrears—a legacy of incompetent predecessors—which he is asked to clear off.

The existing positions.

96. The present day attitude of complacent tolerance of inefficiency was strongly criticised by Shri T. R. Misra a former judge of the High Court, in his note of dissent to the Report of the U.P. Judicial Reforms Committee:¹

In U.P.

“* * * the leniency with which confirmations and promotions are now made, tends to make many judicial officers slack and inefficient. They do not exert themselves and try to improve, which they would if they found that bad work would be punished and good work would be rewarded. Almost as a matter of course, every Munsif whether efficient or otherwise is confirmed, is certified fit to cross the efficiency bar, is promoted as Civil Judge and in nine cases out of ten as Civil and Sessions Judge and even as District and Sessions Judge. The few who are passed over in the first instance are promoted in the second or third chance. It is overlooked that the rules about the efficiency bar have been expressly enacted to stop the inefficient and to promote only the efficient, and that the posts of Sessions and Civil Judge and District and Sessions Judge are selection posts to which promotion be made on the ground not of seniority but of outstanding merit.

* * * * *

“The desired end can be achieved only if * * * the High Court becomes strict and makes it plain to presiding Judges that inefficiency and slackness will not be tolerated, that good work will be recognized and rewarded and bad work will be censured and punished, that they must have due regard for public convenience in handling their cases and should be firm and fearless in dealing with those who try to obstruct and delay justice.

Only those officers should be promoted as District and Sessions Judges who are of outstanding ability and are known to be strong and competent enough to be able to guide and supervise the subordinate Judicial Officers.”

¹ Report, Pages 131 and 132-para# 17, 19 and 21.
(Dissenting Note)

Similar views were expressed by Shri S. C. Sarkar in his ^{In West Bengal,} dissenting minute to the Report of the West Bengal Judicial Reforms Committee:¹

“It is well known that with very rare exceptions every member of the Judicial Service gets into the selection grades and becomes a District Judge in time as a matter of course.”

The existence of a similar state of affairs in most of the States has been brought to our notice. It is surprising that the system of what has been called automatic promotion regulated by seniority should have prevailed, notwithstanding the High Court being in charge of the regulation of these promotions.

97. We have noticed elsewhere, how the changed circumstances in the country have resulted in very inferior personnel being drawn into the judicial service. This emphasizes the need for greater vigilance in granting promotions and making selections for higher posts. As the level of our field of selection has fallen, we cannot be too careful to see that unfit persons are not selected for the higher posts carrying greater responsibility and inefficiency aggravated.

It is necessary, therefore, that strict scrutiny be made at every stage of a judicial officer's career and that he be placed in a position of greater responsibility only on the basis of a fair appraisal of his merit and ability. The High Court on whom rests the ultimate responsibility for the proper administration of justice in the State cannot afford to treat this vital aspect with indifference and as a mere matter of routine governed by seniority. We, therefore, recommend that the promotion of a judicial officer should be made not on the basis of seniority, but on the basis of his ability and merit. The High Courts should be vigilant and stop the officer at the efficiency bar, if his work is not satisfactory or if for any other reason he is not a person who should be entrusted with greater responsibility.

Need for
Strictness.

98. The retirement age of the members of the subordinate judiciary like that in all other State services, is fifty-five years in all States except Uttar Pradesh. In that State, the age has recently been raised to fifty-eight years for all the State services including the subordinate judiciary.

Retirement
age.

In the course of our inquiries, we have received a considerable body of opinion in favour of raising the age limit of retirement of the members of the subordinate

¹Report, page 67.

Existing age limit too low.

Need for retaining experienced officers.

judiciary. A large majority of the members of the judicial services are at the date of retirement physically and mentally fit. A number of them are re-employed by the State Governments as members of various quasi-judicial tribunals like Industrial Tribunals, Revenue Tribunals and Election Tribunals. Some of them are appointed also to administrative posts. We are of the view that, at a time when there is for a number of reasons a growing decline in efficiency, the State Governments should not lose the services of judicial officers possessing long experience and maturity of judgment merely because they have reached the age of fifty-five. It is necessary that the State should endeavour to maintain the efficiency of the service by making use, as long as possible and to the fullest extent, their knowledge, experience and ability.

Recruitment from the bar facilitated.

There is a further reason in support of the view that the retiring age should be raised. We have already noticed that direct recruitment from the Bar is generally made at the level of district judges. Several members of the Bar decline to enter the judiciary at that stage because the retiring age being fifty-five, they would not earn an adequate pension. It would, therefore, help to attract better talent from the Bar, if the age of superannuation be suitably raised.

Age limits fixed long ago.

The rule laying down the age of superannuation at fifty-five years was made long ago on the assumption that on the attainment of that age, a person would normally cease to be efficient. Living conditions have substantially altered in this country since and the assumption on which the rule was made is probably not justified. With improved standards of health and the advance of medical science, the expectation of life has increased. Thus, while in 1931 the average expectation of life in India was 26.91 years for males and 26.56 years for females, it had increased in 1951 to 32.45 years for males and 31.66 years for females according to the last census report. It is significant that the National Health Council at a meeting held recently at Bangalore passed a resolution recommending that the age of retirement for medical officers should be raised. It may also be mentioned that as early as 1947 the Central Pay Commission recommended that the age limit of retirement should be raised to fifty-eight years for all Central Government servants.¹

Views of the Pay Commission.

Objections to raising age limit.

99. It was suggested, that the raising of the age limit would bar the promotion of the members of the service in the lower rungs and would operate as a denial of opportunity to fresh entrants into the services. The raising of the age of retirement will only postpone by a few years the promotion of judicial officers. Nor can it add to unemployment in any substantial degree because the number

¹ Report, page 92.

of persons annually recruited to the judicial service in a State is very small.

It was, however, said that the question of the age of retirement of the subordinate judiciary was linked up with the tenure and conditions of service in other State services and cannot, therefore, be discussed and decided in isolation. We have given anxious consideration to this point of view and are unable to accept it.

Interlinked with other services.

Initially, in India there was no clear demarcation between the judicial and executive services of the country. There was a time when the same officers used to perform judicial and executive functions. It was not, therefore, surprising that the same age of superannuation applied to these officers. But by gradual stages the judicial service has now come to be recognised as distinct from the executive and administrative service of the State. It has a peculiar role to play in our growing social welfare State. In the circumstances, there is no reason why the age of retirement of members of this service should have any necessary relation with that in the executive and administrative services.

Position of the judiciary different.

In England, the judicial service is governed by its special rules in regard to emoluments and the age of retirement. While the Civil Servants retire at the age of sixty years, the County Court Judges and Metropolitan Magistrates retire at seventy-two. In our country also the tenure and other terms and conditions of service of Supreme Court and High Court judges stand out from those relating to the administrative services.

Position in England.

The judicial service stands by itself in the matter of the age of retirement by reason of the great importance of a long experience and a mature mind in the judicial office. The recognition of such importance has led most countries to prescribe a much higher age for the retirement of judicial personnel as compared with that of personnel in other services.

Special position of the judiciary.

100. There is yet another reason why the question of the age of retirement of the subordinate judiciary should be treated differently from that in other State Services. As noticed earlier a judicial officer enters service at a comparatively higher age than a recruit to the executive or administrative services. It would, therefore, be proper that the retirement age of a judicial officer should be relatively higher than that of an executive officer, so as to enable him to serve for the full number of years if he retains his fitness and capacity of work till he reaches such higher age.

Higher age of recruitment in the judiciary.

Retiring age to be raised to fifty-eight.

We therefore recommend that the retirement age of the subordinate judiciary in all States should be raised to fifty-eight years. Such a measure will tend to raise the tone and morale of the judicial service as a whole. It will also be consistent with our recommendation to raise the age of retirement of High Court Judges to sixty-five years.

Recommendation by Medical Board of High Court not necessary.

101. It was suggested that in order to ensure that a member of a subordinate judiciary continued to be physically and mentally fit, his continuance in service till fifty-eight should be made subject to a recommendation by the High Court to that effect or to a certificate by a medical board certifying his physical fitness. It would not, we think, be practicable for the High Court to make recommendations with regard to the mental and physical health of every individual judicial officer in the State. Nor should we permit a judicial officer to be placed at the mercy of a medical board in the matter of his continuance in service. The higher retirement age will be one of the usual conditions of service of judicial officers. The State will, however, have its normal power to compulsorily retire an officer before his superannuation age for proper reasons on the recommendation of the High Court.

No further extension or employment under the State.

102. It is necessary however to emphasize that on the attainment of the age of fifty-eight years a judicial officer should not be granted any extension or given further employment under the State unless of course he is elevated to the High Court Bench. In several States, retired judicial officers are employed as members of various quasi-judicial tribunals. We are of the view that such a practice tends to encourage a retiring judicial officer to look for the patronage of the executive authorities. We therefore recommend that all posts for which a person of the status of a district judge may be needed should be included in the cadre of District Judges and the normal requirement of such posts should be taken into consideration in fixing the strength of the cadre. Such a course has, we understand, already been adopted in the States of Andhra Pradesh and Madras.

Corruption.

Civil judiciary free from.

103. Our country-wide inquiries have left within us a feeling of deep satisfaction that our civil judiciary is by and large free from corruption. Judicial officers have no doubt on occasions strayed from the straight and narrow path; but such instances serve only to emphasise the reputation for integrity enjoyed by the judiciary as a whole. We must, however, make it clear that this cannot be said of the criminal judiciary in States where the judiciary has not been separated from the executive.

Need of rigid code of life for judicial officers.

104. The life of a judge, whether on the Bench or otherwise, is a difficult one. He is called upon to adjudicate on contending claims, sift truth from falsehood, uphold lawful causes and reject the rest; and in doing his duty, he even arouses hostility. He has to tread a wary path in

order to leave no room for any litigant to apprehend prejudice or to court favour. Not only has he to be impartial but he has to conduct himself in a manner so that everyone can feel that he is impartial. The stern necessity for so ordering his conduct invades even his private and social life. He cannot move freely among people for risk of being misunderstood and laying himself open to a suspicion that he has been influenced in his decisions. A judge has to earn for himself an unassailable reputation for independence, fearlessness, strict impartiality and honesty, so that the public can resort to him with confidence for the just solution of their disputes. Thus the grave responsibility that rests upon him in holding the scales of justice even between party and party—and quite often one of the parties is the State itself—affects his entire manner of life.

A judicial officer enjoys large discretionary powers in the performance of his duties. Although he is bound by the law and the rules, he can still, if so minded, use his discretion dishonestly to the prejudice of a party. A civil judge, with an unlimited pecuniary jurisdiction or a magistrate armed with wide powers under the Criminal Procedure Code can cause great harm to parties by a misuse of his discretion. It is true that wrong orders can be detected by the superior courts and set right either *suo moto* or on being moved by the affected party. But, nevertheless an improper advantage would be gained by one party or an unjustified prejudice suffered by another before the matter can be remedied. It is not surprising, therefore, that litigants should often attempt to throw temptations in the way of the judicial officers. These temptations might take the shape of illegal gratification in money or in kind or some other forms or they may seek to influence the judge by an appeal to considerations of friendship, caste or religion. A steadfast sense of duty and an innate integrity are needed in a judicial officer to be able to keep himself unaffected by such temptations and influences.

Danger of temptation.

105. The danger that a judicial officer may be moved by such circumstances has increased considerably in recent years. We have referred elsewhere to the incompatibility of the remuneration and the conditions of service of the judicial officers with their status and their responsibility in the context of conditions of life today. We have referred to their difficulties in obtaining residential accommodation and in commanding even ordinary comforts essential for the satisfactory discharge of their official duties. The fact that our civil judiciary has acquitted itself so well and has gained a reputation for honesty and integrity should not shut our eyes to the urgent need of improvement in their service and other conditions. It is vital that the States should place the judicial officers as a class above the possible reach of temptations of any kind. We are not suggesting that the pay and emoluments of the officers should be raised to such a degree that any temptations would have

Need for improving conditions of service.

no attraction for the judicial officer. That would be impossible under any circumstances. What we do suggest is, that due consideration of the importance of the work done by them should be had in fixing their remuneration and other conditions of service. We have already indicated elsewhere the extent to which the State can go in this respect without incurring very heavy financial burden. We are of the view that action on the lines suggested should be taken without delay.

Strong
Action to be
taken.

106. At the same time, we would insist upon very severe action being taken against officers, who have been found guilty of having abused their position to gain pecuniary or other benefits. In cases where the dishonesty of a judicial officer has, after proper inquiry, been established, there can be no other method of dealing with him than that of dismissal.

Need for
scrutiny
at time of
promotion

107. The High Court has large powers of superintendence and control over the judiciary and in exercise of those powers, it should be vigilant to see that judicial officers whose honesty is not beyond suspicion are not placed in positions of greater responsibility. The integrity of an officer should generally be taken into consideration at the time when he is promoted to a higher post. This can be done effectively only if the officer's reputation and honesty in the discharge of his duties are periodically examined by the High Court. Too often this aspect of an officer's duties is not paid sufficient attention. In a matter of such vital importance, the High Court should not omit to form a considered and deliberate view.

Anti-corruption
commission
committees.

Not favoured.

108. It was suggested to us that anti-corruption committees consisting of the district judge and some members of the Bar may be appointed in each district to investigate into cases of alleged corruption of judicial officers. It is difficult to give serious consideration to such a suggestion. If the members of the Bar are constituted judges of the judiciary, the respect and confidence which the judiciary inspire among the public will be gravely undermined. Such a measure would also tend to affect their independence. A strong Bar is perhaps the best shield that one can have against a dishonest judge. But the Bar cannot be utilized in weighing allegations of dishonesty against a judge.

Criminal
judiciary—
lack of
supervision
and tradi-
tion.

109. The criminal judiciary in States where the judiciary has not been separated from the executive, however, does not enjoy the same reputation for impartiality as the civil judiciary does. We are inclined to feel that this is largely due to the lack of effective supervision and arises from the dual control of the executive and the judiciary over these magistrates. On the administrative side, these officers are under the direct control of the State Government. On the judicial side, they come under the control of an independent judiciary, in that, appeals and revisions from their judgments lie to the Courts of Session or the

High Court. The administrative supervision exercised by the State Government through its officers over the work of these magistrates, would not appear to serve to bring to notice defects in the working of the machinery due to the dishonesty of the officers. The High Court is perhaps in a better position to form a judgment in this respect but it is powerless to take such administrative steps which would control or correct the officer. If dishonesty is to be rooted out from this branch of the judiciary it is vital that it be immediately brought under the administrative control of the High Court. There is also in some States an absence of the tradition of impartiality and integrity in the criminal judiciary as has been the general characteristic of the civil judiciary. Perhaps, the blending of the two into a single cadre as recommended by us, may help to spread the tradition over the combined cadre.

To be brought under the High Court.

110. We do not think it necessary to make any particular recommendations for the purpose of dealing with corruption in the judiciary. It will be for the High Court in each State to devise appropriate measure having regard to the circumstances prevailing in the State.

Corruption: specific recommendations not necessary.

CONSTITUTIONAL PROVISIONS

It is necessary to examine some of the provisions of the Constitution relating to the recruitment and control of the subordinate judiciary.

111. Article 233 provides that appointments of persons to be district judges shall be made by the Governor in consultation with the High Court. A person from the Bar in order to be eligible to be appointed a district judge has to be an advocate or a pleader of not less than seven years standing and recommended by the High Court. Article 234 provides that the appointments of persons other than district judges to the judicial service are to be made by the Governor in accordance with rules made by him in that behalf, after consultation with the State Public Service Commission and the High Court. Article 235 which relates to the control of the High Court over the subordinate courts provides, first that the High Court is to have control over all the courts subordinate to it including the district courts, and, secondly that such control is to include the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to that of a district judge.

Constitutional provisions.

112. On an examination of these articles of the Constitution, certain difficulties of interpretation would seem to arise. Article 234 provides for the appointment of all judicial personnel other than district judges. It requires that the appointment shall be made by the Governor in accordance with the rules made in that behalf after consultation with the Public Service Commission, and with the High Court. The language of the article does not clearly indicate

Difficulties of interpretation.

Article 234-

whether the consultation covers only the making of the rules in that behalf or whether it extends to a consideration of the suitability of the appointee. The Public Service Commission has certain constitutional functions to discharge; it has also the right to be consulted on all matters relating to the methods of recruitment to the Civil Services and the principles to be followed in making appointments to Civil Services and on the suitability of candidates for such appointments. It is not necessary for our purpose to examine the other rights and obligations of the Service Commission. Generally speaking, however, it has been the practice in the States where the Public Service Commission has been employed for the purpose of selecting judicial personnel, to associate the High Court or its representative at the time of making the selection. It is however possible to interpret article 234, so as to exclude consultation with the High Court in the actual selection of the candidates.

Modification
of article
234.

113. Having regard to the ultimate responsibility of the High Court for the judicial administration in the State and other considerations mentioned by us earlier, the principal responsibility for the selection of judicial officers should, in our view, rest with the High Court, though the assistance of the Public Service Commission in holding examinations and *viva voce* tests and other matters will be necessary. Article 234 may, therefore, need modification so as to provide that persons appointed to the subordinate judiciary may be persons recommended by the High Court as in clause (2) of article 233.

Nor
Necessary
under
certain
circum-
stances.

114. Such an amendment would, however, be unnecessary if the recommendations we have made in regard to the methods of the recruitment of the subordinate judiciary are accepted. In the scheme proposed by us the decisive factor is the competitive examination which will include a *viva voce* test. Under article 234 as it stands at present rules could be made by the Governor in consultation with the Service Commission and the High Court providing for a competitive examination, the character of which will be laid down by the High Court. The rules can also provide for the association of a High Court Judge in the *viva voce* test with a prepondering voice in the selection of the judicial officer.

Conflict
between
articles
33 and 235.

115. There appears also to be a conflict between article 233 and article 235. Taking the case of a person in the judicial service who is ripe for promotion to the next higher post as a district judge, the question arises whether such a promotion would come within the scope of article 233 as the appointment of a person to be a district judge or whether it would fall within article 235 which deals with "the posting and promotion of,—persons belonging to the judicial service of a State and holding any post inferior to

the post of district judge". In the first view, the appointment would be one which can be made only by the Governor of a State in consultation with the High Court; in the latter view, the High Court would be fully competent to make the appointment itself. The former view seems to have been taken by the executive in certain States. In fact, instances were brought to our notice of officers holding posts inferior to that of a district judge who were not recommended for promotion to be district judges by the High Court, but who nevertheless were appointed to be district judges by the State Government.

116. The danger inherent in such a state of things should be fairly obvious. The district judge holds a key position in the judicial structure of the district and is in a measure responsible for its efficient judicial administration. The High Court necessarily looks to the district judge for the carrying out in the district of its instructions in regard to courts and judicial administration. The High Court would therefore be considerably handicapped and even embarrassed in the discharge of its functions if its view of the competence of an officer is ignored. Further, if the promotion of a person belonging to the judicial service to hold the post of a district judge is not to depend in any manner upon the view of the High Court, the officer will naturally seek the patronage of the executive and the control of the High Court over the officer will suffer. Difficulties.

117. In our view as under article 233(2), no member of the Bar who has the requisite length of practice is to be eligible to be appointed a district judge unless he is recommended by the High Court, the promotion of a subordinate judicial officer to the post of a district judge should also be made only on the recommendation of the High Court. Promotion to be on the recommendation of the High Court.

118. The position in regard to the posting and promotion of district judges is in no way different. The High Court has complete control over such posting and promotion in the case of officers inferior to district judges. But with regard to the postings and promotions of district and sessions judges, the High Court is required to be merely consulted by the State Government. Though generally the High Court's views are accepted, difficulties have arisen in such matters in some States and officers not approved by the High Court have been either posted to certain headquarters or promoted by the State Government. A senior Chief Justice told us that "Twice have district judges been transferred by the State Government to another post without any reference to the Court and while they were in the midst of heavy cases and such transfer has thrown on the Court the difficult task of finding peremptorily a successor". This, in our view, is most undesirable. The High Court would be the proper authority to decide whether a particular officer would be suitable for being Posting of district judges.

posted to a particular place or promoted having regard to the capacity of the officer or the difficulties relating to judicial administration in that district. The State Government cannot be in a position to form a proper judgment on these matters. It is, therefore, necessary that the posting and promotion of district judges should be made on the recommendation of the High Court.

Constitutional amendment suggested.

119. The entire control over the subordinate judiciary including the district judges must, in the interests of the efficiency of the administration of justice, be vested in the High Courts. We, therefore, recommend that suitable constitutional amendments be made for the purpose of giving the High Courts powers in regard to the posting and promotion of district judges such as they now possess in regard to the posting and promotion of inferior officers.

Absence of proper facilities.

Inadequate court accommodation.

119A. The quality of the work of a Judge is in no small measure conditioned by the environment in which he is obliged to work. In a number of States we visited, there were bitter complaints from judicial officers and others about the appalling conditions of court houses and their surroundings. Our visits to the subordinate courts in Allahabad in Uttar Pradesh and Alipore in Calcutta among others, left us in no doubt that the accounts given to us were fully justified. The condition of the rooms in which Judges hold their courts and/or have as their chambers may be truly described as miserable. The space allotted to the ministerial staff and members of the Bar is so inadequate that overcrowding leads to uncleanness, confusion and even disorder. Buildings constructed to suit the requirements of courts more than three-quarters of a century ago have for years been found insufficient and unsuitable for the greatly expanded needs of the Courts of today. It is not unusual to find three or four Courts being held in a building originally designed for one Court. Many of the additional courts established in later years are held in very uncomfortable and inconvenient temporary sheds erected in the compound of the original court buildings or elsewhere. Apart from the lack of space, the unhealthy conditions of these old structures, the dark, dingy and ill-ventilated rooms, broken furniture and the general slovenliness within the premises make them almost unfit for human occupation. Many of the buildings do not appear to have been cleaned or white-washed for years. The rooms in which the judges are expected to retire for rest or work in the intervals between the sittings are no larger than small cubicle with space just enough for a table and a chair. Many courts are without adequate space for the members of the Bar, and without any space at all for the litigant public and the witnesses. We understood that in many places there are no facilities at all for the safe custody of the records of suits which lie in locked tin boxes piled up either in the office or in the court halls. The situation in

some of the Bihar courts was thus described by the Chief Justice of the State:

"Most of the Additional Munsifs have separate chambers and at some stations like Sasaram the Subordinate Judges and Munsifs are holding courts in the building of the Bar Associations. At Darbhanga the Registrar system could not be introduced because the Civil Court building had not sufficient accommodation. My predecessor inspected the courts and offices at Jamshedpur last year and felt that there was immediate necessity for extension of the Civil Court building In my opinion, the question of the building projects in regard to office and residential accommodation is extremely urgent; otherwise the efficiency of the judicial officers will be affected and the administration of justice is bound to suffer."

The position in Bihar.

120. A court, whether it be that of a munsif or a magistrate or of a district judge, is to the citizen a temple of justice which he visits for the vindication of his rights and liberties. The court must therefore be housed in a place where it could conduct its proceedings with some dignity and so as to inspire respect. A court house need not be an imposing edifice but it should be so constructed and situated as to enable the judicial officer to perform his functions with dignity and in some comfort. This seems to be scarcely realised. The need for providing suitable and adequate accommodation for courts, never in the fore-front of governmental planning, seems to be receding more and more into the background. Naturally, greater emphasis has to be laid upon expenditure on the directly productive aspects of the national economy. But that can be no justification for the niggardly and slum-like accommodation now vouchsafed to courts in some States.

Need for improvement.

121. In the district of the 24-Paraganas, Alipore, West Bengal, the strength of the district judicial officers has been increased from time to time, but the court buildings have not been enlarged to accommodate them. For several years past a series of tin roofed sheds have been constructed in the compound of the district court in which these judicial officers have been holding their courts. These leaking tin structures used as court houses were thus described by the Chief Justice of the State:

Conditions in West Bengal.

"At most of the stations, even Alipore and Howrah are not excepted, the Court and its subsidiary buildings are not only wholly inadequate, but also, structurally of so miserable a character that for an advanced country to hold its courts in such buildings is little short of a disgrace."

In some courts, the court halls are so small that there is just enough space for the judge's dais. The counsel practically lean on the judge's table during hearings and witnesses and parties crowd the rooms to the point of suffocation. There are no seating facilities either for counsel or

parties. It is a matter for surprise that any serious work at all is done in such surroundings. It is indeed a great credit to our subordinate judiciary that they should turn out fairly satisfactory work in the conditions in which they are placed in regard to court accommodation, residential accommodation and libraries.

Plea of financial stringency.

121A. The representatives of the State Governments who gave evidence before us admitted the inadequacy and unsuitability of the court premises but expressed their helplessness to make any provision for new court buildings in the foreseeable future. We were told by the Chief Secretary to the Government of Uttar Pradesh that construction of additional court buildings did not find a place in the general scheme of development under the Five Year Plans to which the resources of the State Government stood committed. According to him, expenditure on court buildings and other buildings for official purposes is not regarded as expenditure on planning either by the State or the Central Government or the Planning Commission and it was not, therefore, possible to allocate for such purposes any of the funds provided by the Central or State Government in the planning schemes.

Phased building programme necessary.

122. It is unfortunate that such a view should be taken of the requirements of judicial administration particularly when one remembers the surpluses the States earn, from the revenues accruing from judicial administration. We would strongly urge upon the State Governments to give the matter of providing better accommodation for the courts, the very urgent attention that it calls for, and make adequate allotment of funds for court buildings. This should be done by a programme phased over years, in which allotments would be made in consultation with the High Court for court buildings and other court requirements for each year.

Inadequate libraries

123. Judicial officers all over the country have very little equipment by way of libraries. A number of them are not being supplied even with books which they would need for frequent reference. The responsibility for making the necessary books available to the judiciary rests with the High Courts. But apparently the High Courts have not been able to persuade Governments to make adequate provision in the budgets for the purpose. The major part of the amount provided in the budgets is spent in the cost of the Law Reports which are supplied to every court. The requirements of courts in the matter of books vary. It is not therefore necessary that every court should be supplied with an identical set of books. The district judge and the High Court will have to decide on the minimum requirements of each court and induce the Government to make such increased grant, as is necessary for the purchase of those books. As matters stand, judicial officers have frequently to rely upon the members of the Bar for making the necessary books available to them. It is not possible

for the members of the Bar, who have work in a large number of courts, to spare their own copies for the judicial officer on each and every occasion whenever books are needed by them. It is imperative, therefore, that each court should have a small library of text-books and law reports sufficient for its requirements. It should not cost the Government a great deal to make a provision for such libraries. These expenses should in our view be a first charge on the revenues derived by the State Governments from the administration of justice. The provision for such books is necessary to ensure that correct decisions are rendered and appeals arising from incorrect decisions avoided.

Improvement necessary.

124. We may refer also to the difficulties which judicial officers experience in obtaining suitable residential accommodation at the stations to which they are posted. We were told that in the matter of the allotment of requisitioned premises, the judiciary received a step-motherly treatment at the hands of the executive. Instances appear to have occurred in which a requisitioned house occupied by a judicial officer was, on his transfer from that station, allotted to an executive officer and the successor in office of the transferred judicial officer was left to fend for himself. There have occurred cases where an order of the High Court, transferring a judicial officer had to be cancelled, only for the reason that the officer transferred had been unable to arrange residential accommodation at the new station. We were told at Patna, that one of the judicial officers on transfer to Patna had to live in his court chambers for a few months, because he could not get residential accommodation. The Chief Justice of the State described the situation thus:

Difficulties in obtaining residential accommodation.

The position in Bihar and elsewhere.

"There are 238 officers below the rank of a District Judge employed in the whole State. At present there are only 51 Government residences available. There is a great scarcity of residential accommodation and some judicial officers really live under appalling conditions. I am told that there was a Munsif at Patna who for want of accommodation in the rented house had to spread a table on the municipal footpath every morning to do his judicial work. Some judicial officers have been compelled to institute fair rent settlement proceedings before the House Controller against unscrupulous landlords in order to avoid paying exorbitant rents. At Gaya one of the Additional District Judges was living in a thatched house and suffering much inconvenience during the monsoon on account of leaking roofs. There have been instances of judicial officers who have entered into unseemly competition with officers of other departments for obtaining housing accommodation. The High Court has recently examined this problem and has forwarded to the State Government the requirements of judicial officers for residential accommodation. At least 103 houses are necessary

to be constructed and a list of the projects has been arranged in order of priority and has been sent to the State Governments."

We are satisfied that similar conditions exist in several other States.

Possible untoward consequences.

15. The problem of finding residential accommodation for the judiciary has a special aspect. It is not proper to place judicial officers in a position that would compel them to incur obligations from persons who might well be litigants in their courts. Such a situation puts the independence of judicial officers in peril. It seems to us therefore, that it is particularly important that Government should provide judicial officers with suitable residences.

Need for special attention.

A view seems to be taken in some quarters that there was hardly any relation between the residential accommodation made available to a judicial officer and the efficiency of his work. Such a view is obviously untenable. We were told of cases, where for lack of suitable accommodation within the financial capacity of the officer, he had to reside so far away from the locality in which the court was situated, that he spent over two hours everyday to go to and return from his court. It is easy to see that a judicial officer who has to study papers at home and write judgments outside court hours would find it difficult to work under such conditions. In other cases, officers had to pay such heavy rents that they were not left with funds to spend on their other necessary requirements. It is true that these observations apply in a measure to nearly all Government servants. But we have already explained how the judiciary needs special attention in this regard.

Corruption in the ministerial staff.

Causes.

126. We had a substantial body of evidence regarding corruption in the ministerial staff of the courts. It was said that this evil has existed for a very long time. There appear to be three main reasons for this state of affairs. The emoluments of the staff are in many cases near the starvation level. The number of the staff is generally speaking very inadequate. Finally, there is a lack of supervision on the part of the presiding officers. It is therefore imperative that the conditions of service of the ill-paid staff should be improved as early as possible. So inadequate is the staff in some places that in order to cope with the copying and other work the staff itself employs outsiders to assist them and this can only be done from the illegal gains made by the staff. The staff should, therefore, be increased and brought up to the required strength.

Need for improved supervision.

127. In regard to supervision, a great deal can be done by the presiding officers, which either through inexperience or neglect, they often fail to do. A feeling appears to have grown among judicial officers that their duty

consists only in the discharge of judicial functions and that administrative matters are of secondary importance or beneath their notice. Such a view is entirely erroneous. The efficient working of a court does not depend only on the work of the judicial officer in taking evidence, hearing arguments and delivering judgment. A number of sections in the administration departments of a court contribute to the satisfactory ending of a cause. The working of each of these sections calls for a certain measure of administrative scrutiny by the presiding officer. Only persistent and close scrutiny of the working of these administrative sections can control corruption. A paper book can be held up, a summons may be kept back, a decree may not issue in proper time, a copy may not be delivered or a payment order can be delayed. Delays or obstruction in these and similar matters which cause hardship to parties are utilized by the subordinate staff to make improper gains. 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. It is necessary that the High Courts should impress upon all judicial officers the importance of a periodical examination of the working of their offices.

128. We are of the view that an improvement can be brought about in the working of the staff of the subordinate courts by a larger delegation of powers of punishment to the presiding officers instead of leaving them as at present in the hands of the district judge.

Delegation of powers to punish subordinate staff.

129. It is also necessary to take steps to improve the quality of the staff of the courts. A knowledge of law is necessary for some members of the staff. Their duties include the examination of plaints, and the drafting of decrees and orders. A large majority of the staff does not have a knowledge of law. The remedy would be to appoint law graduates wherever possible, or subject all recruits to these posts to a training in those branches of law with which they are required to be familiar for the discharge of their duties. The States of Andhra Pradesh and Madras have surmounted this difficulty by insisting on the superior staff of subordinate courts passing an appropriate departmental examination in civil and criminal law. The adoption of a similar practice in all States will serve a useful purpose.

Quality of staff.

130. Our recommendations on the subordinate judiciary can be summarised as follows:—

Summary of recommendation.

(1) There should be one State Judicial Service divided into two classes—Class I consisting of the present Higher Judicial Service, that is officers holding

the posts of district judges or other equivalent posts and Class II comprising of two grades of officers—the munsifs and the subordinate judges.

(2) In States where the judiciary has been separated from the executive, the civil and the criminal judiciary should be unified and formed into an integrated cadre.

(3) The age limit for recruitment to the judicial service should be fixed at thirty years.

(4) The recruitment should be made on the result of a competitive examination conducted by the Public Service Commission.

(5) The examination should be of a practical character such as the writing of a judgment in a case with the aid of the case papers and law books.

(6) The examiners should be appointed in consultation with or the concurrence of the High Court.

(7) It may be advisable to have a fair proportion of the examiners from outside the State.

(8) There should also be a *viva voce* test, but no minimum should be prescribed for it.

(9) A High Court Judge should be associated with the Public Service Commission for the purposes of the *viva voce* test and have a preponderating voice in conducting it.

(10) There should be no reservation in the cadre of the subordinate judiciary, for the purpose of the ministerial staff of the courts, nor should a higher age limit be prescribed for them.

(11) Persons so recruited should be given intensive training for a period between six months to one year.

(12) The details of the training should be settled for each State by the Government in consultation with the High Court.

(13) The training, however, should follow the pattern set out in paras 46 to 49, *ante*.

(14) The training should under no circumstances be shortened or dispensed with.

(15) A selected district judge should be entrusted with the duty of imparting the necessary training.

(16) An all-India Judicial Service should be created which should man forty per cent of the posts of the strength of the higher judiciary in every State.

(17) These officers should be selected by means of an all-India competitive examination on the lines of Indian Administrative Service examination.

(18) The candidates should be law graduates between the ages of 21 and 25 and should be required to offer at least two optional papers in law.

(19) No minimum period of practice at the Bar need be insisted upon in their case.

(20) Such officers should normally be allotted to States other than their home States.

(21) After selection the officers should be trained for a period of two years.

(22) In the beginning they should be trained along with officers of the Indian Administrative Service.

(23) In addition to the subjects taught to the Indian Administrative Service officers like language etc., the officers of the Indian Judicial Service should study additional subjects like civil procedure, company law and the like.

(24) After the training in the Indian Administrative Service school there should be a further period of intensive training in the State for a period of one year.

(25) The training should be of the nature described in para 63, ante.

(26) After training the officers will be posted as magistrates.

(27) After working as magistrates, munsifs and subordinate judges, they should by about the tenth year of their service be posted as district and sessions judges.

(28) The emoluments of Indian Judicial Service officers should be the same as those of the Indian Administrative Service.

(29) On appointment as district and sessions judges, however, their remuneration will be on the same scale as that of State judicial service officers.

(30) These officers should man forty per cent of the posts in the Higher Judicial Service.

(31) The remaining sixty per cent should be filled in by promotion from the State Judicial Service and by direct recruitment from the Bar.

(32) Thirty per cent of the posts should be filled by promotion of officers of the State Judicial Service and thirty per cent by direct recruitment from the Bar.

(33) If the creation of the Indian Judicial Service leads to satisfactory results it might be desirable to raise the percentage of recruits on an all-India basis.

(34) It is necessary to continue direct recruitment from the Bar at the level of district judges.

(35) The minimum requirement for such appointment should be a practice of seven years and an upper age limit of 40.

(36) It is not necessary to subject such direct recruits to any training.

(37) There should be uniformity in the pay scales of civil judicial officers.

(38) The starting pay of civil judicial officers is, generally speaking, too low.

(39) The practice of giving biennial increments in the judicial service is not desirable.

(40) The pay scale of a civil judge (junior division) should be fixed at Rs. 350—25—400—confirmation—30—520—E.B.—30—700.

(41) The pay scales of subordinate judges should be distinct from that of munsifs and there should be no overlapping.

(42) The pay scale of a subordinate judge should be Rs. 700—50—1,000.

(43) The pay scale of a district judge should not be less than that of the senior scale of the Indian Administrative Service.

(44) The starting salary of district judges should be fixed with some advance increments on the basis of their prior service in the subordinate judiciary.

(45) There should be no difference in the pay scales of district judges, additional district judges and others holding corresponding posts carrying equal responsibility.

(46) Promotions in the judicial service should not be on the basis of mere seniority, but only on ability and merit.

(47) The retiring age of members of subordinate judiciary should be raised to fifty eight. However, judicial officers should not be re-employed by Government after retirement.

(48) All posts for which an officer of the status of district judge is required should be included in the cadre of district judges and the strength of the cadre be fixed on that basis.

(49) Though the civil judiciary is remarkably free from corruption, there is scope for improvement in the criminal judiciary in States where the judiciary has not been separated from the executive.

(50) No penalty other than that of dismissal should be imposed on any judicial officer who has been found guilty of corruption.

(51) It is not advisable to form anti-corruption committees consisting of the district judge and members of the Bar to go into cases of alleged corruption of judicial officers.

(52) The High Courts should take particular care in scrutinising the reputation of the subordinate judicial officers for integrity at the time of promotion.

(53) Article 234 of the Constitution needs modification so that, even appointments to the subordinate judiciary below the rank of district judges are made on the recommendation of the High Court. This change will be unnecessary if recruitment is made on the basis of a competitive examination as suggested by us.

(54) Article 235 of the Constitution should be amended so as to vest in the High Court the power of posting and promotion of district judges.

(55) The State Governments should in consultation with the High Courts draw up a phased programme for the building of court houses.

(56) The budget provision for the supply of law books to the subordinate courts should be increased.

(57) The needs of the judicial officers for residential accommodation deserve special attention at the hands of the State Governments.

(58) The conditions of service of the ministerial staff of the subordinate courts should be improved.

(59) Their strength should be adequate to cope with the work.

(60) Larger powers of punishment of the subordinate staff should be delegated to the presiding officers of courts.

(61) The staff of the subordinate courts should be trained in law and required to pass a departmental examination in that subject.

10.—SUPERVISION AND CONTROL OF SUBORDINATE COURTS

Need for
and impor-
tance of
supervision.

1. In the earlier chapters, we have seen that apart from the inadequacy of judicial officers, the main cause of delay in all courts—a civil and criminal, original or appellate is not the defective procedure, but the failure of the two arms of judicial administration, the Bench and the Bar to follow the prescribed procedure, and the adoption by them of unsystematic and dilatory methods of work. These defects are capable of being remedied by the exercise of a continuous vigilance on the part of the superior courts—which will ensure the adoption of proper methods of work.

Our survey has also shown us that when adequately supervised, the courts in our country can under the existing procedure dispose of proceedings expeditiously. This is demonstrated by the experience of States where a strict system of methodical supervision obtains. The importance and the need for adequate supervision and control cannot therefore be over-emphasized.

For its efficient working, our system of administration of justice depends almost wholly upon two elements, the Bench and the Bar. The ideal of quick, but not hasty, justice can only be realised if there is complete co-operation between these two elements.

Methods of
supervision.

Reviews and
inspection.

2. The members of the subordinate judiciary are under the rigid control of a hierarchy of superior courts, including the High Court. The subordinate courts have periodically to submit progress reports of the work disposed of and pending disposal in their courts. These reports are supposed to be reviewed in detail by the superior courts which in their turn are charged with the duty of seeing that causes are not unnecessarily delayed and that such procedural steps as would expedite the hearing and disposal of the cases, are promptly taken. District judges are expected to inspect courts under their charge from time to time. High Court Judges also inspect the district court and other courts. These measures are prescribed to ensure that subordinate courts are vigilant and spare no effort on their part to render justice speedily.

Minimum
standards of
work.

3. Such a system of supervision, effectively worked, would keep the judiciary continually alive to the need of urgency in the disposal of their work. In some States, minimum standards of work are prescribed and every judicial officer strives to see, that his output does not fall short of the standard fixed by the High Court. Though

it may be doubted whether a strict adherence to quantitative disposal is desirable in the interests of quality, it has to be conceded that a system of supervision and inspection does result in judges not being left without the guidance or control of the superior authority. The existence of such control is a salutary check on the vagaries of the individual officer.

4. Under such ceaseless scrutiny, it is not surprising, that the majority of judicial officers should turn out the required quantum of work and that the delay in the disposal of a certain percentage of the cases is not attributable wholly to any slackness on their part. It is true, that there is a tendency to take up easier cases first and adjourn heavier cases. But with the exercise of some strictness and care by the superior courts this can be avoided. Unfortunately, many courts are driven to this course by reasons over which they have no control, such as, a heavy file, absence of witnesses, want of readiness of the parties and not the least important, unpreparedness of counsel as well.

5. We have referred above to what we have called the quantitative tests of work. Though such tests are necessary and fulfil an important purpose, a blind reliance on them which has been found to prevail in several States is likely to defeat their very purpose. Insistence merely on the disposal of certain number of matters frequently results in the heavier matters being put aside. The files become cluttered with old cases all of which are heavy matters and which are passed on untouched from judge to judge. It also often results in disposals without a fair or adequate hearing of the matters.

6. Control over subordinate courts is principally exercised in the following ways:

- (i) Submission and scrutiny of periodical returns;
- (ii) Inspections.

(iii) Appraisal of the quality of work of the subordinate courts at the time of the hearing of appeals, revisions, and other proceedings by the superior courts.

7. Most of the High Courts have prescribed periodical returns (on the lines found in the administration reports) setting out the number of cases instituted, number of cases disposed of and the number of cases pending, to be submitted by the subordinate courts. These statements indicate generally the state of the file in each court and a careful scrutiny of these returns for a few months, would clearly reveal how the presiding officer is looking after the court's file. Any increase in institution, or slowness in disposal or a tendency to increasing accumulation of work, would be apparent from a proper scrutiny of the returns, and the district judge or the High Court could then arrange for a proper distribution of work well in

Adequate disposals.

Tendency to adjourn heavier cases.

Quantitative tests.

Their limitations.

Methods of control.

Scrutiny of periodical returns.

Distribution of work.

Year old cases to be explained.

time or arrange for the posting of additional officers before the situation gets out of control. In the remarks column of these returns the subordinate courts are also expected to explain the reasons for the delays in the final disposal of each of the old cases. Generally speaking, a regular suit is considered an old suit, if it has been pending over one year. But in some of the States like Bihar and Kerala we were surprised to learn, that a suit is not considered an "old suit" unless it is three to five years old. This is extremely unsatisfactory and in our view the returns should require all suits older than a year to be shown as old suits and also require explanations in regard to the causes which have occasioned the delay. We would also suggest as did the Rankin Committee, that the returns should show the pendency of cases according to the year of institution. This will immediately fix attention on any tendency to neglect heavier old suits and favour newly instituted lighter ones.

Return showing year of institution.

Fixation of time limits in civil cases.

8. In the State of Madras, there are definite time limits fixed within which various classes of judicial proceedings are expected to be disposed of in the courts of their institution. Thus, small cause suits are expected to be disposed of within three months, regular civil appeals in district courts within six months, and miscellaneous appeals within three months. If these matters are not disposed of within the prescribed time limits, the reasons for the delay have to be explained in the statistical returns. We would recommend the adoption of similar targets and similar requirements as to returns in all the States.

Time limit for delivery of judgments.

Returns.

9. In order to prevent delays in hearing arguments and the delivery of judgments the subordinate civil courts in West Bengal have to submit a monthly statement showing the cases in which arguments and judgments were pending for over one month and the dates on which the arguments were heard and judgments delivered. In Madras, the High Court has laid down a rule providing that in all suits the hearing of arguments must be completed within fourteen days after the conclusion of the evidence and the judgment must be delivered within fourteen days from the termination of arguments. All subordinate courts have to submit monthly returns to the district judge showing particular cases in which the rule has not been observed together with an explanation for the delay. Copies of these returns have to be sent to the High Court along with the periodical statements. The returns in Madhya Pradesh also prescribe an overall period of fourteen days from the close of the hearing within which arguments have to be finished and the judgment has to be delivered. We think that such returns are extremely useful and would, to a large extent, check unusual delays in the delivery of judgments and might be adopted in all States.

10. A careful scrutiny of these returns would give a very clear picture of the judicial work of subordinate courts. It would reveal whether the presiding officer has kept pace with the institution, whether he is also disposing of the old and presumably heavy suits, or merely attempting to dispose of lighter suits, and whether he has done the work normally expected of a presiding officer in that court, during the period of review. Value of returns.

11. But submission of such periodical returns would serve no useful purpose, unless they are closely scrutinised by a responsible official and appropriate instructions are issued for the guidance of subordinate courts. Unfortunately, we find that, except in a few States, the review of the progress of work in subordinate courts is perfunctory and is treated as more or less a routine affair. These returns are generally scrutinised by the district judges in the first instance who after consolidating them submit them to the High Court. They are examined by the Registrar or the Deputy Registrar of the High Court, who in turn puts them up with his comments to the administrative judge. It has come to our notice that in some States these returns are not even sent up to the administrative judge for scrutiny. Where a large number of courts exist, it is well nigh impossible for a single judge of the High Court to scrutinise these returns. If the scrutiny is to be useful the judge would have to contrast the return with that of the previous period and check particular instances of cases for which a stereotyped explanation is being given for their continued pendency. The work of scrutiny, we appreciate, is taxing and likely to become monotonous. The result is, that the judges of the High Court or the district courts do not devote sufficient attention to it and the effect of a personal scrutiny, however occasional it may be, by the judge is sadly lacking. Even the outstanding work done by the subordinate judicial officers is lost sight of. Need for security.

We would emphasize that a critical scrutiny of these periodical returns is very important. Such a scrutiny should be periodically made by one or more of the judges of the High Court. If such a scrutiny is pursued systematically, the High Court would be in a position not only to appraise the capacity of the presiding officer of the subordinate court to manage the court's file but also to notice the courts in which there is likelihood of congestion of work, so that steps can be taken well in time for the proper distribution of work or for the posting of an additional judge. If an officer is slack in his work, he could be warned and if he does not show improvement, he may even be replaced.

12. It may well be, that in view of the large number of courts in a State, or the pressure of other administrative or judicial work it is not possible for the administrative judge or judges to devote sufficient time to the scrutiny Scrutiny at High Court level.

of these returns. These difficulties can be overcome either by relieving the judge of some of his administrative work by transferring it to another or by distributing the several districts in the State into groups each under a different judge for the purpose of supervision. Whatever be the method adopted, under no circumstances should the duty of scrutiny be neglected or left to the Registrar or Deputy Registrar as happens in some States.

At district level.

13. The High Courts should not only pay careful attention to the state of affairs disclosed by the returns, but insist on the district judges performing a like task in regard to all matters within their district. It should be made clear to the district judges that the primary responsibility for the efficient judicial administration of the district is theirs—and that neglect of the administrative side of their work would be considered to be a dereliction of their duty in as great a degree as inefficient judicial work.

Inspection.

14. Another mode of exercising effective control over the work of the subordinate courts is the personal inspection of the subordinate courts and their establishment by the superior officers. Generally speaking, a district judge exercises control over all the civil courts in his district and their establishments. In some of the States like Bombay and Andhra Pradesh where the judiciary is separated from the executive they also exercise similar control over the criminal courts. Elsewhere, the administrative control over the criminal courts is exercised by district magistrates. It is noteworthy that in Madras, where the executive has been separated from the judiciary, the post of district magistrate (judicial) has been retained principally for the purpose of supervision of criminal Courts.

High Courts generally have framed detailed rules regarding inspection of subordinate courts by the district judge. Broadly speaking, the rule is, that subordinate courts should be inspected by the district judge once in every year or at least once in every two years. Similarly, inspection of district courts and other courts of equivalent rank is expected to be done by High Court Judges. Detailed instructions are given in the Circulars and the rules in regard to the various aspects of the courts' functions which need looking into at an inspection.

Nature of inspections.

15. The work of inspection is broadly divided into three branches—(1) judicial—this refers to the procedure in the Court and the actual work of the civil judge, (2) ministerial—this refers to the carrying out of the orders of the civil judge, (3) departmental—this refers to the maintenance of registers, accounts, files, bills, and returns which are kept and submitted in conformity with the orders of the Government, the High Court or the district judge. What is generally necessary is, that before the inspection begins, the subordinate court has to submit to the

inspecting officer very detailed information about the cases and other matters in a prescribed form. The detailed information thus supplied forms the basis of the inspection by the inspecting officer. The judicial work of the court is expected to be inspected by the district judge himself. He is expected to examine in detail the records of pending cases so as to draw the attention of the presiding officer to instances of failure to take full advantage of the facilities provided by the Civil Procedure Code for expediting the course of litigation. A close examination of these records would indicate whether adjournments have been granted by a judicial officer for the purpose of payment of process fees or for taking out summonses for service on witnesses, or whether adjournments have been granted on account of the unpreparedness of the parties or their counsel, or whether the posting of too many cases has resulted in adjournments and, also other causes of delay which an alert and a strict judge should be able to avoid.

16. In some States the rules require the judge to maintain a judicial diary showing the work done by him in court every day. This is a very useful record which enables the inspecting officer to understand the manner in which judicial work is being done by the officer concerned and should be required to be maintained in all the States. The other aspects, namely, the ministerial and the departmental functioning of the court, are initially inspected by the trained staff of the district judge, who point out all irregularities and deficiencies with their comments to the inspecting officer. The inspecting officer, in his report is expected not only to point out mistakes and irregularities, but also to lay down detailed instructions for the guidance of the civil judge and the members of the establishment concerned, for the securing of improved methods of work, the abolition of unauthorised practices and the correction of mistakes.

17. Notwithstanding, however, the detailed rules framed by the High Courts, it is a matter of great regret that during the past several years the importance of inspection as a mode of exercising supervision over subordinate courts has not been fully appreciated. We are of the view that the lack of frequent and efficient supervision, inspection and control by the superior courts has been one of the root causes of the delays and the congestion in courts. It must be remembered that the judicial officers on account of their peculiar position, cannot freely consult others like executive officers. The only guidance they can get, is from their superior officers, who can assist them in the solution of their practical difficulties only at the time of inspection of their courts. In the result, a large number of the junior judicial officers do not get the benefit of the maturer experience of the superior officers in the matter of the management of their Courts. Although the district and sessions judges are directed to make inspections of the subordinate

Judicial diary.

Neglect of inspection.

courts once in a year or once in two years, as the case may be, in very many States they seldom complete their round of inspections within that period. Several courts have not been inspected for years. In the northern States, it appears that, a district and sessions judge does not inspect the courts in his district oftener than once in two or three years. Heavy judicial work has been mentioned as one of the reasons why the district judges have not found it possible to make these inspections. In like manner, the inspection of the courts of district and sessions judges or other subordinate courts by the High Court Judges themselves has not been as frequent as is necessary or desirable. We were told by one of the Chief Justices:

"It is undoubtedly true that inspection by High Court of the subordinate Courts and by the District Judges of the Courts subordinate to them has been inadequate in recent years. So far as the High Court is concerned, the pressure of judicial work has been so insistent and heavy that it has been found impossible to spare a Judge, even occasionally, for inspection work. * * * *

As regards the inspection of subordinate Courts by District Judges, the Court has recently been insisting on such inspection being made, but it has discovered that there is a danger in doing so. There is a tendency, in at least some of the judges, to make inspection duty an excuse for staying away from ordinary judicial work and spending their time on tours."

But the true remedy for this unfortunate tendency is not to give up inspections altogether, but for the High Court to see, that inspection duty is not misused to escape from regular work.

Conse-
quences.

18. The present indifference of High Courts in regard to inspection work is, in our view, largely responsible for the inability of the subordinate judicial machinery to deliver the goods. We may mention however, that in the Southern States, particularly, Madras and Andhra Pradesh, on no grounds are the district and sessions judges permitted to depart from the rule requiring an annual inspection of all subordinate courts. It is, perhaps, true that the number of courts in each district in these States is less than the number of courts in some of the districts in some other States but as inspections do play a vital role in the proper working of the judicial administration by alerting the judicial officers and drawing attention to their mistakes and weak points they must be regarded as an essential duty of a district judge and should not be regarded as of minor importance as compared with judicial work.

19. It must also be mentioned that there are a large number of High Court Judges who seem to think that the

time spent on these inspections is unnecessary and causes needless interference with their judicial work. They think that the appraisal of work of a judicial officer, when his decisions come up before them in appeal or revision, is enough. Such an attitude is unjustified and is even more so now with the existing mass of arrears. A long time is bound to elapse between the passing of a judgment and its scrutiny at the stage of appeal or revision. During this long interval of probably several years the subordinate judicial officer will continue his unmethodical manner of work which may well ripen into an incorrigible habit. This could be avoided by a few well chosen words of advice Its im-
portance. after a careful inspection at an earlier stage. Though judicial work is primarily more important than administrative work, the success of judicial administration depends in a great measure upon inspections and the understanding of the local difficulties and problems which often vary even from district to district. On the occasion of such inspections, the inspecting judge, whether he is a district and sessions judge or a judge of the High Court, can always examine the work of the judicial officer with reference to his laxity or control over his subordinates, the freedom with which he grants adjournments, the dilatoriness with which the proceedings are conducted and delays caused in the administrative machinery of the court which affect the final disposal of the suit. These are all matters which can never be clearly or at all brought to light when a decision of the subordinate judicial officer comes up by way of appeal or revision to the superior court. At that stage, the judge can only note the total extent of the delay without any appreciation of the stages at which such delays have occurred and without any possibility of discovering whether such delays could have been avoided. When it is once realized that our judicial procedure, and the various stages of trial cannot be curtailed to any great extent and that the possibility of delay is always inherent in the system or any other system that may replace it, it will be apparent that the only solution can be to control these delays and bring them down to the minimum, i.e., to the normal duration required for pushing through each stage. It is in this aspect that inspection plays a very important role and there is no substitute for it. The need of inspection by a High Court Judge has now assumed greater importance by reason of a large number of district judges being comparatively inexperienced and lacking in aptitude for administrative work.

20. We must also point out that it is impossible for any one Judge of the High Court to be placed solely in charge of the work of inspection and supervision. We came across an extreme case in one of the High Courts where one judge out of about twenty judges was in sole charge of the inspection of courts in as many as 51 districts in addition to dealing with administrative work. In yet another State

inspection work was done only by the Chief Justice. Any such arrangement is bound to be unsatisfactory as the judge in question will be unable to devote adequate time to these duties unless he is largely or even wholly freed from judicial work.

Concentration of inspection work undesirable.

It stands to reason that the court of a district and sessions judge being the highest court in the district should invariably be inspected by a judge of the High Court not only in relation to the judicial work discharged by the district and sessions judge but also in respect of the administrative functions of the district judge. This obviously cannot be achieved if the entire work is concentrated in one or two judges however able. This difficulty has been met in some of the southern States where all the judges of the High Court are entrusted with inspection duty. Each Judge is placed in charge of one or more districts in the State for a period of one or two years. All matters relating to that district, both judicial and administrative, pass through the hands of the judge in charge of the district. Even such matters as admissions of second appeals or revisions, arising from one district go to the judge in charge of the district though the final hearing may be by a different judge or judges. This arrangement enables a Judge of the High Court to give his close attention to the judicial officers working in a particular district. Further all administrative matters relating to that district pass through that judge though the final orders may be passed by the judge though in charge of that branch of administration and the Chief Justice. In addition, all the judges take part in inspection work, the districts being rotated among them periodically. We recommend the adoption of this system generally in all the States.

Distribution of work recommended.

Periodical Inspections.

21. We accordingly recommend that all the subordinate courts should be invariably inspected by the district judge at least once a year and the district courts and at least one subordinate court in each district be inspected by a High Court Judge at least once in two years.

Guidance to be given in inspection reports.

22. It is essential that the supervision of the courts should be very thorough and should cover all the aspects of the court's functions. The inspection reports therefore should show a correct picture of the state of each court, point out the defects in its working and give instructions to the subordinate officers for their guidance. We had occasion to pursue some of the inspection reports and reviews that were made available to us in some States. The impression left upon our minds was, that a large number of them were perfunctory and might well have been written by an intelligent ministerial officer. They failed to indicate to the subordinate officials the way in which they could have avoided unnecessary delays in the disposal of cases and often referred to the conditions in the office but gave no information about the judicial side of the work

or the way in which the judicial officers had handled it. It is essential, that the inspection reports should not only be informative but should also be instructive.

23. We think, that the High Court should make it clear to the district judges, that the primary responsibility for supervision lies on them. We were surprised to find that in the State of Kerala the district judges exercised practically no supervisory powers over the subordinate courts. The review of the work of the subordinate judicial officers is done by the High Court and the district judge merely compiles and forwards like a post office the figures collected by him. He inspects the subordinate Courts only as a nominee of the High Court. We were told that all postings and transfers of even the ministerial and the last grade staff were attended to by the High Court. We think, that in relation to the subordinate courts, the district judge, being the man on the spot, is in a much better position than the High Court, to be able to exercise relatively more effective control and supervision over the courts within his jurisdiction. It should be pointed out to the district judges that they should not expect the High Court to do the work of supervision which ought to be their main responsibility. If it becomes necessary for the High Court to point out delays on the part of subordinate courts, which the district judge has failed to notice, the district judge would certainly have been remiss in the discharge of his duty of supervision and control.

Role of the
District
Judge.

24. Another important feature which needs emphasis is the need of personal contacts between district judges and the presiding officers of subordinate courts. It is a wholesome practice for district judges to call the presiding officers and discuss with them their problems and give them suitable guidance. Such a practice will greatly assist the district judge in understanding the problems of the subordinate courts and in devising suitable measures for solving them. If he finds that a particular judge is overburdened he could withdraw some cases from his file, transfer them to others and re-arrange the distribution of work. He would in this manner not only be in a position to instruct the presiding officer, but also have control over the pending litigation in all the courts within his jurisdiction.

Need for
personal
contact.

25. We may also refer to a practice that prevails in Bombay. The High Court has framed a rule to the effect that once a year the district judge should call a judicial conference of the judges subordinate to him for discussion of doubtful matters and for consultation as to the conditions of each court. The senior pleaders practising in the district are also invited to the conference. The civil judges are thus encouraged to freely consult the district judges who on their own part again freely consult the High Court

Judicial
Conference.

on matters of importance affecting the judicial administration. The district judges are instructed to endeavour to cultivate a personal acquaintance with the civil judges and keep themselves closely informed of their needs and of the progress of the work in their respective courts. A district judge can thus make such a conference a convenient opportunity for discussing the affairs of each court with the civil judge concerned, for examining the state of his files and for ascertaining the progress of his work, his need for assistance and other allied matters.

We think that this practice of a periodical "get-together" is a very healthy practice and should be adopted in all the States in the country.

Circulation
of statement
of Work.

26. We should also suggest that the district judge should circulate monthly to the judicial officers in the district a statement showing the individual out-turn of work of all officers so that good work done by some officers may serve as a stimulus to others to emulate them.

Supervision
of criminal
courts.

27. Strict supervision by superior courts is all the more necessary in the case of the magistracy. Under the Criminal Procedure Code, magistrates are invested with such large discretionary powers, that in the absence of a constant and strict supervision by the superior officers, it is likely that their powers may be abused. As the decisions of the magisterial courts affect the liberty of the individual, the need for such supervision cannot be over-emphasized.

In non-
separation
States.

28. In States, where the judiciary has not been separated from the executive, all the magistrates are subordinate to the district magistrate who exercises administrative control over them under the instructions of the State Government. He is also expected to inspect and supervise the courts of magistrates. We understand that in some of these States, the sessions judge also occasionally inspects the courts of magistrates; but the scope of their inspection is limited. Any deficiency or irregularity noticed by them is conveyed to the district magistrate for taking suitable action.

In separa-
tion States.

29. In Bombay, where the judiciary has been separated from the executive, the entire administrative and supervisory control over the judicial magistrates has been vested in the district and sessions judge. In Madras, on the other hand, the administrative control and the task of supervision of the magistracy is vested in the district magistrate (judicial) who is under the control of the High Court. The Code has been amended to enable him to hear criminal appeals from second and third class magistrates. He is himself a first class magistrate. Thus in his capacity as district magistrate (judicial) he performs three principal functions: as a court of trial, he tries cases which

are normally triable by a first class magistrate; as an appellate court he hears appeals from the decisions of the second and third class magistrates, and administratively, he supervises the work of all the judicial magistrates functioning in his district. In Andhra Pradesh, in the initial stages the posts of district magistrates (judicial) were created on the pattern prevailing in Madras; but after the passing of the Central Act, XXVI of 1955, amending the Code of Criminal Procedure, the Government of Andhra Pradesh abolished the posts of district magistrates (judicial) and appointed in their place additional district and sessions judges to afford relief to the district and sessions judges. This was done, among other things, to facilitate the disposal of appeals from the decisions of the second and third class magistrates which had to be heard by the court of session and also to help in the exercise of supervisory functions over the subordinate magistracy.

30. It has been said that the district and sessions judge is, on account of his very heavy judicial work, unable to find the time necessary for supervising the subordinate magistracy, particularly as he has to supervise the work of the civil judiciary as well. In fact, we had evidence before us in Bihar that the pressure of judicial work had prevented the district and sessions judges from adequately discharging their supervisory duties. It has been estimated that in the States where the supervisory functions are adequately performed by the district magistrate (judicial) such duties take about a third of his time. It is obviously more economical that these duties for which considerable time is needed should be performed by a lower paid officer like a district magistrate (judicial) rather than by a highly paid district and sessions judge. Further, we also apprehend that an additional district and sessions judge appointed for this purpose, will very likely be utilised for sessions and civil appellate work which is largely in arrears so that the work of supervising subordinate criminal magistracy will suffer. We have referred to this aspect of the matter in the chapter on Criminal Appeals.

Assistance to district judges in their supervisory work.

31. In our view, it is therefore necessary in order to ensure adequate supervision over the criminal magistracy, to retain district magistrates (judicial) in all States, as has been done in Madras and Kerala. In addition to inspection and supervision of the subordinate Courts, the district magistrates (judicial) could also be a first class magistrate and try the more important and difficult criminal cases himself. Administrative supervision of the working of the subordinate criminal courts would be principally in his hands; while in the judicial set up, the sessions judge would continue to be the highest judicial authority in the District. The advantage of this system is demonstrated

Judicial district magistrate necessary.

by the fact, that in the Madras State where the supervisory duties are adequately performed, there are very few criminal cases more than two months old in the magisterial courts. It may be thought, however, that it would add to the cost of administration if a district magistrate were to be appointed for this purpose. Experience has however shown that such additional cost is more than compensated for by the resulting efficiency. The utility of a system of supervision in reducing delays needs to be appreciated.

The Madras example.

32. A striking example of its success is afforded by what happened in the State of Madras where the system has been in force for a long time.

In June, 1953 the number of criminal cases pending for more than two months in the Trichy district was 496. Among these were cases instituted in 1951 and 1952 and two committal cases of the year 1951. On the 31st March, 1956 after separation and the rigid enforcement of supervision, the number of two months old criminal cases pending in that district were only thirteen and on the 20th April, the district magistrate was able to report to the High Court that out of these thirteen cases, eleven had been disposed of leaving only two, which had not been disposed of because of stay orders issued by the High Court.

This remarkable improvement was attributed by the judges of the High Court and the officers concerned solely to strict and effective supervision at the district level and by the High Court. The method of supervision is set out below.

Madras system of supervision of criminal courts.

33. The High Court had laid down standards of the maximum time which an average criminal case should take. The instructions issued by the High Court lay down that no case triable by a magistrate should be pending for over two months. Similarly, committal proceedings have to be disposed of within six weeks and sessions cases within three months. In all these cases, the time is reckoned from the date of the apprehension of the accused.

Time limits.

Judicial diary.

34. Various returns have been prescribed to ensure that this schedule of time is adhered to. Every magistrate has to maintain a court diary showing the actual time spent by him every day in court work and full details of the actual judicial work during the day. Recently the High Court has directed that the number of witnesses examined by a magistrate in a day should also find a place in it.

Calendar statements.

35. Rule 292(g) of the Madras Criminal Rules of Practice directs that superior courts should be particularly vigilant over unnecessary delays in the trial of cases in subordinate courts. In order to help the superior courts to exercise such vigilance, Rule 307 provides for the submission of what are commonly known as "calendar" statements.

Except in the case of extremely petty offences, every second and third class magistrate has to submit to the district magistrate through the sub-divisional magistrate, a statement containing certain particulars relating to every case tried by him. The statement has to set out the dates of (1) the offence, (2) the report, or complaint, (3) the arrest, (4) the release on bail, (5) the commencement of trial, (6) the close of the trial and (7) the sentence.

The calendar statement and the judgment has to be sent within two days of the date of the judgment together with an explanation for the delay in the disposal of the case if more than two months have elapsed between the date of the apprehension of the accused and the final disposal of the case. Similarly, the calendar statements of first class magistrates are submitted to the sessions judge by the district magistrate together with a copy of the judgment in every case. An examination of the statement immediately shows whether there has been any avoidable delay and if so whether the delay occurred at the investigation or the trial stage. Since the calendar statements are submitted separately for each case and court—they enable the progress of cases to be watched more closely than consolidated monthly returns.

36. Similarly all magistrates in a district have to submit to the district magistrate by the eighth day of the month a statement of all the criminal work done by them during the previous month giving in a consolidated form all their calendar statements (as explained above) together with an explanation of the delays which have occurred. In these returns they have also to show separately cases which have been disposed of by transfer to other courts or by a transfer to the register of long pending cases, i.e. cases in which proceedings have been taken under section 512 Cr. P. C.

Monthly statements to the district.

37. The High Court has recently directed that these returns should be systematically reviewed and scrutinised both by the sub-divisional magistrate and by the district magistrate. The district magistrate is particularly instructed to see that the calendar statements of cases which are shown as pending in one monthly statement, and as disposed of in the next, have been received in his court.

Methods of scrutiny.

38. Quarterly returns have to be submitted to the High Court by all district magistrates in Form 38 (Administrative forms) prescribed by the High Court, which is in effect a consolidated summary of all the calendar statements. Among other things these returns show the average duration of cases, the pendency in days of the oldest case on file, the explanations for delay furnished by the magistrates together with the district magistrate's own review or remarks on the working of the courts in his district.

Quarterly returns to the High Court.

Scrutiny at
district level.

39. These statements were no doubt being submitted by all magistrates for a long number of years, but nevertheless, during the war and the post-war years the pendency of criminal cases increased considerably. It is not so much, therefore, the insistence on returns but their careful scrutiny and examination accompanied by disciplinary action in cases of slackness, which have brought about the satisfactory state of the criminal courts now obtaining in Madras.

For some years during and immediately after the war the supervision was completely ineffective. It was almost abandoned in many districts but in the one district in which it was maintained, the state of work in the criminal courts was fairly satisfactory¹. Repeated and stringent instructions had to be issued by the High Court with regard to the separation districts and by the Board of Revenue in non-separation districts to the district magistrates concerned insisting upon close and effective supervision. As a result, supervision is now fairly effective.

Perusal of
judgments—
its value.

40. The judgments which every second class magistrate submits to the district magistrate along with his calendar statement are perused by that officer and if the subordinate magistrate has adopted an erroneous or incorrect procedure, the district magistrate corrects and guides the inferior magistrates. Whenever necessary, he draws the attention of the High Court to a judgment which appears unsatisfactory to him so that the revisional powers of the High Court may be used to correct it. Further, where cases have been delayed owing to the fault of the magistrates, the scrutiny of the calendar statements draws attention to them and the magistrates are reprimanded by the sub-divisional magistrate or by the district magistrate as the case may be, if on the other hand delays have occurred owing to the fault of the prosecution, (for instance their failure to produce witnesses) the district magistrate takes up the matter and writes a demi-official letter to the district superintendent of police drawing his attention to it.

The judgments of first class magistrates are subjected to similar scrutiny not only by the district magistrate but also by the sessions judge and appropriate instructions and advice given. The system of submitting judgments for the perusal of superior courts has at least one virtue. It ensures that cases will not be disposed of without a judgment being written. It is capable however of serving many more useful purposes. A perusal of the judgments enables the superior magistrate to judge the quality of the work of the subordinate magistracy, and point out its defects. It also helps to make the revisional jurisdiction

¹. Report of the Committee of Inquiry into the Working of the Scheme of the Separation of the Judiciary from the Executive, p. 127, para. 438.

effective by making it easy for the district magistrate or sessions judge to make references *suo motu*.

41. So far as the returns showing the work done by the magistracy are concerned, the former practice was that the detailed scrutiny was made only at the district level. The High Court was merely supposed to see that the district magistrate had performed his duties of supervision. In the High Court, the returns for a district used to be reviewed only by the judge in administrative charge of the district concerned. Frequently, however, the judge in administrative charge had little experience of the working of subordinate courts and no inclination for administrative work. In the result, the work in the district suffered considerably.

Supervision
at the High
Court level.

Recently this has been set right. The scrutiny of all criminal returns has been entrusted to one judge with considerable district and administrative experience. The returns go in the first instance to the judge in administrative charge of the district; but whether or not he has scrutinised them, they are nevertheless submitted to the judge in charge of criminal returns (not necessarily the administrative or portfolio judge in charge of appointments) who systematically examines every explanation for delay submitted by the magistrate. If the judge finds that cases have been unnecessarily delayed and that the district magistrate has not noticed the delay, the district magistrate's explanation is called for. In other words, systematic supervision at the High Court level by a judge familiar with administrative work, ensures that district magistrates do not neglect their duty of seeing that all the criminal courts in their districts are working satisfactorily.

42. If a particular court accumulates arrears owing to heavy filing the district magistrate and the High Court promptly move for the appointment of additional magistrates and such requests are generally accepted by Government.

Additional
staff.

43. Inspections are also a regular feature of criminal judicial administration. The district and sub-divisional magistrates regularly inspect all courts in their jurisdiction once a year. If the conditions in a particular court are unsatisfactory more frequent inspections are made till the conditions improve. The court of the district magistrate is also annually inspected by the sessions judge, who is also authorised to inspect the court of any judicial magistrate in the district if he thinks fit.

Inspections.

43A. A common complaint by members of the public is, that witnesses are asked to attend court on a number of occasions and are then sent away without being examined. Considerable harassment is thus caused to the witnesses and unnecessary work thrown upon the police who have to serve the summonses. To prevent this happening, the High Court has provided by rules that no witness should

Witness—
Avoidance of
harassment.

be detained for more than three days. Once a witness has attended court in obedience to a summons his evidence must be recorded and he must be discharged within three days. The period of three days includes Sundays also. A return has to be submitted every quarter to the High Court showing the number of witnesses who have been detained for more than three days, together with explanations for such detention. The three days referred to in the rule do not mean three consecutive days. If a witness has been asked to attend Court on more than three occasions the operation of this rule is attracted. The returns are scrutinised and serious notice is taken of any avoidable hardship inflicted on witnesses.

Non-appearance of witnesses and service of summons.

44. The long pendency of criminal cases is frequently due to the non-appearance of witnesses. The police blame the magistracy and the magistracy blame the police for the failure of the witnesses to appear. To ensure that summonses are sent to police sufficiently in advance to enable them to serve the witnesses and also to impress upon the police the necessity of serving all processes promptly, a register is maintained in every magistrate's court showing among other things the date on which processes are issued to a particular police station and the date on which they are received back. The circle inspector concerned has been authorised to check this register periodically with a similar register maintained by the police. If there is delay in the issue of process on the part of the magistrate's office then the inspector points it out to the presiding officer. Where the police itself is at fault the inspector takes necessary action.

Delays sometimes occur in the service of processes by reason of the time taken in the transmission of summonses and warrants from the court to the police station. To avoid such delays, instructions have been issued that whenever a police constable is present in a court, he should be asked to stay on till the end of the day when all processes which are intended for service from his station should be handed over to him. This practice results in the saving of two or three days which are usually taken in transmitting processes by post to the police station.

Manual of Instructions.

45. Recently a manual of instructions for the guidance of the magistrates has been prepared by a senior sessions judge and after scrutiny by the High Court, it has been issued to all the magistrates. This manual is extremely helpful and the instructions contained in it, if followed, should go far to avoid delays and make for the quicker disposal of criminal cases.

General Instructions.

46. The High Court has prescribed, that every application for adjournment of a case in a day's list, should be made as soon as the court sits on that day to enable the magistrate to settle his work. Once the work is settled, the magistrate tells the parties and counsel in each case at

Adjournments.

what point of time on that day each case will be taken up. It has also been provided that adjournment should as a rule be avoided and that generally a party should be given only one adjournment for the purpose of engaging counsel. Precise instructions have also been issued that a case should on no account be adjourned on the ground that all the witnesses who have been summoned are not present. On the other hand the presiding officers have been directed to examine all witnesses who are present on a particular day. Exceptions may sometimes have to be made, but it has been provided, that as far as possible, all witnesses present should be examined even if such an examination breaks the continuity of the case put forward by either party.

47. The High Court has also provided in the instructions issued that requests for adjournments by a departmental officer in charge of prosecutions should be discouraged. It has also pointed out that in simple cases where the prosecution witnesses are present, it is not necessary to adjourn the case to enable a representative of the prosecution to attend. The magistrates could examine such witnesses themselves, with the aid of the memorandum attached to the charge sheet, which states the facts which each witness is expected to prove in a particular case. It has also been emphasised, that adjournments for the purpose of hearing arguments or for consideration should normally not be granted and that arguments should be heard immediately at the close of a case or in any event at the close of the succeeding day.

Absence of prosecutor.

Hearing of arguments.

48. Instructions have also been issued to the magistrates, that all the cases prosecuted by particular departments other than the police like the Sales Tax, Forest or Prohibition Departments should as far as possible be posted on the same day after ascertaining the convenience of the departmental officer in charge of these cases. An arrangement of this kind tends to the convenience of all concerned.

Posting of cases.

49. A number of cases often remain pending for a time owing to the non-appearance of the accused. The magistrates have been instructed to issue in such cases warrants for the arrest of the accused, in the event of their non-appearance to issue proclamations under sections 86 and 88 of the Criminal Procedure Code, to record the evidence under section 512 Criminal Procedure Code after obtaining the concurrence of the district magistrate and to transfer them to the register of long pending cases. Petty cases are, however, withdrawn by the administrative departments when the magistrate draws their attention to the long pendency and to the fact that there is no chance of apprehending the accused within a reasonable period of time.

Absence of the accused.

Delivery of judgment.

50. Delays in the delivery of a judgment in criminal cases have been prevented by a strict insistence upon the rule, that once a trial has been concluded the cases should be posted to a specific date for judgment and the accused if on bail should be bound over for appearance on that date. This avoids delays arising out of the necessity of ensuring the presence of the accused to hear the judgment pronounced. The High Court has also provided by its rules that in all criminal cases, judgments must be delivered within three days of the conclusion of arguments and that an explanation must be submitted along with the calendar statement in every case where more than three days have been taken for the delivery of the judgment.

We may in contrast consider some other States like Uttar Pradesh and Rajasthan where a period of fifteen days is permitted for this purpose. Normally three days should be sufficient for the delivery of judgment even in a sessions case. In any case, under no circumstances need the time permitted exceed a week. We therefore recommend the immediate amendment of the rules in this regard and its strict enforcement.

Supervision of appellate work.

51. For ensuring adequate supervision over the appellate work of magistrates and sessions judges a form has been prescribed known as Form No. 40—Administrative Forms. The form shows the number of appeals and revisions presented to subordinate courts, the time taken for their disposal and the manner of their disposal. The average duration of these cases is also entered in it. These returns have to be submitted quarterly to the High Court. The rules provide that ordinarily judgments in criminal appeals should be delivered on the working day following the day on which hearing is concluded.

A rule providing that copies of all appellate judgments delivered by sessions judges and magistrates should be forwarded to the High Court *within 5 days* of the date of such delivery ensures an appraisal of the quality of these judgments. This provision has also the additional advantage of preventing the lower appellate courts disposing of appeals without delivering written judgments.

We have examined the measures adopted in the State of Madras for the quick disposal of criminal appeals in the Chapter on Criminal Appeals.

We have examined the measures adopted in the State of Madras for the quick disposal of criminal appeals in the chapter on Criminal Appeals.

Supervision of session judges.

52. The work done by the sessions judges is scrutinised by the High Court, in the same way as that of magistrates, namely, by a scrutiny of calendar statements and a perusal of judgments. Every sessions judge has to send to the High Court a printed copy of his judgment in every criminal case within eight days of the delivery of judgment.

The judgment is perused by the Judge in administrative charge of the district concerned, who is thereby enabled to assess the quality of the work of the sessions judge and to issue instructions to him if thought necessary. In suitable cases the Court exercises its powers of revision *suo motu*. The maximum period ordinarily permissible for the disposal of a sessions case is three months from the date of the apprehension of the accused.

53. We recommend that similar rules be framed in all other States. But we may emphasize that unless the proper observance of these rules is insisted upon—and that can be ensured only by continuous supervision—the mere framing of the rules will serve no useful purpose. On the High Court, as the highest court in the State, lies solely the responsibility for efficient judicial administration in the State. All machinery needs constant supervision and periodical inspection to ensure its smooth operation. The machinery for the administration of criminal law is complex and requires very close co-operation between the magistracy, the prosecuting agency and the public. Even a small detail which prevents such co-operation, may well throw the machinery out of gear.

What is necessary therefore, is not the mere framing of the rules but their observance. This can be enforced only by the method of a close and continuous scrutiny by the district officials as well as the High Court Judges. The Madras system outlined above has the merit of focussing the attention on all aspects which mainly cause delay. It may at first sight appear unreasonable to suggest that the valuable time of a High Court Judge should be devoted to work of this character. But, in our view, the end *i.e.* the speedy disposal of cases in *all the criminal courts all over the State*, is worth achieving even at that cost.

54. Our conclusions regarding the superintendence and control of subordinate courts may be summarised as follows:— Summary of conclusions.

(1) Many of the delays now prevalent in our system of judicial administration are capable of being remedied by adequate and effective supervision.

(2) The laying down of quantitative tests as to the amount of work to be done by a judicial officer tends to result in older and difficult cases being neglected and lighter suits being disposed of.

(3) All civil suits over a year old should be regarded as old suits and subordinate courts should be asked periodically to explain the delay in their disposal.

(4) All subordinate courts should be asked to submit returns showing the pendency of cases according to the year of institution together with their explanations for delay.

(5) For the disposal of other civil proceedings in subordinate civil courts, the standards set out in paragraph 8 *ante* should be insisted upon and explanations furnished in cases of delay.

(6) A time-limit should be fixed for the completion of arguments and the delivery of judgment in a case after the close of the hearing. Failure to conform to these time-limits should be adequately explained.

(7) The returns from subordinate courts should be systematically scrutinised by a Judge or Judges in the High Court and not be left to the Registrar. If necessary, the work of supervision scrutiny of returns and inspection should be divided among the judges to ensure that it is effective.

(8) The High Courts should make it clear to the district judges that the primary responsibility for the judicial administration of the district rests on them and that the task of supervision should on no account, be neglected by them.

(9) Inspection of subordinate courts is essential and should not be given up.

(10) All subordinate courts should be invariably inspected by the district judge once a year.

(11) All district courts and at least one subordinate court in each district should be inspected by a High Court Judge at least once in two years.

(12) The work of supervision and inspection may be divided among the Judges of High Courts each Judge being placed in charge of a district or group of districts.

(13) All judicial officers should be required to maintain a judicial diary, showing the work done by them in court every day.

(14) Inspection reports should contain adequate guidance and instructions to the officers of subordinate courts with regard to their work.

(15) The district judge should maintain a close personal contact with subordinate civil judicial officers in the districts and effect rearrangement of work whenever necessary. The practice of holding an annual judicial conference in each district on the line followed in Bombay as set out in paragraph 25 *ante* should be followed.

(16) The district judge should circulate monthly to the judicial officers in his charge a statement showing the out-turn of work done by each one of them.

(17) A district magistrate (judicial) should be appointed in the separation States to ensure proper supervision of the magistracy.

(18) A long time-limit like fifteen days for the delivery of judgment in a criminal case should not be allowed. Judgments should be delivered within three days and at any rate not later than a week.

(19) The methods of supervision of criminal courts in force in Madras set out in paragraphs 33 to 52 should be adopted in all States.

11.—DELAYS IN CIVIL PROCEEDINGS

Delays in
Civil Pro-
ceedings.

1. This part of our Report is concerned with delays in the disposal of civil proceedings in India, the causes which occasion such delays at different stages of the litigation and remedies for reducing the delays. Laws' delays are not peculiar to our country. They have been and continue to be the subject of comment in the United Kingdom and the United States. Nor are these delays a recent development in our country. They have been the subject of previous inquiries by several committees to which we have made a reference earlier. Many of the matters dealt with by us were also examined by those Committees and we shall have occasion to refer to the results of their examination in appropriate places.

Volume of
litigation;
institution
and dis-
posals.

2. Before considering the nature and the causes of the delays during the progress of a suit, it is necessary to ascertain the extent of the delays by a reference to some figures relating to the institution and disposal of original suits in the various States. We have, for the purpose of this analysis, chosen the year 1954 because it is the latest year for which administration reports were available for all the States. The figures of 1954 which we have given in the following Tables relate to the former Part A and Part B States. We have not been able to obtain relevant figures for Part C States.

3. During 1954, over one million and fifty-five thousand original suits including small cause suits were instituted in the civil courts excluding the village and panchayat courts and the High Courts on the original side. Including the arrears carried forward from the previous year, the total number of suits available for disposal by the courts in that year was over one million six hundred and fifty-nine thousand. During that year, the courts disposed of one million and forty-seven thousand suits leaving undecided more than six hundred thousand or thirty-six per cent of the total suits available for disposal. The following Table gives an overall picture of these suits before the civil courts in the States mentioned.

Table showing the institution, disposal and pendency of original civil suits (excluding suits before the village and panchayat courts and high courts) in 1954.

Name of the State	Instituted during the year	Total No of suits for disposal	Number of suits disposed of	No of suits pending at the close of the year
1	2	3	4	5
Andhra	74,728	1,01,643	72,892	28,751
Assam	10,873	17,816	10,090	7,726
Bihar	1,53,452	2,15,942	1,54,151	61,791
Bombay	1,19,554	1,90,593	1,11,460	79,133
Hyderabad	23,905	35,148	25,053	10,085
*Kerala (Travancore-Cochin)	42,923	84,654	44,657	39,997
Madhya Pradesh	52,101	83,470	52,833	30,637
Madras	74,219	1,52,093	76,900	75,193
*Mysore	N.A.	41,541	29,773	11,768
Orissa	16,390	28,098	15,579	12,519
Punjab	21,883	31,711	22,261	9,450
Rajasthan	47,866	70,823	48,618	22,205
Saurashtra	18,482	25,612	18,602	
Uttar Pradesh	1,98,738	3,09,262	1,69,353	1,39,909
West Bengal	2,00,439	2,71,459	1,94,998	76,461
	10,55,553	16,59,865	10,47,220	612,635

*For the official year 1954-55.

4. These figures which also include a large volume of small litigation decided by courts of small causes are not of material assistance in understanding the precise nature or extent of the delays nor of the difficulties of the courts or of the litigants. The position, however, becomes a little clearer from the following classification of the number of decided cases into contested and uncontested and the number of pending cases into those pending for more than one year. The following Table gives these particulars.

Name of the State	Total No. of suits disposed of	No. of suits disposed of without contest	No. of suits disposed of after contest	No. of suits pending for over a year
Andhra	72,892	58,660	14,232	6,509
Assam	10,090	8,785	1,305	2,073
Bihar	1,54,151	1,39,076	15,075	10,983
Bombay	1,11,460	84,325	27,135	22,964
Hyderabad	25,053	N.A.	N.A.	1,631
Kerala	44,657	23,917	20,740	22,842
Madhya Pradesh	52,833	37,742	15,091	3,685
Madras	76,900	58,320	18,580	46,649
Mysore	29,773	20,915	8,858	3,131
Orissa	15,579	12,994	2,591	4,584
Punjab	22,261	14,082	8,179	671
Rajasthan	48,618	34,780	13,838	4,869
Saurashtra	18,602	10,359	8,063	1,082
Uttar Pradesh	1,69,353	1,35,835	33,518	41,121
West Bengal	1,94,998	1,80,662	14,336	17,909
	10,47,220	8,20,452	2,01,541	1,90,703

Proportion of delayed cases.

5. The uncontested suits include those which were summarily dismissed under Order IX of the Civil Procedure Code or otherwise, suits decided *ex parte* or on admission of the claim and those compromised after the defendant had entered appearance. It will be seen that out of the total number of suits decided 25.58 per cent only were decided after full trial and the rest of the disposals amounting to over 70 per cent were without contest. The average duration of cases decided without contest is generally less than one year. That would show that two-thirds of the suits are disposed of in less than one year after their institution and the cry of "law's delays" is, therefore, directed against the balance of one-third of the cases which remain pending for a year or more.

Before considering the causes of delayed disposals, we must attempt to understand and define what should be regarded as unjustifiably delayed suits or arrears. Every case pending before a court cannot be put in the category of arrears. A case necessarily takes a certain amount of time in passing through its preliminary stages of the completion of pleadings, service of process, discovery and inspection, before it can reach a stage when it can be set down for hearing. We have in an earlier chapter indicated what should be regarded as normal time limits for the disposal of various types of civil proceedings. We have come to the conclusion that having regard to the figures of average duration, the standard time for disposal of a suit in a munsif's court should be one year and in a subordinate judge's court, eighteen months. These standards are to some extent arbitrary but in the nature of things that cannot be avoided. The real arrears would, therefore, be those cases in the munsifs' courts which have been pending for more than one year after institution and those in the subordinate judges' courts pending for one and a half to two years. Bearing this in mind, we may examine the extent of the delays from the following Table showing the pendency of original suits in the subordinate courts excluding small cause suits (in seven States) according to the year of institution.

Arrears:
What they
are.

Pendency of
old suits.

Table showing the pendency as on 31-12-1954 of original suits in the subordinate courts according to the year of institution.

Name of the State and class of court	1941 and ear- lier	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	Total
I	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
<i>Andhra</i>															
District Judges Courts	1	..	1	..	2	1	1	1	5	2	13	25	56	87	194
Subordinate Judges Courts	2	1	6	7	15	22	25	66	233	432	852	1374	3036
District Munsifs' Courts	2	..	5	5	11	16	24	55	86	173	297	694	3058	11288	15714
<i>Assam</i>															
Munsifs' Courts	*28	42	30	115	290	1142	6150
Subordinate Courts	*3	19	29	101	174	292	1308
District Courts	4	14	5	1	7	41
<i>Bihar</i>															
Superior Courts	**9	6	9	11	17	47	115	335	812	1454	3846	6661
Munsifs' Courts	**3	6	11	14	65	68	276	463	1523	5739	46962	55130
<i>Madras</i>															
District Judges Courts	1	1	..	6	2	7	18	51	95	281
Subordinate Judges Courts	1	12	14	26	31	48	85	184	348	622	1449	1826	4654
District Munsifs' Courts	63	237	935	1721	1153	1684	1894	2800	4059	3244	16909	14317	49036
<i>Orissa</i>															
Superior Courts	@7	1	4	7	7	7	31	67	211	405	1332	2079
Munsifs' Courts	@32	4	4	12	18	44	72	292	984	2375	6603	10440

Punjab

District Courts other than Chief Courts of the District	1	2	1	3	11	12	16	30	34	63	270	446
Chief Courts of the District				1	1	1	..	..	..	2	2	7

West Bengal

District Judges Courts					@5	5	11	15	14	38	147	235
Additional Judges Courts					2	..	..	2	3	8	8	23
Subordinate Judges Courts					191	150	312	533	981	1777	2698	6642
Munsifs' Courts					657	255	388	863	2627	8502	41902	55194

*Instituted prior to 1949.

**Instituted prior to 1945.

@Pending for over ten years.

@@Instituted prior to 1949.

The above statement relates only to seven States because reports from other States do not give similar particulars.

Low percentage of old suits.

6. We have not been able to obtain similar information from other States. It will be noticed, however, that the number of pending cases, which according to our definition can be classed as arrears, bears a comparatively low percentage to the total number of cases pending at the end of 1954 while the percentage of the number of cases pending for more than three years is still lower. In the munsifs' courts of Bihar, out of a total pendency of 55130 only thirteen percent were cases pending between one and two years and only 1.6 per cent were more than three years old. In the district and subordinate courts, out of 6661 suits pending, thirty-four per cent were more than two years old and only 8.2 per cent were three years old. The figures for West Bengal are slightly higher. The exceptionally high percentage of old cases in Madras in that year is said to be due to the passing of the Madras Act V of 1954 which had the effect of staying proceedings in all suits for the recovery of debts from agriculturists and in consequence of which a large number of old suits were stayed although the number of institutions fell. It is true that in all these States some of the older suits have been pending for five, six or even ten years. Such delays, however, which occur in all courts in all parts of the country are due, in part, to certain extraneous factors beyond the control of the courts.

Delays at the stage of appeal.

7. The result of this statistical analysis, therefore, shows that on the whole, more than sixty-five to seventy per cent of the cases are disposed of within the target time of one to two years in the civil courts. If that were the end of these cases, the average litigant would not have much to complain about. But the law does not give finality to the decision of the courts of first instance. The aggrieved party has generally a right to challenge the decision against him in one or more appellate courts, the number of appeals permitted being regulated by the nature and value of the subject matter in dispute in each case. This right of appeal is a necessary corrective to the errors and omissions of the courts of first instance which is rightly availed of by a large number of litigants. In fixing, therefore, the ideal time limit for disposal of cases, one has to bear in mind the time necessarily required for reaching the final decision after all the appeals provided by law have been exhausted. For instance, in original suits triable by a munsif's court, except suits of a small cause nature, the law provides a first appeal to the district appellate court and a second appeal to the High Court. In our view, litigation originating in the munsif's court ought to be disposed of within one year in the trial court, within six months in the district appellate court and within one year in second appeal in the High Court. In an ideal sense, therefore, such a suit should reach final decision within two and a half or at the most three years but not more. In important suits of higher valuation triable in the courts of the senior judges, our target is eighteen months to two years in the trial court and the same duration for the first appeal to

the High Court. Such a suit should, therefore, be finally decided in about three to three and a half years. But the time in fact taken will appear from the following two Tables which show the average duration of suits commenced respectively in the munsifs' and subordinate judges' courts at the stages of trial and of first and second appeals. The figures relate to the year 1954.

Table showing the average duration of a regular suit instituted in munsif's court from the date of institution to the date of final disposal in second appeal

Name of the State	Average duration in days of suits disposed of by the courts of munsifs after full trial	Average duration in days of appeals disposed of by the district appellate courts after full hearing.	Average duration in days of second appeals disposed of by the High Court after full hearing.
Andhra	365·0	D.J. 228 S.J. 382	Not available*
Assam	490·1	D.J. & A.D.J. 310 S.J. 537·1	603·4
Bihar	503·6	D.J. 658·2 S.J. 348·7	822·4
Madhya Pradesh	321·0	Not available	1604·0
Madras	491·0	D.J. 553 S.J. 367	1168·0
Orissa	561·2	D.J. 628·4 S.J. 581·7	2038·0
West Bengal	423·6	D.J. & A.D.J. 199·6 S.J. 153·9	1487·0

*The Court started functioning in July 1954.

D.J.—District Judge.

S.J.—Subordinate Judge.

A.D.J.—Additional District Judge.

Table showing the average duration of a regular suit instituted in subordinate courts from the date of institution to the date of final disposal

Name of the State	Average duration of suits disposed of after full trial by the courts of subordinate judges	Average duration of suits disposed of after full trial by the chief courts of districts	Average duration of appeals disposed of by the High Court after full hearing
Andhra	620.0	386.0	Not available*
Assam	369.8	126.2	1122.2
Bihar	762.6	1144.5	1887.1
Madhya Pradesh	522.0	588.0	2503.0
Madras	725.0	437.0	1305.0
Orissa	677.7	816.3	1783.0
West Bengal	630.2	483.2	1454.0

*The Court started functioning in July 1954.

8. The above Tables show that while the lower courts, on an average, are in the time taken for disposal closer to the targets of time indicated by us, the High Courts are more dilatory in disposing of first and second appeals in suits which have originated in the court of a munsif or a subordinate judge. We are aware that statistics do not always afford a true indication of the position and that figures, particularly of averages, may not accurately reflect the state of affairs. If the average duration of a suit in a munsif's court is, say, fifteen months, it is obvious that in many courts a large number of suits must have taken more than two or three years. As an illustration, we may mention the State of Kerala where we have suits with the duration of five, ten or even twenty years. We were told by the Chief Justice of the State that the practice in the Travancore region was not to regard a suit as old, unless it had been pending for more than five years. The percentages and the average durations might, therefore, present a somewhat rosier picture than justified. We would be right in inferring from the figures referred to earlier that civil litigation is subjected to longer delays in the appellate courts than in the trial courts.

Greater delays at the appellate stage.

The figures indicated that suits filed in the munsifs' courts or in the subordinate judges' courts suffer great delays after appeals are filed either in the district courts or in the High Courts. These delays in the disposal of appeals are far greater in the High Courts than in the district courts. In all States, the duration of a first appeal or a second appeal in the High Court is much longer than the duration

of the suit giving rise to the appeal in the lower courts. This state of affairs is clearly anomalous. Normally, the trial in the original court should be reason of the various stages through which it has to pass take longer time than the disposal of an appeal from the decision of the trial court.

Procedural machinery how far accountable for delay.

9. It has been frequently asserted that the chief cause of delay are the laws of civil and criminal procedure which, it has been said, are cumbrous, wasteful and time-consuming. It is pointed out that very often the procedure becomes an end in itself. The fate of the suits is made to depend upon the procedural technique to be gone through to bring them on the files of the court for adjudication. However, it is not possible to refer to a single factor as either the sole or the main cause of delay in civil litigation in India. Every system of legal institutions designed to administer justice in accordance with law must necessarily be based on an adequate procedural machinery aimed at promoting the just adjudication of causes before the law courts.

It is not suggested that our procedural codes are perfect. It is clear that to the extent to which they hinder the speedy dispensation of justice, they must be improved or amended. But it would, in our opinion, be a mistake to lay the entire blame for the delays in our litigation on the defects or cumbrousness of the procedure. When complaints are made against procedural delays, it is often forgotten that the machinery of justice cannot, like a penny in the slot machine, produce a decision as soon as a dispute is referred to it. The object of procedural laws is to bring the disputants together for the purpose of trial, to ascertain the facts and the law in dispute so as to enable the court to reach a conclusion after full investigation. The provisions of the Civil Procedure Code are based on the theory that there must be a full disclosure by each party of his case to the other, that the rival contentions must be reduced as quickly as possible to the form of clear and precise points or issues for decision and that there must be a prompt adjudication by the court upon those issues. An ordinary civil action brought before a court of law must, therefore, necessarily take some time before its final adjudication by the court. The time which must elapse before the matter is thus brought to its conclusion will depend on a number of factors like the number of parties to the litigation, the time reasonably required for effecting service, the time spent by parties in collecting and producing documentary and oral evidence and in prosecuting *bona fide* appeals or revisions in important interlocutory matters and above all upon the normal state of the court's business. A good deal of the criticisms against the procedural laws as the cause of delays when carefully analysed will show that justice is delayed not so much by any defects or technicalities in the prescribed procedure

Procedure not responsible for delays.

as by its faulty application or by failure to apply it. That was the view of all responsible and experienced persons who answered our Questionnaire or gave evidence before us.

10. It was generally agreed that the Code of Civil Procedure is an exhaustive and carefully devised enactment, the provisions of which, if properly and rigidly followed, are designed to expedite rather than delay the disposal of cases. The delay results not from the procedure laid down by it but by reason of the non-observance of many of its important provisions particularly those intended to expedite the disposal of proceedings. The view which attributes delays mainly to the cumbrous procedure fails to take into account numerous extraneous and personal factors responsible for delays like, an inefficient and inexperienced judiciary, insufficient number of judicial officers, an incompetent and corrupt ministerial and process-serving agency, the diverse delaying tactics adopted by the litigants and their lawyers, the unmethodical arrangement of work by the presiding judge and the heavy file of arrears. In the following chapters we shall endeavour to examine the procedure from the point of view of delays and suggest measures to remove them.

12.—JURISDICTION OF CIVIL COURTS

Set up of
Civil Courts.

1. The normal hierarchy of civil courts in any district consists of (1) the court of the district judge (2) the court of the additional or the assistant district judge (3) the court of the subordinate or the senior civil judge and (4) the court of the munsif or the junior civil judge. Besides these regular civil courts, there are also panchayat and village courts constituted under the Village Panchayat Acts of the several States.

Types of
jurisdiction.

2. The civil courts exercise two distinct types of jurisdiction, namely, ordinary civil jurisdiction which is derived under the Civil Courts Acts in force in the various States and special jurisdiction in certain matters conferred under certain Central and State Acts e.g., the Indian Succession Act, the Guardians and Wards Act, the Land Acquisition Act and Acts relating to marriage, divorce and other matters.

Transfer of
jurisdiction
to subor-
dinate
courts.

3. It appears to us that it will tend to the greater convenience of the parties and less expense to the State if powers, at present exclusively exercised by higher courts, could be entrusted to lower courts access to which will be nearer and easier to the parties. We have already noticed how the highest courts at the district level are overburdened with work and suffer from a congestion of their files which has led to substantial delays. On the whole, the situation in the lower courts is not so difficult. That appears to us to be a cogent reason for the transfer of some of the jurisdictions which are now enjoyed by the higher courts to the lower courts.

The devolution of jurisdiction, both ordinary and special, of the civil courts can conveniently be considered under the following heads:

(1) Enlargement of the pecuniary jurisdiction of the junior judges;

(2) Investing the senior judges with powers and functions of the district judge under certain special Acts so as to give relief to the latter;

(3) Extension of summary procedure and third party procedure to subordinate courts; and

(4) Enlargement of the jurisdiction of the courts of small causes.

We propose to deal with the first three heads in this chapter and the fourth in the succeeding one.

4. The accompanying Table shows the ordinary original jurisdiction in regular suits (excluding small cause suits) exercised by the civil courts of different grades under the local Civil Courts Acts in all the States. The pecuniary jurisdiction of the subordinate judge (in the Madras or the West Bengal sense) or officers of corresponding designation in the erstwhile Madras area of Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madras, Orissa, Uttar Pradesh and West Bengal is unlimited. In the Punjab, subordinate judges, Class I, exercise unlimited jurisdiction. In Madhya Pradesh, there are no subordinate judges in the West Bengal sense; the district and additional district judges alone exercise unlimited jurisdiction. In Rajasthan, only some of the subordinate judges are invested with unlimited pecuniary jurisdiction. In the Telangana area of Andhra Pradesh, the maximum jurisdiction of the subordinate judge is Rs. 20,000 which in the case of selected officers may be increased to Rs. 50,000; only the district and additional district judges exercise unlimited jurisdiction. There are similar variations in some of the areas of the reconstituted States of Bombay and Madhya Pradesh.

Jurisdiction
of subor-
dinate
Judges.

Name of the State	Maximum ordinary original jurisdiction in regular suits		Laws defining jurisdiction
	Subordinate Judges or officers of corresponding designation.	Munsifs or officers of corresponding designation.	
1	2	3	4
Andhra Pradesh	Unlimited	Rs. 5,000	Central Act III of 1873 and Madras Act XVI of 1951 as adapted by the Andhra Adaptation of Laws Order, 1953.
Assam	Unlimited	Rs. 1,000 to Rs. 4,000	The Bengal, Agra and Assam Civil Courts Act (XII of 1887).
Bihar	Unlimited	Do.	Do.
Bombay	Unlimited	Rs. 10,000 (Rs. 15,000 in case of civil judges of not less than ten years' service, if recommended by the High Court)	The Bombay Civil Courts Act (XIV of 1869).
Kerala	Unlimited	Rs. 5,000	The Kerala Civil Courts Act of 1957.
Madhya Pradesh	(1)	Upto Rs. 10,000	The C. P. & Berar Courts Act (I) of 1917 ; Madhya Pradesh Courts Act (II) of 1956.
Mysore	Rs. 10,000	Rs. 3,000	Mysore Civil Courts Act, 1883, as amended by the Amending Act XXIII of 1955.
Madras	Unlimited	Rs. 5,000	Central Act III of 1873. Madras Act XVI of 1951.
Orissa	Unlimited	Rs. 1,000 to Rs. 4,000	The Bengal, Agra and Assam Civil Courts Act (XII of 1887).

Punjab	Class I : Unlimited. Class II : Rs. 5,000. Class III : Rs. 2,000. Class IV : Rs. 1,000.	There are no munsifs in the Punjab. There is only one class of officers namely subordinate judges, classified into four grades according to the jurisdiction conferred upon them as shown in the previous column.	The Punjab Courts Act (VI of 1918).
Rajasthan	Rs. 10,000 (Unlimited in case of some officers).	Rs. 2,000 to Rs. 5,000	The Rajasthan Civil Courts Ordinance, 1950.
Uttar Pradesh	Unlimited	Rs. 2,000 to Rs. 5,000	The Bengal, Agra and Assam Civil Courts Act (XII of 1887), as amended by U. P. Act V of 1955.
West Bengal	Unlimited	Do.	Do.

(1). In Madhya Pradesh all the officers below the cadre of district judges are called civil judges. Only the district and additional district judges exercise unlimited jurisdiction.

Jurisdiction
of munsifs.

5. There is a greater diversity in regard to the pecuniary jurisdiction exercised by munsifs and officers of corresponding designation in the different States. In the Andhra districts of Andhra Pradesh and Madras, the munsif's jurisdiction is Rs. 5,000. In Assam, Bihar and Orissa, munsifs start with a pecuniary jurisdiction of Rs. 1,000 which may gradually be raised to Rs. 4,000 by the High Court. In Bombay, the civil judges, junior division, exercised pecuniary jurisdiction upto Rs. 5,000 since 1863 under the Bombay Civil Courts Act. By an amendment of that Act in 1949, this has been raised to Rs. 10,000 and it may even be raised to Rs. 15,000 in selected cases. In Kerala, the jurisdiction exercised by a munsif is Rs. 5,000. In Madhya Pradesh where there is only one class of civil judges, their jurisdiction is Rs. 10,000. In the Punjab, there are no munsifs but only subordinate judges of different classes invested with jurisdiction from Rs. 1,000 onwards upto an unlimited amount according to their experience and seniority. In Rajasthan, Uttar Pradesh and West Bengal, the jurisdiction exercised by munsifs is Rs. 2,000 which may be increased to Rs. 5,000

Enhance-
ment of
pecuniary
jurisdiction.

6. There are good reasons for the extension of the pecuniary jurisdiction of these courts by conferring upon the senior judges the power to try suits unlimited in value and the junior judges with the power to try suits upto a valuation of at least Rs. 5,000 wherever these powers are below such limits. The limits of the pecuniary jurisdiction of these courts were statutorily fixed a long time ago. Since then, land value and the price index have risen greatly with a corresponding fall in the value of the rupee. It was for this reason that in Bombay and Madhya Pradesh the jurisdiction of the civil judge, junior division, was raised from Rs. 5,000 to Rs. 10,000. On the same ground, the value of the subject matter of appeals to the Supreme Court has been raised from Rs. 10,000 to Rs. 20,000. The enlargement of the jurisdiction of the junior judges will give much needed relief to senior judges who, in several States, have to carry a heavy burden of civil appeals, sessions cases and other matters besides original civil work.

Fall in value
of money.

Objections
to enhance-
ment.

7. The opinion which we have elicited is on the whole in favour of such an increase although doubt and hesitation were expressed in some places. Some witnesses in Kerala put forward the view that it would be inadvisable to increase either the original or the appellate jurisdiction of the subordinate civil courts unless there was in the first place an improvement in the competence and capacity of the judges. Notwithstanding these doubts, the State Government has raised the pecuniary jurisdiction of the munsifs in that State to Rs. 5,000. On the other hand, a former Chief Justice of the Calcutta High Court favoured an extension of the munsifs' jurisdiction to double the present amount. That view has been echoed by many

others. We, therefore, recommend that the senior civil judges should be immediately invested with unlimited pecuniary jurisdiction while the jurisdiction of the junior civil judges or munsifs should not be less than Rs. 5,000 in the States where it is below this amount. The maximum of the junior judge's jurisdiction should, on the recommendation of the High Court, be eventually raised to Rs. 10,000.

8. We have considered the objection raised in certain quarters against an increase in the jurisdiction on the ground that raw and inexperienced junior judges will not be able to deal satisfactorily with cases involving stakes of higher value. In fact, as already pointed out by us, the values involved will not be higher for a jurisdiction of Rs. 2,000 or 3,000 ten years ago is equivalent to a jurisdiction of Rs. 10,000 today. Moreover, junior civil judges have satisfactorily exercised the higher jurisdiction conferred upon them in the States of Bombay and Madhya Pradesh. With improved methods of recruitment and training, we are confident that they can be safely trusted to handle cases of higher valuation. We may, however, as a precaution suggest that freshly appointed junior judges should normally be posted to district or sub-divisional headquarters where there are more courts than one, some of which are presided over by senior officers and that during their period of probation they may be entrusted only with suits of a simple nature. This practice has been adopted in Madhya Pradesh where the district judge distributes the work taking into consideration the seniority and experience of the civil judges.

Objections
not valid.

Junior
Officers
to try suits
of smaller
value.

9. The Court of the district judge is the principal court of original civil jurisdiction for the district. Under the district judge are a number of subordinate judges and munsifs who among them dispose of practically the entire volume of original civil work in the district. The district judge deals with civil appellate work and in his capacity as the sessions judge has also to try sessions cases and hear criminal appeals. In some States, he is assisted in his civil appellate and criminal work by subordinate judges or additional or assistant district judges who are invested with civil appellate powers and also the powers of the additional or assistant sessions judge. The district judge also exercises original jurisdiction in cases arising under a large number of special Acts, both Central and States, such as the Indian Succession Act, the Guardians and Wards Act, the Land Acquisition Act, the Lunacy Act and the Administration of Evacuee Property Act, to mention only a few of them. Further, subject to the High Court's general superintendence, he is the administrative head of the judiciary in the district and, as such, exercises general supervision over the work of the judicial officers subordinate to him, inspects their courts from time to time and also controls the subordinate staff of those courts.

Duties of
district
judge
numerous.

Need
relief, for

10. We have been informed that in many instances the district judges do not find sufficient time to discharge all their manifold duties. They are busy hearing sessions cases and criminal appeals and are unable to devote sufficient time to their civil original and appellate work. In those districts where criminal work is exceptionally heavy, the relief which the district and sessions judges get by transferring criminal work to additional district judges or subordinate judges is not enough to enable them to devote sufficient time to civil work. In a latter Chapter, we propose an increase in the jurisdiction of the district appellate courts to Rs. 10,000. We have also recommended that in future all civil appeals should be heard only by the district judges or additional district judges and not by subordinate judges. These recommendations must inevitably result in a further increase in the civil appellate work of district judges, which is one more reason why relief should be given to them by investing senior judges with jurisdiction to hear cases under special Acts which has hitherto been exercised exclusively by the district judges. The special jurisdiction under the provisions contained in the following enactments may be considered in this connection:

- (1) The Indian Succession Act, 1925.
- (2) The Guardians and Wards Act, 1890.
- (3) The Land Acquisition Act, 1894.
- (4) The Provincial Insolvency Act, 1920.
- (5) The Indian Divorce Act, 1869.
- (6) The Special Marriage Act, 1954.
- (7) The Hindu Marriage Act, 1955.
- (8) Section 92 of the Code of Civil Procedure, 1908.
- (9) Section 18 of the Religious Endowments Act, 1863; and
- (10) The Indian Lunacy Act, 1912.

Powers under the
Succession
Act.

11. *The Indian Succession Act, 1925*: The matters arising under the Indian Succession Act are proceedings relating to the grant, etc., of probate, letters of administration and succession certificates. Section 264 of the Act confers upon the district judge jurisdiction to grant and revoke probate and letters of administration in all cases within his district. Under section 265, the High Court may appoint such judicial officers within any district as it thinks fit to act for the district judge as delegate to grant probate and letters of administration in non-contentious cases within such local limits as it may prescribe; this has in fact, been done in a number of States by delegation of the said powers to the civil judges. Similarly, several High Courts (Assam, Bombay, Madhya Pradesh, Madras, Punjab and West Bengal) have invested all subordinate judges with all the powers of the district judge to take cognizance

of any contested proceeding under this Act arising within the local limits of their respective jurisdictions that may be transferred to them by the district judge. Under section 371, the district judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, within whose jurisdiction any part of the property of the deceased may be found, may grant a succession certificate. Under section 388, the State Government is authorised to invest any court inferior in grade to a district judge with powers under Part IX to exercise the functions of a district judge relating to the grant of succession certificates. In exercise of this authority, all civil judges have been invested with this jurisdiction in Bombay and Madras. We recommend that in other States also where such powers have not been given to the subordinate judicial officers they should be so empowered.

Delegation
recommend-
ed.

12. *The Guardians and Wards Act, 1890*: Under section 4(5) of the Act, 'Court' means the district court having jurisdiction to entertain an application under the Act. However, under section 4-A the High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a district court or authorise the judge of any district court to confer power upon any such officer subordinate to him to dispose of any proceeding under the Act transferred to such officer under the provisions of the section. Sub-section (2) also empowers the district judge to transfer at any stage any proceeding under the Act pending in his court for disposal to any officer subordinate to him and empowered under sub-section (1). Notwithstanding a view to the contrary expressed by the Bombay High Court, we would strongly urge upon all the High Courts to make a large use of section 4-A and to empower all senior or subordinate judges in the State to dispose of proceedings under the Act. As, under our scheme of distribution of civil work, the subordinate or senior judges would be exclusively occupied with the trial of original proceedings, both ordinary and special, it is only in the fitness of things that original proceedings arising under the special Acts should also be dealt with by them.

The Guar-
dians and
Wards Act.

Authorisa-
tion of
subordinate
judges.

13. *The Indian Lunacy Act of 1912*: Under section 37 of the Act, jurisdiction has been conferred upon the High Courts of Calcutta, Madras and Bombay to take cognizance of proceedings under this Act arising within the Presidency towns. Under section 62, whenever a person not subject to the jurisdiction of the Courts mentioned in section 37 is possessed of property and is alleged to be lunatic, jurisdiction is conferred upon the district court within whose jurisdiction such person is residing, to direct an incision for the purpose of ascertaining whether such person is of unsound mind. The district court has been defined to mean the principal court of original jurisdiction in any area outside the local limits for the time being, of the

The Lucy
Act.

presidency towns. As proceedings under the Act involve the status of an alleged lunatic and may also involve difficult questions of law and fact, we are of the view that while provision should be made in the Act enabling delegation of the powers of the district judge, such delegation should be made only to a subordinate judge or an officer of a similar rank but not to a munsif. We also recommend that State Governments should, as far as possible, make use of this power of delegation.

The Land Acquisition Act.

14. *The Land Acquisition Act, 1894*: The power to try references under section 18 of the Land Acquisition Act has been conferred on the court. Section 3(d) defines "Court" as the principal civil court of original jurisdiction unless the appropriate Government has appointed, as it is empowered to do, a special judicial officer within any specified local limits to perform the functions of the court under the Act. The questions arising in land acquisition references, though important, are not so difficult as not to be entrusted for adjudication to an officer of the rank of a subordinate or senior civil judge. The Civil Justice Committee had suggested¹ that other judicial officers may be empowered by the State Governments to entertain and dispose of references under the Land Acquisition Act. In Madras, even munsifs are invested with jurisdiction to try cases under the Land Acquisition Act where the amount of compensation claimed falls within the limits of their pecuniary jurisdiction. In Bombay where such jurisdiction has been conferred upon civil judges of the senior division, the High Court does not favour the extension of such jurisdiction to civil judges of the junior division or munsifs as they are called in most other States. We are of the view that the States where such delegation does not exist may well follow the example of Madras with advantage. In any case, they should, following Bombay, invest the courts of subordinate judges with jurisdiction under the Land Acquisition Act in order to afford necessary relief to the district court.

Authorisation of senior and junior civil judges.

Insolvency jurisdiction

15. *The Provincial Insolvency Act, 1920*: Section 3(1) of the Provincial Insolvency Act confers on the district court jurisdiction to exercise the powers under the Act. The proviso thereto empowers the State Governments to invest any subordinate court with jurisdiction to try any class of cases under the Act. We recommend that all civil judicial officers may be invested with insolvency jurisdiction. Such powers have been conferred upon these officers in Bombay and Madras.

All officers to be empowered

Matrimonial jurisdiction.

16. *The Indian Divorce Act, 1869, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955*: Further relief can be given to district judges by investing the subordinate judges with jurisdiction in certain matrimonial cases which is now exclusively vested in the former. Under the Special

Marriage Act of 1954, all matrimonial proceedings under Chapters V and VI are to be instituted in the district court within the local limits of whose jurisdiction the marriage was solemnized or the husband and wife reside or last resided together or in the city civil court. Under this Act, therefore, the district court alone has jurisdiction in the mofussil to take cognizance of matrimonial proceedings. In contrast, section 3(b) of the Hindu Marriage Act of 1955 enables the State Government by notification in the official gazette to authorise any civil court to deal with proceedings under this Act. We do not see any reason why a similar provision should not be made in respect of cases arising under the Special Marriage Act of 1954 by an appropriate amendment. Similarly, under the Indian Divorce Act, all proceedings are instituted either in the district court or the High Court. Jurisdiction under this Act must be exercised by the district judge alone and not even by an additional district judge. In respect of proceedings under this Act also we recommend that the definition of district court should be amended on the analogy of section 3(b) of the Hindu Marriage Act, 1955. We recommend that State Government might make larger use of their powers by empowering subordinate judges to try and dispose of cases under these Acts.

Amendments suggested.

17. Section 92 of the Civil Procedure Code and Section 18 of the Religious Endowments Act, 1863: Under section 92 of the Code of Civil Procedure, the principal civil court of original jurisdiction or any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of a subject-matter of the trust is situate can try a suit of the description referred to therein concerning public charities. Similarly, section 18 of the Religious Endowments Act confers on the civil court exclusive jurisdiction to entertain applications or suits referred to in it. Section 2 defines the words "Civil Court" and "Court" to mean the principal court of original jurisdiction, that is, the court of the district judge or any other court empowered in that behalf by the State Government. We recommend that the State Government should make as large a use as possible of these powers by empowering subordinate judges to try and dispose of cases under section 92 of the Civil Procedure Code and section 18 of the Religious Endowments Act.

Proceedings relating to endowments and public charities.

Subordinate courts to be empowered.

18. We have not been able to examine the various State enactments under which special jurisdiction has been conferred on the district judges; but we would suggest that the State Governments should undertake a general review of these, in consultation with the High Courts with a view to give relief to the district judges by transferring their work under special enactments to subordinate judges and munsifs wherever possible.

State Acts.

Summary
procedure.

Statutory
provisions.

19. We have next to consider other proposals for speeding up the trial and avoiding delay in the subordinate courts. Our Questionnaire invited opinion on the feasibility of the extension of the summary procedure contemplated by section 128(2) (f) and Order XXXVII of the Code of Civil Procedure to subordinate courts. Under section 128(2) (f), the High Courts have the power to make rules providing for summary procedure in—

(1) Suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising on an express or implied contract; or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or on a guarantee where the claim against the principal is in respect of a debt or a liquidated demand only or on a trust, or

(2) Suits for recovery of immovable property, with or without rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant.

Order XXXVII of the Code lays down the procedure for the trial of such suits. The order applies only to the High Courts of Calcutta, Madras and Bombay. A power to extend it to other courts has, however, been given and it has been extended to the three Presidency Small Causes Courts. Further, in exercise of their rule-making powers, certain High Courts have extended the provisions of Order XXXVII to other Courts as well. In Bombay, it has been extended to the Bombay City Civil Court and, in Madras, to the Madras City Civil Court and also all Courts of subordinate judges and munsifs. In Calcutta, it has been extended to all civil courts except the courts of small causes in the district of 24 Paraganas, in Uttar Pradesh to any court in the Province of Agra exercising small cause powers and in the Punjab to the courts of district judges and subordinate judges, first class, in the Province of Delhi and similar courts in the district of Amritsar.

Procedure.

20. The procedure under Order XXXVII is applicable only to suits on negotiable instruments. A suit under this Order is instituted in the ordinary form by presenting a plaint but the summons is issued in Form No. IV in Appendix B of the Code. The essence of a summary suit under Order XXXVII is that the defendant is not, as in an ordinary suit, entitled as of right to defend the suit. He must apply for leave to defend within ten days from the date of service of summons upon him and such leave will be granted only if the affidavit filed by the defendant discloses such facts as will make it incumbent upon the plaintiff

to prove consideration or such other facts as the court may deem sufficient for granting leave to the defendant to appear and defend the suit. If no leave to defend is granted, the plaintiff is entitled to a decree. The principle underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no real defence.

21. The Bombay High Court has extended this procedure to all the suits mentioned in 128(2) (f) in addition to the suits on negotiable instruments. Further, the procedure has to some extent been made less rigorous by an amendment of Rule 3 of Order XXXVII. The Bombay amendment requires a plaintiff to serve with the writ of summons, a copy of the plaint and the exhibits, and the defendant may, at any time, within ten days of such service enter only an appearance in the first instance. Notice of the appearance must be given to the plaintiff's attorney and thereafter the plaintiff shall serve on the defendant a summons for judgment returnable in less than ten days from the date of service, supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit. It is only after the service of this additional summons for judgment that the defendant is required within ten days thereof to apply for leave to defend.

Bombay amendment.

22. A general extension of the summary procedure to all courts of subordinate judges and munsifs has not been advocated nor do we recommend any such far-reaching measure. We understand that although Order XXXVII has been applied to the courts of all subordinate judges and munsifs in Madras, it is not in use and has virtually become a dead letter so far as subordinate courts in the mofussil of that State are concerned. The High Court of Allahabad is opposed to its general extension. The Bombay High Court is in favour of extending it to the courts in such commercial towns as are recommended by the High Court. The Civil Justice Committee made a similar proposal. Order XXXVII was extended to certain courts in Bengal, Uttar Pradesh and the Punjab, probably, on the basis of that recommendation. We suggest that the High Courts should extend the rules of summary procedure, as amplified in Bombay, to subordinate courts in important industrial and commercial towns, like Ahmedabad, Asansol, Kanpur and Jamshedpur.

Extension recommended.

23. Section 128(2) (e) of the Civil Procedure Code also gives power to the High Courts to make rules prescribing what is known as third party procedure. So far as we are aware, except on the Original Sides of the High Courts of Calcutta, Madras and Bombay, in the Bombay City Civil Court and in the mofussil of Madras such rules are not in

Third party procedure.

force in other courts. The third party procedure is applicable where, in a suit, a defendant claims against any person, not already a party to the suit, any contribution or indemnity or any relief or remedy relating to or connected with the original subject-matter of the suit, or where any question or issue relating to or connected with the same subject-matter as substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and defendant but as between the plaintiff and the defendant and the third party or between any or either of them. In such cases, the defendant may, with the leave of the court, give a third party notice stating the nature and the ground of the claim or the relief or the remedy claimed or the nature of the question or issue to be determined. The third party then becomes a party to the suit with the same rights in respect of its defence against any claim made against him as if he had been duly sued in the ordinary way by the defendant. The rules further provide for the consequences of the third party's failure to appear. At present, the remedy of a defendant who is entitled to any contribution, indemnity or relief as aforesaid, against a third party has to be enforced by way of a separate suit. In our Report on the Liability of the State in Tort, we have made a proposal for an appropriate provision in the Civil Procedure Code making it obligatory "to implead as party to a suit in which a claim for damages against the State is made, the employee, agent or independent contractor for whose act the State is sought to be made liable. Any claim based on indemnity or contribution by the State may also be settled in such proceedings as all the parties will be before the Court".¹ The High Courts may consider the advisability of extending the application of the third party procedure to commercial towns like Ahmedabad, Kanpur, Asansol and others. We would not recommend any larger extension of the third party procedure.

Summary of
recommendations.

24. Our recommendations regarding the jurisdiction of civil courts can be summarised as follows:—

(1) Subordinate judges or senior civil judges should be invested in all States with unlimited pecuniary jurisdiction.

(2) The pecuniary jurisdiction of junior civil judges or munsifs should not be less than Rs. 5,000. Eventually, on the recommendation of the High Court, the jurisdiction of the junior civil judge or the munsif should be raised to Rs. 10,000.

(3) On their first appointment, probationers or junior munsifs should be posted to centres where there are more judges than one and at the start be entrusted only with the trial of simple suits or suits of small value.

¹Report, page 40, para 64(IV) (iii).

(4) All subordinate judges and munsifs should be empowered to grant succession certificates and subordinate judges should also be authorised to dispose of contentious proceedings for the grant of probate or letters of administration.

(5) The High Courts should make larger use of section 4A of the Guardians and Wards Act and empower all senior civil judges or subordinate judges to dispose of proceedings under that Act.

(6) The Indian Lunacy Act of 1912 should be amended so as to empower subordinate judges to exercise the powers of the district judge under the Act.

(7) The presiding officers of all civil courts should be empowered to hear references under the Land Acquisition Act. An immediate beginning should be made by investing subordinate judges with this power.

(8) All civil judicial officers should be invested with insolvency jurisdiction.

(9) The Indian Divorce Act and the Special Marriage Act should be amended so that courts subordinate to the district court might be empowered to deal with proceedings under these Acts and jurisdiction under these Acts might be conferred upon subordinate judges.

(10) The State Governments should freely confer jurisdiction under the Religious Endowments Act, 1863, and under section 92 of the Civil Procedure Code on the courts of subordinate judges.

(11) The State Governments should in consultation with the High Courts examine State enactments conferring special jurisdiction on the district judge and consider the advisability of transferring the work to subordinate courts.

(12) Order XXXVII of the Civil Procedure Code might be amended on the lines of the Bombay amendment. The High Courts should extend such summary procedure to subordinate courts in important commercial towns.

(13) The High Courts should consider the advisability of applying the third party procedure now used on the Original Sides of the High Courts to Courts in commercial towns.

13.—COURTS OF SMALL CAUSES

History.

1. The courts now known as the presidency small cause courts were first established by a Charter of George II dated 8th January 1753, and appear to be the oldest courts existing in India. Courts of small causes in the mofussil were first created in or about 1860 with the object of providing a speedy and cheap means of settling claims of a comparatively simple nature and of small pecuniary value.

Laws establishing small cause courts.

2. The law relating to the courts of small causes in the three presidency towns of Calcutta, Madras and Bombay is the Presidency Small Cause Courts Act of 1882 while the Provincial Small Cause Courts Act of 1887 extends to the whole of India except the three presidency towns and the areas that formed part of the erstwhile Part B States which had corresponding laws of their own. The following are the three types of courts created by the above statutes:

(1) Presidency small cause courts in Calcutta, Madras and Bombay established under section 5 of the Presidency Small Cause Courts Act (XV of 1882).

Courts of small causes.

(2) Provincial courts of small causes outside the presidency towns established under section 5 of the Provincial Small Cause Courts Act of 1887 or corresponding laws in the erstwhile Part B States.

(3) Ordinary civil courts invested with powers of courts of small causes under the relevant provisions of the States Civil Courts Acts read with the relevant provisions of the law relating to courts of small causes.

Summary procedure in these courts.

3. Except for certain special provisions relating to practice and procedure applicable to courts in the presidency towns, the principles embodied in the two Acts are identical. They prescribe a summary procedure for the speedy disposal of disputes wherein the pecuniary stakes are of small value and are suitable for summary disposal. The judges exercising small cause powers are not obliged to record the evidence in full, the examination or cross-examination of witnesses is not elaborate, issues are not framed; and the judgment simply states the points for decision with the court's findings thereon but not the reasons therefor.

4. We shall deal in the first instance with the question of increasing the powers of the small cause courts outside the presidency towns.

Jurisdiction of small cause courts.

The provisions of the law which define the jurisdiction of these courts prescribe the upper limit of the pecuniary value of suits cognizable by them and enumerate the classes

of suits excluded from their jurisdiction. Section 15 of the Provincial Small Cause Courts Act bars the court from taking cognizance of all suits specified in the second schedule thereof and empowers the court to take cognizance of all other suits of a civil nature the value of which does not exceed Rs. 500. The section further empowers the State Government to invest a court of small causes with jurisdiction to try suits the value of which does not exceed Rs. 1,000 subject, again, to the exceptions specified in schedule II.

5. We invited opinion whether the jurisdiction of the small cause courts should be extended both as regards the maximum pecuniary limit as also the classes of suits cognizable by such courts as we felt the need for relieving pressure upon the regular courts of first instance as also on the lower appellate courts. As we have already seen, a very large volume of civil litigation in the mofussil consists of suits the pecuniary value of which is below Rs. 2,000. Except a few stray suggestions for amendment and deletion of some of the articles of the second schedule which will be dealt with hereafter, we have not received in the replies to the Questionnaire or in the course of evidence recorded by us in the various States any proposals for a large increase in the jurisdiction of these courts either as regards money value or subject-matter.

Enlargement
of jurisdic-
tion.

Maximum powers in small cause suits

Name of the State	Subordinate judges or officers of corresponding designation	Munsifs or officers of corresponding designation	Laws defining jurisdiction
1	2	3	4
	Rs.	Rs.	
Andhra Pradesh*	2000	500	Central Act III of 1873 and Madras Act XVI of 1951 as adapted by the Andhra Adaptation of Laws Order, 1953.
Assam	500	100	The Bengal, Agra and Assam Civil Courts Act (XII of 1887).
Bihar	500	250	Do.
Bombay	†1,500	500	The Bombay Civil Courts Act (XIV of 1869)
Kerala	1,000	500	The Kerala Civil Courts Act of 1957.
Madhya Pradesh‡	1,000	..	The C. P. & Berar Courts Act (I of 1917). The Madhya Pradesh Courts Act (II of 1956).
Madras	2,000	500	Central Act III of 1873 Madras Act XVI of 1951.
Mysore	500	300	The Mysore Civil Courts Act of 1956.
Orissa	500	250	The Bengal, Agra and Assam Civil Courts Act (XII of 1887).
Punjab	500	500	The Punjab Courts Act (VI of 1918).
Rajasthan	500	100	The Rajasthan Civil Courts Ordinance, 1950.
Uttar Pradesh	500	250	The Bengal, Agra and Assam Civil Courts Act (XII of 1887).
West Bengal	750	300	Do.

*The information relates to that part of Andhra Pradesh which constituted the State of Andhra prior to 1-11-1956.

†The jurisdiction of the small cause court at Poona and Ahmedabad is Rs. 2,000.

‡In Madhya Pradesh, all the officers below the cadre of district judges are called civil judges.

It may be noticed that separate courts of small causes under section 5 of the Provincial Act have been constituted only in a few large towns like Delhi, Amritsar, Sealdah, Poona, Ahmedabad and Kanpur; elsewhere the ordinary courts are invested with the powers of the small cause court. The Table on page 280 sets out the small cause jurisdiction of subordinate judges and munsifs or of corresponding officers in the different States.

6. The proposals for the extension of small cause jurisdiction is not a new one. As far back as 1925, the Civil Justice Committee advocated that the maximum limit of Rs. 1,000 contemplated in section 15 of the Provincial Act should be reached in as many States as possible. It will be seen from the Table on page 280 that the maximum limit of Rs. 1,000 with which subordinate courts can be invested without resort to legislation has not yet been reached except in the States of Andhra Pradesh, Bombay, Madhya Pradesh and Madras. In some of the areas which, before the passing of the States Reorganization Act of 1956, were Part B States, pecuniary jurisdiction of small cause courts is below Rs. 500. On the other hand, in Bombay and Madras, the maximum limit has been increased to Rs. 1,500 and Rs. 2,000 respectively by local amendments to the Provincial Small Cause Courts Act. This is also true of a part of the present State of Andhra Pradesh which before the formation of the Andhra State was part of the Madras State. We are conscious that owing to the special local conditions in each State, including the standards of efficiency and experience of its judicial personnel, progress in this direction must vary in different parts of the country. The statutes define the maximum limits of the powers of small cause courts in each State and, subject to those limits, the courts are invested with such powers having regard to the seniority, experience and capacity of the presiding officers, the nature and volume of the litigation, and local conditions.

Primary jurisdiction; present position.

7. For the reasons which we have given in support of our proposal for extending the pecuniary limits of the ordinary civil jurisdiction of the subordinate courts, we recommend that the maximum pecuniary limits of small cause powers should also be increased to Rs. 2,000 in the case of senior judges and Rs. 500 in the case of junior judges and wherever local conditions and circumstances permit, the High Courts should increase the powers of the different courts of small causes upto the maximum limit allowed by law. The disposal of a larger number of suits than hitherto in exercise of the small cause jurisdiction will give much needed relief to the civil courts and, at the same time, substantially reduce the number of first appeals to the district appellate courts.

Enhancement recommended.

8. The next question is whether the small cause courts' jurisdiction can be further extended by bringing within the ambit of the small cause court procedure some of the cases

Jurisdiction relating to certain suits.

Recommendations
of the
Rankin
Committee.

now exempted by the second schedule to the Provincial Small Cause Courts Act. Addressing themselves to this question the Rankin Committee observed: "It is difficult to say why the suits referred to in some of the articles of the Schedule should not now be tried on the small cause side, whatever may have been the reasons which nearly forty years ago induced the framers of the Act to exclude them. ** ** * there is nothing inherently complicated in the character of the classes of suits hereunder dealt with justifying their exclusion from the category of simple causes of small value. We have carefully examined the various suggestions made by witnesses in this matter in all the Provinces and have come to the conclusion that the time has arrived when the following classes of suits may be tried by this procedure".¹

The Committee then went on to make detailed recommendations for amendment of the schedule so as to bring a much wider class of suits within the purview of the courts of small causes. These proposals will be presently referred to wherever necessary. The Government of India accepted in principle most of the proposals of the Rankin Committee subject to certain modifications. Their tentative conclusions were embodied in a draft Bill to amend the Provincial Small Cause Courts Act of 1887 which was circulated to the provincial Governments for their opinion. The replies received from the Government disclosed a wide divergence of views. In view of the criticisms received, the Government of India did not proceed further with the draft Bill.

9. We have examined the articles in schedule II in the light of the suggestions received by us from numerous witnesses and the conclusions of the Civil Justice Committee. Our conclusions and recommendations with respect to each article are given below:

Articles
1, 2 and 3.

10. *Articles 1, 2 and 3:* These articles relate to suits concerning acts done or purporting to have been done by or by order of the Government or pursuant to an order of a court or by any Government officer in his official capacity and the like. These suits are of a special category and cannot be tried under the small cause court procedure.

Article 4.

11. *Article 4:* This article relates to suits for possession of immovable property or for the recovery of an interest in such property. The Civil Justice Committee observed that this article should be amended so as to enable a small cause court (which under article 8 can entertain a suit for house rent) to try and decide ejectment suits as even in this category of suits there will be some where title to the property is not denied. (Chapter VII of the Presidency Small Cause Courts Act also provides for issue of summons against a person in occupation of property without leave

¹Civil Justice Committee Report, page 98, para. 1.

and for orders directing him to give possession thereof to the applicant.) There is, therefore, no reason why a small cause court outside the Presidency towns should not be entrusted with powers to decide suits for ejectment based on written leases where the term has expired and which do not fall under any special or local law. In the draft Bill of 1926 the Government of India accepted this recommendation and sought to confer upon the court of small causes powers to try suits for ejectment where:—

(a) the property has been let under a lease made by a written instrument and,

(b) the court of small causes would be competent to take cognizance of a suit for the rent of the property and,

(c) the only issue arising for decision is as to whether the lease is determined by efflux of time limited thereby.

The proposed amendment evoked favourable response from a majority of the Judges of the various High Courts. The amendment, however, was dropped with the rest of the Bill. Subsequently, in Bombay, article 4 was amended on the above lines by Bombay Act VI of 1930. By a subsequent amendment in 1932 the small cause Courts' jurisdiction was extended to suits for ejectment where the property had been let under an oral lease as well. Further, in recent years, suits for ejectment arising under the Rent Control Acts are in certain States triable by courts of small causes. For instance, in Calcutta, all suits under the West Bengal Premises Rent Control Act of 1950 are cognizable by the Presidency Small Cause Courts Act. Similar jurisdiction is conferred in Bombay upon the Presidency and Provincial Courts of Small Causes by the Bombay Rent, Hotels and Lodging Houses Rates Control Act of 1947. As jurisdiction of this kind has been satisfactorily exercised by small cause courts in at least two States, we recommend an amendment of article 4 on the lines of the Bombay Amendments of 1930 and 1932.

12. Article 5: A suit for partition of immovable property cannot obviously be entertained by a small cause court. Article 5.

13. Article 6: The Bill of 1926 also sought to incorporate the Civil Justice Committee's recommendation for amending article 6 by adding the following: Article 6.
Mortgage-suits.

“But not including any suit by a simple mortgagee as defined in clause (b) of section 58 of the Transfer of Property Act, 1882, where—

(a) the property mortgaged is free of all other encumbrances, and

(b) the only issue arising for decision is as to the amount, if any, due on the mortgage,

with the further proviso that only a preliminary decree shall be passed by a small cause court."

The Civil Justice Committee said: "It may be difficult sometimes for the plaintiff when he files the plaint to find out whether the suit is going to be contested or what the defence will be and this might cause confusion and inconvenience in the actual working of the rule suggested. Similar difficulties, however, do exist in cases in which the plaintiff's title is in question and resort has to be had to section 23 of the Act. But they do not prevent a large number of suits being tried on the small cause side in which the defendant raises incidentally a question relating to title to immovable property or an interest therein. A similar proviso might be devised to meet the case of mortgages. No doubt some defendants may put in frivolous pleas in order to oust the jurisdiction of the small cause court. But the Court has power to reject any plea which is not *bona fide* and is put forward simply to oust jurisdiction and such power is often exercised in cases in which unnecessary declarations or taking of accounts are prayed for. The advantage of the inclusion of simple mortgage suits of the kind described in small causes is that a large number of suits now held up for a long time as ordinary suits will be speedily and finally disposed of on the small cause side."¹

In making these observations the Committee does not seem to have taken into account the difficulties that might result if at a later date subsequent encumbrances were brought to light. Under the proposed amendment, the existence of another encumbrance, prior or subsequent, known or unknown, would bar that court's jurisdiction, and the decree of the small cause court would be a nullity if subsequent encumbrances came to light.

Further, the inclusion of the condition in clause (a) would lead to other difficulties such as creating a jurisdiction which depended for its exercise upon the defendant's plea in his written statement and it was neither fair nor convenient to the parties to let one court pass a preliminary decree and another court deal with the matter at the stage of the final decree.

One possible solution of the difficulty which may arise in consequence of the existence of other encumbrances is to confer upon a small cause court, jurisdiction to try all suits on a simple mortgage, provided the only issue for decision relates to the amount. But even in such cases difficult questions not suitable for trial by a small cause court, such as priorities and the validity of the mortgage may arise, if there are other encumbrances.

¹Report, page 99, paragraph 3.

14. Having regard to these considerations, we agree with the view then expressed by the Government of India that the proposed amendment was a dangerous innovation and the best course would be to drop it. Amendment not desirable.

15. Article 7: This relates to suits for the assessment, enhancement, abatement or apportionment of rent of immovable property. The determination of issues in such cases requires the examination of evidence in a more elaborate manner than under the summary procedure. This article must, therefore, remain. Article 7.

16. Article 8: This article relates to suits for the recovery of rent, other than house rent, unless the judge of the small cause court has been expressly invested by the State Government with authority to exercise jurisdiction in respect thereto. It will be seen that the article itself empowers the State Government to invest a court of small causes with jurisdiction in this regard. The Civil Justice Committee recommended¹ that the State Governments should more freely exercise this power and more rent suits should be disposed of on the small cause side. A suit for recovery of rent which presupposes a contract stipulating payment of rent is nothing more than a money claim and should, on general principles, be brought within the jurisdiction of the small cause court. It may be noted that in Madras all subordinate judges and district munsifs have been invested with authority to try under the small cause jurisdiction of their courts all suits for recovery of rent. This article may be omitted. Article 8. Suits for rent.

17. Articles 9 to 12: From the very nature of the suits mentioned in these articles, it is abundantly clear that they cannot be omitted. Articles 9 to 12.

18. Articles 13 and 38: These articles relate respectively to suits to enforce payment of allowances or fees called 'malikana' and 'hakk', or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in a hereditary office or in a shrine or other religious institution and suits relating to maintenance. The Government of India accepted the Civil Justice Committee's recommendation that the article should be so amended as to exclude therefrom suits where the right is based on a contract and reduced to writing. The proposal also received considerable support from the High Courts and the State Governments. The suits covered by these two articles are generally claims for money and within the limits stated above, the powers of the small cause court can be safely extended in relation to these two articles. Articles 33 and 38. Suits for fees and cesses.

19. Article 14: It relates to cases where a land acquisition officer has paid the compensation to a person other than the claimant. A suit of this description would involve a determination of title to immovable property and would Article 14.

¹Report, page 99, para 4.

naturally be outside the jurisdiction of the court of small causes. This article must remain.

Articles 15
to 17.

20. *Articles 15 to 17:* The nature of the suits mentioned in these articles is such that they cannot be omitted.

Suits relating
to trust.

21. *Article 18:* This article refers to suits relating to a trust including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust and a suit by a co-trustee to enforce against the estate of a deceased trustee the claim for contribution. In 1926, the Government of India, accepting the recommendation of the Civil Justice Committee, sought to amend this article by substituting the words "to enforce an express trust" in place of the words "relating to a trust". The corresponding words in the Presidency Small Cause Courts Act [section 19(k)] are also "suits to enforce a trust". The Committee proposed substitution of those words for the words "relating to a trust". It said: "The words 'relating to a trust' mean literally 'standing in some relation to; having bearing on or concern with; pertaining to; referring to a trust', but they could not have been intended to be construed in this wide sense. These words have given room for a number of decisions of High Courts regarding their interpretation. The corresponding words in the Presidency Small Cause Courts Act are 'suits to enforce a trust'. Those words may be substituted for 'relating to a trust' in Article 18, to avoid ambiguity and to confine the article to cases where the terms of a trust form the real subject matter in dispute. * * * Again, it should be made clear that the article applies only to express trusts. A number of cases could be conceived where some sort of relationship of trustee and *cestui que trust* exist and it would waste the time of the ordinary courts to make them attend to disputes arising out of such relationship in suits really of a small cause nature. So it is necessary to make the language plain and certain."¹

22. In other words, even if the claim in the suit was a simple claim for recovery of money, if it had any bearing on or was concerned with or pertained to a trust whether express, implied or resulting, it came under this article. For example, a suit by an ex-trustee against the present trustee for recovery of money paid by the former on account of the trust was held to be a suit relating to a trust and therefore not cognizable by a court of small causes². However, the Rankin Committee's proposals to confine the article to suits to enforce express trusts are open to a further objection that suits relating to implied or resulting trusts may be as difficult or complicated as suits to enforce express trusts. It is, therefore, no less desirable to exclude suits to enforce implied or resulting trusts as it is to exclude those to enforce express trusts. The article should, therefore, be amended simply by substituting "to enforce a trust" for the words "relating to

Amendment
suggested.

¹Report, page 100, para 5.

²13 M. L.J. Page 47.

a trust" as has been done in Bombay by the Amending Act of 1930.

23. Article 19: The nature of the suit mentioned in it makes it unsuitable to be dealt with summarily. Article 19

24. Articles 20 and 21: In regard to these articles, the Civil Justice Committee recommended that the scope thereof should be confined to immovable property. This proposal did not meet with much opposition in 1926 and has been given effect to in Bombay by Act VI of 1930. Such an amendment may be made in all the States. Articles 20 and 21.

25. Articles 22, 23 and 24: The suits dealt with by these articles are obviously unsuitable to be disposed of in a summary manner. Articles 22 to 24.

26. Article 25: This article relates to a suit upon a foreign judgment. The Civil Justice Committee recommended that such a suit should be made cognizable by a court of small causes. "If the suit were brought on the original cause of action it would be a small cause suit and the court would be competent to decide pleas of *res judicata* relating to the claim; that is to say, if the defendant pleads a foreign judgment in his favour against the plaintiff as *res judicata* in a suit on the original cause of action in the small cause court, that court has to and is now competent to consider its validity. It is therefore not apparent why a person who has a foreign judgment in his favour should not institute a suit based on it as plaintiff on the small cause side. * * * A small cause judge who has to decide as many questions of law on the small cause side as he does on the ordinary side might well be trusted to deal with the questions of law which arise for decision in enforcing a judgment of a foreign court¹."

By the proposed amendment of 1926, effect was sought to be given to this recommendation by amending the article in the following manner:

"A suit upon a foreign judgment (as defined in the Code of Civil Procedure) unless the judge of the court of small causes has been expressly invested by the local Government with authority to exercise jurisdiction in such suits."

Several of the High Courts were agreeable to this proposal which seems free from objection. We recommend the omission of this article.

27. This article excludes suits under section 73, sub-section (2) of the Code of Civil Procedure from the purview of courts of small causes. These are suits to compel Article 26.

¹Civil Justice Committee's Report, pp. 100-101, para 7.

a refund of all or any of the assets liable to be rateably distributed but which are paid to a person not entitled to receive the same. Before the enactment of this article, suits under section 73 (old section 295) were cognizable by a court of small causes. Such a suit is virtually a suit for money had and received and there is no reason why it should be excluded from the small cause court's jurisdiction. The Civil Justice Committee recommended the omission of this article and restoration of the law to what it was before the article was enacted. We agree with the recommendation.

Articles 27
to 30.

28. *Articles 27, 28, 29 and 30:* The suits mentioned in these articles are obviously unsuitable for summary disposal and should, therefore, remain.

Articles 31.
Suit for
mesne pro-
fits.

29. *Article 31:* The Civil Justice Committee recommended that a suit relating to mesne profits should be made cognizable by a court of small causes. All High Courts except two were willing to accept the proposal. The only doubt that arose was whether a suit for mesne profits really stood excluded by this article. The suggested amendment was to enlarge the small cause courts' jurisdiction by adding the words "but not including a suit for mesne profits". This amendment has been made in Bombay and may be made elsewhere also.

Articles 32
to 34.

30. *Articles 32, 33 and 34:* The suits dealt with by these articles cannot obviously be disposed of in a summary manner. The articles must, therefore, remain.

Articles 35
(ii) and 43-
A.

compensa-
tion or re-
covery of
property.

31. *Articles 35 (ii) and 43-A:* These articles were added by the amending Act VI of 1914. The Civil Justice Committee recommended deletion of both these articles. Article 35 (ii) relates to a suit for compensation for an act which is or, save for the provisions of Chapter IV of the Indian Penal Code, would be an offence punishable under Chapter VII of the said Code. Article 43-A covers suits for recovery of property obtained by an act which is or, save for the provisions of Chapter IV of the Indian Penal Code, would be an offence punishable under Chapter XVII of the said Code. The Committee pointed out that many trumpery suits such as those for pan leaves cut and carried away by a trespasser or for the conversion of a few measures of paddy were tried on the original side because technically the act charged amounted to an offence under the Indian Penal Code. They were intended to provide that suits against public servants relating to their acts which might technically constitute criminal offences should not be heard by courts of summary jurisdiction although, in form, they may be merely for recovery of damages. The Government of India thought that the Committee's reasons for deletion of these articles were not convincing and the proposal was not accepted. The effect of such an amendment would be that suits which involved a criminal accusation against the defendant would become cognizable by a small cause court. To allow

such suits to be tried under summary procedure without a right of evidence would be unsatisfactory, as it would deprive the defendant of the opportunity to clear his character by an appeal from an adverse decree. It was on considerations such as these that the two articles were added to the schedule at the instance of some of the Provincial Governments. They should, in our opinion, be left untouched.

32. *Articles 36, 37, 38, 39, 40 and 41:* The suits dealt with by these articles cannot obviously be disposed of summarily. The articles must therefore remain. Articles 36 to 41.

33. *Article 42:* This article contemplates a suit by one of the several co-mortgagors of immovable property for contribution in respect of money paid by him for redemption of the mortgaged property. This may be in essence a claim for money but in view of the complex defences that might be set up it is desirable that such suits should be tried by regular courts. Article 42. Suits for Contribution.

34. *Article 43:* Suits mentioned in this article are obviously not suitable for summary disposal. The article must, therefore, remain. Article 43.

35. The presidency small cause courts constituted under Act XV of 1882 consist of a chief judge and as many other judges as the State Government may appoint and the local limits of their jurisdiction are co-terminus with those of the High Courts in the exercise of their ordinary original civil jurisdiction. These courts have jurisdiction to try all suits of a civil nature when the amount or value thereof does not exceed Rs. 2000 except the categories of suits specified in section 19 of the Presidency Small Cause Courts Act of 1882. In suits upto Rs. 1000 these courts have exclusive jurisdiction but above Rs. 1000 they exercise concurrent jurisdiction with the High Court in Calcutta and with the city civil court in Madras. Under section 21 of the Act, the plaintiff has an option to institute in the High Court a suit the amount or value of the subject matter whereof exceeds Rs. 1000. Further, under section 39, the defendant has a statutory right to have his case transferred to the High Court, or in Madras to the city civil court, subject to such terms as to security for costs etc. as the court may direct and, unless in the opinion of the judge, the application has been made solely for the purpose of delay, the defendant shall be entitled to such order of transfer as of right. Presidency small cause courts.
Their jurisdiction.

36. Commenting on the working of these provisions, the Civil Justice Committee found that in a great majority of cases the defendant's purpose in making such applications for transfer was to cause delay. Although only a very small number of cases was actually found to have been transferred under section 39 to the High Court, the Committee did not recommend the repeal of the said Criticism of concurrent jurisdiction.

section, but contented itself with suggesting a strict interpretation of the section. We have not been able to obtain the exact figures of cases of this type filed in the High Court at the option of the plaintiff or transferred to the High Court on the application of the defendant. Even as far back as 1925 the Civil Justice Committee found that the number of such cases could not be very large; nor have we been able to get any information to the contrary. But, whatever be the figures, we are unable to see any justification for the continuance of this system of giving concurrent jurisdiction to the High Court or the City Civil Court in petty cases of small value. In Bombay the High Court's concurrent jurisdiction in this type of cases has been abolished and no complaint on that score was made before us. We recommend a similar change elsewhere.

Abolition
recom-
mended.

New Trial
Procedure.

37. There is no right to revision against a judgment of the Presidency Small Cause Court on the lines of section 25 of the Provincial Small Cause Courts Act. However, section 38 of the Presidency Small Cause Court Act confers upon a party the right to apply to the court itself for a new trial in all contested suits within eight days from the date of the decree or order in the suit. The section empowers the court on such application either to order a new trial or to alter, set aside or reverse a decree or order upon such terms as it thinks reasonable. At one time it was thought that the section was intended to confer upon the small cause court the jurisdiction of a court of appeal on fact as well as law; but it is now settled that section 38 was not intended to confer a general right of appeal. The powers under it are revisional in character though not limited to the particular matters mentioned in section 115 of the Civil Procedure Code. Applications under this section are heard by what is called the "full court" which in Calcutta and Madras includes the chief judge and one or two other judges including the trial judge whereas in Bombay it is constituted by the chief judge and at least two other judges but excluding the trial judge¹. One of the criticisms of the full trial procedure is directed against the inclusion of the trial judge while constituting the full court. Before the Civil Justice Committee the practice of including the trial judge was sought to be defended on the ground that a small cause court is not a court of record, the judge's notes are seldom full and exhaustive and therefore his presence on the full bench is "a check against unwarranted statements as to the happenings in the court below. In his absence there will always be a tendency amongst the pleaders to fill up gaps in evidence as judge's notes are not full and also to give a different colour as to the manner in which evidence was given". The Committee thought that the evils of this

Criticisms
of present
procedure.

¹ We were informed by the Chief Judge, Presidency Small Cause Court Bombay, that even the chief judge does not sit in the full court if he has been the trial judge.

practice were largely exaggerated and they were not convinced that what was done in Bombay could not be tried in Calcutta or in Madras. "Any court exercising appellate powers has itself to blame if it relies on inaccurate statements as to what happened in the court below. The trial court may well be expected to take a reasonable note of evidence or of arguments in a really contested matter. As the members of the bench are familiar with the trial work, doing it every day themselves, we think that these objections should not count for much. The present arrangements in Calcutta and Madras should be made to conform to the Bombay practice¹." This criticism was echoed by some practitioners in the small causes court in Calcutta on the ground that the trial judge would be inclined to support his own decision. We are inclined to agree with the views of the Rankin Committee on the point.

38. But, in our opinion, there is another and a more fundamental objection to the new trial procedure. While there is no corresponding provision in the Provincial Small Cause Courts Act, the right to apply for a new trial under section 38 of the Presidency Act subsists simultaneously with the right to invoke the High Court's revisional jurisdiction under section 115 of the Code of Civil Procedure.

Objections
to the right.

39. Therefore, inasmuch as a decision of the full court under section 38 is revisable by the High Court under section 115 of the Civil Procedure Code, it merely permits an intermediate proceeding which might unnecessarily prolong the proceedings in the trial court. We think that the procedure should be unified by abolition of the new trial procedure in the presidency courts and by providing a right of revision to the High Courts analogous to that under section 25 of the Provincial Small Cause Courts Act. The proposal to enlarge the revisional jurisdiction on the analogy of section 25 has received the support of the West Bengal Judicial Reforms Committee:—

Abolition
recom-
mended.

"We are unanimously of opinion that a section analogous to section 25 of the Provincial Small Cause Court Act should be included in the Presidency Small Cause Court Act. At present decrees or orders of the Presidency Small Cause Court can only be challenged in the High Court by way of revision under section 115 of the Code of Civil Procedure. That section gives the High Court a right to interfere only where questions of jurisdiction are involved or where illegality or irregularity in the exercise of such jurisdiction is established. The right of the High Court to interfere is, therefore, very strictly limited, whereas under section 25 of the Provincial Small Cause Court Act the High Court may interfere by way of revision not only in cases covered by section 115 of the Code of Civil Procedure but also where a decree or order of a

¹ Report, pages 296 and 297, para 5.

Provincial Small Cause Court appears contrary to law. Judges of the Presidency Small Cause Court are now recruited from the Provincial Judicial Service as they are in the case of Provincial Small Cause Courts and there appears at the present time to be no reason whatsoever why decrees or orders from both classes of Small Cause Courts should not be subject to the same form of revision. The form of revision provided in section 25 of the Provincial Small Cause Court Act is wider and more satisfactory and, therefore, we recommend that such form should be substituted for revision under section 115 of the Code of Civil Procedure which is now applicable to decrees and orders of the Presidency Small Cause Court. This can be done by the inclusion of a section in the Presidency Small Cause Court Act similar in terms to that of section 25 of the Provincial Small Cause Court Act.

"We are further unanimously of opinion that section 38 of the Presidency Small Cause Court Act no longer serves any useful purpose and should be repealed. The procedure of questioning a decree or order of a Small Cause Court Judge before a Full Bench of the Small Cause Court rarely ends in an authoritative or final decision and unnecessarily prolongs litigation. A decision by the High Court by way of revision without the intervention of a Full Bench is preferable and speedier and would result in a decision carrying greater weight and would have the further advantage of being a final decision. Small Cause Court procedure is applicable only to disputes of small valuation and is intended to be speedy. Abolition of the Full Bench procedure would greatly assist the attainment of this latter object¹."

We are in complete agreement with the West Bengal Committee's view that a section analogous to section 25 of the Provincial Small Cause Courts Act should be incorporated into the Presidency Act and section 38 repealed, although this might mean some increase in the work of the High Courts.

Extension
of pecuniary
jurisdiction.

Not recom-
mended.

40. As we have pointed out, the maximum small cause powers of the presidency courts are upto Rs. 2000. In Bombay, however, by a recent amendment the pecuniary jurisdiction of the presidency small causes court has been raised to Rs. 3000. In addition to the ordinary civil suits cognizable by courts of small causes, courts in all the three presidency towns have been given jurisdiction to try suits arising under certain special Acts, such as, the Bombay Rent, Hotels and Lodging House Rates Control Act of 1947, in Bombay, the West Bengal Premises Rent Control Act of 1950, the Thika Tenancy Act of 1949 in Calcutta and

municipal assessment cases in Madras. In Bombay, the Presidency Small Cause Court is also the appellate authority under the Payment of Wages Act. Besides, the chief judge is the special judge in certain municipal matters. The volume of work in these courts has increased considerably in recent years and the chief judges of the presidency small cause courts in both Calcutta and Bombay were against any further extension of the Court's jurisdiction. We would, therefore, leave it to the High Courts concerned to determine whether any further increase in the pecuniary jurisdiction is desirable.

41. We have not received suggestions from any responsible bodies or persons for the enlargement of the presidency courts' powers by amending section 19 so as to bring a wider class of cases within the court's jurisdiction. The items in section 19 correspond to those in schedule II of the Provincial Small Cause Courts Act. Except a slight alteration of clause (s) of section 19 relating to suits under Order XXI, Rule 6 of the Civil Procedure Code and suits to set aside attachment of immovable property, the Civil Justice Committee did not make any other suggestions for amending this section. We would, however, recommend an amendment of section 19 on the lines which we have suggested in reference to schedule II to the Provincial Small Cause Courts Act.

Extension of jurisdiction.

Amendment of section 19.

42. Suggestions have been made to us by some of the witnesses and also in replies to our Questionnaire that instead of having two separate enactments for the presidency towns and the mofussil small causes courts, there should be a single unified law applicable to both the areas. The main object of the courts of small causes is to render cheap and speedy justice in claims of small value. From this point of view both the Acts are identical in principle, the differences being only as to certain procedural details.

Unification of law in the presidency towns and in the mofussil.

43. There are certain additional provisions in the Presidency Act relating to what is known as new trial procedure by a full court; procedure for recovery of immovable property and distress warrants for speedy recovery of arrears of rent of houses or premises is also laid down. We have already suggested a partial unification of the procedure by recommending the abolition of the procedure relating to a new trial and the conferment of a right of revision analogous to that given by the Provincial Small Cause Courts Act.

Additional provisions in the Presidency Act.

44. Chapter VII of the Presidency Act deals with recovery of possession of immovable property. These provisions are intended to enable a person to obtain quick delivery of possession of premises which are in the possession of a tenant or another person by permission and where such tenancy or permission has determined or has been withdrawn, under section 41 of the Act, a person entitled to the possession of such property can make an

Right to recover immovable property.

application to the small causes court for a summons against the occupant calling upon him to show cause why he should not be compelled to deliver the property. On the default of the occupant to comply with the summons, the applicant is entitled to an order addressed to a bailiff of the court directing him to give possession of the property, if the court is satisfied that the applicant is entitled to apply under section 41. Under section 46, when the applicant is not at the time of applying for any such order entitled to possession of such property, the application itself is deemed to be an act of trespass committed by the applicant against the occupant even though possession was not taken thereunder. Section 47 provides that if the occupant binds himself to institute a suit in the High Court against the applicant for compensation for trespass and to pay all costs for such suit in case he does not prosecute the same or in case the judgment is given in favour of the applicant the proceedings are stayed by the small cause court until such suit is disposed of. In short, therefore, the Act provides a quick and cheap remedy for recovery of possession of small tenements in large towns without compelling the applicant to resort to the long and tortuous procedure of a civil suit and execution proceedings and throws the burden of filing the suit upon the person who is alleged to be in unauthorised occupation of the same. The utility of such provisions in large thickly populated industrial and commercial cities is too obvious to need any emphasis. The only question is whether similar provisions cannot be made for the mofussil also. In recent years other towns like Delhi, Ahmedabad, Kanpur etc., have grown phenomenally in population and the problems of housing and need for small tenements of moderate rent is no less acute in these places than in the presidency towns. We accordingly feel that such a procedure may well be extended with advantage at least to big towns in the mofussil. We would suggest that a provision may be added in the Provincial Small Cause Courts Act empowering Government to extend the procedure under Chapter VII of the Presidency Act to such selected local areas outside the presidency towns as it may think fit.

Extension
of procedure
to selected
areas re-
commended.

Extension
of distress
warrant
procedure.

45. Our conclusions regarding the extension of the procedure of distress warrants in Chapter VIII of the Presidency Act are also similar. This chapter which contains sections 50 to 67 of the Act lays down the procedure for recovery of arrears of rent of any house or premises without instituting a suit in that behalf. Section 53 enables a person claiming to be entitled to such arrears of rent to apply to a judge of the small cause court for a distress warrant under section 56 for the purpose of seizure of any property liable to be seized. We are doubtful of the utility and wisdom of the extension of such procedure to rural areas but we think that the provisions could be

extended with advantage to large urban and industrial areas in the manner indicated above.

46. Having regard to what has been stated above, we take the view that it would be advantageous to combine the two Acts, which in substance embody similar and in a large number of cases identical provisions, into one statute. The operation of particular provisions suitable to be applied only to presidency towns may be confined in their operation to them by specific provisions to that effect in the particular sections.

Combination of the two acts recommended.

47. We may summarise our recommendations on courts of small causes as follows:—

Summary of recommendations.

(1) The small cause jurisdiction of subordinate or senior judges should be increased to Rs. 2,000 and of junior judges or munsifs to Rs. 500.

(2) Taking into account local conditions, the High Courts should increase the small cause powers of different judicial officers up to this limit.

(3) Article 4 of the Provincial Small Cause Courts Act should be amended on the lines of the Bombay amendments of 1930 and 1932.

(4) Article 8 of the Provincial Small Cause Courts Act should be deleted.

(5) Articles 13 and 38 of the said Act should be amended so as to permit such suits to be tried by a court of small causes when the right is based on a contract reduced to writing.

(6) Article 18 of the Provincial Small Cause Courts Act should be amended so as to substitute the words "to enforce a trust" for the words "relating to a trust."

(7) The scope of articles 20 and 21 should be confined to immovable property.

(8) Article 25 should be deleted.

(9) Article 26 should be repealed.

(10) Article 31 should be amended by adding the words "but not including a suit for mesne profits".

(11) The concurrent jurisdiction of the High Court or the city civil court in matters triable by the presidency small causes courts should be abolished.

(12) The provisions relating to a new trial contained in section 38 of the Presidency Small Cause Court Act should be repealed.

(13) A right of revision analogous to that conferred by section 25 of the Provincial Small Cause Court Act should be conferred against the decisions of the Presidency Small Causes Court.

(14) Section 19 of the Presidency Small Cause Courts Act should be amended on the lines suggested by us for the amendment of Schedule II to the Provincial Small Cause Courts Act.

(15) The provisions relating to the recovery of possession of immovable property contained in Chapter VII of the Presidency Small Cause Courts Act should be added to the Provincial Small Cause Courts Act and the State Governments empowered to apply the provisions of the chapter to suitable areas within the State.

(16) Similar steps should be taken with regard to the procedure for distress contained in Chapter VIII of the Presidency Act.

(17) It would be advantageous to combine the Provincial and the Presidency Small Cause Act into one enactment.

14.—TRIAL OF SUITS

1. Order VI of the Code of Civil Procedure has enacted in India broadly the main rules of pleadings followed in England. "The whole object of pleadings" says Jessel, M. R., "is to bring the parties to an issue, and the meaning of the rules" (relating to pleading) "was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."¹

2. In the civil courts in India, oral pleadings are unknown. The soviet law provides for them only in cases of labour disputes. The Japanese Civil Procedure Code (Chapter IV, Section 1, art. 25) speaks of an oral debate in court, a written record being kept of the same. Such oral proceedings may be useful in petty cases but in order to confine the claim and the defence to their proper ambit, it is desirable to have them in writing. In our questionnaire we invited views whether in certain types of cases, whether pleadings could be dispensed with altogether. The idea has, however, received no support and on a careful consideration, its adoption does not seem to us to be advisable.

3. The rules of pleadings enacted in Orders VI, VII and VIII of the Civil Procedure Code have been found to be adequate. The fundamental rule set out in Rule 2 of Order VI requires (a) that every pleading must be a statement of fact but not of law, (b) that it must state only the material facts, (c) that it must state only the facts on which party relies for his claim or defence but not the evidence by which they are to be proved and (d) that it must state such facts in a concise form. These rules have existed since the earlier Codes of the last century, yet lengthy and confused pleadings setting out numerous evidentiary facts, persist to this day. In the courts in the mofussil, more particularly in the sub-divisional courts, no attempt is made to comply with these rules. Pleadings are generally prolix, argumentative and full of irrelevant matter. The averments lack precision and clarity. Very often material facts are omitted and immaterial and irrelevant facts and even the evidence are set out and repeated at length. In the written statements all possible defences, whether they arise or not, are taken.

¹ *Thorp vs. Holdsworth* (1876) 3 Ch. D. 637 at p. 639.

It is not uncommon to find in these pleadings frivolous contentions such as "the suit is not maintainable in its present form" or that "the suit is time-barred" or that "the suit is bad for multifariousness"; but no indication is given as to why the suit is not maintainable or how it is time-barred or multifarious. It is customary to deny every allegation made in the plaint including obviously true and undeniable statements of fact. With pleadings drafted in this manner, it is not surprising that very often the real question in controversy is obscured, the issues are needlessly enlarged and clouded, the trial lengthened, unnecessary costs incurred and the whole object of providing for pleadings is defeated.

Better
pleadings.

4. This is a matter over which the courts can exercise very limited control. The powers of the presiding officers to deal with unsatisfactory pleadings are very restricted. Under Rule 16, Order VI, the court has the power at any stage of the proceeding to order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay a fair trial of the suit. A presiding officer rarely attempts to exercise *suo motu* even this limited power. "If he endeavours to perform this duty few make the attempt he is frequently represented as dictating to counsel how they should frame their cases."¹ Preoccupied with other duties, the presiding officer has little time for examining the pleadings at the earlier stages of the proceedings. Very often, he looks into them only at the stage of framing the issues, and not even then, particularly if he has acquired the widespread habit of accepting without question, the draft issues prepared by the advocates. The real remedy lies in our view in a proper training at the Bar. The art of drafting pleadings can be acquired only by an assiduous study of the rules and diligent practice. The Civil Justice Committee observed,² "that the first requisite was to train pleaders to draft, and that this training will be assisted appreciably by the preparation of works on pleadings in India on the lines of Bullen and Leake." Books containing detailed instructions for drawing pleadings and model forms are now available in India. The young practitioner should provide himself with a good book on the subject. A course of instruction on drawing of pleadings should also form part of the young lawyer's professional training recommended by us elsewhere. Many practitioners in the mofussil allow pleadings to be drawn by irresponsible clerks, petition-writers or other lay persons who are not only deficient in the knowledge of law but lack general education. The profession must make a determined effort to put a stop to this practice. The practitioner will also greatly profit by studying and following drafts of pleadings drawn by senior lawyers.

¹ Civil Justice Committee Report, p. 34.

² *Ibid* p. 34.

5. It was suggested by the Civil Justice Committee that a rule should be added to Order VI providing that the name of the draftsman must appear on the pleading and that the pleader who acts should be obliged to add a certificate that he has accepted the pleading and takes full responsibility for it. The proposal is similar to a rule obtaining in the United States under which, every pleading of a party represented by an attorney has to be signed by the attorney. The signature of the attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay¹. We invited opinion on the question whether an advocate drawing the plaint should be required to certify that it is in accordance with the Code. The proposal did not receive much support. We do not think that such a provision will be useful. Rule 14 of Order VI does require the pleading to be signed by the party and his pleader, if any. The requirement of a certificate by the pleader that the pleading drawn by him is in accordance with the Code will not induce in the pleader a greater sense of responsibility. He would naturally look upon his own draft as answering the requirements of the Code.

6. We would, however, suggest a change in the rule requiring verification of pleadings. Order VI Rule 15 requires the verification of every pleading at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. The person verifying has to specify by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verifies upon information received and believed to be true. The verification though required to be signed by the person making it is not a statement on oath. The statements verified are not therefore evidence on which a decree can be passed if the defendant does not appear². In *ex parte* cases or in cases where the defendant appears but does not defend the suit, the court is therefore required to take the formal evidence of the plaintiff before passing the decree. If the rule is amended by providing for the verification of pleadings to be made on oath, we think, it will result in saving the time of the courts in such matters. Verification on oath is required by the rules in force on the Original Side of the Madras High Court. Verification.

7. We suggested in our Questionnaire the appointment of a special officer of the rank of a civil or subordinate judge for the purpose of receiving, scrutinising and checking the pleadings. The appointment of a special officer for the Special officers for receiving and checking pleadings etc.

¹ See Rule 11 of the Rules of the Civil Procedure for the United States District Courts.

² J. B. Ross & Co. vs C.R. Scriven and others—I.L.R. 43 Calcutta, p. 1001.

discharge of such functions for courts situated in the tehsils or taluka headquarters, may prove expensive as such officers might not have enough work. The appointment of an itinerant officer for the performance of these duties will also not be advisable because his other administrative duties and judicial work may be held up during his absence from headquarters. However, the proposal seems capable of being given effect to in places where there is a concentration of several courts of different grades and jurisdiction. In order to discharge his functions effectively, the officer should have the power to make orders dismissing the suit or directing an amendment or the rejection of the pleadings.

Delay in
filing writ-
ten state-
ments.

8. Considerable delays frequently occur at the stage of filing written statements in suits. It may be useful in this connection to review the provisions of the Code in regard to the filing of written statements.

Form of
summons.

The Code does not provide for a summons on the defendant to file his written statement. The summons only directs him to appear either in person or by a duly instructed agent to answer all material questions relating to the suit. Order V, Rule 5 contemplates two kinds of summonses: one, for the settlement of issues and the other, for final disposal. Before issuing the summons, the court is expected to determine which of the two forms would be appropriate in the particular case, subject however, to the proviso that in a small cause case, the summons shall be for the final disposal of the suit. A summons for final disposal requires the defendant to be prepared to produce all the witnesses upon whose evidence and all the documents upon which he intends to rely in support of his defence. In a summons for settlement of issues the defendant is directed to produce on the date of appearance all documents upon which he intends to rely in support of his defence¹. Order VIII deals with written statements. Rule 1 of that Order provides that the defendant may, and, if so required by the court, shall, at or before the first hearing or within such time as the court may permit, present a written statement of his defence. Thus, unless required by the court to do so, the defendant is not bound to present his defence in a written statement. In practice, however, the date of appearance mentioned in the summons has always been understood to be the date for filing the written statement. In small cause suits and suits of a very simple nature, if the defendant appears but is not ready with his written statement, the court sometimes records his statement in his defence before disposing of the case finally or settling issues. But generally, even though a date may be fixed for final disposal or for settlement of issues, written statements are seldom filed on the day fixed, the defendant asks for time to file it and time is granted. Thus although the Code contemplates the final disposal of a suit or the settlement

Written
statements.

¹ See Civil Procedure Code, Appendix B, Form Nos. 1 & 2.

of issues, as the case may be, on the date fixed, the court is not able to do either of these things in a large majority of cases. Even after the written statement has been filed the courts do not take the further step on the same day, but the suit is generally adjourned to a future date for the settlement of issues.

9. Delay on this account is to some extent unavoidable. In rural areas in particular, the parties are accustomed to go to their pleader only on the day actually fixed for their appearance or on the previous evening. The defendant who may be an illiterate villager is not always ready with his defence. He requires time for giving instructions to his pleader for collecting documents and other incidental matters. An adjournment is in these circumstances granted as a matter of course. It may be a short or long adjournment depending upon the simplicity or complexity of the dispute. However, once a reasonable time has been given to the defendant for filing the written statement, there is no reason why he should not be compelled to file his written statement within the time allowed. Thereafter ordinarily no further time should be granted for the purpose. Unfortunately, a great deal of avoidable delay takes place at this stage. Rarely does the defendant file his written statement on the first day of hearing or even on the subsequent day fixed for it. It is true that the defendant should be allowed a reasonable time to put in his defence, but once such time has been given and the defendant has not utilised it, there is no reason why the penal provisions in Order VIII, Rule 10 of the Code should not be enforced. The former Nagpur High Court made a rule¹ providing, that if the presiding judge on directing registration of a plaint sees good grounds for requiring the defendant to file a written statement under Rule 1 of Order VIII, a note should be added to the summons issued to the defendant ordering him to file a written statement on or before the date fixed for the first hearing. If such a direction is given, the rules direct that the provisions of Rule 10 of Order VIII where they are applicable should be enforced against the party and in other cases substantial costs should be ordered to be paid. This seems to be in accord with Order VIII, Rule 1 under which a defendant is under an obligation to file a written statement only if so required by the court. Though the existing rule expects the court to determine whether the summons shall in the first instance be issued for settlement of issues or for final disposal, in practice the courts as a rule direct the former to be issued in title suits or suits of a complex nature, and the latter only in suits of a very simple nature including small cause suits. The Nagpur Rule would probably be reduced in practice to the same formula so that in all cases where the summons is for the settlement of

Unavoidable delays.

Strictness in granting time.

Nagpur rule re: filing of written statements.

¹ Rules and Orders (Civil) for the Civil Courts (1950), Chapter VIII, para 134.

issues, the court would require the defendant to file a written statement on the date of his appearance. We were told by a former Chief Justice of the Nagpur High Court that this method had worked extremely well in Madhya Pradesh and ordinarily a written statement was filed on the day fixed for filing it. The Madras High Court has amended Rule 5 of Order V by providing for a third form of summons in addition to the summonses for final disposal and for settlement of issues. The summons requires the defendant to appear and state whether he contests or does not contest the claim. It directs him, if he contests the claim, to receive directions as to the date on which he has to file the written statement, the date of trial and other matters. It is not clear in what class of cases the court issues this third category of summons for receiving directions.

Strictness
necessary.

10. Delays in filing written statements undoubtedly occur owing to the want of vigilance and supervision by the presiding officer over his ministerial staff. Many judicial officers are in the habit of leaving these preliminary matters to their sheristadars or bench clerks. The practice also leads to a good deal of petty corruption. The effective remedy for these delays is a strict attitude by courts in the matter of granting adjournments for filing written statements. "Until the courts make it understood that an order must be obeyed, there will not be great improvement in this or in many other matters, and it may be suggested with a certain confidence that, once a court lays down unmistakably that it will enforce an order that has been passed, there will be few instances in which the order is disregarded!"

Adoption
of rule in
Madhya
Pradesh.

11. We are of the view that the rule made by the former Nagpur High Court may usefully be adopted elsewhere so that if the summons is in the first instance for settlement of issues, the defendant should be directed to file a written statement on the date of his appearance. The mere adoption of the rule will not, however, be enough. It will have to be strictly enforced. That should not cause any hardship. If it has been enforced with good results in Madhya Pradesh, there is no reason why it should not be equally capable of enforcement in the other States. It may perhaps be simpler to make an amendment in Form No. 2 in Schedule 1, Appendix B to the Civil Procedure Code which is the form of summons for settlement of issues by providing a direction to the defendant to file a written statement by a date which should be the date fixed for the settlement of issues and a notice to the defendant that if the written statement is not filed by that date, the matter may be dealt with *ex parte*.

12. Having regard to the recommendation made earlier that a plaintiff should be required to verify the plaint on oath, we think it is desirable that a similar requirement be imposed on the defendant in regard to the written statement filed by him. Such a course will have the advantage of preventing reckless denials of fact or irresponsible allegations being made by the defendant in his written statement. He would, if he chooses knowingly to make untrue denials or untrue statements of fact, expose himself to the risk of being prosecuted.

Written statement to be on oath.

13. Long delays sometimes extending over a year occur at the stage of filing a written statement in suits in which Government is a defendant. This occurs particularly in suits against a railway administration. Order XXVII, Rule 5 of the Civil Procedure Code makes a special provision for cases in which Governments have to answer plaints and empowers a court in fixing the day for the Government's written statement to allow a reasonable time for necessary communication with the Government through the proper channel and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Government and to extend the time at its discretion. The Government is therefore entitled to special consideration and a reasonably longer time than the ordinary litigant. However, unreasonable and inordinate delays do occur because the Government Pleaders are unable to get prompt instructions from the Departments concerned to enable them to draft a defence. Once the court has in its discretion allowed sufficient time to Government, we are unable to see any justification for further extensions of time being granted to Government. Armed with their Law officers and Legal Departments, Governments ought to be able to file their defences within a reasonable time. It should therefore be the duty of the presiding officer to enforce the law with firmness in such cases if the reasonable time granted to Government has expired. In view of our recommendation that the provision in section 80 of the Civil Procedure Code, requiring notice to be given to Government of intended suits should be omitted, we are of the view that Government should be given three months' time to file its written statement. In Madras, the High Court has amended the Rule so as to provide for not less than three months' time from the date of summons to be given to Government for filing its written statement. We recommend that Order XXVII, Rule 5 be amended on the lines of the Madras amendment. Such an amendment will strengthen the hands of the courts and the Government Pleaders and at the same time serve as a reminder to the Departments concerned of the necessity of giving prompt instructions to the Government Pleaders.

Delays in filing written statements by Government.

SERVICE OF PROCESS

14. The absence of a correct and an accepted address of a party frequently causes delays in the service of the processes of the court. It is therefore desirable that

Registered address.

parties should, when filing their pleadings be required to file a statement in the court giving their registered address. Such registered address should after it is filed, be deemed to be the address of the party for the purpose of the service of processes in the suit or in any appeal or revision petition or in respect of any decree or order therein made and for the purposes of execution. The address should be deemed to be the proper address of the party for a period of two years after the final determination of the cause or matter. The service of any process may be effected upon a party at his registered address in like manner in all respects as though the party resided thereat. A provision to this effect has been added in Order VI of the Civil Procedure Code in West Bengal by adding a new rule, namely, Rule 14-A. We recommend the amendment of the Civil Procedure Code by the addition of such a Rule to Order VI.

Preparation
of processes.

15. After the plaint has been examined and registered, the next step is the service of summons on the defendant to appear before the court. Rules have been made by all the High Courts to ensure prompt payment of process fees. Generally, the rule provides that process fee and diet money must be paid with the plaint or application. In practice, however, delays occur as the office requires some time in calculating the amount of court fee required for issuing process. After the process fee has been paid, further delays occur in the preparation of the processes in the office of the nazir. As pointed out by the Civil Justice Committee, this is most acute at certain times of the year when many suits are filed on the same day as on the re-opening of the courts after the vacation. These delays can be remedied only by a closer supervision over the nazarat and a regular scrutiny of the arrears in the process lists. In certain States like Bihar, Madras, Orissa and West Bengal the High Courts have made a rule requiring the parties or their pleaders to file with the plaint or applications printed forms of process legibly filled in by them leaving only the date of appearance of the opposite party and the date of issue of process blank. The forms of these summonses are usually available free of cost or on a small payment in the nazir's office. The parties or their pleaders are responsible for the accuracy of the information given in those forms and the duty of the court's office is only to fill in the blanks as to dates and get the process signed. This is a very useful device which saves time and labour and we recommend its adoption in other States.

Process
forms to be
filled in and
filed with
plaint.

Corruption
in the
process ser-
ving staff.

16. A judge enforces his decrees and orders through the agency of the process server. The process server thus fills an important place in the scheme of the administration of justice, and should be compelled to perform his task with assiduity and honesty. However, in a very large number of States, process servers are known to be corrupt. Malpractices on their part are regarded as a major cause of delay in the trial of proceedings. Cases of process-

servers furnishing false or incorrect reports of service or non-service are frequent. Thus the U.P. Judicial Reforms Committee observed in 1951:

"The process-server is sometimes not a straightforward of efficient person and he leisurely moves to the beat with a determined effort to make as much out of the business as he can. Sometimes it is a question of bid between the two parties and whichever can exercise greater influence" (over the process server) "obtains a report suiting its need..... We do not mean to say, however, that there are no scrupulous process-servers. There are many and they do record correct report of service but we feel that a.l is not well with the majority of this class of government servants".¹

17. The Civil Procedure Code contemplates three types of process: (a) those which are required to be served on persons, for example, notices, summonses and injunctions, (b) those which are required to be executed against person or property, such as, warrants for arrest and detention of persons, warrants of attachment, warrants of sale or delivery of possession of property, (c) proclamations. There are also three modes of serving a simple summons or notice upon a defendant or opponent, namely, (1) by delivering or tendering a copy of the defendant personally or to his agent or an adult male member of his family who is residing with him, (2) by affixing a copy on the outer door of his house if the defendant or his agent refuses to accept service or cannot be found after due diligence and search, and (3) by affixing a copy thereof in some conspicuous place in the court house and of the house where the defendant last resided or in such other manner as the court thinks fit after obtaining an order from the court. The last is known as substituted service and is available in cases where the defendant is keeping out of the way for the purpose of avoiding service or where for any other reason the summons cannot be served in the ordinary way. Personal service is thus the primary mode of service under the Code and it is the duty of the process server to make diligent efforts to trace the party and effect service. The provisions as to proof of service are contained in Rules 16 to 19 of Order V. Under Rule 16 the person served is required to sign an acknowledgment on the original summons. The service is proved by the endorsement of the serving officer on the original summons stating the time and the manner of service and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons. The provisions of the Code of Civil Procedure as to the mode and proof of service of processes of various kinds are very clear and have been explained in

Types of
processes.

Methods of
service.

¹ U. P. Judicial Reforms Committee Reports, p. 13.

detail in the Civil Rules and Circulars of all the High Courts for the guidance of subordinate courts.

Difficulties
in effecting
service.

18. In dealing with the problem of delays in the service of process we have to bear in mind certain practical difficulties which obtain in many parts of the country. The service of process is often delayed on account of the long distances which have to be travelled by the process server and unsatisfactory or insufficient means of transport. Dealing with this aspect of the problem, the Civil Justice Committee observed in 1925:

Transport
difficulties.

"In many parts the process-servers have to proceed very considerable distances to the places where the service has to be effected. Good railway communication is rather the exception. Means of communication are sometimes incredibly bad. Roads may be non-existent, forests and jungles may have to be traversed, flooded rivers may have to be crossed."¹

The conditions today in regard to roads and means of transport are better than in 1925, yet, there is no doubt that lack of proper transport facilities and bad roads hamper the work of the average process server even today. As late as 1951 the Uttar Pradesh Judicial Reforms Committee observed that "In some districts there are long distances to be traversed on foot and in the rainy season village paths are flooded and water logged. In alluvial areas service of summonses sometimes becomes impossible in the rainy seasons."²

Poor ser-
vice condi-
tions.

19. The difficulties of the process server are further increased by the fact that he is expected to visit the places on his itinerary on foot and his emoluments do not always provide for the expenses which he might incur by availing himself of public conveyances even where they are available. Clearly the service conditions of the process servers need improvement. We shall deal with this aspect presently in detail.

Negligence
and cor-
ruption.

20. However, what most causes delays in the service of process is the negligence and corrupt practices of the process server to which we have already referred. Sometimes the process server returns the process unserved without proceeding to the village at all either through indolence or in collusion with the defendant. On other occasions he proceeds to the village but fraudulently and at the instigation of the defendant returns the process unserved, stating that the defendant is not to be found. Or he may in collusion with the plaintiff fraudulently serve the process on the wrong person. He may also return the process unserved without making proper inquiries and without

¹ Civil Justice Committee Report, page 5, para 5.

² Report, p. 14.

attempting service. Such wrong or fraudulent reports of the process server inevitably hold up the progress of the case and put parties to unnecessary expense.

21. As stated previously, effective supervision by the court of the process service establishment and a general improvement of the service conditions of the process server are the two measures which can reduce these delays. The rules of all the High Courts contain elaborate instructions for the guidance of the process servers and also of the nazir and subordinate courts in the matter of supervision over the process servers' work. In Madras, for example, every amin and process server has to maintain a diary in a prescribed form written day by day and showing where he was on each day, what work he did and what processes he served or failed to serve. The diary is initialled by the nazir whenever he issues processes and whenever the amin or the peon returns to headquarters. The peon or amin has also to endeavour to get the entries in the diary attested by a village officer or other respectable resident of the village which he visits for the service of process. The officers in charge of the central nazarats are expected to inspect these diaries from time to time and the district judges have during their inspection of subordinate courts to satisfy themselves that the diaries are being regularly maintained. Under the rules of the Bombay High Court also, the process servers who are called bailiffs in that State are required to maintain similar diaries. The following is a copy of the form in use in one of the districts in that State:—

Need for
and methods
of super-
vision.

Date	Villages visited	Number of processes given for service in each village	Number of processes served	Manner of service	Reasons for non-service	Number of miles travelled daily	In what village Patil's Patrol Book signed by Bailiff	Signature of the Patil or any other well known person in the village visited by Bailiff
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In addition the village officers in Bombay have been instructed by a Government Order to give every assistance to bailiffs when serving processes. The village officers are

required to maintain what is called a Bailiff's Patrol book in the following form:—

Signature of officer	Date of arrival	Date of departure	Summary of work done	To what village proceeding next
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Whenever a bailiff visits a village, he has to ascertain from the patrol book the name of the bailiff who had visited it immediately before him and the date of his visit and has to make a note of these facts in his own diary. These notes are checked by the nazir from time to time in order to ascertain the correctness of the diaries of other bailiffs. This method ensures that the process server does go to the village to serve his process and does not make a false return of non-service. An effective method of controlling corruption and fraud of the process servers is the appointment of a responsible officer of the court to pay surprise visits to the villages visited by them. He would pay surprise visits from time to time to a group of villages and verify in a few cases the truth of the process server's report of served or unserved processes. In Bombay, the deputy nazirs of the district courts who happened to be appointed guardians and managers of the minors' estates used at one time to be entrusted with the task of checking bailiffs reports. In Madhya Pradesh an officer is frequently sent suddenly and without previous notice to go over the beat of a process server to test the correctness of his reports by actual inquiry at each place. This system has yielded satisfactory results.

Service conditions of process servers.

22. A basic cause of the corruption rampant amongst the process servers is the very small remuneration paid to them in most of the States. In Andhra and Madras process-serving establishment is divided into amins and process servers; the scale of remuneration of the amins is Rs. 21-2/2-31-1-33 and that of the process servers is Rs. 18-1-25. In Bihar and Uttar Pradesh the scale is Rs. 22- $\frac{1}{2}$ -32 and Rs. 22- $\frac{1}{2}$ -27 $\frac{1}{2}$ respectively and in Kerala it is Rs. 30-2-42-3-60. The lowest scale obtains in Mysore where it is Rs. 11- $\frac{1}{2}$ -18 whereas the highest prevails in Bombay where a bailiff gets Rs. 40-1-50-1-60. Though in most of the States dearness allowance is also payable to them yet on the whole the process server does not get even a living wage. In several States he is not paid any allowance for travel by bus or other means of public transport, nor is he paid any food allowance during his travels. An ill-paid and disgruntled process server is bound to be driven to corruption. The grant of dietary allowance and a higher rate of remuneration with an allowance for the cost of travel by public transport will result in less corruption and

greater efficiency in their work. Such additional remuneration will undoubtedly mean an increase in financial outlay but as generally, the rates of process fees are adjusted to cover the cost of the process serving establishment, this should not create any difficulty. As observed by the Civil Justice Committee, it is only right that the litigant should get full value for money paid for a specific purpose. The court fees and process fees have been enhanced in recent years in most States, "the enhancement should not be made a source of greater profit. The State should provide for the efficient discharge of service for which it is paid."¹

23. We suggested in our Questionnaire a more extensive use of the post office for service of various kinds of processes. This proposal has received universal approval. The normal method of effecting service under the provisions of the Code is personal service or service on an authorised agent. Prior to the amendment of 1956 a provision was made for service by post under Order V, Rule 21 only in the case of processes to be served beyond the limits of the jurisdiction of the court issuing them. The High Courts however by their rules provide for a larger use of the post offices. The courts were empowered in specific cases to direct the summonses under Order V to be addressed to the defendant by registered post, acknowledgment prepaid. An acknowledgment purporting to be signed by the defendant was to be deemed to be sufficient proof of service of such summons. That is the Madras rule. In Bombay, a new Rule 21-A made in 1940 provides for a summons to be sent at the court's discretion by registered post to any place where there is a regular daily postal service. The summons is to be addressed to the defendant at the place where he resides and sent by registered post prepaid for acknowledgment. An acknowledgment purporting to be signed by the defendant is to be deemed by the court issuing the summons to be *prima facie* proof of service. The Rule further provides that in all other cases, the court shall hold such inquiry as it thinks fit and declare the summons to have been duly served or order such further service as may in its opinion be necessary. As to whether the refusal of a packet of summons should be presumed to be good service, section 27 of the General Clauses Act, 1897 provides that service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post a letter containing the document. Unless the contrary is proved, service will be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post. It was held in *Baluram Ramkissen v. Bai Pannabhai*² that the court was entitled to draw the presumption under section 27 of the General Clauses Act and to hold that there was sufficient

Use of
postal
agency.

¹ Civil Justice Committee Report, p. 167, para 15.

² I. L. R. 35 Bombay 213.

service if it appeared that the packet was properly addressed to the defendant and had been registered, duly stamped and posted. The presumption is, however, a presumption of fact and liable to be rebutted. It has been held that the presumption would be rebutted as soon as the defendant appears and denies that the packet had ever been delivered to him by the postal authorities.

Object ions.

24. It might be argued against the greater use of the post office for serving process that a postal peon is as susceptible to corruption as the process server and in his case, there is the additional disadvantage that he is not subject to the control and discipline of the court. The latter part of Rule 21-A made by the Bombay High Court would, we think, act as a safeguard against improper practices by postmen. In order to satisfy itself whether the summons was duly served, the court would see whether the packet was sent pre-paid by registered post and an acknowledgment asked for and also whether it was properly addressed. The court would therefore require it to be proved by affidavit or otherwise that the defendant resided at the place to which the packet was addressed to him at or about the time when it would reach him in the ordinary course of postal service. The acknowledgment purporting to have been signed by the defendant would also in most cases require an affidavit verifying the signature of the defendant on the acknowledgment. Subject to safeguards of this nature, we would recommend a more extensive use of the post office for the purpose of process service.

Recent amendment.

Order V of the Civil Procedure Code has now been amended by the Act No. 66 of 1956. The newly enacted Rule 20A enables the summons to be served by registered post either in lieu of or in addition to the normal manner of service where for *any reason whatsoever the summons is returned unserved*. An acknowledgment purporting to be signed by the defendant or the agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the court issuing the summons to be *prima facie* proof of service. However, even the new Rule lays emphasis on personal service as the primary mode of service and permits the use of the post office only if the personal service has been ineffective. We are of the view that such a restriction is unnecessary and should be removed and a summons by post should be issued simultaneously with the summons in the ordinary manner and the court should act on whichever return shows effective service. It may be mentioned that in England the Committee on County Court Procedure recommended service of ordinary summons by A. R. (advice of receipt) registered post.¹ A further amendment of the Rules on this line would, we think, result in much saving of time at this early stage of the litigation.

Simultaneous Service Suggested.

¹ Final Report of the Committee on Supreme Court Practice and Procedure p. 15, para 37.

25. Under Order V, Rule 20 of the Civil Procedure Code the court has power to order substituted service in two cases only; firstly, where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or secondly, where for any reason the summons cannot be served in the ordinary way. We invited opinion on the question whether the court should be empowered to order substituted service if service in the normal manner is not effected within a certain number of days. Views on this question were divided and the proposal was not generally favoured. A rule to this effect might perhaps be regarded as arbitrary and as likely to work hardship in practice. We, nevertheless, think that a limit may be placed on the number of attempts made to effect service in the ordinary manner rather than to fix the limit of a number of days within which such service must be effected. There would in our opinion be no point in wasting time in a number of futile efforts at effecting service in the ordinary manner. Normally, the only material upon which the court acts before ordering substituted service is the affidavit of the plaintiff and of the process server showing that the defendant is keeping out of the way in order to avoid service or that for some other reason service cannot be effected in the ordinary way. We suggest that in the second class of cases, failure to effect service in the ordinary way in two succeeding attempts should be deemed a sufficient reason for holding that summons cannot be served in the ordinary way and the court should thereafter proceed to order substituted service. We recommend that the Rule may be amended by making a provision to that effect.

EXAMINATION OF PARTIES, DISCOVERY AND ISSUES

26. We now come to a group of important orders in the Code of Civil Procedure relating to matters preliminary to the trial of a suit. Orders X to XIII contain provisions for the examination of parties, discovery, production and inspection of documents, and admission of facts and documents. These are essential preliminaries leading up to the settlement of the issues under Order XIV. We propose to deal first with the subject of the settlement of issues because we have found that the importance of framing correct and precise issues is often not sufficiently appreciated by presiding officers.

Under Order XIV, Rule 1, sub-rule (5) the Court shall at the first hearing of the suit after reading the plaint and the written statement, if any, and after such examination of parties as may appear necessary, ascertain the material propositions of fact or law upon which the parties are at variance and thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. The duty of framing correct issues is thus cast on the Court which is expected to discharge it after reading the

pleadings and examining the parties. We have found that in many States the Courts do not follow the above procedure but accept the issues drafted by the pleaders without applying their minds to the questions in dispute, without examining the parties and at times without even reading the pleadings. Some of the judicial officers who gave evidence claimed that they followed the provisions of the Code in framing issues. Others while conceding that they did not examine the parties nevertheless insisted, that they themselves framed the issues after reading the pleadings and after considering the draft issues submitted by the advocates. On the other hand, several representatives of the Bar stated that sufficient attention was not being paid to the framing of the issues which at times were too general, vague and carelessly framed and that some presiding officers accepted without question the issues drafted by the lawyers. The Court is undoubtedly entitled to invite the advocates of the parties to state the points on which the parties are at issue. But the framing of proper issues is the responsibility of the Court. The issues constitute the points of dispute on which the parties go to trial and give notice to the parties of the matters on which they have to adduce evidence or expound the law. Unless therefore, the issues are complete and precise, the trial cannot come to a satisfactory conclusion. If issues do not reflect the real points in dispute, advantage is likely to be taken of these defects at a subsequent stage or in appeal. Delay and injustice will often result by the omission of the first Court to deal with and decide the real points in dispute.

Importance
of framing
proper
issues.

27. The Court itself should frame the issues after a careful study of the pleadings and ascertaining all relevant information from the parties themselves. The materials on which the Court may frame the issues are set out in Order XIV, Rule 3 as follows:

Materials
for framing
issues.

- (a) Allegations made on oath by parties or by any persons present on their behalf or by the pleaders of such parties;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;
- (c) the contents of documents produced by either party.

Thus the three sources from which the Court derives the material necessary for framing the issues are the pleadings, the examination of parties and the documents produced by them. It is important to note that Orders X to XIII dealing with the examination of parties and the production of documents and cognate matters precede Order XIV relating to issues in the Code. It is thus clear that the Code contemplates that the Court should have considered all matters relating to the controversy between the parties before it proceeds to frame the issues.

28. The Rules in Order X contemplate an examination of parties by the Court before the issues are framed in order to ascertain the nature of the dispute. Rule 1 enables the Court to ascertain from each party or his pleader whether he admits or denies the allegations of fact made in the pleadings of the opposite party and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. Rule 2 contemplates an examination by the Court of a party. The object of these two rules is to ascertain the precise nature of the dispute between the parties and to obtain admissions or denials of facts alleged in the pleadings of the opposite party. It is an effective way of elucidating the pleadings and timely and proper use of these provisions by the Court narrows down the issues and the facts in dispute and results in much saving of time and costs. The examination by the Court may also serve the purpose of a written statement in the case of defendants who are illiterate, and too poor to obtain legal advice. Here, again, rules made by the High Courts contain sufficient instructions to the subordinate courts in regard to the use of these provisions for the purpose of shortening the trial. Evidence before us showed that these provisions are, more often than not, disregarded. Some judicial officers do try to elicit further information from the parties by examining them before the framing of the issues but a majority of them do not make use of these rules. As pointed out by the Uttar Pradesh Judicial Reforms Committee, the presiding officer is overworked and has to rush through the process of settling issues and does not have sufficient time to make proper use of Order X. Further, in view of the heavy arrears in many of the Courts, the presiding officers are not inclined to spend time and labour over preliminary steps in cases which they themselves may not be called upon to try. In simple cases of small value, the examination of parties under these rules may probably put an end to the suit by the examination demonstrating that the parties are not at variance on any matter whatever or have only trifling differences. In difficult and complex cases a great saving of time will result, if proper and timely use is made of these provisions. It should be the duty of the district judges at the time of inspection to see whether the presiding officers make proper use of these provisions. Their failure to observe these rules should also be taken into consideration in deciding upon the officers fitness for promotion.

Examination
of parties.

Its im-
portance.

29. The documents produced by the parties form the third source from which the Courts ascertain the matters in controversy. All documents in the possession of parties whether they be documents sued upon, or those on which parties rely as evidence in support of their case must therefore be on record before issues can be framed. However, parties do not file all their documents on the day fixed for the purpose and considerable delays occur. According to

production
of documents.

the scheme of the Code, documents required to be produced fall into two general categories—those which form the basis of the claim or what are known as documents sued upon, and those on which parties rely as evidence in support of their claim. The former must be produced in the Court at the time of the presentation of the plaint if they are in the possession or power of the plaintiff. The latter must be entered in a separate list to be annexed to the plaint but they need not be produced at the time of the presentation of the plaint. If any of such documents is not in possession or power of the plaintiff he shall, if possible, state in whose possession or power it is. Documents of either class which are not produced with the plaint or the particulars whereof are not entered in the aforesaid list cannot, without the leave of the Court, be received in evidence at the hearing of the suit. Orders VI, VII, and VIII do not provide for the production in Court of documents of the second category. However, Order XIII, Rule 1 requires the parties or their pleaders to produce at the first hearing of the suit all documentary evidence in their possession or power on which they intend to rely and which has not already been filed in Court and also all documents which the Court has ordered to be produced. Rule 2 provides that a document not produced in accordance with the requirements of Rule 1 cannot be received at a subsequent stage unless good cause for its non-production is shown to the satisfaction of the Court.

Discovery.

30. The above group of Rules thus provides for the production of all documents which are in the possession or power of the party interested to produce them in Court. With regard to the documents in the possession or power of the opposite party a different machinery is provided in Orders XI and XII. That is the machinery of discovery and admission of facts and documents and inspection of documents. On the application of any party (without an affidavit) the Court may direct any other party to the suit to make discovery on oath of documents which are or have been in his possession or power relating to any matter in question in the suit. The discovery is generally made by an affidavit in a prescribed form specifying the documents and the objections to the production of any particular document. The affidavit of documents must specify every document in the possession or power of the party called upon to make the discovery, even though he may state his objections to the production of any particular document in the list. The production of documents listed in such an affidavit can be obtained by an order from the Court under Rule 14 of Order XI. A party to a suit has also a right of inspection all documents referred to in the pleadings or affidavits of the opposite party after service of notice to produce the documents for his inspection (Order XI, Rule 15). Non-compliance with an order for discovery or for inspection results in the plaintiff's suit being dismissed or the defendant's defence being struck out. The machinery for admission of documents and facts is laid down in Order

XII. Any party may by notice in writing call upon the Admissions- other party to admit any document or to admit for the purposes of the suit only any specific fact or facts. The refusal or neglect to admit such documents results in the cost of the proof thereof being paid by the party so neglecting or refusing, irrespective of the result of the suit unless the Court otherwise directs.

31. The machinery of discovery and inspection is adequately used only in the High Courts exercising original civil jurisdiction and in some other Courts in urban areas. "The framers of the Code anticipated that in mofussil Courts the members of the Bar would not easily or quickly accustom themselves to the new procedure provided and would not avail themselves of its provisions. They, therefore, inserted in section 30 of the Code a provision which gives the court authority to order discovery and inspection of its own motion. Their anticipations have unfortunately been fulfilled and the power given to the court has not been utilised."¹ The position today in the matter of discovery and inspection is practically the same. The chief reason for the neglect of the use of the law of discovery by the subordinate courts in the mofussil was also given by the Committee: "the great majority of cases are simple cases about matters of small money value, and because the old practice as to lodging in court the documents relied on is for so many cases regarded as sufficient".² There is great force in this observation. The elaborate machinery of discovery and inspection given in Order XI is undoubtedly needed for the complex and difficult commercial litigation arising in large trading and industrial centres where civil practice is in the hands of experienced advocates and attorneys well-trained in practice and procedure and accustomed to make use of these provisions. In the subordinate courts, the matters are simpler and less complicated and the machinery for discovery and inspection is naturally less apt to be used. In the result the legal practitioners and the judiciary have little familiarity with it. The difficulty in the use and application of these provisions even in difficult and complicated matters in the subordinate courts arises mainly therefore out of the want of experience of the judges and the lawyers of their working. The great advantages which result from their use cannot be appreciated unless they are put to practical use in the courts. The timely and effective use of them must ultimately depend upon a closer co-operation between the Bench and the Bar. Time spent by the judges and the lawyers in acquainting themselves with these provisions and the manner of their application at the appropriate stages of litigation will be of great help at the stage of the trial by having narrowed down the issues and the field of controverted facts. The Courts in the mofussil are unduly lenient in admitting documentary evidence at

Neglect of provisions for discovery and inspection.

Limitation on their use

Unfamiliarity of subordinate courts.

Undue leniency in admitting documents.

¹ Civil Justice Committee Report, p. 36, para 14.

² *Ibid.*

all stages of the suit. As the Civil Justice Committee rightly pointed out this laxity has deprived Order XIII, Rule 1 of its true purpose. All parties are defaulters in an equal degree in the matter of production of documents and the penalty of costs does not provide an adequate sanction and prevent the rule from becoming a dead letter. A considerable improvement in the matter of production of documents can be brought about by the presiding officers in mofussil courts following the undermentioned simple procedure.

No obligation on defendant to produce or file list of documents.

Amendment suggested.

Order XII Rule 3-A.

32. The provisions of Order VII, Rule 14 requiring the production with the plaint of all documents upon which the plaintiff sues and which are in his possession or power and the entering into a list of all other documents upon which he relies as evidence must be strictly enforced. The Code curiously enough, imposes no obligation on the defendant to produce in Court with his written statement all documents on which he bases his defence or claim for set-off or to file a list of other documents on which he relies as evidence. The High Courts of Allahabad and the Punjab have, however, made such a provision in the case of the defendant by amending Rule 1 of Order VIII. The obligation to produce such documents and lists with the pleading should be laid upon both the parties. We suggest that Rule 1 be amended on the lines of the amendment made in the Punjab. After the pleadings are closed, a date should be fixed for the production of documentary evidence and the framing of the issues. If the parties have on that date produced all the documents mentioned in the lists filed with their pleadings and other documents the production of which may be allowed by the Court, the Court should, acting under section 30 call upon each party to examine the lists of documents of the opposite party and admit such of the documents therein as they wish to admit. This is now provided by a new Rule 3-A to Order XII brought in by the Civil Procedure Code (Amendment) Act of 1956. The new rule provides:

"Notwithstanding that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document."

Greater use necessary.

We recommend a greater use of this rule. The documents thus admitted can straightaway be numbered and admitted in evidence. In complicated and difficult cases, the Courts acting under the same section would do well to encourage the parties to ascertain their adversary's case by the delivery of interrogatories under Order XI, Rules 1 and 2. The Court should not hesitate to punish any party for evasive or unreasonable denial of any document by awarding against him the costs of proving those documents

irrespective of the result of the litigation. We further recommend that in addition to the costs of proving such document as provided in Order XII, Rule 2, the Court should be empowered to award against the offending party penal costs in case of wrongful or unreasonable refusal to admit documents. Order XII, Rule 2 may be suitably amended for this purpose.

33. The issues should be framed after the procedure for the production and the admission of documents described above has been gone through. After the issues are settled the Court may, if necessary, give one more intermediate date before the date of the hearing for filing supplementary lists of documents. This is necessary because sometimes it may be unreasonable to exclude a document produced after the issues have been framed, unless the parties have had a reasonable opportunity of considering the issues, the evidence required on each issue and the importance of any document they may possess in the light of the issues. In regard to documents in the possession or power of the opposite party, the ordinary practice in the mofussil courts is, that the party requiring the production of such documents applies to the Court for an order directing the party who is in possession or power of the documents to produce them. In the procedure indicated by us, parties will have at least three opportunities of producing all the documents which they wish to bring on the record. Once the case reaches the stage of hearing, no further documents should be allowed to be produced, unless the Court for good reasons to be recorded by it thinks it just to do so. This discretion should be exercised only in very exceptional circumstances; for example, in the case of documents which have come into existence subsequently or documents of the existence of which the party desiring to produce them was unaware and which he could not have produced at an earlier stage with due diligence.

Supplement-
ary docu-
ments.

34. The Civil Justice Committee pointed out another difficulty experienced by presiding officers trying complicated suits of large value in the mofussil areas. Parties produce in Court a large number of documents many of which are irrelevant or only of remote relevance. "Very generally there is a complete absence of arrangement: even as regards the ordinary correspondence it is nothing unusual to find that the first letter is the seventh in order, and that replies generally precede the letters to which they are an answer. * * * * Sometimes a mass of documents is brought into a court in a locked box, copious allegations being made in the written statement as to the danger of theft or forgery if the plaintiff be allowed to go near them."¹ We saw tangible evidence of this complaint when

Irrelevant
documents

¹ Civil Justice Committee Report, p. 37, para 16.

in the course of our inquiries in Calcutta we took the opportunity of visiting the premises of the subordinate courts of the 24 Parganas at Alipore. We found in the courts of the subordinate judges rows upon rows of locked metal boxes of different sizes piled almost upto the ceiling in the ante-rooms of the courts and even the court halls. We were told that these boxes contained the documents produced by the parties in the pending suits. The boxes were locked for fear that the contents may be tampered with or removed. We were told by a senior officer of the West Bengal Judicial Service that the practice of producing documents in metal boxes is universal in Bengal. Sometimes these boxes get mixed up or are mislaid and it takes a long time to trace them.

It is difficult to suggest an effective remedy. "The chief causes, however, lie in the circumstance that parties and their pleaders will not agree to co-operate to prepare their cases so as to present their dispute to the court in a reasonable way. Doubtless it will be of service that the judge should preside over a prolonged inspection of documents, try to persuade the parties to make proper admissions, and try to help them to clear their minds as to the real points of a case. But, though in small cases the judge may well do this sort of work at the settlement of issues, this is not really a judge's work and complicated cases are not as a rule best approached, so far as the judge is concerned, by an attempt to master a mass of documents. A competent Bar should not require this form of assistance. This kind of preliminary work when it has to be done at all should not be part of the hearing, but should be done well in advance in order that when the hearing commences it should go on continuously."¹ The responsibility of presenting a party's case in a systematic and methodical manner falls primarily upon his advocate. The presiding officer must, however, insist upon a proper arrangement and presentation of the documentary evidence. They should be entered in the lists and admitted in evidence in chronological or other methodical order so as to present the party's case in a clear, logical and connected sequence. If the judge takes a little trouble at the stage of framing the issues to consider the relevancy or admissibility of the documents, a large saving of time will result at the stage of hearing.

35. At any rate, the High Courts should see that the presiding officers decide questions as to admissibility and relevancy of documents as and when they arise. Many officers are in the habit of reserving the decision on the relevancy or admissibility of a document sought to be tendered in evidence till the stage of the judgment. A note is sometimes made that the document is admitted subject to the question of its admissibility or relevancy being decided at the time

¹ Civil Justice Committee Report, p. 40, para 21.

Questions of admissibility to be discussed when they arise.

of writing judgment. It sometimes happens that the case is eventually decided without decisions upon the point of the admissibility of the document and occasionally even without a reference at all to the documentary evidence. This practice should cease. Clear instructions to prevent such a practice must be given whenever the attention of inspecting officers is drawn to instances of this character. In our opinion, a great saving of time will result if the simple suggestions that we have outlined above are followed. We are also of the view that the attention of the presiding officers in the larger industrial and trading towns which have a mass of commercial litigation should be repeatedly drawn to the advantages that will flow from a proper observance of the provisions as to discovery and inspection.

CONCILIATION AND PRE-TRIAL

36. Conciliation proceedings are intended to settle cases through the intervention of the Court. We have considered whether it would be desirable to have a conciliation proceeding on the date fixed for hearing at which the judge may try to induce the parties to come to an amicable settlement. The Code of Civil Procedure does not contemplate such proceedings but such a procedure exists in Japan, France and Norway. In Japan it is the duty of the court either on the application of the parties or *suo motu* to send all civil proceedings either to a body consisting of two laymen and a judge or to judicial commissioners for a negotiated settlement. If the conciliation court succeeds in persuading the parties to arrive at a settlement, its terms are recorded by the court and the order becomes binding as a judgment. In the event of a failure, the proceeding is dealt with in the ordinary manner. In France, all cases go to a Cantonal Court presided over by a layman for conciliation and an agreed settlement. Failing a settlement, the case goes for disposal to the court. In Norway, such proceedings are an essential preliminary to a proceeding in a civil court. The proceedings first go before a conciliation council, composed of three mediators, designated by the local authority. The council can record an agreement. If any of the parties fail to appear, the council can in petty cases settle the proceedings. If the conciliation proceedings fail, the parties may approach the court for the redress of their grievances.

Conciliation Proceedings.

In foreign countries.

37. A senior advocate of the Supreme Court has suggested to us the following procedure as a possible machinery for conciliation, having as its object the avoidance of litigation: the proceedings are to be designated Settlement Proceedings. Under this procedure, the plaintiff has to summon the defendant on a date to be called "the first settlement day" to attend before the settlement judge by means of a "Notice of Complaint" in the prescribed form obtainable from a post office. On that day the

A suggested procedure for India.

settlement judge would hear both sides appearing in person without lawyers in a completely informal manner and briefly record the case of each party as stated before him orally and as supplemented or supported by documents produced before him. The statements of the parties would be read over to and signed by them. Having heard parties and read the documents produced, the settlement judge would there and then try to bring the parties to an amicable settlement in regard to the matter in dispute. He would not pronounce his opinion before the parties on the validity or strength of their respective cases but he may act on his views of the strength of their cases in his endeavour to promote a settlement. If his effort succeeds, the terms agreed to would be signed by the parties and recorded by the judge. The rules would provide that the compromise shall be binding upon the parties and their assigns and, if necessary, a decree may be drawn up. If, however, the attempt fails, the matter would be adjourned for a period not exceeding two months to a date to be called the "Second Settlement Day." On that day the settlement judge would again make a similar attempt to bring the parties to a settlement in an informal manner and without the assistance of lawyers. If he fails again, the settlement judge would give directions for a trial after which the suit would go for disposal to the trial judge. To ensure the attendance of the defendant in response to a summons to attend on the first settlement day or the attendance of parties on the second settlement day pursuant to the Courts' directions, it would be made a statutory offence punishable with imprisonment or fine for a defendant or a party to refuse or neglect without just cause to attend the court in answer to such summons or directions. Unless this is done, the litigants may be persuaded by lawyers or interested persons to refuse to cooperate in settlement proceedings. The services of ex-judges of all categories or lawyers of not less than ten years' experience may be enlisted to relieve the regular judges from the burden of settlement proceedings.

Success
doubtful.

38. The proposal envisages in every case a separate machinery for conciliation independent of the trial judge. We are not satisfied that the setting up of such a machinery will serve the intended purpose. On the contrary such settlement proceeding will, we think, be an additional step in a civil proceeding and lead to greater delay in the disposal of the proceeding.

Trial
Judge
to act as
conciliation.

We are, however, of the view that the trial judge could himself act in a way as a conciliator. The appropriate time for initiating and tactfully helping parties to arrive at a compromise, we consider, would be when the clarification of the pleadings and the examination of parties under Order X, Rules 1 and 2 take place. In this connection we were told that judges in the mofussil who try to induce parties to come to an amicable settlement are liable to be

misunderstood. That should not however, in our view, make the judge deny himself of all initiative in the matter of suggesting a compromise and deter him from helping the parties in arriving at a settlement in suitable cases. A competent and experienced judge who has learnt to make a proper use of the provisions of Order X will have no difficulty in perceiving cases pre-eminently suitable for a compromise. A few tactful words by the Judge at a suitable opportunity, without the appearance of taking a view on either side and without playing an unduly active role, may bring about the desired result in a more satisfactory and speedier way than a separate conciliation proceeding in the manner described and spread over several weeks. In our opinion the promotion of a compromise in suitable cases should be left largely to the initiative and the personality of the judge and to the parties and their lawyers. We would like to emphasize that the Bar can play a very useful role in bringing about a compromise.

"Lawyers perform a real service to their clients and to society and the courts when they make settlements that are right settlements, where there are two sides to a case, where the issue may well be in doubt, where the facts are honestly in conflict or where the law is unsettled, there is always some figure which is fair to both sides. It should be the lawyer's aim to make such a settlement if he can".¹

39. Another proposal which was pressed upon us and which we have considered is, whether there should be a thorough-going pre-trial conference on the date of the hearing for the purpose of (a) a summary examination of parties and the hearing of the lawyers (b) the determination of the issues (c) a consideration of (i) documents to be produced, (ii) facts necessary to be proved and the manner of their proof (d) determining whether any witnesses other than those mentioned in the list may be called or examined on commission and similar matters. A provision for such a pre-trial conference is to be found in the Rules of Civil Procedure for the United States District Courts, Rule 16 which provides as follows:—

Pre-trial conferences.

"In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

The procedure in U.S.A.

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;

¹American Bar Association Journal, May 1929, "The Trial of Cases", by Emory R. Buckner.

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions".

The working of this procedure as explained by the Chief Justice of the State of New Jersey in the United States is briefly as under:—

The plaintiff and then the defendant states what each expects to prove at the trial. The trial judge thereupon dictates for the pre-trial order the issues to be proved and if any amendments of the pleadings are necessary he orders them made. The Judge then explores what facts may be admitted. The Judge then finds out if the execution and admissibility of any documents are uncontroverted. The pre-trial order which incorporates the above matters is dictated in open Court and signed by the Judge and counsel. The trial Judge then orders preparation of briefs to be delivered in advance of the trial, if such briefs are necessary. The details of the procedure are to be found in New Jersey Manual of Pretrial Practice.

Advantages.

The advantages of pre-trial conference have also been explained by the same author.

"The remarkable thing about it all is that at the end of a pre-trial conference very often the plaintiff's lawyer for the first time understands the plaintiff's case..... Likewise the defendant's lawyer for the first time gets a true concept of his own and his adversary's case. Suddenly it dawns on each of them that instead of this being a case that the plaintiff can lose or the defendant can't lose, it begins to be one that has a monetary value in terms of a settlement.....month in and month out, in every country in our State three quarters of the cases are settled between the date of the pre-trial conference and the date

when the case goes to trial two weeks later without the Judge saying a word about settlement".¹

40. The working of the system of pre-trial procedure which has been introduced in some States in the United States was examined by the Evershed Committee. The American system made it clear that the success of these pre-trial conferences depended for the most part on the personality of the Judge and his willingness to deal and aptitude for dealing with such proceedings. "No doubt", said the Committee, "it would be the same in England"². We believe it would be the same in India as well. The Committee examined this procedure with reference to the Rules of Practice and Procedure in England and came to the conclusion that the existing rules relating to the summons for directions in Order 30 of the Rules of the Supreme Court give all the powers that are needed. The Committee took the view that the general adoption of the pre-trial conference procedure in all forms of proceedings would not be advisable in England. "The procedure has, undoubtedly its attractions particularly to those who have become accustomed to its working. After careful consideration we have reached a clear conclusion that it would not be appropriate for adoption in this country—certainly of long duration, possibly developing into a 'fishing not for the purpose of saving costs * * * More than this, the procedure may become somewhat elaborate and expedition'³.

Views of the
Evershed
Committee.

41. As to the introduction of similar provisions for a similar procedure in India the witnesses before us have pointed out that the practice already obtains in a modified form under the provisions relating to the examination of parties and discovery and inspection under Orders X, XI and XII of the Civil Procedure Code. The provisions for the amendment of pleadings are found in Order VI Rules 16 and 17 of the Civil Procedure Code. Rule 16 gives power to the Court at any stage of the proceedings to order to be struck out or amended any matter in any pleading which may be (1) unnecessary, (2) scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit. Similarly the duty of framing precise issues is cast upon the court under the provisions of Order XIV and if these issues are framed after the preliminary examination of the parties and the reading of pleadings as already suggested, it would no doubt lead to a considerable simplification of the issues. Thus it can be said that the rules of the Civil Procedure Code amply provide for all the matters enumerated in Rule 16 of the Rules of the Civil Procedure for the United States District Courts.

Position in
India.

Provisions
of Civil
Procedure
Code.

¹American Bar Association Journal—January 1954, "Five Functions of the Lawyer".

²Final Report of the Committee on Supreme Court Practice and Procedure, page 73, para 216.

³*Ibid.*, p. 24, para. 220.

42. An elaborate pre-trial conference of the nature contemplated above would, it was said, be needless waste of time. The same purpose could well be achieved by an examination of the parties under Order X of the Civil Procedure Code. We were informed by a senior Judge of the Madras High Court that the method of a pre-trial conference had been tried on the Original Side without much success. Conditions in our country, we think, are not yet ripe for the introduction of such an innovation which would throw upon the court the responsibility not only of examining the parties and settling the issues, but also of considering what documents need be produced or proved or of considering the facts necessary to be proved and the manner of their proof. The object of the pre-trial system is to define the scope of the dispute and ascertain the true issues which arise. Such a definition and clarification does in many cases tend to bring about a compromise. Order X of the Code of Civil Procedure already provides for the examination of the parties by the court before the framing of the issues. The object of such an examination is to get admission or denials of the allegations of fact made in the pleadings. The examination will have the effect of clearly defining and limiting the scope of the inquiry and focussing attention on the real points in dispute. If these provisions are carefully followed, they should result in bringing about the salutary consequences which are said to flow from a pre-trial conference. We do not therefore think it desirable to incorporate in our procedural laws the elaborate system of pre-trial conferences which obtains in some other countries.

Introduction unnecessary.

ATTENDANCE OF WITNESSES

Summonses to witnesses.

43. We shall next deal with the summoning and attendance of witnesses. Under the Code, parties are entitled at any time after the institution of the suit to obtain by an application to the court summonses to persons whose attendance is required either to give evidence or to produce documents. This is generally done after the issues have been framed and matters relating to discovery and inspection have been completed. In practice, the application for summoning the witnesses must be made at the earliest opportunity so that sufficient time may be left for service before the date fixed for hearing of the suit.

Non-service of witness summons.

44. Considerable delays arise from a failure to serve summonses on witnesses, even when the parties have filed their applications for witness summonses in time and paid the travelling and other expenses as required by law. The causes of these delays are generally speaking the same as those which lead to delays in the service of processes on the defendants. Measures similar to those indicated earlier have therefore to be adopted to remove these delays.

45. There is a large body of opinion that parties are not sufficiently diligent in applying for the issue of summonses for the attendance of witnesses. Sometimes a party who for some reason is not interested in the suit being heard on a particular date deliberately applies for issuing summonses to witnesses at a late stage when the chance of effective service on the witness for his attendance has become remote. The summons is in such cases returned unserved for want of sufficient time; or the witness having been given very short notice is unable to attend the court. The case has therefore to be adjourned to a future date. In such cases, summonses may be issued at the risk of the party. If service is not effected or the witness is unable to attend because the summonses were not applied for and process fees not paid within a reasonable time for service or attendance, the court will be justified in refusing to adjourn the hearing on the ground of the non-appearance of witnesses. Unfortunately, considerable laxity prevails in this matter which results in frequent adjournments and considerable delays in the disposal of suits. We suggest that it should be provided by an amendment of Order XVI, Rules 1 and 2 that the list of witnesses to be summoned should be filed, as far as possible, within a time limit not exceeding thirty days from the date of the framing of the issues. The date of hearing may be fixed only after such a list is filed and having regard to the time that may be reasonably required for summoning the witnesses and in consultation with the lawyers. The Rules of almost all the High Courts contain clear instructions in this matter for the guidance of the subordinate courts. The presiding officers should rigidly follow these instructions. The High Courts and the district judges should from time to time draw their attention to the Rules and insist on their being followed.

Delays in applying for summonses.

Laxity of presiding officers.

Witness lists to be filed.

46. In regard to witnesses who wilfully avoid service of summons or attendance after service, the court has ample powers under section 32 and Order XVI, Rules 10 to 13 of the Code. Under Section 32, the attendance of a witness to whom a summons has been issued may be compelled by (a) the issue of a warrant for his arrest, (b) the attachment and sale of his property, (c) a fine not exceeding Rs. 500 and (d) ordering him to furnish security for his appearance or in default committing him to civil prison. The procedure to be followed in the case of a witness who fails to comply with the court's process is laid down in Order XVI, Rules 10 to 13. Under Rule 12 the court has power in certain cases to impose a fine upto Rs. 500 upon a witness who has failed to appear or failed to satisfy the court that he had a lawful cause for his absence. These powers are, however, rarely exercised. Parties are for obvious reasons unwilling to move the court for exercising these powers against their own witnesses. The Civil Justice Committee recommended that in such cases the

Non-attendances of witnesses and penalties

parties should be offered the alternative of either applying for a coercive process against their defaulting witness or withdraw the witness if they refuse to apply for such process. They also suggested that in flagrant instances the courts should on their own initiative take action against recalcitrant witnesses and met out exemplary punishment for the contempt of the court's process.

Non-examination of witnesses.

47. Frequently, however, wilful default on the part of the witnesses is not the cause of their failure to attend. Very often parties omit to make an application for summoning their witnesses because the heavy congestion of the court's file makes it unlikely that the case will be heard or the date fixed for hearing and the party wants to avoid the unnecessary expenditure of summoning a large number of witnesses. This question will be discussed in detail when we deal with the hearing of the suit.

Discourtesy to witnesses.

Not infrequently a witness is treated with scant respect not only by the cross-examining lawyer but even by the presiding officer. There is a natural tendency on the part of witnesses to avoid the ordeal of a lengthy and sometimes unpleasant and undignified cross-examination which is so frequent a characteristic of the subordinate courts. Unnecessary rebukes, unfavourable comments upon his demeanour and ridicule in open court if the witness is sometimes driven to give an unintelligible answer, are not uncommon. In our view this is one of the principal reasons why witnesses shun the courts of law and avoid having to give evidence. We suggest that the High Courts should draw the attention of all presiding officers to the necessity of maintaining proper decorum in court and ensuring proper treatment of parties and their witnesses whatever their social status. They should be treated with courtesy and dignity and not permitted to be brow-beaten or insulted in court.

Better treatment necessary.

Parties producing their witnesses without summons.

48. We invited opinion on a proposal that the parties themselves should be initially responsible for procuring the attendance of their witnesses. The opinion is almost evenly divided. A section expressed the view that the parties should be made responsible for bringing their witnesses to court because they would be in a better position to procure their attendance and that summonses should be issued only in very special cases. Others took the view that such a course would lead to delays and bargaining between parties and their witnesses and that in all cases, the court must help the party in enforcing the attendance of his witnesses. Some High Courts have amended their rules so as to enable the parties in the first instance to bring their witnesses by themselves undertaking the responsibility of serving the summonses. A similar enabling

provision has now been made in the Civil Procedure Code (Rule 1A of Order XVI). The new rule is:—

“Where any party to the suit has, at any time on or before the day fixed for the hearing of evidence, filed in the Court a list of persons either for giving evidence or for producing documents, the party may, without applying for summons under rule 1, bring any such person, whose name appears in the list, to give evidence or to produce documents”.

In Allahabad, Rule 8 has been amended by providing that the witness summons may by leave of the Court be served by the party or his agent applying for the same by personal service, and failing such service it shall be served in the usual manner. A similar amendment has also been made in Bihar, Orissa and Madras. According to these amendments a party may, if he so chooses, obtain the leave of the court to effect service of summons personally upon his witnesses. In Calcutta and Assam, on the other hand, it appears that the party is in the first instance bound to procure the attendance of his own witnesses except where it appears to the court that summons should be served by the court in the usual manner. The Calcutta rule therefore introduces the general practice of leaving the parties to procure attendance of their witnesses, summonses being issued by the court only in special cases, if a party is prepared to take the responsibility of keeping his own witnesses present in court or to serve the summonses upon them personally, there will of course be no question of service through court.

49. It is necessary in this connection to point out a difficulty which confronts a party who is prepared to bring his witnesses without summonses being issued. Generally, and particularly in the rural areas, a witness who appears to support the case of a party without being summoned through the court, is looked upon with suspicion and his detachment and impartiality are not considered above question. The general practice of the cross-examiner in the subordinate courts is to start his cross-examination with the question whether or not he appeared in response to a summons. This practice acts as a deterrent to the parties making any attempt to bring their witnesses and leads to the witnesses insisting upon a summons being served before consenting to give their evidence. If therefore it is desired to amend the rules by making it obligatory upon the parties in the first instance to bring their own witnesses, it should also be understood that the impartiality of a witness who has come without a summons should not, on that account, be suspect. Subject to this safeguard, we are of the view that the parties should in the first instance be made responsible to procure the attendance of their witnesses either by bringing them without summonses or by taking up the task of serving the summonses upon them.

Variety of witnesses brought without summons doubted.

We therefore recommend an amendment of the Code on the lines of the Calcutta Rule providing the safeguard mentioned above. It should also be provided that when the service of summons is arranged by the party, the full process fees should not be payable by the party as is insisted upon in some states.

Filling of
witness
list.

50. The Civil Justice Committee considered a proposal that a rule should be made whereby parties may be required to file lists of witnesses on a certain date and be prevented from calling witnesses other than those mentioned in the lists given by them, save in exceptional circumstances. Such a rule would, it was thought, interfere with the inherent right of the parties to call as many witnesses as they desired at any time. It was also thought that if such lists were filed, an opportunity would be given to the other side, who would know the names of witnesses, to persuade the witnesses either not to give evidence or to give evidence against the party who has called them. The Committee rightly rejected the first view, pointing out that there was no inherent right in the parties to call as many witnesses as it chose. The Committee however felt that it was by no means uncommon for the opposite party, as soon as he knew that certain witnesses were being called against him, to use all means in his power to dissuade them from assisting his opponent. The Committee nevertheless took the view that it was better on the whole, that each party should know what the evidence of the other side would be and that the large majority of the litigants were not dishonest. They thought that there would be an attempt to tamper with the witnesses only in a minority of cases. We see no reason to take a different view.

However, not unoften, a witness named in the list may for some reason not be available to the party calling him. In such cases a party may desire to examine another witness who might be available but whose name might not have been included in the list of witnesses. A rigid rule, such as the one suggested, would deprive the party of the opportunity of leading such evidence. It was therefore urged that the right of a party to call a witness at any time should not be restricted. It should be for the court to decide whether a witness whose name is not included in the list should be allowed to be examined or whether a case should be adjourned to enable a party to call such a witness. Moreover, rigidity in this matter may result in a party conducting the cross-examination of the opponent's witnesses in such a way as to necessitate the examination of additional witnesses and this would be denied to him under the proposed rule. On a careful consideration of all these aspects, therefore, we do not recommend the acceptance of this proposal. We should leave it to the good sense of the court to decide every application for leading additional evidence on its own merits. The Court should however in all cases be required to ask the party

to give an explanation why the evidence of witnesses other than those mentioned in the list is required.

HEARING

51. In an earlier chapter, we have noticed that about two-thirds of the civil suits are disposed of by the courts without a contest and in the same year in which they are instituted. The average duration of such suits disposed of *ex parte* or without contest varies from about three to nine months. It does not appear that the hearing of uncontested or *ex parte* cases is unreasonably delayed. But occasionally such cases have taken nine or ten months or even a year for disposal. In the opinion of the Civil Justice Committee such delays in the disposal of *ex parte* cases arose in part from the over-worked presiding officer leaving the fixing of dates for hearing to his clerk. "He" (the presiding officer) "does not know, until the case is called on, whether it would be contested or uncontested. An inordinately long list of cases is fixed for each day. It happens too often that a suit which should be decided *ex parte* on the first date on which it is called is crowded out by other work and never reached. The hearing is then adjourned by the clerk and on the adjourned date the same thing happens". The Committee thought that the judge should invariably endeavour to find out at the first hearing whether the suit is contested or uncontested; and, if it is uncontested, to decide it at once. It therefore recommended a new form of summons for directions whereby the defendant could be called upon to appear merely for the purpose of stating whether he does or does not contest the claim and, in the event of contest, of receiving directions as to the date on which he has to file his written statement, date of trial and other matters. The form of summons in use in Madras seems² to have been based upon this recommendation. We have not been able to ascertain to what extent a summons in this form results in speedier disposal of uncontested cases. If the defendant appears in consequence of the summons being served upon him, he either admits the claim or disputes it and in the latter case he either files his written statement immediately or asks for time to put in his defence. This would happen whether summons be in the form for settlement of issues or for receiving directions to file written statement. We do not therefore think that the form of summons recommended by the Committee will help in focussing the attention of the court to cases which are uncontested any more than a summons in the simple form for settlement of issues.

Uncontested matters.

Findings and recommendations of the Rankin Committee.

Utility of new form of summons doubtful.

52. It has been proposed that *ex parte* matters should be set down for hearing from time to time in a separate *ex parte* list and judgment should be signed forthwith on the verified statement in the plaint and without taking

¹Report, p. 10, para. 21.

²Schedule 1, Appendix B, Form 14A.

Separate
ex parte list.

evidence. The position under the Code is that if the defendant does not appear when the suit is called on for hearing and it is proved that the summons was duly served upon him, the court may proceed *ex parte* against the defendant. This is provided by Order IX, Rule 6. The court is, however, unable to pass an *ex parte* decree forthwith because the law requires that the plaintiff should make out a *prima facie* case and the mere absence of the defendant does not of itself justify the presumption that the plaintiff's case is true¹. If the plaintiff is present, the courts generally take his evidence in support of the claim before passing the *ex parte* decree. However, very often the plaintiff who is represented by a lawyer is not present on the first date of hearing in the belief that the defendant will appear and ask for time to file his written statement. In such cases, if the defendant has not appeared to contest the suit, the courts make an order against him that the suit be heard *ex parte*. The *ex parte* hearing takes place thereafter on a future date. There is of course no harm in setting down such cases for hearing in a separate *ex parte* list. However merely maintaining such separate lists of *ex parte* cases will not result in their expeditious disposal. *Ex parte* matters may be fixed for hearing along with contested matters but the presiding officer must invariably take care to see that the *ex parte* matters are heard and disposed of before the contested work begins.

Judgment
on alle-
gations
in plaint.

53. The proposal that judgment should in *ex parte* matters be signed on the verified statements in the plaint without taking evidence did not receive much support. Several judges of the High Courts expressed themselves against it. It was pointed out that verification of the pleadings required by Order VI Rule 13 is not on oath and that the plaint is not a sworn statement upon which judgment can be given. There is considerable force in this view and we deprecate the practice which we were told was in vogue in some States of passing *ex parte* decrees on the strength of statements made by the plaintiff in his plaint. However if our recommendation to amend Order VI rule 13 made earlier, is accepted, it will be possible for the courts to dispense with the formal evidence of the plaintiff and to give judgment straightaway on the plaint, which would be verified on oath, without adjourning the case to a future date.

Not possi-
ble unless
verification
is on oath.

Contested
matters.

54. As a rule the courts fix considerably more work than they can possibly dispose of on any one day. Consequently the litigants and their witnesses are in a large number of cases compelled to come to the court and go back, time and again, without their evidence being recorded. The practice results in considerable delays and an increase in the costs of litigation. The practice prevails not only in courts with heavy arrears but also in courts which have only a normal pending file of not more than one to one and half year's institution. The practice of fixing more work than can be

Crowded
cause-
lists.

¹Mulla's Civil procedure Code, 12th Edition, page 639.

finished in a day seems to have arisen from a desire to provide against a possible breakdown of the day's file by reason of unforeseen circumstances. It is also due to the presiding officer not giving his personal attention to the fixing of his daily list and leaving it to his bench clerk or other ministerial officer of the court to post cases for hearing. In courts with a considerable amount of work all the cases ready for trial cannot be set down for hearing within a reasonable time from the date of settlement of the issues. Even if a distant date is given, there is no certainty that the case will be taken up on the date so fixed.

55. The normal average disposal of suits both contested and uncontested in munsif's court may be taken to be about thirty to thirty five original suits. In such a court an ordinary title suit of a contested nature usually takes a year to reach final disposal. On that basis, a munsif's normal pending file should not be more than 350 to 400 suits. If the file is heavier, the presiding officer will be unable to cope with it and the number of pending old suits will have a tendency to continue to rise year after year. Heavy pending files.

In Uttar Pradesh we came across cases where a munsif's court presided over by a single officer had to deal with a file of over 1000 pending suits. The insistence by some of the High Courts on fixing a minimum out-turn of work as a test of efficiency of the judicial officers, results in a tendency in the officer to pay more attention to lighter and simpler suits and to adjourn difficult and heavier work.

In Kerala, we were told, that the munsifs post daily as many as thirty to forty suits for trial. A roll call of parties is taken at the commencement of the day's work and this takes an hour or more. The judge is not able to take up during the day more than one or two of the suits fixed for the day. Thus a large number of parties and their witnesses hang about the court unnecessarily throughout the day. The practice of fixing specific dates for hearing for a large number of cases makes day-to-day hearing of cases impossible and results in a piecemeal hearing and in frequent adjournments of even part-heard suits.

56. In some States, notably in West Bengal and Uttar Pradesh, shortage of judicial officers was stated to be the main reason for the congestion of work and the evercrowding of cause lists in the subordinate courts. The problem of the adequacy of judicial personnel has been considered by us elsewhere. Inadequacy of officers.

57. The main reason for this state of affairs in many of our courts, in our view is, that the question of fixing dates for the hearing of suits is not given the attention which it deserves. It is of the utmost importance that at the time of fixing dates the presiding officer should, in consultation with the advocates, attempt to estimate the time required for the trial so as to ensure that all the work fixed on a Posting of cases.

particular day will be disposed of on that day. "A reasonable estimate can be framed as to how long a particular suit will take to hear. The time required for the purpose may exceed the estimate; it may be below the estimate. The death of a party may prevent the suit being heard on the day on which it is fixed, the plaintiff may withdraw the suit, the parties may compromise. If the suit comes on for hearing, the hearing may take a longer period than the period estimated by the presiding officer. But over the greater part of India no attempt is made to make such estimates, and more work is fixed in a day than can possibly be done in the day¹". It is therefore essential that judicial officers should devote their personal attention to the fixing of their lists. They should not leave the work of fixing these dates to their bench clerks or ministerial officers. The dates should be fixed by them after looking into their diaries and after making a reasonable estimate of the time required to dispose of the work fixed on a given day. It has been represented to us that lack of proper control of the ministerial staff by the presiding officer causes many unnecessary adjournments. The ministerial staff is, it is said, interested in a case appearing in the cause list many times, without being actually heard and disposed of. The advocates, if they are remunerated by daily fees and the clerks in some courts also receive payment for each day the case appears on the list whether the case is heard or not. Thus, the interests of the clerk and of the pleader often are adverse to quick disposal of cases. It is therefore imperative that the courts should be vigilant and careful in framing lists so as to restrict them as far as possible to cases which will be disposed of on a particular day.

Personal attention of judicial officers to posting necessary.

The Madhya Pradesh method—settling date.

Block of days for recording evidence.

58. We would in this connection refer to the method evolved in Madhya Pradesh for the trial of civil suits. In that State on the completion of the preliminary stages a date is generally fixed called the "settling date" for giving a list of witnesses and paying the necessary process fees and expenses. On that day the court is also required to obtain information which will enable it to estimate the probable length of the hearing. Thereafter a date or several consecutive dates are required to be fixed for recording evidence. An unbroken block of a sufficient number of working days commencing from the first working day of each month is allotted for the trial of regular suits each month. This block is reserved exclusively for cases in which evidence is to be recorded although work of a minor character which does not claim much of the time and attention of the Judge may be fixed along with such cases. How this method works in Madhya Pradesh was described by a former Chief Justice of the Nagpur High Court as under:

"I would strongly recommend the system of trial of civil cases evolved by Madhya Pradesh where adjournments are the least frequent and the witnesses

¹Report of the Civil Justice Committee, p. 26, para. 2.

are seldom turned back on the ground that the court is busy doing something else. In that State it has been recognized that witnesses should be called on the date of hearing actually fixed by the court. It may be a long date of even six months. But the litigant is not harassed every fortnight or every month to bring his witnesses and then be told that they all have to go back because the court was otherwise busy."

The success of this method in Madhya Pradesh seems to be due partly to the fact that the lawyers are not interested in prolonging the trial or in having adjournments, because they generally receive a consolidated fee prescribed by the rules of the High Court and not daily fees as is the practice in the northern States.

Further, in Madhya Pradesh, inability to take up a case on the date fixed for hearing is regarded as a slur upon the presiding officer. "Hence every presiding officer of the court makes a genuine effort to have the case heard on the dates fixed, with the result that there is least harassment to the witnesses or to the parties who called them and least expenditure too." We understand that the manner in which a judge fixes his diary and the number of adjournments are among the tests applied in Madhya Pradesh for assessing his efficiency. We are of the view that such a test of efficiency should be applied in all the States.

59. In Madras, a somewhat different system was evolved and tried successfully in the munsifs' courts in some districts. The basic principle of this system which was described as the "special list system" was also the same, namely, that no more work is posted for the day than can reasonably be expected to be taken up. The essence of the special list system is that no contested suit would be taken up for trial unless it is posted for the day in the special list to be prepared and published by the presiding officer in the following manner. All contested suits ready for hearing are in the first instance posted in the diary on hearing book by the bench clerk, about four to six suits being fixed for a day, so that all of them can be called up once in eight or ten weeks, it being clearly understood that this posting is merely formal and intended only for the purpose of reporting compromise, death of parties, and the like. The special list is then prepared at the beginning of every month for the whole of the following month. For each day of the following month not more than two suits selected from out of the suits posted in the hearing book and fixed for trial. One of these must be the oldest of those suits while the other will be chosen from the rest having regard to the nature and complexity of the old suit. The old suit will of course be a heavy suit and therefore the second suit chosen is a light one. The special list prepared in this manner is treated as a provisional list and is published on the notice board of the court and of the

In Madras
special
list system.

bar association by the fifth day of each month. Between the fifth and the tenth, any representation which the lawyers might have to make will be heard and the necessary changes made. The final list is to be published by the tenth and thereafter, short of the death of parties or similar compelling reason, no adjournments are given. Suits not appearing in this special list have to be formerly adjourned with the remark. "Not in the list, adjourned to....." But suits in the special list must always be taken up unless circumstances compel an adjournment. If, for any reason, a suit posted for the day cannot be taken up, it stands out of the list and is formally adjourned to some other day unless for some special reason the presiding officer thinks it necessary to post it peremptorily to a particular date. Failing that, it is not to be taken up until it re-appears in the special list and is not allowed to disturb the postings already made in the special list of the following month. Ordinarily, the light suit is expected to be disposed of before the mid-day interval, so that, it becomes possible to anticipate whether the heavy suit will be disposed of that day or will go on to the next day. If it is found that the heavy suit will take a substantial part of the next day also, the heavy suit posted for the next day is taken out of the special list and the lawyers concerned informed accordingly. The same course is adopted if the heavy suit goes on to a third or fourth day.

Conditions
for its
proper
working.

60. It is claimed that the above system leads to the hearing of the cases from day to day in the munsifs' courts, unless unforeseen circumstances make this impossible and also guards against there being more than one part-heard suit at a time. It is obviously necessary to the proper working of this method that adjournments should be given only in exceptional cases and for compelling reasons. In cases where both suits posted for the day collapse, the presiding officer can utilise his time in checking the various departments of the court or dictating reserved judgments. Though the system has been tried successfully only in munsifs' courts, there is no reason why it should not be worked with equal success in subordinate judges' courts.

In Bombay.

61. In Bombay, the Rules of the High Court contain instructions for the presiding officers to make some sort of estimate as to the period required for disposal of each particular portion of work and to fix the dates after making such an estimate so as to ensure that the work fixed for a day will be finished. A margin may be allowed but every endeavour should be made to prevent litigants appearing in court and being sent away without a hearing on the ground that the time of the court is so occupied that no attention can be paid to them. The Rules of the High Court permit the courts to enter cases on a *sine die* list, if necessary. If, after the issues are framed and the matters preliminary to the trial are attended to, it is found that no day for hearing is available within the next ten weeks, the case is entered on the *sine die* list until such time as it can

be fixed for hearing. The list must be carefully examined by the Judge every week so as to see that the cases in it are set down for hearing, as days become available. This method also prevents the congestion of the daily diaries and if intelligently followed, the parties and their witnesses are not put to the necessity of coming to the court from time to time without being given a hearing.

62. We strongly recommend the adoption of the Madhya Pradesh method of fixing a certain number of days in a month exclusively for recording evidence, which has yielded very good results. Merely laying down rules in the circulars prescribing the method will not be enough. The observance of these rules will have to be strictly enforced as in Madhya Pradesh. If some difficulty is found in working it, we would recommend the adoption of one of the other two methods with such modifications as may be necessary having regard to local needs and conditions.

Recommendations.

63. It has also been brought to our notice that in many States the provisions of Order XVII, Rule 1 are disregarded and the hearing of a case once begun is not continued from day to day. This happens in spite of the instructions to the contrary laid down by all the High Courts for the guidance of subordinate courts. Our examination of the order sheet of a large number of suits in the courts of munsifs and subordinate judges in West Bengal and Uttar Pradesh showed the utter confusion which prevails in the matter of fixing the dates of hearing. Day after day the cases, were/are adjourned either because the lawyers are engaged elsewhere or because the court is otherwise busy. Indeed, so chaotic were the files, that cases often adjourned to a future date only for the purpose of fixing the next date of hearing. This difficulty, in our opinion, is created by a total disregard of the provisions of Order XVII Rule 1 and a failure to appreciate that it contemplates the continued hearing of a case, once it has started, from day to day until it is finished. In various States we found the subordinate judiciary acting as if they understood the Code to provide the contrary. They seemed to think that interrupted hearings should be the rule and a day-to-day hearings the exception. We found in some State the cross-examination of a witness spread over several hearings with breaks running in some cases into months. It seemed to be the invariable practice to adjourn the case after the closing of the plaintiff's evidence and before the starting of the defendant's evidence. It would also appear to be common practice to adjourn the case after the recording of evidence is completed to enable the counsel to prepare their arguments. A further adjournment invariably takes place after the arguments are closed for the judge to deliver his judgment. It needs to be emphasised that every step in this method of what may be described as the hearing of a suit through a series of adjournments, is contrary to the Code. There is no reason why all the witnesses in the case whether

Hearing from day to day a rarity.

Violation of the Code.

those of the plaintiff or of the defendant should not be examined in a series, the evidence followed immediately by arguments of counsel and, in most cases, the judgment following the close of the arguments. This happens every day in practice on the Original Sides of the High Courts of Calcutta, Madras and Bombay, and we see no reason why the subordinate courts should not be able to follow the same procedure.

Sudden intrusion of sessions work.

64. The situation is most acute in parts of West Bengal where hearings are constantly interrupted particularly in the courts of the subordinate judge, by the sudden intrusion from time to time of sessions cases. The subordinate judges in that State as in many other States, are invested with the powers of the assistant sessions judges. But what is usual in West Bengal is that the trial of civil suits in these courts is very often interrupted by the start of a sessions case which is fixed for that very day or the next day. We were told by the President of the Alipore Bar Association and also by the District Judge of Alipore and other senior judicial officers that the civil work is delayed because sessions cases have to be given priority. Frequently, a civil suit which has been going on for a number of days has to be adjourned because a sessions case fixed for hearing on that very day, is suddenly transferred by the sessions court to the subordinate judge. This mixing up of civil and sessions cases creates great difficulties. The judicial officers said that they could dispose of pending heavy cases more expeditiously and might be able to give day-to-day hearing, provided they were not so frequently disturbed by the transfer of sessions cases.

Rational distribution of work in advance necessary.

At the time of our visit to Calcutta we found that the district of the 24 Parganas which is the largest in Bengal with its headquarters at Alipore had, besides the district and sessions judge, a judicial strength of nine additional district judges, twelve subordinate judges and twenty two munsifs, almost all of whom were holding court in Alipore itself. We have not been able to understand why a simpler and more practical method of distribution of civil and criminal work by entrusting some of the judges exclusively with civil and the others with criminal cases cannot be adopted. If the subordinate judges have to be assigned sessions work it is of the utmost importance that the sessions judge should transfer cases to them sufficiently in advance of the date of the hearing to enable the subordinate judge to fix its hearing having regard to the state of his own civil work. The sessions cases must therefore be transferred as soon as the committal papers have been received, leaving it to the subordinate judge to fix the date of hearing. We see no justification for the system under which the hearing of the sessions case is fixed by the sessions court in total disregard of the state of file of the court to which it may ultimately be transferred and the case is sent to that court

at the eleventh hour so as to completely disorganize the posting of civil work in that court.

65. The law on the subject of adjournments has been thus stated in Order XVII, Rules 1 and 3 of the Civil Procedure Code: Adjournments.

“The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit. (Rule 1).

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith”. (Rule 3).

Thus the hearing of a suit once begun has to go on from day to day, until all the witnesses in attendance have been examined unless the court sees sufficient cause to adjourn the hearing to a future date. The expression “sufficient cause” has not been defined because the rule does not intend to fetter the discretion of the court to grant time. On the one hand no adjournment can be granted if no sufficient cause is shown and on the other, the court should not refuse an adjournment if sufficient cause is shown. What is “sufficient cause” is a question of fact in each case.

66. Unfortunately, in practice even after the case has reached the stage of trial, its progress is impeded by frequent adjournments. Adjournments are sometimes granted for the mere asking especially in the heavier cases. Quite often a litigant comes to court ready with witnesses to go on with a trial and is told that the case has been adjourned. Thus parties are forced to incur needless expense and parties and witnesses are harassed. The most frequent causes of the adjournment of a hearing are that the court is pre-occupied with other cases and has no time to take up the case or cases or that the date is inconvenient to the parties or their pleaders. In fact, the convenience of the parties or the pleaders is probably the most usual cause of adjournments. We have already dealt with the problem of adjournments arising out of the court's preoccupation with other cases. Unjustified adjournments. With regard to adjournments which are granted to suit the convenience of the parties, the remedy is obvious. The matter was thus commented upon by the Civil Justice Committee: “No hard and fast rules can be laid down in such matters. There are instances in which an adjournment should be reasonably granted to suit convenience alone. For example an application for an adjournment on the ground that the father of the principal witness had died and the witness had to attend his obsequies is a reasonable application which should be allowed. . . . At

present, however, not only are such adjournments granted too frequently, the interests of the other side are not sufficiently considered. When a party wants an adjournment to suit his own convenience the court should insist as a preliminary that he pays the costs of the other side for that day. Such adjournments should not be granted except for really good cause. Presiding officers must be stricter on the point, and be ready to give up a reputation for easy going good nature in the interests of efficiency. Lawyers who take up more work than they can handle must be shown that the court will not delay decision to suit their convenience.....The principle must be accepted as absolute that a case must be taken up on the date fixed unless there is really good reason for an adjournment."¹

Need for
strictness.

Opening.

67. The rule as to the opening of a case in Order XVIII, Rule 2 provides that the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence, if any, and may then address the court generally on the whole case. It is true as the Civil Justice Committee said, that outside the High Courts the above rule is seldom followed except in cases of great complexity and large valuation. The reason for the non-observance of the rule is that the omission of the opening speech saves time. The Committee thought that an opening speech by counsel was an absolute necessity, a departure from which caused delay for the following reasons:

Views of the
Rankin
Committee.

Its impor-
tance.

(1) The party not opening his case and not stating the line which he proposed to take may change his case subsequently and call other witnesses on different points to support a new case.

(2) If the case is not opened, a party cannot be confined to his original case, for the court does not know what the original case is.

(3) Failure to open the case puts the presiding officer at a disadvantage in dealing with the evidence of each witness as he is called.²

Over-stated.

68. We are not in agreement with the views expressed by the Civil Justice Committee. The first reason has not much force because the parties are bound by their pleadings and the issues that have already been framed, and it is difficult to see how they can be allowed to depart from the case stated in the pleadings and crystallised in the issues merely because the opening speech has been omitted. The Committee thought that unless the case was opened, a court would not know what the original case was even if it had read the pleadings and framed the issues because the pleadings and issues would not be sufficiently informative as to

¹. Civil Justice Committee Report, p. 53, para 13.

². Civil Justice Committee Report, p. 43.

the points to which the contest would be confined. It seems clear to us that if the court has read the pleadings and the issues, as indeed it must, at the time not only of framing the issues but also before the hearing commences, the court must know what the original case of the party is. The further ground, namely, that the presiding officer may not be able to deal with the evidence of each witness if there is no opening will also not be valid except in a very few cases of exceptional difficulty and complexity. We are of the view that in a very large majority of cases arising before the lower courts, if the judge has taken care to have the allegations in the pleadings elucidated, has framed correct issues and has taken the trouble to read them before commencing the trial, the opening contemplated by Order XVIII, Rule 2 will be unnecessary and can be dispensed with.

69. It will be noticed that the rule merely states that the party shall state his case. This statement of the case may take any form from a lengthy elaboration of the several contentions in the plaint supplemented by details of the oral and documentary evidence proposed to be led, to a mere summary of the pleadings or even a mere statement of the relief claimed. A pleader might well formally open his case by reading out the reliefs claimed in the plaint and then call the plaintiff to depose to his case. Very little can be gained by such an opening. In the more complicated and important cases and in cases arising out of trading and commercial transactions which depend upon technical, oral and documentary evidence, an opening is certainly of great advantage and should be insisted upon under this Rule. In such cases an opening speech will lead to a better understanding of the party's case and of the evidence which he proposes to call on the several issues. But the matter cannot and need not be governed by any rigid rule. Whether an opening in a particular case is necessary or not must ultimately depend upon the nature of the case.

70. It is interesting to note that the Evershed Committee in their Final Report has taken a similar view. In dealing with the suggestion that some measure of reduction of time could be obtained in the length of the trial, without detrimental effect by barring or at least limiting counsel's opening speeches, the Committee observed that such speeches were not necessarily essential and demonstrated this by the fact that in the ordinary admiralty collision case no opening speech was made by Counsel because the judge was known to have read the pleadings before entering the court. "On examination it has seemed to us that the value of an opening speech must depend largely on the nature of the individual case. In personal injury actions, for example, counsel's opening speech will usually add little to what may be gathered from the pleadings. In other cases, however, some preliminary explanation by counsel may be essential to a proper understanding of the evidence and the issues to which it is directed. We feel, therefore, that this is a matter

Views of the
Evershed
Committee.

which cannot be governed by any rigid rule. But we are of the opinion that the Judges themselves can do much to render long opening speeches unnecessary, for in appropriate cases the fact that the Judge has read the pleadings before the trial may well enable an opening speech to be dispensed with or reduced to a minimum. We think that there is little substance in the possible objection that, if the Judge reads the pleadings beforehand, he may enter the Court with a prejudiced mind¹. These observations are, in our view, more realistic than the somewhat theoretical approach of the Civil Justice Committee to this question. We think that upon a true construction, Rule 2 of Order XVIII does not cast upon the court an absolute obligation to require the parties to state their case even if such a statement of the case is, in the particular instance, considered unnecessary by the court or by the parties.

Oral evidence.

71. In dealing with the question of oral evidence we wish to refer to an undesirable practice which seems to prevail in certain courts. The plaintiff or the defendant upon whom lies the burden of proving certain issues and who has to give evidence in support of his case is not called as witness before the evidence of the other witnesses is recorded. He is called after all his witnesses have been examined. The underlying purpose of this practice appears to be that the plaintiff or the defendant giving evidence at the end may be able to fill in gaps in the evidence given by his witnesses. We strongly deprecate this practice and recommend that it should be stopped.

Party to give evidence first.

The parties to a proceeding should be in a position at the commencement of the proceedings to make up their minds whether they wish to give evidence. If they do wish, they should be required to enter the witness box before any of their witnesses are examined. We recommend that Rule 2 or Rule 3 of Order XVIII of the Code of Civil Procedure be suitably amended so as to embody such a provision.

72. The recording of oral evidence at a court trial takes a great deal of time. Very often time is taken in proving irrelevant and unessential allegations to which no reference is made in the arguments or in the judgment. Lengthy, roving and irrelevant examination-in-chief and cross-examination are common in subordinate courts, both civil and criminal, in every part of the country. This is due, at times, to the lack of experience of the presiding officers and their inability to exercise control over the oral evidence. It is also due in part to the anxiety of the examining lawyers to make an impression upon their clients and upon others present in court. The litigants themselves prefer "that examination and cross-examination should be conducted in this manner, and the methods

¹. Final Report of the Committee on Supreme Court Practice and Procedure 101 para 304.

are the traditional methods of many District Bars.²¹ The provisions of the Evidence Act in regard to relevant or admissible evidence are not always followed.

73. We have considered two proposals for a more rigorous control by the presiding officer on oral evidence. The first suggestion was that the examination of witnesses of both the sides should be left to the judge himself as in some European countries, liberty being given to the lawyers of the parties to suggest questions to the judge. It was said that the system of questioning in this manner by the judge would be a better method of eliciting the truth. It was further suggested that the presiding officer should be given power to regulate evidence and stop it when he is of the opinion that sufficient evidence on a point has been put before the court. On fuller consideration and after considering the views expressed to us on these questions, we feel compelled to reject both these proposals.

Suggestions for saving time.

Judge to question witnesses.

Power to stop evidence.

74. We are convinced that the proposal to leave the examination of the parties and the witnesses to the judge with liberty to the lawyers only to suggest question will not expedite the trial, nor will it further the ends of justice. It will place upon the judge the inordinately heavy burden of eliciting all essential facts relevant to the case of both the parties. The allegations of fact and law made in the pleadings or the documents on record would not disclose to the judge all the necessary material for this purpose. The judge would not like the advocates be armed with instructions from the parties and he would therefore be unable to discharge this function in a satisfactory manner. Moreover, the proposal might well bring the judge into the arena of conflict. Nor would this procedure shorten time taken in examination and cross-examination by the advocates. On the contrary, it may lengthen the proceedings by the lawyers suggesting numerous questions to the judge to be put to the party. It is true that there is a greater probability of the witness speaking the truth in answer to questions put by the court. Under the Indian Evidence Act, however, the judge is at liberty to put any question to a witness at any time and as a rule, experienced judges do exercise this power and intervene at the proper moment with questions from the court with a view to eliciting the truth. On the whole, we do not think, that the search for truth would in any way be facilitated by the court undertaking the entire responsibility of the examination of the witnesses of both the sides.

Changes inadvisable.

For similar reasons we are unable to recommend the proposal to invest the judge with power to stop evidence on any point or points when he thinks sufficient evidence has been led. In inexperienced hands this power may

²¹. Civil Justice Committee Report, 44 para 2.

work injustice to one or other of the parties. It may also put a strain on the relations between the Bench and the Bar. It may convey an impression to the parties that the court has pre-judged the case. It may also create difficulties at the appellate stage, because what the trial judge may have judged to be sufficient evidence may not be regarded as sufficient by the appellate court. The result may well be a re-trial following a remand. Evidence which may have been available to a party at the hearing may not be available later and the party may suffer irreparable damage. The responsibility for deciding whether sufficient evidence has been led must, therefore, rest on the party and his pleader. However it is always open to a court to suggest to the pleader that enough evidence has been led on a particular issues and that no useful purpose would be served by adding to the volume of evidence. Such hints thrown by experienced judges are often accepted in the proper spirit by the lawyers. But we think that the framing of a rigid rule empowering the judge to stop the evidence will tend to undermine public confidence in the impartiality of the judge and affect the purity of the administration of justice. The Civil Justice Committee rejected a similar proposal in the following words. "We feel that we should not be justified in suggesting alterations in the law by which presiding officers would be authorised to terminate the examination of a particular witness, or to refuse to hear additional witnesses on any particular point. It seems only possible to wait, till litigants begin to see for themselves that in their own interests there should be expedition. At present we must leave the solution to the good sense of the Bench and Bar."¹

Larger use
of affidavit
evidence.

75. We have also considered a proposal for providing for a larger use of affidavit evidence. Order XIX of the Civil Procedure Code empowers the court for sufficient reasons to direct that a particular fact or facts be proved by affidavits. In practice, courts generally take evidence by affidavit in interlocutory proceedings, such as applications for temporary injunctions, attachment before the judgment and appointment of interim receivers. Affidavit evidence is also taken in applications for setting aside the dismissal of a suit for default or an *ex parte* decree and other miscellaneous proceedings. We recommend that the courts should make a larger use of this power: and proof by affidavit should be encouraged not merely in *ex parte* and miscellaneous matters but also in contested matters for the proof of simple and incontrovertible facts. In such cases it should be open to the party to require the production of the deponent for cross-examination and if the court is satisfied about the *bonafide* character of the request it should direct his production before the court

Suggested
enlargement.

¹. Report 44, para 2.

76. But, apart from such limited extended use, the method of taking evidence by affidavits in contested matters will not be satisfactory from the point of view of eliciting the truth. Affidavits are generally prepared by the lawyers. They do not contain a faithful record of the story such as would be told by a witness in his own words. The credibility of a witness can be tested only when he is allowed to tell his own story. The demeanour of the witness is an important aspect which the judge has to consider in evaluating his evidence. The judge will have no occasion to observe the demeanour of the witness if the evidence is allowed to be produced on affidavits only. Again, the public will not be satisfied that justice has been done when a decision in the case has been pronounced by the judge on the basis of affidavit evidence. It is true that the judge will have the power to direct the deponent to be produced for examination. But the power to exercise such a discretion may not be a sufficient safeguard. A larger use of affidavit evidence in contested matters cannot, therefore be recommended. It is true that the use of affidavit evidence is successfully made in writ petitions before the High Courts and the Supreme Court. But the scope of the facts to be investigated in these matters is very narrow and such use cannot be extended to regular civil suits.

Limited
scope for
extension.

77. The method of the recording of evidence in the court by the judge in his own hand causes considerable delay. It will be useful at this stage to examine the provisions of the Code in regard to the recording of evidence. Under Section 138 of the Civil Procedure Code, the High Court has the power to direct with respect to any specified judges that evidence in appealable cases shall be taken down by them in the English language. Where a judge so empowered, is prevented by any sufficient reason from taking down the evidence in his own hand, he shall record the reason and cause the evidence to be taken down in writing from his dictation in open court. In certain States such as Assam, Bihar, Madras and West Bengal, evidence is recorded in English in a narrative form. The record is read over or interpreted to the witness and signed by him as provided in Rule 7 of Order XVIII. Where a judge is not so empowered, the provisions of Order XVIII apply. Under Rule 5, in appealable cases, the evidence of each witness is taken down in writing, in the language of the court, by or in the presence and under the personal direction and superintendence of the judge in a narrative form. When concluded, it is to be read over to the witness in the presence of the judge and is then signed by the judge. If the evidence under this rule is not taken down by the judge himself, Rule 8 provides that he must, as the examination of each witness proceeds, make a memorandum of the substance of what each witness deposes and such memorandum shall be written and signed by the judge and shall form part of the record. Finally, in non-appealable cases,

Recording
of evi-
dence.

In English.

Rule 13 provides that it shall not be necessary to take down the evidence of the witnesses in writing at length, but the judge, as the examination of each witness proceeds, shall make a similar memorandum.

Double recording.

78. The practice of double recording which prevails in the courts of some States in which the judges are not empowered to record evidence in English under section 138 has its origin in the aforesaid rules. The most common practice is that the bench clerk of the court takes down in the court's language, the deposition of the witness in a narrative form while at the same time the judge makes his own memorandum in English. The memorandum made by the judge is not merely a substance of the deposition as contemplated by the rules but a full narration in English of the deposition of the witness. In fact, the judge tries to make a faithful rendering in English of the evidence given in the regional or other language. The complaint against this method of double recording is that it is wasteful and that the writing of the evidence by the judge in his own hand causes much delay. There is undoubtedly considerable substance in this comment. If the evidence is long or where the witnesses are many, the judge has to write continuously for hours and the fatigue involved in writing hampers him not only in controlling and intelligently following the trend of the examination-in-chief and cross-examination but also in exercising effective supervision over the vernacular recording by the bench clerk.

Difficulties.

Recording by stenographers.

79. The suggested solution of this difficulty by the employment of stenographers to take down a verbatim transcript of the evidence is open to several objections. Competent stenographers required for all the courts in the mofussil areas will not be easily available. The recording of the questions and answers in shorthand and then transcribing them in English and correcting them subsequently would cause more delay than would be caused by the judge himself taking down the evidence. If the evidence is heard throughout the day, a single record would need a relay of stenographers. The implementation of the proposal would, apart from other difficulties, be very expensive.

Not practicable.

Judge to dictate evidence.

80. In our opinion, the best method of freeing the judge from the mechanical necessity of taking down the evidence in his own hand and at the same time of ensuring the accuracy of the record is to enable the judge to dictate the evidence either in English or in the regional language direct on the typewriter in the hearing of the parties and their pleaders. Copies of the evidence so dictated should be made available to the parties on payment of the reasonable charges. We understand that this method of dictating evidence in open court is being followed by many presiding officers in the Bombay State with success and has been permitted by the High Court. It enables the judge to avoid

fatigue, to exercise a better control over the entire proceedings and also to ensure better accuracy in the recording of evidence, in that, it enables the parties or their lawyers to point out any mis-statement or errors. Further, if the practice of double recording is adhered to, the oral dictation by the judge in English will also help his bench clerk to make a more accurate record in the regional language. As a matter of fact, under section 356 of the Code of Criminal Procedure, all sessions judges and magistrates have been authorised either to take down the evidence in writing in the language of the court in their own hand or to have it taken down from their dictation in open court or in their presence and hearing and under their personal direction and superintendence. Under this section, the judge or the magistrate is not required to write down, the evidence with his own hand. Under the Code of Civil Procedure, on the other hand, it is only in cases falling under sub-section (2) of section 138 that a judge can dictate the evidence in open court. We recommend the enactment in the Civil Procedure Code of a provision similar to section 356 of the Criminal Procedure Code. We are further of the view that if such an amendment is made, the necessity of keeping a double record can safely be dispensed with.

Amendment suggested.

81. It has been stated that the arguments of the advocates tend to be prolix and some method should be devised to control them.

Arguments.

It is true that in many cases arguments are unduly prolix. Sometimes the arguments become lengthy because the court either from inexperience or for other reason is unable to control counsel. Some lawyers are long-winded; others are brief and to the point. Similarly, some judges are unable to control the arguments while some are inclined not to hear any arguments at all and cut them very short. The Court which has heard the case from day to day should be familiar with the evidence and can if necessary go through the record of the case before the arguments are commenced to refresh its memory. The presiding officer who has followed the evidence will be in a much better position to control arguments. The control of arguments is a matter which must pre-eminently be left to the capacity, experience and discretion of the judge and the good sense of the advocate. We do not think it is practicable to confer any special powers on the judge in this respect.

Prolixity.

No special powers possible.

82. Very often, delay is occasioned by the postponement of arguments to a later date on the conclusion of the evidence. The law contemplates that arguments shall be heard immediately after the evidence is concluded. In many cases, however, arguments are postponed either because the lawyers are not ready or because the court

Delays.

Firmness
necessary.

has other work on hand. If the court's diary is methodically prepared in the manner already indicated, there will be fewer occasions for a judge to postpone the arguments on the conclusion of the evidence. The court must insist upon the lawyers appearing in the case presenting their arguments immediately on the conclusion of the evidence. Such a practice prevails on the original side of the High Court in Bombay, where, however heavy the record, counsel never ask for time to prepare their arguments. In cases of exceptional difficulty, complexity and a heavy record, it may perhaps be reasonable to give a short adjournment to enable the lawyers to prepare their arguments; but the normal rule should be to hear the arguments immediately on the conclusion of the evidence.

Judgments.

83. It is not suggested that the delivery of judgments is as a rule delayed though no doubt delays have been brought to our notice in some places where some judges are in the habit of delaying their judgments, at times, inordinately. We have even been told of instances where judges have failed to deliver judgments for several weeks or even months after the conclusion of the hearing, and have caused entries to be made in the case diaries to show that the case was reopened for further arguments on some point at a later date.

Definite
date to be
fixed for
delivery of
reserved
judgments.

84. The requirements of the Code on this point are clear. Order XX, Rule 1 requires that after the case has been heard the court shall pronounce judgment in open court either at once or on some future date, of which due notice shall be given to the parties or their pleader. Therefore, if the court does not pronounce judgment immediately at the conclusion of the hearing, it will have to fix a definite date for the delivery of judgment and notice of such date will have to be given to the parties. Notwithstanding this provision, the courts however merely reserve judgment without fixing a specific date for its delivery. This is undesirable. The Court should, as far as possible, fix the date for the delivery of the judgment when it adjourns the case for judgment. In practice, it is difficult for the subordinate courts to give their judgments at once at the close of the hearing as contemplated by Order XX, Rule 1. In the courts of senior civil judges or subordinate judges who try difficult suits of higher valuation, a judgment may perhaps not be ready for delivery for a week or in some cases a fortnight after the conclusion of the hearing. However, except in *ex parte* and small cause cases and cases of a very simple nature, where judgment can and must be delivered immediately or on the next day, ordinarily not more than a week or a fortnight should be allowed to elapse before a judgment is delivered. Delay on the part of the presiding officer in writing out his judgment weakens his grasp of the facts of the case, arguments are forgotten, impressions formed of the witnesses' demeanour become faded and generally there is a waste of time.

Provision
of steno-
graphers.

occasioned by the necessity of refreshing his memory by frequent reference to records. If all judicial officers are provided with stenographers as in the States of Andhra Pradesh and Madras, the judges will be able to deliver judgments at the close of the hearing in a greater number of cases and will also be able to deal expeditiously with reserved judgments. We recommend that the assistance of stenographers be made available to all presiding officers.

85. Certain High Courts have made rules for delivery of judgments of the lower courts within a fixed period. We have dealt with these rules elsewhere. We recommend that it should be generally provided by rules that judgments should be delivered within two weeks of the close of hearing of the case. There is no reason why this time limit which has satisfactorily worked in Madhya Pradesh and Madras should not work equally well in other States.

A fourteen-day limit for delivering judgments.

86. It is said that judgments of the subordinate courts are often unnecessarily prolix. The law requires that the judgments should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. Unfortunately, sufficient attention is not paid to this provision, Order XX, Rule 4 C.P.C. The length of the judgments is increased on account of the long verbatim extracts of pleadings and reproduction of the evidence of witnesses. Instead of starting compendiously the case for each side, many judges set out in the judgments a literal translation of the pleadings. Sometimes the entire plaint and the written statement are translated into single continuous sentences. Some judges are in the habit of summarising the facts though they have set out the pleadings in detail. The plaints often contain a great deal of irrelevant and unnecessary matter. The written statement also contains denials as to every such irrelevant fact. In the course of the trial many of these facts are either admitted or given up. In writing a judgment therefore, the judge should apply his mind to the facts as they have emerged at the trial. They should be stated shortly and with reference to the pleadings on specific points to which alone the dispute has been limited. It is wholly unnecessary to reproduce at length the evidence of witnesses as many judges do. A judgment should not be a catalogue of events or a summary of the evidence. The judge owes it to himself to endeavour to develop his capacity for writing good judgments. A judgment is probably the most creative part of his work and the expression of his own personality. As an eminent English judge has said "the art of composing judgments is not taught; it is acquired by practice and by study of the models provided in the innumerable volumes of the law reports in which are recorded the achievements of the past masters of art."

Prolix judgments.

Training and practice necessary.

1. "The Writing of Judgments" by the Rt. Hon. Lord Macmillan L. Bom. L. R. J. p. 1.

The excellence of a judgment will depend upon the judge's power of expression and his capacity to grasp and to marshal the facts and the law in a simple, yet lucid and logical manner. We urge upon the judicial officers the importance of studying judgments of eminent Indian and English judges recorded in the Law Reports. Much can be achieved in the direction of the cultivation of this art by suitable instruction imparted to judicial officers at the stage of probation.

Reading out in court unnecessary.

87. The rule that judgment should be pronounced in court requires that it should be read out in full. Opinion has been generally expressed that this practice results in a good deal of waste of judicial time and is wholly unnecessary. It would be sufficient to read the findings on the issues and the final order in the judgment in open court. The judgment could then be made immediately available to the parties. Such a practice is followed by many presiding officers. We recommend that legislative provision be made for the adoption of this practice by a suitable amendment.

OTHER CAUSES OF DELAYS

Suits by or on behalf of minors or persons under a disability.

88. The law relating to suits by or against minors or persons under a disability is contained in Order XXXII of the Code of Civil Procedure. Sometimes delays occur by reason of the special procedure required to be followed in cases in which such persons are parties.

Where the plaintiff is a minor (or a person under a disability) a suit on his behalf must be instituted by a next friend. Rule 2 of Order XXXII provides that if such a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file with costs to be paid by the pleader or other person by whom it was presented. If the minor plaintiff is and continues to be properly represented, no delays need arise.

Vexatious suits by next friends.

89. The Uttar Pradesh Judicial Reforms Committee, have however, pointed out a difficulty. Sometimes a suit is instituted on behalf of a minor after another suit for a substantially similar relief by a different person acting as a next friend of the same minor has been previously heard and disposed of. The Committee pointed out that a large majority of such suits are frivolous and the defendant finds it difficult to recover his costs from the next friend even if such costs are awarded against him personally. We have not heard of similar frivolous suits in other States. As a safeguard against this practice the Committee proposed the insertion of a new sub-rule (2) to Order XXV of the Code of Civil Procedure requiring the next friend to give security for costs of the defendant.¹

Recommendations of the U.P. Judicial Reforms Committee.

¹ Report page 34.

In Madras a new rule 2-A in Order XXXII empowers the court at any stage of the suit either on the application of the defendant or *suo motu* to order the next friend to give security for the payment of the defendant's costs if it appears that the suit has been instituted on behalf of a minor by his next friend improperly or unreasonably. The security includes court fees payable to Government when the suit has been instituted in *forma pauperis*. This amendment goes much further than the recommendation of the Uttar Pradesh Committee which would restrict the right of the court to demand security only to those cases in which a suit for a substantially similar relief had already been instituted and decided and even in such cases security would be ordered only on the application of the defendant. We recommend that a provision similar to that introduced in Madras be enacted in the Code. Such a provision will control vexatious litigation by next friends of minors.

A Madras amendment.

Commended.

90. When the defendant is a minor it is the duty of the court to see that the suit does not proceed against him unless he is properly represented. A suit against a minor cannot proceed until a *guardian ad litem* is appointed by the court to represent him. The evidence before us shows that though delays sometimes occur in the appointment of *guardians ad litem* they are neither frequent nor too long. At this stage it will be useful to examine briefly the existing legal provisions.

Suits against minors.

Rules 3 or Order XXXII of the Civil Procedure Code empowers the court in cases in which a minor is a defendant to appoint a proper person to be his guardian for the purpose of the suit. The rule gives the order of preference for the appointment of a *guardian ad litem* as follows:

Statutory provision.

(i) A guardian appointed or declared by a competent authority;

(ii) The father or other natural guardian to the minor;

(iii) Where there is no father or other natural guardian, the person in whose care the minor is.

Under Rule 4(1) any person who is of sound mind and has attained majority may act as next friend or guardian for the suit provided his interests are not adverse to those of the minor. The same rule provides that no person can be appointed guardian for a suit without his consent and that where there is no other person fit and willing to act as such guardian the court may appoint any of its officers to be such guardian and may make proper orders for the costs to be incurred by such officer in the performance of his duties as such guardian.

Under Rule 4, sub-rule (2) where the minor has a guardian appointed or declared by a competent authority, no person other than such guardian can act as a next friend

of the minor for the suit unless the court considers for reasons to be recorded that it is for the minor's welfare that another person be permitted to act or be appointed. When no guardian has been appointed by any competent authority, the plaintiff has to propose the name of other suitable person for appointment as guardian and to support it by affidavit that the proposed guardian has no interest in the matters in controversy in the suit adverse to the minor. Under sub-rule (3) of Rule 4, however, no person can be appointed a defendant's guardian for the suit without his consent.

Guardians
refusing
to act.

Delays.

91. A difficulty arises therefore when the persons proposed by the plaintiff refuse or are reluctant to act as guardians. It is said that the natural guardians or other persons entrusted with the custody of the minor often cause delays by refusing to act as guardians and hold up the progress of the suit for long periods. When the proposed guardian refuses to act, the plaintiff has to think of another relation and to apply for his appointment. When such other relation also refuses, the whole process has to be repeated because under Rule 4 of Order XXXII the court can appoint one of its officers as guardian only "where there is no other person fit and willing to act as guardian for the suit". It often happens that successive proposed guardians either evade service or decline guardianship with a view to harass and tire out the plaintiff and drive him to incur the costs of taking out fresh notices to other guardians who in their turn refuse to act. The Civil Justice Committee found that in many cases it had taken more than a year to appoint a guardian. This was also noted in 1951 by the Uttar Pradesh Judicial Reforms Committee who observed: "It is a matter of experience that considerable delay is occasioned in the appointment of guardians of minors".¹

Suggestions.

Simultaneous
notices.

92. The Uttar Pradesh Committee suggested "that all probable guardians should be nominated in the very first instance and notices should issue to all of them simultaneously including the natural guardians. After the notices have been served, it will be open to the court to appoint a proper guardian out of those to whom notices have been sent". The rules of the Punjab High Court require a plaintiff to file with his plaint a list of all relatives of the minors and other persons with their addresses who *prima facie* are capable of acting as guardians. In Madras, the plaintiff is required to state in his application in order of suitability, a list of persons who are competent and qualified to act as guardians for the suit for the minor defendant. This is a slightly modified form of the proposal of the Uttar Pradesh Committee. The plaintiff is also required to produce with his application necessary forms in duplicate for issue simultaneously of notices to at least two of the proposed guardians. If neither of the person served signifies his consent

¹ Report, 33.

to act, the court has to proceed to serve notice simultaneously upon two other selected persons out of those named in the list and the applicant has, within three days of intimation of unwillingness by the first set of guardians, to pay the necessary process fees for service on the second set. Under rule 4, neither a guardian appointed by the competent authority nor a natural guardian nor a person in whose care the minor is, can be appointed without his express consent. Under the old Code of 1882 if such a person neither accepted nor refused guardianship, his consent was presumed. The Civil Justice Committee was in favour of reverting to the old provisions. It proposed that the consent of such a person (namely a guardian appointed by a competent authority or a natural guardian or a person in whose care the minor is) should be presumed and notice should be issued upon him presuming his consent if he does not within a month refuse to act. If he eventually appears before the court and refuses to act, the court would then relieve him of his duties and appoint another guardian for the suit.¹

Consent to be presumed.

93. The proposal of the Uttar Pradesh Committee which would require the plaintiff to furnish a list of all possible guardians and the service of simultaneous notices to them might create a conflict between the proposed guardians and also cause unnecessary costs to the plaintiff. The order of preference in Order XXXII Rule 3 is based on sound principle and we are unable to see that any useful purpose will be served by sending simultaneous notices to distant relatives when a natural guardian like the father or the mother or some other nearer relation in whose care the minor is/are available. Such distant relatives may not agree to act as guardians or may not take adequate steps to safeguard the interests of the minor. In the absence of a guardian declared by the competent authority or natural guardian, preference will have to be given to the person in whose care the minor is or with whom he is residing. In making the appointment the court will of course take into consideration the question whether he has any interest adverse to that of the minor. But it appears to us inadvisable that the court should start a roving inquiry which is implicit in the proposal to send out notices simultaneously to other persons whose number may at times be very large. The rules made by some High Courts for sending notices, not to all persons named in such lists, but to two or three at a time also do not, in our view, help to solve the difficulty. If those who are supposed to represent the interests of the minor defendant are inclined to be intractable, the notices issued to each group of such persons in succession will be evaded or refused and the position will in no way be improved. On the other hand, if the natural guardian or other person with whom the minor is residing accepts guardianship in the first instance, the plaintiff will have unnecessarily incurred

Objections.

Conflict.

Unnecessary costs.

¹ Report 65, para. 7.

the heavy cost of serving notices on other persons at the same time.

Presump-
tion of
consent
undesirable.

94. The suggestion of the Rankin Committee to revert to the procedure obtaining under the Code of 1882 whereby consent of the proposed guardian could be presumed did not commend itself to the majority of the High Courts at that time. The purpose of appointing a guardian is to safeguard the interests of a minor and if his consent is presumed, although he has not expressly given it, he cannot be trusted to act in the minor's interest. In such a case the possibility of the minor defendant bringing a suit to set aside the decree on attaining majority cannot be overlooked. An amendment on these lines has actually been made in Allahabad. In our view such a provision is likely to increase litigation and we are unable to recommend it.

Recommen-
dations.

Early
appointment
of guardian
by the
court.

95. We, however, recommend that a notice should be issued in the first instance to a guardian appointed by a competent authority, or, if there be none, to the natural guardian, or failing him to the *de facto* guardian, i.e., the person in whose care the minor is. This is already provided in Order XXXII Rule 3(4). If the court finds that none of them can be appointed, it should immediately appoint one of its own officers as guardian for the suit instead of calling upon the plaintiff to propose the names of other distant relatives or friends. Sub-rule (4) of Rule 4 will have to be amended accordingly. We do not expect any difficulty in the officer of the court so appointed being able to discover a relative, near friend or other person who would be able to give necessary instructions to him and also put him in funds for the defence of the suit. It should of course be open to such near relative or other person who has been discovered and approached by the official guardian to come to the court and express his willingness to accept guardianship for the purpose of the suit. The court would in that case relieve the official guardian of his duties and appoint that relative or the other person guardian for the suit. In cases where the court appoints an officer of the court to be the *guardian ad litem*, it should also be authorised to direct that the costs of the guardian shall come out of the estate of the minor. Provision to this effect has been made by the High Courts of Madras, Bombay, Nagpur and others.

Provision
for costs
of guardian.

Notice to
the minor.

96. Sub-rule (4) of Rule 3 of Order XXXII requires notice to be served on the minor also before any order can be made on an application under that rule. This rule has been amended in different States. Thus in Bombay and Madras it is not necessary now to issue a notice to the minor. In Uttar Pradesh following the recommendation of the Uttar Pradesh Judicial Reforms Committee, notice has to be served upon the minor only if he has attained the age of twelve. In Kerala the age has been fixed at fifteen years. We think some uniformity in this matter is desirable. Again, when a minor is of tender years and unable to form

an opinion as the person most suitable to be appointed guardian, no useful purpose would be served by serving a notice upon him. On the other hand, it is equally undesirable to dispense completely with notice to a minor as has been done in Bombay and Madras. The minor may have reached an age nearing the age of majority and in such cases it would undoubtedly be advantageous to consult him. We do not think it is necessary to lay down a hard and fast rule as to the age at which a minor should be consulted. It should, in our view, be left to the discretion of the court to determine in each case, whether notice should be issued to the minor also. This is precisely the position in Madhya Pradesh under Rule 4-A framed by the former Nagpur High Court. We recommend an amendment of the Code enacting a similar rule.

To be discretionary.

97. The court has power to issue commission—(a) for examination of witnesses, (b) for making local investigations, (c) for examining or adjusting accounts or (d) making a partition. Delays at times occur when commissions are issued for the examination of a witness or for making a local investigation or adjusting accounts.

Commissions.

Generally, a pleader is appointed a commissioner for the examination of a witness. Although the court fixes a date for the return of the commission, delays frequently occur and the commissioner applies for an extension of the time fixed for the execution of the commission. The delay may arise by reason of the commissioner being a busy pleader and not being able to devote time to the work entrusted to him especially when the fees payable are unattractive. Delay may also be caused by the parties or their pleaders trying to seek adjournments of the examination before the commissioner.

Delays in executing commissions.

The commissioner appointed under the Code is an officer of the court and if the court exercises proper vigilance, there should not be unreasonable delay in the execution of the commissions for examining witnesses residing within the court's jurisdiction. If the delay is occasioned by the default of the commissioner himself the court would be justified in revoking his appointment and appointing another person instead of extending the time. If, on the other hand, the party at whose instance the commission is issued is guilty of dilatory tactics, the court can still revoke the order of examination by commission and the party in default must take the consequences of such revocation. This is a matter entirely in the discretion of the court and expedition can be attained if the commissioner is imperatively required to finish his work within a stated period and if his fees are reduced in case of delay in executing the work.

Strictness necessary.

98. As regards witnesses residing beyond the court's jurisdiction the commissions are generally issued to the court within the local limits of whose jurisdiction such witness

resides or to any pleader or other person whom the court issuing the commission may appoint. The court to whom the commission is issued is not bound to record the evidence but it may cause the evidence to be recorded by the appointment of a commissioner. The Civil Justice Committee observed: "As there is a disinclination to add to the duties of the court the recording of evidence in suits not within their jurisdiction, the usual practice is to appoint a pleader in the place where the witness resides as commissioner..... The pleaders to whom they are issued are apt to put them on one side and to take them up when they have nothing better to do." The work of recording evidence on commission should in our view be entrusted to comparatively junior lawyers who do not have much court work instead of busy practitioners who would not be able to give time to such work. Some courts maintain a list of pleaders willing to work as commissioners. As far as possible this list should consist of junior lawyers who can be depended upon to execute the commission promptly. Junior lawyers competent to do this work will undoubtedly be found in all districts.

List of suitable persons to be maintained.

Excessive length of depositions.

Powers of Commissioner.

Recommendations of the Rankin Committee.

Not favoured.

99. The opinion generally held is that the depositions before the commissioners tend to be extremely lengthy. Although, it would appear that in law the commissioner has the authority to exclude irrelevant or inadmissible evidence, the Code is not clear on the point and the commissioner feels incompetent to exercise this power and the result is a mass of useless matter placed on record, through the mouth of the witnesses and much time and expenditure are wasted in the process. The Civil Justice Committee recommended that the rules should be recast in order to provide for the appointment of a commissioner who shall have the same authority as the court in excluding inadmissible evidence or for the appointment of a commissioner who would be obliged to record everything that each party desired leaving the question of admissibility or inadmissibility to the decision of the court which issued the commission. In cases in which a commissioner is given full power to reject evidence as inadmissible the Committee recommended that an appeal against the decision refusing to admit evidence should lie to the court which issued the commission and that such appeal should be filed within seven days. This proposal was rejected by most of the High Courts. We cannot recommend it. The acceptance of it will result in a multiplicity of interlocutory appeals which will have the effect of holding up the trial. A simpler solution is that the commissioner recording the evidence should have regard to the provisions of the Evidence Act and in case the pleader or other person examining the witnesses presses any question which the commissioner has disallowed, he should record such question and the answer thereto, but the same should not be admitted as evidence

except by the order of the judge before whom the deposition is put in evidence. Such rules have been made by some High Courts and it is necessary that they should be generally applied by being enacted as a part of Order XXVI.

100. Delays also occur in the return of commissions issued for local investigations or for taking accounts. We think that commissions for local investigations which are usually issued for the purpose of preparing a plan or map of the site in dispute or for like purposes would be expedited if the work is entrusted to some ministerial officer of the court instead of to a pleader. The court will be able to exercise a more efficient control and supervision over its own officer than over a pleader. Other commissions.

As regards commissions for taking accounts the Civil Justice Committee suggested, that the work should be entrusted to individuals competent in particular forms of accounts and that they should be remunerated adequately for the work performed. The appointment of commissioners is in the discretion of the court and the court can make a careful and judicious choice, and keep a strict watch over his work. Civil Supervision necessary.

101. Delays in the trial of a suit or proceeding often occur by reason of orders of stay of proceedings passed by appellate or superior courts. Apart from the stay of execution of decrees, stay orders relating to suits and proceedings arise generally out of interlocutory matters. The progress of the suit is held up by an appeal or revisions against an interlocutory matter. Stay of proceedings.

A majority of these appeals and revisions lack substance. Sometimes, such interlocutory proceedings are not even *bona fide*. The applicant or appellant who files such interlocutory appeals or revisions knows that there is no chance of success and he files it only in order to gain time when other attempts to obtain adjournments have failed. In such cases the original proceedings should not be stayed, unless a very strong case is made out. In any case, no stay should be granted without imposing terms. The appellate courts should be very careful in dealing with admission of revisions or appeals against interlocutory orders. An examination of the returns of such proceedings shows that in more than 80 per cent of such cases the order passed by the court of the first instance is confirmed and the appeal or revision is dismissed. The superior courts should also pay more attention to the disposal of these revisions and appeals which delay the original proceedings and as far as possible priority should be given to them. It will also be useful if the returns made by the subordinate courts to the superior courts contain a column setting out the suits in which proceedings have been stayed by the superior courts. This will have the advantage of indicating to the superior courts from time to time the number of proceedings that Stay orders by superior courts.

Remedies.

have been stayed by reason of their orders and enable them to take measures for the early disposal of the proceedings in which stays have been granted.

We have also discussed the problem of delays arising on account of stay of proceedings of interlocutory stages in the Chapter on "Civil Revisions" and have made several recommendations, which need not be repeated here.

Summary of conclusions and recommendations.

102. We may summarise our conclusions and recommendations on the trial of civil suits as follows:—

(1) Instruction in the art of drafting pleadings should form part of the lawyer's professional training course.

(2) Efforts should be made by the legal profession to stop the practice of pleadings being drawn by clerks and petition writers.

(3) Order VI, Rule 15 of the Civil Procedure Code should be amended by providing that the verification of pleadings should be on oath, so that in *ex parte* cases, the court may in its discretion give judgment on the plaint without requiring additional evidence and the defendant may not falsely deny obvious facts.

(4) Parties should be required to file with their pleadings a registered address, service of processes and notices at which, will be deemed to be service on the party for the purposes of the suit, appeal, revision or execution proceedings. Order VI may be amended by the addition of a rule similar to rule 14-A in West Bengal.

(5) Whenever there is concentration of several courts at one place, a special officer of the rank of a civil judge should be appointed for the purpose of receiving, scrutinising and checking pleadings with power to make peremptory orders for dismissal of the suit or direct amendment or rejection of the pleadings.

(6) The form of summons to the defendant should be amended by inserting in it a direction to the defendant to file a written statement by a date which should be the date fixed for settlement of issues and a note added in the summons to the effect that if the written statement is not filed by that date, the matter may be dealt with *ex-parte*.

(7) The courts should be strict in the matter of granting adjournments for filing written statements.

(8) Government should generally be given three months notice from the date of the summons for filing its written statement. Order XVII, Rule 5 should be amended as in Madras.

(9) Parties should be directed to file with their pleadings printed forms of processes, filled in by them leaving only the relevant dates to be filled in by the court.

(10) Printed forms for this purpose should be made available free of cost or on a small payment.

(11) Parties should be responsible for the accuracy of the details given in the forms.

(12) The courts should exercise very strict supervision over the process serving establishment to reduce delays in the service of process.

(13) If practicable, a responsible officer should make regular inspections of the work of the process servers by paying surprise visits to the villages.

(14) The service conditions of process servers should be improved and provision made for the payment of travelling and other allowances to them.

(15) Summons by post and summons in the ordinary form should be issued simultaneously and the courts should act on whichever return shows effective service.

(16) Substituted service should be ordered after two unsuccessful attempts to effect service in the ordinary manner or by post.

(17) Although suggestions as to the framing of issues may be invited from the advocates, judicial officers should invariably frame the issues themselves after studying the pleadings and documents and after obtaining relevant information from the parties.

(18) The rules for the examination of parties contained in Order X, Rule 1 and 2 should be fully applied.

(19) The provisions relating to discovery and the production and admission of documents in Orders XI, XII and XIII should be made use of as frequently as possible.

(20) Order VIII, Rule 11 should be amended as in the Punjab so as to require a defendant to produce documents on which he bases his defence or claim for set-off and file a list of documents on which he relies as evidence in support of his case.

(21) The provisions of Order XII, Rule 3-A should be more extensively used.

(22) If necessary, after the settlement of issues, one intermediate date may be fixed before the date of hearing for filing supplementary lists of documents.

(23) The production of further documents should not be allowed at the stage of hearing save in exceptional circumstances and for good reasons to be recorded in writing.

(24) The court should insist upon the list of documents and their production in court being made in chronological or some other methodical order.

(25) Questions as to the relevancy and the admissibility of documents should be decided as and when they arise and not left to be decided at the stage of delivering the judgment.

(26) The High Courts should continuously draw the attention of presiding officers to the advantages resulting from the use of the provisions relating to discovery and inspection.

(27) Parties should be required to file their lists of witnesses within a time to be fixed by the court not exceeding thirty days from the date of the framing of the issues.

(28) The date of hearing should be fixed after such lists are filed and in consultation with the lawyers to ensure a day to day hearing.

(29) Parties should be encouraged to procure the attendance of the witnesses without the issue of a summons. No aspersions should be allowed to be cast on the integrity or impartiality of witnesses who appear without summons on the ground of their appearing without being summoned.

(30) Applications for examining additional witnesses not mentioned in the list should be decided on their merits and on sufficient reasons being placed before the court for such examination.

(31) Process fees should be remitted in cases when the party himself serves the summons.

(32) A separate machinery for conciliation proceedings is unnecessary.

(33) The bringing about of a compromise should be left to the initiative of the trial judge.

(34) The judge should be able at the stage of the clarification of the pleadings and the examination of the parties under Order X to form a view whether the case is suitable for a compromise and to make suitable suggestions with a view to effecting a settlement in appropriate cases.

(35) An elaborate pre-trial procedure on the American model is not suitable for adoption in our country.

(36) *Ex parte* and uncontested cases should be fixed for hearing early by putting them in a separate *ex parte* list.

(37) Uncontested cases fixed for hearing on any given date should be disposed of before contested matters are taken up.

(38) If the plaint is verified on oath, judgment may be passed for the plaintiff without recording evidence. In all other cases formal evidence will have to be taken.

(39) Judicial officers should pay personal attention to the posting of cases and the fixation of dates for trial.

(40) The way in which a judicial officer fixes his diary and adjourns cases should be taken into account in assessing his efficiency.

(41) The methods of arranging cause lists and fixing of dates prevalent in Madhya Pradesh may be adopted and its observance strictly enforced. If there are difficulties in working it, the methods adopted in Madras and Bombay and described in paragraphs 59 to 61 *ante* may be adopted.

(42) The hearing of contested cases once begun should continue from day to day in strict conformity with the provisions of Order XVII, Rule 1.

(43) Efforts should be made to distribute work among judicial officers in a systematic fashion.

(44) When an officer is required to do both original civil and sessions work, sessions cases should be transferred to him immediately on receipt of the committal order and it should be for the judge trying the case to fix the date of hearing having regard to the state of his file.

(45) Adjournments should not be granted merely to suit the convenience of the parties or their advocates.

(46) An opening need not be insisted upon in every case but only in complicated cases when the court feels the need for it.

(47) If parties to a suit wish to give evidence they should do so before their other evidence is led.

(48) The courts should encourage the larger use of affidavit evidence for proof of simple and incontrovertible facts.

(49) Judges should be enabled to dictate the evidence of witnesses to a typist in court instead of

recording it in their own hand. A provision similar to section 356 of the Code of Criminal Procedure as amended should be made in the Code of Civil Procedure.

(50) Arguments should, as far as possible, be heard immediately on the conclusion of the evidence or in complicated cases within a short time thereafter.

(51) The High Courts should frame and enforce rules for judgment to be delivered promptly or within two weeks of the close of the hearing except for good reasons to be explained by the presiding officer.

(52) Whenever the court reserves judgment in a case it should, at the time of adjournment for consideration, specify the date on which the judgment will be delivered.

(53) All judicial officers should be furnished with stenographers as in the States of Andhra Pradesh and Madras.

(54) It is not necessary to read out the full judgment in open court. It is sufficient if the findings on the issues and the final order are read.

(55) Order XXXII, Rule 2 should be amended so as to empower the court at any stage of the suit to order the next friend of a minor plaintiff to give security or the defendant's costs if the suit appears to have been instituted by the next friend improperly or unreasonably.

(56) When there is a minor defendant a guardianship notice should be issued in the first instance to (1) a guardian appointed by a competent authority or (2) a natural guardian or (3) the de facto guardian, that is, a person in whose custody the minor is.

(57) If none of them can be appointed, the court should immediately appoint one of its officers as guardian for the suit, till a suitable relative willing to accept the guardianship is discovered.

(58) The costs of the official guardian should come out of the estate of the minor.

(59) Order XXXII, Rule 3, sub-rule (4) should be amended so as to leave it to the courts discretion to determine whether notice should be issued to the minor defendant.

(60) A commissioner appointed by a court for any purpose should be imperatively required to finish his work within the time fixed and in case of delay his fees should be reduced.

(61) Commissions for recording the evidence of parties or witnesses should be entrusted to junior lawyers not having much work. A list of suitable junior

lawyers willing to work as Commissioner should be maintained in each court.

(62) If any question is objected to and the Commissioner for recording evidence considers the objection valid but the other party insists on the question being permitted, the Commissioner should record both the question and the answer thereto, but the same should not be admitted as evidence except by the order of the judge before whom the deposition is tendered as evidence.

(63) Commissions for local investigation like preparing a plan or map may be entrusted to ministerial officers of the Court.

(64) Superior courts should submit appeals and revisions from interlocutory orders to a close scrutiny and admit them or grant a stay only in proper cases.

(65) Superior courts should dispose of proceedings in which stay orders have been issued expeditiously.

(66) Subordinate courts should indicate in their returns the cases and proceedings which have been held up owing to the stay orders.

15.—CIVIL APPEALS

Appeals,
Scope
of Existing
law relating
to.

1. The Indian legal system knows of three procedures by which a litigant can obtain relief against decrees or orders passed by a Court. He has a remedy by way of appeal, revision or review. We are, in this chapter, concerned only with the right of appeal.

Right of
appeal
conditioned
by value.

2. The right of appeal in civil proceedings is primarily conditioned by the value set upon the subject matter in dispute in the suit for the purpose of jurisdiction. As we have seen, almost the entire volume of original civil litigation is disposed of by judicial officers of the class of Subordinate Judges or Senior Civil Judges, and Munsifs or Junior Civil Judges. The limits of their pecuniary jurisdiction are defined by the respective *Civil Courts Acts*. These limits are not uniform. In the case of Munsifs or Junior Civil Judges, their pecuniary jurisdiction varies from Rs. 10,000 in Bombay and Madhya Pradesh to Rs. 1,000 in Punjab and Orissa. Above these limits, the Subordinate Judges or Senior Civil Judges exercise unlimited pecuniary jurisdiction in all States, except a few. All suits above the pecuniary limits of the Munsifs or Junior Civil Judge's jurisdiction, which are generally assumed to be more important, are triable exclusively by the Subordinate or Senior Civil Judge.

First
Appeals
to District
Court and
the High
Court.
Appeals to
the Sup-
reme
Court.

3. From the decrees passed by the Courts in these suits, the law provides a first appeal to the district court or the High Court on questions of facts as well as law¹. There is a further right of appeal to the Supreme Court under article 133 of the Constitution and section 109 of the Civil Procedure Code from a decree passed in appeal by a High Court, subject to certain conditions.

No right
of appeal
in small
cause
suits.

4. Small and simple suits for money or movable property and the like fall within the jurisdiction of the Courts of small causes or regular Courts exercising the powers of a Court of small causes. These cases are tried summarily according to the small cause Court procedure, and there is no right of appeal from decrees passed in such suits but only a right to invoke the High Court's revisional jurisdiction.² If cases of this description are tried according to the regular procedure by Courts not invested with powers of a small causes Court, only one appeal is allowed

¹ Within defined pecuniary limits, appeals lie to the District Judges from decisions of the Subordinate Tribunal.

² In U.P. revisions lie to the District Judge.

on facts and law to the district appellate Courts and no further appeal lies to the High Court, unless the value of the subject matter in dispute exceeds Rs. 1,000.

5. There is a large volume of cases which may either be (a) of a small cause nature, but the value of the subject matter of which is above Rs. 1,000 and below the upper limit of the Munsif's or Junior Civil Judge's jurisdiction as defined by the local Civil Courts Acts or (b) of a nature which, under the law for the time being in force, are excepted from the cognizance of Courts of small causes. Right to second appeal.

In such cases, there is a first appeal to the district appellate Court on facts and law and a second appeal to the High Court on a point or points of law only. The findings of the lower appellate Court, whether of affirmance or of reversal, on issues of fact are conclusive and cannot ordinarily be re-opened in the High Court¹. A second appeal will lie on any of the following grounds, namely; "(a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; (c) a substantial error or defect in the procedure provided by the Code or by any other law for the time being in force, which may possibly have produced an error or defect in the decision of the case upon the merits."

6. Finally, we have the system of Letters Patent appeals under clause 15 of the Letters Patent of the Calcutta, Madras and Bombay High Courts and clause 10 of the Letters Patent of the High Courts of Allahabad and Patna. These appeals lie to the High Court from judgments of a single Judge (a) in the exercise of its original jurisdiction, (b) in the exercise of its appellate jurisdiction in a first appeal, or (c) in the exercise of its appellate jurisdiction in a second appeal, provided the Judge who passed the judgment certifies that the case is a fit one for appeal. Letters Patent Appeals

7. There are also miscellaneous appeals arising out of orders of an interlocutory nature in pending suits, appeals from orders in execution, and the like. Section 104 and Order XLIII Rule 1 of the Civil Procedure Code contain an exhaustive list of appealable orders of this type. Section 104(2), however, contemplates only one appeal against such orders and a second appeal is barred. But the section makes an exception in the case of other orders against which appeals are allowed by other express provisions of the Code or by any other law. For instance, orders passed under sections 47, 144, 145 etc. are treated as decrees and are subject to first and second appeals. The provisions of section 104(2), however, do not take away the general right of appeal to the Supreme Court given by section 109. Miscellaneous appeals.

This completes the picture of the structure of our appellate system.

¹ Except in Kerala.

Curtailment of right of appeal.

8. Since the early seventies, the Indian legal system has met with the criticism that it permits a multiplicity of appeals causing enormous delays and costs. A case commenced in a subordinate Court is generally taken in appeal to a district appellate Court and thence to the High Court, and again by leave to a Division Bench of the same High Court. It may eventually be taken to the Supreme Court, if the nature of the case permits. There may thus be—and there, not infrequently, are—cases where the same matter may be given three or four or even five hearings and the party ultimately losing becomes liable to pay the costs of all these separate hearings. Even the party emerging as the ultimate victor may find that he has achieved only a pyrrhic victory, for his unrecoverable costs may exceed the value of the judgment he has obtained. Except in those cases in which the law allows no appeal, a litigant today has no means of estimating beforehand the ultimate costs of the litigation, because he can never know where his case will end.

Total abolition of appeals not possible.

9. The cost of litigation could undoubtedly be minimised and justice made speedier, if appeals could be dispensed with altogether by giving finality to the decisions of the trial Court, care being taken to make these Courts very efficient. But the total abolition of the right of appeal is a course which cannot be contemplated. For, as the Committee on Supreme Court practice and procedure in England observed: "The legal system of every civilized country recognizes that Judges are fallible and provides machinery for appeal in some form or another. The right of appeal ***** is too ingrained in our legal system to be capable of being uprooted in toto. The problem must be approached * * * * on the basis that it would be palpably wrong to leave the defeated litigant entirely without remedy in all cases, even in those where the judgment against him is demonstrably wrong, or to deny him altogether the chance of appealing from a decision which leaves him smarting under a sense of injustice." The question before us, therefore, is whether, and how far, the right of appeal can be curtailed, with a view to making justice speedier and reducing the litigant's costs.

History of proposals for curtailment of appeals.

10. The view that there should ordinarily be only one appeal in civil cases, followed by a revision on the ground of failure or miscarriage of justice, has been propounded in India from very early times. In 1872, Sir James Stephen, summing up the view of the Judges of the Calcutta High Court, said that the whole system of appeals in civil cases was radically faulty and the number of appeals ought to be greatly reduced and the inferior Courts strengthened. One of the Judges, Sir Barnes Peacock, wanted to abolish second appeals altogether and went to the extreme length of pointing out that it would be cheaper to Government

¹ Final Report of the Committee on Supreme Court Practice and Procedure in England, page 158, para. 473.

to pay the full amount of the appellant's demand with costs of both parties and to give each a bonus for terminating the litigation than to support the establishment of the High Court for hearing such second appeals. Since 1873, the Government of India has, from time to time, made various proposals for changes in the law of procedure relating to appeals, the most prominent of them being a partial restriction of the right of second appeals. It is unnecessary to enter into a detailed discussion of those proposals or to refer to the various comments collected thereon by the Government of India. The principal opposition to these proposals, however, came from the Calcutta High Court which strongly objected to making the right of appeal dependent on the value of the subject matter on the ground that important questions may be raised even in cases of small value. A further objection was that the deficiency in the knowledge of law and the strength of character of subordinate Courts necessitated a preservation of the liberty of the second appeal¹.

In a Bill introduced in 1901 for the revision of the Code of Civil Procedure, it was proposed that no second appeal should lie in suits of a small cause nature of a value under Rs. 1,000, unless the decree involved directly some claim or question respecting property exceeding such value and also that, in other cases no second appeal should lie, unless the value of the suit was over Rs. 100. This Bill was withdrawn after opinion had been invited on it.

Finally, in 1907 while introducing the Bill which became the Code of Civil Procedure of 1908 Sir Erle Richards, speaking of the litigant's right to a second appeal, referred to the "strong feeling among the public that it would be an injustice to deprive them of the right of obtaining a decision of the highest tribunals".² He hoped that a time would come when, by the improvement of the lower courts, this feeling would subside but that for the time being it was wise to leave matters alone. Thus, in 1908, when the present Civil Procedure Code was enacted, the position remained practically the same as it was in the seventies.

11. In examining, therefore, the question of the multiplicity of appeals, let us, in the first instance, take the cases triable exclusively by an officer or the rank of a Subordinate Judge in Madras or Bengal or a Civil Judge, Senior Division, in Bombay or cases triable by a District Judge. These are suits in which the amount or value of the subject matter in dispute exceeds Rs. 5,000, or in Bombay and Madhya Pradesh Rs. 10,000. A first appeal¹ in such cases, lies direct to the High Court, both on facts and law, except in cases where an appeal can be entertained by the District Court. The following Table shows the volume of this type of work for the years 1954 and 1955.

First Appeals to the High Courts.

¹ For fuller details of the proposals of the Government of India and the opinions of the Calcutta High Court from time to time see Chapter 21 of the Civil Justice Committee's Report, page 334 and the following pages.

² Op. cit. page 341.

TABLE A

Comparative Table showing the Institution, Disposal and Pendency of first appeals from decrees in the High Courts of the various States during the years 1954 and 1955

Name of the State	Pending at the beginning of the year		Instituted		Total for disposal		Disposed of		Pending at the close of the year		Remarks
	1954	1955	1954	1955	1954	1955	1954	1955	1954	1955	
I	2	3	4	5	6	7	8	9	10	11	12
Andhra	2025	2210	285	535	2310	2745	100	291	2210	2454	*The actual number of first appeals disposed of was only 500, the remaining 2,054 appeals were transferred to the Andhra High Court.
Assam	74	82	24	36	98	118	16	14	82	104	
Bihar	2206	2496	552	552	2758	3048	262	285	2496	2763	(A) The figure shown against this State include Original Side Appeals.
Bombay (A)	2070	2100	826	935	2896	3044	787	658	2105	2386	
Madhya Pradesh	1053	1017	187	198	1240	1215	223	209	1017	1006	(B) The figures shown against this State relate to the Official years 1954-55 and 1955-56.
Madras	3987	2251	818	609	4805	2860	2554*	547	2251	2313	
Mysore (B)	824	1134	356	210	1180	1344	46	620	1134	724	
Orissa	314	264	29	46	343	310	81	69	264	243	
Punjab	941	1076	309	272	1250	1348	174	99	1076	1249	
Rajasthan	353	430	180	167	533	597	103	73	430	524	
Travancore-Cochin	1868	1471	745	795	2613	2266	1142	1180	1471	1086	
Uttar Pradesh	3081	3310	602	552	3683	3862	373	283	3310	3579	
West Bengal	970	1053	280	345	1250	1398	197	193	1053	1205	
	19,766	18,903	5,193	5,252	24,959	24,145	6,058	4,521	18,903	19,636	

NOTE.—The above Statistical data has been supplied by the High Courts.

A comparison of the above figures with the corresponding statistics examined by the Civil Justice Committee for the year 1922 is instructive.

TABLE B

Province	Total number of appeals before Courts	Number of appeals decided	Number of appeals undecided at the end of the year
Agra	1577	561	1016
Bengal including Assam	784	308	482 (476 ?)
Bihar and Orissa	1033	288	745
Bombay	951	366	585
Central Provinces and Berar	402	164	238
Madras	1597	372	1135
Oudh	254	127	127
Punjab	1198	234	964
	7706	2420	5292 (5286 ?)

The above Tables show that the arrears in 1954 and 1955 in this category of work in the High Courts are much heavier than in 1922.

The average duration of these appeals and the number of old appeals on the files of the High Courts will appear from the undermentioned two tables.

Extent of delays and arrears.

TABLE C

Comparative Table showing the average duration in days of First Appeal from decrees disposed of by the High Courts of various States.

Name of the State	Year	Average duration in days	Remarks
1	2	3	4
Andhra	1954	Not available	A. Less 266 days of average duration due to one or more long vacations which intervened in 1956 Cases out of a total of 160 Cases.
	1955	Not available.	
Assam (excluding Tribal Areas)	1953	103.2	
	1954	112.2	
Bihar	1953	2151.6	
	1954	1887.1	
Bombay	1954	Not available.	
	1955	Not available.	

TABLE C—contd.

1	2	3	4
Madhya Bharat	1952	1285·0	B. Less 363 days of average duration due to one or more long vacations which intervened in 154 Cases out of a total of 155 Cases.
Madhya Pradesh	1954	2503·0	
Madras	1954	1305·0	
	1955	1262·0	
Mysore	1954-55	Not available.	
Orissa	1954	1783·0	
	1955	1580·0	
Punjab	1954	715·0	
	1955	737·0	
Rajasthan	1954	Not available.	
	1955		
Saurashtra	1954	289·0	
	1955	482·0	
Travancore-Cochin	1954-55	Not available.	
Uttar Pradesh	1954	2037·0	
	1955	2145·0	
West Bengal	1954	1454·0A	
	1955	1564·0B	

TABLE D

Comparative table showing the pendency of first appeals in the High Courts of the various States according to the years of institution of the pending appeals (as on 1-1-1957).

Name of the States	Ear-lier than 1939	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Andhra Pradesh (A)	7	1	2	9	9	11	31	103	514	630	654	692	714
Assam	3	18	23	36	32
Bihar
Bombay	1	18	155	219	257	315	301	262	419	452	689
									1	..	..	2	38	87	275	322	535	745	629
Madhya Pradesh	5	2	29	59	87	130	126	145	242
Madras (M)	1	1	5	10	75	468	435	584	826
Mysore (C)	8	37	57	73	180	106	107
Orissa	1	..	1	..	1	4	9	15	42	44	36	22	40	62
Punjab	1	1	..	23	123	134	229	216	311	282
Rajasthan	1	6	26	39	64	141	146	126
Travancore-Cochin	1	..	..	..	1	1	1	7	3	42	84	172	333	578
Uttar Pradesh	28	100(D)	195	173	248	188	343	381	363	361	396	513	595
West Bengal	1	1	4	10	18	51	146	193	205	315	336

NOTE.—As regards the States affected by the States Reorganisation Act, 1956, it is not known except in the case of those marked A, B & C above, whether the figures shown against them indicate the position as it stood prior to the re-organisation or otherwise.

REMARKS.—(A) Includes appeals relating to the Telangana region. (B) Includes appeals from the original side of the High Court and those pending before the Nagpur and Rajkot Benches. (C) Does not include appeals received by transfer from Madras, Bombay and Hyderabad. (D) Includes appeals instituted earlier and were pending. (M) Includes Original Side and City Civil Court Appeals.

It will be noticed that in the case of a number of High Courts the average duration of these appeals exceeds two years and, in some cases, it is as high as five or six years. The two High Courts which show the longest average are Uttar Pradesh and Madhya Pradesh, with an average duration of 2,145 and 2,294 days respectively. It appears that in Madhya Pradesh, the average duration which was 418.7 days in 1922 had increased to 2,294 days in 1954. Uttar Pradesh shows a substantial number of ten-year-old appeals awaiting disposal in 1957. It will be realised, therefore, that emergent and drastic measures will be necessary, if the target for the disposal of these appeals, which we have fixed at two years, is to be reached.

Raising of appellate jurisdiction of district judges.

12. In our opinion, much relief can be given to the High Courts by a resort to the simple expedient recommended by the High Court Arrears Committee, 1949, of raising the appellate jurisdiction of the District Courts. Its introduction, we think, will be of great advantage in all the High Courts. As the High Court Arrears Committee correctly pointed out in 1949, a great deal of the time of the High Court is taken up in disposing of first appeals. "Thirty to forty per cent of these first appeals arise out of suits valued at Rs. 10,000 or less. Considering the depreciation which has taken place in the value of money and consequent rise in the market value of property generally, there does not appear to be any cogent reason why the District Courts should not be vested with jurisdiction to dispose of first appeals upto Rs. 10,000". It may be pointed out that the present limit of Rs. 5,000 was fixed over a century ago. In Bombay, Madras and Madhya Pradesh, the District Judges hear all appeals upto Rs. 10,000 from the decrees of the Subordinate and Civil Judges. In Uttar Pradesh and West Bengal also, the appellate jurisdiction of the District Judges has been raised to Rs. 10,000.

Strengthening cadre of District Judges.

13. We are confident that the acceptance of the recommendation will give considerable relief to the High Courts by reducing the number of annual institutions. It is true that it will result in an increase of work in the district appellate Courts and require more Judges in these Courts. But, it is easier and less expensive to appoint more District Judges than to raise the strength of the High Courts. The State Governments will, however, have to take prompt measures to appoint the additional District Judges needed; otherwise, the result will merely be the accumulation of heavy arrears in the district appellate Courts.

A possible objection.

14. To the course, suggested above, an objection was taken on the ground that the judicial officer of the present day is not competent to handle appeals in cases of a higher valuation. This view has, in our opinion, no substance. It overlooks the important circumstances of the steep fall in the value of money so that claims of Rs. 10,000 in value today are but what would have been claims of the value

of Rs. 3,000 some years ago. We are convinced that the increase in the pecuniary jurisdiction of the district and subordinate Courts, both in original and appellate, is justified by the fall in the value of money. We, therefore, recommend that, following the examples of Bombay, Madhya Pradesh, West Bengal, Madras and U.P., the Governments of the States where the appellate jurisdiction of the district Courts is below Rs. 10,000 should take immediate steps to raise it to Rs. 10,000.

15. As a corollary, we further recommend that retrospective legislation should be forthwith undertaken for the two-fold purpose of transferring all pending first appeals in the High Courts between Rs. 5,000 and Rs. 10,000 to district appellate Courts and for providing that appeals in all suits below Rs. 10,000 should lie to the district appellate Courts, whether the suits were instituted before or after the date of the legislation. The West Bengal and the U.P. enactments are not retrospective in that they do not apply to, or affect appeals from, decrees or orders passed in suits instituted before the commencement of the relevant Acts. Where such appeals have become ready for hearing, for example, when the paper books are ready and the advocates have been briefed, additional costs and hardship to the parties and the advocates can be avoided by temporarily posting a sufficient number of District Judges at the headquarters of the High Court to dispose of such appeals within a year.

Retrospective legislation

Transfer of pending appeals.

16. The two rights of appeal *viz.*, the right of first appeal to the High Court and a further right of appeal to the Supreme Court in certain cases are, to quote the Civil Justice Committee, "both proper and necessary * * * and that guarded and conditioned as at present, they are justifiable in principle, in practice necessary as a control over the different (and differing) High Courts and a source of strength for our judicial system with the instructed and uninstructed public."¹ With the abolition of the jurisdiction of the Privy Council and the creation of a Supreme Court in India, the great hardship of heavy costs which had to be incurred in England in appeals of this type has disappeared. On the whole, therefore, we see no further scope for the curtailment of first appeals to the High Court or of appeals to the Supreme Court under article 133.

No scope for curtailment.

17. Our attention has, however, been drawn to a possible method of reducing costs and expediting the ultimate decision in cases of this class.

The leap-frog proposal.

This is known as the "leap-frog" proposal and was considered in its application to appeals to the Court of Appeal and the House of Lords by the Evershed Committee. The principle of the "leap-frog" system which was sponsored by Lord Greene before the Evershed Committee was that

¹Report, page 313.

in cases which were suitable for appeal to the House of Lords and which were of the type in which leave to appeal to the House of Lords was normally granted, the expense and delay involved in appealing to the Court of Appeal in the first instance could be avoided by allowing such appeals to go straight to the House of Lords. "In the exceptional case, of the type considered suitable for consideration by the House of Lords, it would be competent, on the appellant's giving notice of appeal, for either party to petition the House of Lords for leave to appeal thereto direct, by-passing the Court of Appeal. If the application were granted, the appeal would go direct to the House of Lords; if it were refused, the appeal would stand remitted to the Court of Appeal whose decision would then be final."¹

On this basis, the "leap-frog" system, in its application to India, would probably involve all cases within the purview of clauses (a), (b) and (c) of article 133 of the Constitution so that with the leave of the Supreme Court, the parties would be allowed to "leap-frog" the first appeal to the High Court by taking the case straight to the Supreme Court.

Objections.

18. The proposal of Lord Greene was based on the assumption that all cases of the type which ultimately go to the House of Lords with leave are easily recognizable from the start. This assumption was not acceptable to the Evershed Committee whose view was confirmed by the evidence placed before it that such ready identification was not possible. The Committee's view was also confirmed by a sub-committee of the Lords of Appeal in Ordinary who pointed out that "the House of Lords case", far from being readily identifiable at first instance, not infrequently, acquired its qualification for the first time in the Court of Appeal.

It is easy to anticipate similar difficulties in India, especially in regard to cases coming under clauses (b) and (c) of article 133 of the Constitution. To meet this objection, it might be argued that in India the "leap-frog" system could at any rate be introduced in cases covered by clause (a) of article 133 in which the value of the subject matter of the dispute would clearly be above Rupees 20,000, provided both the appellant and the respondent before the High Court declared, in the first instance, that in the event of the decision of the High Court against them, they would take the matter to the Supreme Court in further appeal.

The answer to this is to be found in the second ground of opposition of the Law Lords to the "leap-frog" system. It was pointed out that although the parties might assert that the case would undoubtedly have to go to the Supreme

¹Final Report of the Committee on Supreme Court Procedure and Practice, page 156, para. 48g.

Court, it might frequently happen that after the hearing in the Court of the First Appeal there may, in fact, be no desire to litigate further, not so much on the ground of costs, but because the losing party might be advised that it would not be worth-while to take the matter in a further appeal.

There are two further objections to the "leap-frog" system envisaged by the Law Lords which are of equal, or even greater, application to the conditions in India. The first is that the "leap-frog" system, as envisaged, would deprive the Supreme Court of the benefit of the judgment of the High Court. "It is not to be forgotten * * * that the judgments of the House of Lords have acquired and enjoy a world wide reputation, and they act as final and binding precedents in all Courts in the United Kingdom. In the absence of the Court of Appeal judgments it would * * * * be more difficult for the House to maintain its primacy—at least, unless their deliberations were greatly prolonged."¹ In the same way, the law declared by the Supreme Court of India is binding on all the Courts in the country and we think that it is essential that it should have the assistance of a considered judgment of the highest tribunal in the State.

Secondly, in England the Lords of Appeal in Ordinary are selected from Scotland and Northern Ireland as well as from England and it was pointed out that upon an appeal from England, the members of the House sitting who came from the other parts of the Kingdom would be under a real disadvantage in the absence of the judgment of the Courts of Appeal. In India also, the Judges of the Supreme Court are recruited from all parts of the country. On an appeal coming from one State in India, the Judges of the Supreme Court sitting in appeal who come from different parts of the country would be under a disadvantage in the absence of the expository judgment of the High Court on all questions pertaining to local law, usage, custom, etc. We are, therefore, unable to recommend any such innovation in this country.

Proposal
rejected.

Even in England, though the Evershed Committee recommended the introduction of the system in a modified form hemmed in by a number of safeguards, its recommendation does not appear to have been implemented.

19. The position with regard to second appeals in the High Courts in the years 1955 and 1956 appears from the statements below.

Second
Appeals.

¹Final Report of the Committee on Supreme Court Practice and Procedure, page 159, para. 495.

TABLE E

Comparative table showing the institution, disposal and pendency of second appeals in the High Courts of the various States during the years 1954 and 1955

Name of the State	Pending at the beginning of the year		Instituted		Total for disposal		Disposed of		Pending at the close of the year		Remarks
	1954	1955	1954	1955	1954	1955	1954	1955	1954	1955	
I	2	3	4	5	6	7	8	9	10	11	12
Andhra	3014	2999	482	1001	3496	4000	497	1444	2999	2556	*Actual number of second appeals disposed of was only 1656; the rest were transferred to the Andhra High Court.
Assam	179	168	111	158	290	326	122	122	168	204	
Bihar	5372	5920	1881	2014	7253	7934	1333	1958	5920	5976	
Bombay Madhya Pradesh	1125	1490	1375	1596	2500	3086	1010	1430	1490	1656	
Madras	2896	2700	842	1061	3738	3761	1038	871	2700	2890	(A) The figures shown against this State relate to the official years 1954-55 and 1955-56.
Mysore(A)	700	1022	614	560	1524	1582	502	301	1022	1281	
Orissa	1892	1339	294	282	2186	1621	867	901	1339	734	
Punjab	2280	2245	1198	1080	3478	3325	1233	913	2245	2412	
Rajasthan	1658	1864	671	613	2329	2477	465	481	1864	1996	
Travancore- Cochin	2497	1843	1111	1165	3608	3008	1765	1507	1843	1501	
Uttar Pradesh	9123	10067	2628	2976	11805	13034	1738	2570	10067	10464	
West Bengal	4638	4389	1430	1650	6068	6039	1679	1401	4389	4638	

We have, in a later chapter, recommended a stricter and better scrutiny of second appeals under Order XLI Rule 11. Such a course would, we think, avoid the necessity of a resort to the drastic remedy of a total abolition of second appeals.

Second Appeals. Curtailment right prefer.

20. The principle suggested by us in our Questionnaire that there should be only one appeal in civil cases followed by a revision on the ground of miscarriage of justice provoked considerable opposition.

The High Court's powers in revision under section 115 of the Civil Procedure Code are, unlike those in section 425 of the Criminal Procedure Code, strictly limited to cases of erroneous assumption or non-assumption of jurisdiction or of illegality or material irregularity in the exercise of jurisdiction by the Courts below. The proposal for cutting out second appeals altogether, leaving the aggrieved party to move the High Court in revision, would be impracticable without enlarging the scope of the revisional jurisdiction. It must be recognised that important questions of law sometimes do arise even in cases outside the limits of section 115 on which the highest tribunal in the State may be required to pronounce judgment and give authoritative guidance. To enlarge the scope of section 115 would be tantamount to substituting one class of proceedings for another, and will not take us any nearer the solution of the problem of curtailing too many hearings of the same matter.

Abolition not desirable.

21. Nevertheless, we concur with the view expressed by the Rankin Committee that it is possible to give finality to cases of small and 'intermediate' valuation by providing for only 'one good appeal' on fact and law. The Committee rightly pointed out that the great volume of litigation in India was of a character and value which required "a trial and one good appeal" both on fact and law and that any other elaborate process was unnecessary. This view, which was expressed more than thirty years ago, holds good even to-day, as will be revealed by a reference to a few figures of the valuation of second appeals filed in some of the High Courts in 1956. In West Bengal, out of 1,021 second appeals instituted in 1956, 757 were of a value below Rs. 1,000, 154 were of a value between Rs. 1,000 and Rs. 2,000, and only in 110 appeals did the value exceed Rs. 2,000. In Bihar, in the same year, 1,034 second appeals out of a total filing of 1,429 were valued below Rs. 1,000, 225 between Rs. 1,000 and Rs. 2,000 and only 230 appeals exceeded Rs. 2,000 in value. In Madras, 1,308 second appeals were filed in that year out of which 1,033 were below Rs. 1,000 in value and 139 were of a value between Rs. 1,000 and Rs. 2,000. In Bombay, only 166 such appeals were of a value above Rs. 2,000, 180 were between Rs. 1,000 and Rs. 2,000 in value while in the remaining 704, the value was below Rs. 1,000. Examination of similar figures for the

Low value of second appeals.

Punjab, U.P., Andhra Pradesh, Rajasthan and other States leads to the same result namely that in a very large majority of second appeals, the value of the subject matter is less than Rs. 2,000. Most of these appeals are filed merely as a speculation. The appellant's real object in bringing such appeals is merely to take one more chance even in cases where it is obvious from the start that the appeal is not likely to succeed, and more than anything else to postpone the evil day of the execution of the decree. Viewed against the background of the low value of the subject matter and the high rate of fatality of second appeals in the High Courts, as appears from the figures found in a later chapter, the proposal to give finality to litigation at the stage of the decision of the first appellate Court has much to commend itself.

Objections
to curtail-
ment.

22. One of the arguments which has been advanced against the proposal to raise the jurisdiction of the district and subordinate Courts and to give finality to the district appellate Court's decisions is that the judiciary of the present day is not as competent as it was in the past. It was said that the calibre and standards of efficiency and integrity must first be raised before any proposal for cutting down second appeals can be considered. It was also said that the value of a suit for the purpose of Court fee or jurisdiction is no test of its importance and that sometimes important points of law arise even in cases of small value.

We believe that these arguments spring largely from the fact that the proposal offends vested interests. The constant hard work which the district officers are required to do with an eye to the number rather than to the quality of disposals as insisted upon by some of the High Courts, the trying conditions under which they work, including the poor equipment in the matter of court houses and libraries have to some extent affected their efficiency. There has been no doubt some deterioration in the quality of the personnel. Nevertheless, by and large the district appellate judges who are senior experienced officers can, in our opinion, be depended upon to decide questions both of fact and law with reasonable satisfaction. We have also made recommendations elsewhere which should help to raise the efficiency and standards of the judicial officers. It should not also be forgotten that the efficiency of a judicial officer is largely conditioned by the efficiency of the Bar and the skill and industry which it brings to bear upon the preparation and presentation of the case.

Even now in cases tried by the Courts of Small Causes, the jurisdiction of which in several States exceeds Rs. 1,000 there is no right of even a first appeal although important questions of law do sometimes arise in those cases. The fact that more than 80 per cent of the decisions of the district appellate courts are confirmed in second appeal, as appears from the figures in a later chapter, is, in our opinion, a

sufficient refutation of the charge of incompetence against them. Nor are we much impressed by the oft-repeated argument that cases of small value often involve points of law of general importance. These points of law will arise also in cases of larger value and may well be decided in those cases. There is, in our opinion, no justification for refusing to cut down second appeals to the extent indicated below.

23. Our first recommendation is that the limit of Rs. 1,000 in section 102 of the Code of Civil Procedure should be raised to Rs. 2,000. Such a proposal was also made by the High Court Arrears Committee in 1949 and the U.P. Judicial Reforms Committee in 1951. The limit in section 102 which up to 1956 was only Rs. 500 was raised to Rs. 1,000 in that year by the Civil Procedure Code (Amendment) Act of 1956. It is interesting to notice in this connection that the proposal to prohibit second appeals in suits of a small cause nature upto the value of Rs. 1,000 goes back to the commencement of the present century. In 1926, the Civil Justice Committee recommended an amendment of section 102 by increasing the limit to Rs. 1,000. Today, the value of Rs. 1,000 is much less than that in 1901 or even in 1925 and we, therefore, have no hesitation in recommending the raising of the limit under section 102 to Rs. 2,000.

Recommendations.
Raising limit in section 102 to Rs. 2,000.

24. We are further of the view that this restriction against second appeals in suits below Rs. 2,000 should be extended, by a suitable amendment of section 102, to all suits except suits involving rights over or in respect of immovable property and not be restricted to suits of a small cause nature.

No second appeals in cases below Rs. 2,000—
Exceptions: Suits relating to immovable property.

25. We may refer in passing to an amendment of section 100 of the Civil Procedure Code in Kerala. By Travancore-Cochin Act XVII of 1951, the following clause was added to that section in its application to that State:

Kerala amendment of section 100, C.P.C.

“(d) the finding of the lower appellate Court on any question of fact material to the right decision of the case on the merits being in conflict with the finding of the Court of first instance on such question.”

26. The amendment permits a second appeal even on questions of fact and thereby enlarges the right to file such appeals. A view that questions of fact should be permitted to be raised in second appeal, where the judgment of the first appellate Court is one of reversal on facts, was also pressed upon us by some members of the Bar. This view which has been accepted in Kerala runs counter to the well accepted principle broadly laid down in the Civil Procedure Code and accepted for a long time that second

Disapproved.

appeals should be only on questions of law. The acceptance of this view may well create a tendency in the district appellate judges to avoid as far as possible recording a finding of reversal on facts so as to avoid a scrutiny by the High Court in second appeal. It will also result in an increase in the number of appeals brought before the High Courts which are already carrying a heavier load of arrears. We are, therefore, unable to approve of the change brought about by the Kerala amendment or the principle underlying it.

27. The complaint that the present law makes for multiplicity of appeals derives great force from the provisions for appeals under the Letters Patent of the High Courts. There is considerable variation in the powers exercised in civil appeals by a Judge sitting singly on the appellate side of the High Court. So far as first appeals from decrees in original suits of subordinate Courts are concerned, there are very few cases in which such appeals are heard and finally decided by a single judge. In the High Courts of Bombay and Patna, a single judge is empowered to hear first appeals upto Rs. 10,000 and in Madras, upto Rs. 7,500. In Madras and Bombay, these powers can be exercised only with respect to appeals filed before the appellate jurisdiction of district judges was raised to Rs. 10,000. In the other High Courts, a single judge cannot hear first appeals except those against certain orders under the Civil Procedure Code including orders in execution.

Turning now to second appeals, in the High Courts of Madras, Bombay, Allahabad, Patna and Andhra Pradesh, a judge sitting singly is empowered to hear and finally dispose of all second appeals. In West Bengal, Assam and Orissa, single judge's powers to hear second appeals are limited to cases of the value of not more than Rs. 2,000. From such decisions, an appeal lies under the Letters Patent and this contributes largely to delay in the disposal of cases of small value.

28. It will appear from the annexed Table (Table F) referring to some of the States that the average duration of these Letters Patent Appeals varies from 300 to 1,300 days. Taking into account that second appeals take anything from a year to five years for disposal, as is evident from Table G, a Letters Patent appeal would result in the final decision of a petty case being delayed for at least two to three years after the facts have been finally found by the lower appellate court. In some States, a Letters Patent appeal would result in about 3,000 days being taken in the High Court over a matter which was instituted before a munsif, or a Junior Civil Judge. We, therefore, recommend the total abolition of Letters Patent Appeals from the judgment of a single Judge in appeal on the appellate side of the High Court.

Letters
Patent
Appeals.

The present
position.

Total
abolition
from judg-
ments
on the
appellate
side
recommend-
ed.

TABLE F

Comparative Table showing the average duration in days of Letters Patent or Special Appeals disposed of by the High Courts of various States.

Name of the State	Year	Average duration in days	Remarks
1	2	3	4
Andhra	1954	Not available.	A. Less 108 days of average duration due to one or more long vacations which intervened in 2 Cases out of a total of 3 Cases.
	1955	Not available.	
Assam (excluding the Tribal Areas)	1953	Not available.	B. Less 78 days of average duration due to one or more long vacations which intervened in 3 Cases out of a total of 4 Cases.
	1954	Not available.	
Bihar	1953	Not available.	
	1954	1030.9	
Bombay	1954	Not available.	
	1955	Not available.	
Hyderabad	1954	Not available.	
	1955	Not available.	
Madhya Pradesh	1953	1381.0	
	1954	1220.0	
Madras	1954	539.0	
	1955	349.0	
Mysore	1954-55	Not available.	
	1955-56	Not available.	
Orissa	1954	Not available.	
	1955	588.0	
Punjab	1954	396.0	
	1955	406.0	
Rajasthan	1954	Not available.	
	1955	Not available.	
Saurashtra	1954	Not available.	
	1955	Not available.	
Travancore-Cochin	1953-54	Not available.	
	1954-55	Not available.	
Uttar Pradesh	1954	325.0	
	1955	347.0	
	1954	328.0 A	
West Bengal	1955	297.0 B	

TABLE G

Comparative Table showing the average duration in days of Second Appeal from decrees disposed of by the High Courts of various States.

Name of the State	Year	Average duration in days	Remarks
1	2	3	4
Andhra	1954	Not available	A. Less 301 days of average duration due to one or more long vacations which intervened in 1084 Cases out of a total of 1139 Cases.
	1955		
Assam (excluding Tribal Areas)	1953	405·0	
	1954	603·4	
Bihar	1953	766·9	
	1954	822·4	
Bombay	1954	Not available	
	1955		
Hyderabad	1954	Not available	
	1955		
Madhya Bharat	1954	Not available	B. Less 339 days average duration due to one or more long vaca which interv in 832 Cases of a total of Cases .
	1955		
Madhya Pradesh	1953	1510·0	
	1954	1604·0	
Madras	1954	1168·0	
	1955	1111·0	
Mysore	1954-55	Not available.	
	1955-56		
Orissa	1954	2038·0	
	1955	1088·0	
Punjab	1954	326·0	
	1955	342·0	
Rajasthan	1954	Not available.	
	1955		
Saurashtra	1954	113·0	
	1955	193·0	
Travancore-Cochin	1954-55	Not available.	
Uttar Pradesh	1954	1241·0	
	1955	1276·0	
West Bengal	1954	1487·0 A	
	1955	1586·0 B	

29. The Civil Justice Committee strongly criticised the system of Letters Patent Appeals under which the High Court was obliged to entertain an appeal twice. It stated that in its opinion "the Letters Patent Appeal, that is the right to a fourth hearing, is in no degree short of absurdity. There is no guarantee whatever that a Letters Patent Case will be half so important, from any point of view, as a money decree in a Small Cause suit; and no probability that the judge who decided the second appeal will be any more careless, arbitrary or eccentric than a judge exercising Small Cause Court powers."¹ In the Committee's opinion, this system was "so indefensible whether from the point of view of expedition or of cost to the State or of cost to the parties that it is almost a waste of words to denounce it".² Two alternative methods were suggested by that Committee for getting rid of Letters Patent Appeals from a decree in second appeal. The first was to lay down a rule that no second appeal should be heard save by a Bench and the second was to provide that the second appeal would lie only if the judge hearing the second appeal should certify that the case was of such difficulty or importance that a further appeal should be allowed.

Views of
the Ran-
kin
Committee.

30. The second method was adopted by amendng clause 15 of the Letters Patent of the Calcutta, Madras and Bombay High Courts and the corresponding clause of the Letters Patent of the Allahabad and Patna High Courts by excluding the right of Letters Patent Appeal from a judgment passed by a single judge in second appeal except upon a certificate by that Judge that the case was a fit one for appeal.

Action
taken.

31. We are, however, of the view that even this right of appeal should be abolished and that there should be no Letters Patent Appeals from decisions of a single judge on the appellate side. There seems little justification for providing in cases of small value, a series of appeals from which spring all the evil consequences of delay in the disposal of cases. It is no exaggeration to say that a litigant who has lost will not be satisfied with the decisions of any number of Courts so long as there exists a right to appeal to a higher tribunal.

Case for
abolition.

32. The argument of those who advocate the retention of the present system can be summarised in the following words of the U.P. Judicial Reforms Committee:

Case for
retention.

"Sometimes important questions of law are involved and law has to be laid down for the guidance of subordinate courts also and it is, therefore, necessary that the provision for Letters Patent Appeals should remain."³

¹Report, p. 353, para 7.

²Ibid p. 350, para 3.

³Report, p. 60.

Answered.

33. The argument has its root in the notion that a single judge cannot satisfactorily dispose of an appeal involving a question of law. Some judges including a distinguished Chief Justice and some experienced lawyers feel, first, that cases in the High Court should be heard as far as possible by a division bench of two judges instead of a single judge, because when two minds are set to work on the same matter, the possibility of a correct and balanced view being taken is always greater; and, secondly, a Bench of two judges always carries greater weight than a judge sitting singly. This view has undoubtedly great force. But as was said by the Civil Justice Committee it is idle to shut one's eyes to the fact that not only must a large number of second appeals be heard before the single judge, but that the single Judge must continue to do a great deal of work of incomparably greater importance and not less difficulty.¹ That statement is truer to-day with the increased congestion in the High Courts and our greater need to conserve judge power.

Important questions to be referred to a Bench

34. However, under the rules of all the High Courts, if a judge sitting singly takes the view that a case before him is one which should be heard by a Division Bench, the case is generally directed by the Chief Justice to be heard by a Bench. This may be done by the single judge, either in the exercise of his own discretion or on the application of the appellant or the respondent, if the importance or the difficulty of the case justifies such a course, notwithstanding its low valuation. Normally, the single judge will not refuse such an application, if he is satisfied that the case is of sufficient importance to be dealt with by two Judges. Thus, cases of difficulty or importance can, notwithstanding the abolition of Letters Patent Appeals, still be heard by a Bench of two judges.

Appealable Orders.

No scope for reduction.

35. Section 104 and Order XLIII, Rule 1 of the Code of Civil Procedure contain a full list of the Orders which are appealable. We have considered some suggestions made to us for the omission of some of the items from this list of appealable Orders. In Bombay, clause (w) of Order XLIII, Rule 1 has been deleted by a rule of the High Court so that an order under Order XLVII, Rule 4(2) granting an application for review is made non-appealable in that State. Similarly, items (g), (i) and (o) in Order XLIII have been omitted in Allahabad by an amendment of the Code. Having carefully examined the list of items in section 104 and Order XLIII, Rule 1, we are unable to recommend the omission of any of the items in it. Section 104(2) provides for only one appeal in these cases and a second appeal is barred. It appears to us to be unnecessary to curtail the right of appeal against such orders any further.

¹Report, p. 352, para. 5.

36. At this stage, we might consider a proposal for strengthening the lower appellate Courts by constituting district appellate benches and providing that appeals at the district level should be heard by a Bench of two judges with no further right of appeal and that in case of a disagreement between the judges the case should be referred to the High Court.

District Appellate Benches.
Not desirable.

The proposal to constitute district appellate benches has been put forward and considered from time to time. It appears to have been proposed in Bengal but was not accepted there. It seems to have been actually worked out in the Punjab in the eighties of the last century, but was abandoned later because it was found unsuitable. The Civil Justice Committee recommended the constitution of district appellate benches. The views of the State Governments on its proposals, however, differed greatly. The main objections to the proposal were:—

- (1) that it will be uneconomic;
- (2) that it disturbed the original courts and involved the appointment of extra Judges; and
- (3) that from the point of view of a final decision on a point of law, a Court of the character proposed would be unsuitable. There would be differing decisions in the same State by different district benches.

In consequence of these views, the proposal was not put into practice. Later, in 1947, the question of the constitution of these Benches was fully considered by the High Court of Allahabad. While pointing out the various difficulties likely to arise in the working of the proposal, it seems to have supported it mainly on the ground that, in its opinion, two Judges were more likely to reach a correct decision in a case than a single Judge. The idea was, however, not put into practice in Uttar Pradesh. Recently, the idea was again put forward at the time of the amendments to the Criminal and Civil Procedure Codes in 1955 and 1956, but did not meet with acceptance.

In the opinion elicited by us, the idea has received very little support. The fundamental notion underlying the idea is that appeals at the district level would be more satisfactorily disposed of by a bench of two Judges than under the present system. We do not agree with this view. The District Judges are senior and experienced officers and there is no reason to believe that singly they are not capable of dealing with appeals before them with reasonable efficiency. If these officers are not competent to deal singly with these appeals, two of them put together in a Bench will not, in our view, achieve better results. The acceptance of the proposal will also involve the cost of additional Judges. It will also involve practical difficulties in the constitution of the benches in different centres. If such appellate benches are to be the final Courts of appeal on questions of

law, we have to face the contingency of conflicts of opinion between appellate benches within the same State or even within the same district, which would be difficult to resolve. The Judges constituting the Bench may disagree and in such a case an appeal to the High Court will be necessary. On the whole, and after having given our best consideration to it, we are not prepared to recommend the constitution of appellate benches at the district level.

Summary
of re-
commen-
dations.

37. Our conclusions can be summarised as follows:—

(1) The appellate jurisdiction of District Judge should immediately be raised to Rs. 10,000. Such legislation should have retrospective effect and apply to suits instituted prior to the legislation.

(2) The cadre of District Judges should be strengthened for the purpose of dealing with this increase of work.

(3) Legislation should be undertaken to transfer all First Appeals below Rs. 10,000 from the judgments of Courts other than District Courts now pending in the High Courts to the District Courts for disposal.

(4) For the convenience of parties a sufficient number of District Judges should be posted at the seat of the High Court to dispose of the transferred appeals in which records are ready and in which counsel have been briefed. Their number should be sufficient to enable such transferred appeals to be disposed of within one year.

(5) Section 102 of the Code of Civil Procedure should be amended so as to raise the non-appealable limit to Rs. 2,000.

(6) Even in Suits not of a small cause nature where the value is below Rs. 2,000, and no right to immovable property is involved, there should be no second appeal.

(7) Letters Patent Appeals from the judgments of a Single Judge exercising appellate jurisdiction should be abolished.

(8) It is not desirable to curtail the existing right of appeal in the case of appealable orders.

(9) It is not possible to introduce the system of "leap-frog" appeals in India.

(10) The constitution of District Appellate Benches is not desirable.

16.—CIVIL APPELLATE PROCEDURE

1. We shall now address ourselves to the question of appellate procedure and suggest reforms in the procedure which should, in our view, lead to a more expeditious disposal of appeals and lesser expense.

2. Under the Limitation Act, thirty days are allowed for filing an appeal to the district Court from the date of the decree or order of the subordinate Court (article 152), and ninety days for an appeal to the High Court (article 156). In our Report on the Indian Limitation Act, we have recommended the adoption of a uniform period of limitation of thirty days for all civil appeals.

Limitation.
Time for obtaining copy of decree and judgment.

Under Parts II and III of the Limitation Act, the appellant is entitled to the exclusion of the time requisite for obtaining copies of the decrees and judgments of the lower Court for computing the period of limitation. Difficulties arise in the case of appeals under special enactments to which Parts II and III of the Limitation Act do not apply; but, nevertheless, Order XLI requires the appellant to file with his memorandum of appeal copies of the judgment and decree of the lower Court. The Madras High Court has amended Rule 1 of Order XLI so as to permit an individual to file an appeal in such cases without copies of the decree or judgment of the lower Court. In our Report on the Limitation Act, we have recommended that Parts II and III of the Limitation Act be made applicable to proceedings under any enactment. If that recommendation is accepted, the Madras amendment would be redundant. In the meanwhile, we would suggest that the other High Courts should make an amendment similar to the Madras amendment in Order XLI Rule 1.

3. In cases where a memorandum of appeal is accompanied by a petition seeking condonation of delay under section 5 of the Limitation Act, the High Courts, at one time, used to admit the appeal subject to objections as to its maintainability being raised at the time of hearing. Sometimes no such reservation is made so that the point of limitation survives and is debated upon at the hearing of the appeal. This practice was disapproved by the Privy Council in two cases.¹ In the first case, Sir Lawrence Jenkins delivering the judgment of the Judicial Committee sought "to impress on the Courts in India the urgent expediency of adopting *** a procedure which will secure at the stage of admission, the final determination (after due

Disposal of petitions under section 5 Limitation Act.

¹Krishnasami vs. Ramaswami, ILR 41 Madras 412 and Sundara B vs. The Collector of Belgaum, ILR 43 Bombay 376.

notice to all parties) of any question of limitation affecting the competence of the appeal".¹ Following this advice, the High Courts of Andhra Pradesh, Bombay and Madras have made appropriate amendments to the rules. We recommend that similar amendments be made in their rules by the other High Courts, so as to provide that, if the appellate Court thinks fit to condone the delay under section 5 of the Limitation Act, it should, before admitting the appeal, give notice to the respondent and hear his objections, if any, to the condonation of the delay in filing the appeal.

Memorandum of appeals.

Copy of decree accompanying memorandum of appeals.

4. Under Order XLI Rule 1, an appeal has to be preferred by presenting a memorandum of appeal which is to be accompanied by a copy of the decree appealed from and unless the appellate Court dispenses with it also a copy of the judgment on which the decree is founded; both these requirements are very necessary, yet, occasionally, they put the parties to some extra expense which is capable of being avoided. It sometimes happens that a partition decree contains a number of allotment papers and insistence on the filing of copies of the allotment papers is likely to put the appellant to heavy expense in obtaining copies. The Patna High Court has provided in its rules that in appeals from final decrees in partition suits containing allotment papers, the appellate Court may accept copies of the decrees containing only a portion of the said papers. This seems to us to be a modification of the general rule worthy of adoption by other High Courts.

Copy of judgment accompanying memorandum of appeal.

5. The requirement that a memorandum of appeal should be accompanied by a copy of the judgment of the lower Court also occasions extra expense when two or three suits or appeals have been disposed of by a single judgment. In such cases, although the decrees are different, the judgment on which they are founded is the same; yet, the appellant having preferred more than one appeal is put to the expense of filing more than one certified copy of the same judgment. Thus, in a case in Madras, when three decrees were based on a common judgment, the appellant had to file three copies of the judgment running into 68 pages of stamp papers. The Punjab High Court has met this difficulty by providing in its rules that when more cases than one are disposed of by a single judgment, the appellate Court may dispense with the necessity of filing more than one of the judgment of the Court below. We recommend a similar provision be made by the other High Courts.

Appeals Memo. to state relief claimed.

6. A detail which concerns the contents of a memorandum of appeal may be referred to at this stage. Although the memorandum is required to set forth the grounds of objection to the decree of the Court below, notwithstanding the provision in Order XLI Rule 35 that an appellate decree shall contain a clear specification of the relief granted, the

¹ILR 41 Madras 412 at 417.

appellant is nowhere required to state the relief which he seeks in his memorandum of appeal. This is in contrast with the provision in Order VII Rule 7 which requires a plaintiff to specifically state the relief claimed. It is, sometimes, a matter of difficulty in an appeal to know precisely what relief the appellant seeks, particularly when the appeal is against only a part of the decree. It is also fair to the respondent that he should be made aware of the order which the appellant seeks from the appellate Court. In England, following the recommendations of the Evershed Committee, it is now provided in Order LVIII Rule 3 of the Rules of the Supreme Court that a notice of appeal shall state "the precise form of the order which the appellant proposes to ask the Court of Appeal to make". The circular orders of the Madhya Pradesh High Court provide that the appellant should specify in his memorandum of appeal the relief sought by him. In our view, Order XLI Rule 1 requires to be amended so as to cast a duty upon every appellant to state in his memorandum of appeal the precise form of the order the appellant proposes to ask the appellate Court to make.

7. If the memorandum of appeal is in order and is not rejected or returned by the Court under Rule 3 of Order XLI, the next stage in an appeal is that of admission. The power to admit or to dismiss an appeal is conferred by Rule 11 of Order XLI. The appeals can in the first instance, be posted for preliminary hearing of the appellant's counsel under that rule. The rule is not limited in its application to Second Appeals. First Appeals to the district Court and the High Court can also be posted for admission under Order XLI Rule 11. Admission of Appeals.

8. In certain States, like Madras for instance, First Appeals in the district appellate Court are straightaway admitted and notice issued to the respondent. In Bombay, Madhya Pradesh and some other States, on the other hand, appeals from decrees in simple suits for money or movables are generally set down for admission and notice to the respondent is not issued until the appellant's counsel is heard. It appears that this practice has led in the States of Bombay and Madhya Pradesh to a number of frivolous appeals being rejected summarily. It is, therefore, necessary that Order XLI Rule 11 should be applied to first appeals filed in the district Courts. This will have the effect of weeding out appeals which, on the face of them, are frivolous and have been brought merely for the purpose of delay. We recommend the adoption of the practice followed in Bombay and Madhya Pradesh and some other States. Scrutiny of appeals at admission stage by District Courts.

9. The question, whether a district appellate Court, dismissing an appeal summarily under Order XLI Rule 11, is bound to write a judgment under Rule 31 of Order XLI, has occasioned a difference of opinion between the High District Courts to write short judgments.

when summarily dismissing under Order XLI, Rule 11.

Courts. The Patna High Court has held¹ that the writing of such a judgment is not necessary. In the opinion of Mulla,² in the absence of High Court Rules and circulars to the contrary, that view is correct. The Bombay High Court has, however, directed that when a subordinate appellate Court dismisses an appeal under Order XLI Rule 11 of the Code of Civil Procedure, a brief statement of the grounds should be recorded and a formal decree drawn up. As the findings of the first appellate Court on questions of fact are final, and as it is necessary for the High Court in the second appeal to be made aware of these findings, in our view, a brief judgment should be delivered by all subordinate appellate Courts when dismissing appeals under Order XLI, Rule 11.

Admission of Second Appeals.

10. A very wide scope for the proper use of Order XLI Rule 11 exists in the admission of second appeals by the High Court. The rule has been enacted to enable the Court to dismiss second appeals in cases of decisions based on findings of fact, which do not disclose a point of law such as is required by section 100. The rule gives power to the Court to dismiss an appeal *in limine* without notice to the respondent after hearing the appellant's pleader and sending for the record, if necessary, in such cases.

An examination of the figures, however, shows that the real purpose of the rule has not, in practice, been served. A very large number of second appeals admitted by the High Courts are dismissed after a full hearing and the inference is irresistible that, if the provisions of Order XLI, Rule 11 had been properly worked, and the Court's mind applied at that initial stage to ascertain whether the requirements of section 100 were satisfied, a large percentage of the appeals which are finally dismissed after considerable expense has been incurred by the litigant and after delaying the final disposal of the proceedings for a long time, would never have been admitted. The Table below shows the number of institutions, the summary dismissals, dismissals for default, disposal after a full hearing and the percentage of the decrees confirmed in these appeals for the year 1954.

¹Makhu Sahu v. Kanta Prasad Sahu, 13 Patna 540.

²Civil Procedure Code, 12th Edition, page 1198.

Comparative Table showing the number of Second Appeals against decrees instituted and disposed of summarily or in default and after full hearing together with percentage of decrees confirmed and reversed to the total number of appeals disposed of after full hearing in the High Courts of the various States in the year 1954

Name of the State	Instituted	Summarily dismissed ₁	Dismissed for default	Decided after full hearing	Percentage of decrees confirmed	Percentage of decrees reversed	Remarks
Andhra	482	113		384	92.00	5.00	This Table does not give the percentage of decrees modified or reversed in appeals.
Assam	111	24	2	92	62.00	32.60	
Bihar	1,881	544	300	489	69.10	14.70	
Bombay	1,375	628	1	381	64.56	22.57	
Madhya Pradesh	842	394		644	67.30	15.70	
Madras	1,710	70		1,800	77.00	12.00	
Mysore	688	232	90	335	58.20	33.40	
Orissa	318	182		686	75.00	20.00	
Punjab	1,198	408		825	63.51	11.88	
Rajasthan	671	93	160	211	63.00	18.00	
Travancore-Cochin	892	150	30	963	65.76	16.11	
Uttar Pradesh	2,719	721		1,095	83.10	12.00	
West Bengal	1,430	447	93	1,139	66.00	11.80	

Admissions
not
sufficiently
strict.

11. The figures given in the preceding Table, showing the very small percentage of appeals in which the decrees appealed from are reversed, indubitably establish that Rule 11 of Order XLI, as it is being applied, fails to serve its purpose of affording adequate protection to the respondent.

Section 100 of the Code of Civil Procedure sets out the restrictive conditions under which only a Second Appeal lies. Section 101 specifically provides that no Second Appeal shall lie except on the grounds mentioned in section 100.

The true
test of
admission.

12. Having regard to the terms of section 100, an appeal should not be admitted merely because the appellant has shown that an arguable or a *prima facie* valid point of law arises in the appeal. The Court has, further, to be satisfied that the decision of the lower appellate Court on a point of law is erroneous, and that it is necessary, in order to do justice between the appellant and the respondent, that a further hearing should be given to both the parties.

In practice, however, widely divergent views prevail in regard to the precise functions of the Court in scrutinising appeals for admission. Some Judges require only "an arguable point of law" while others insist upon "a *prima facie* good point of law"; but the correctness or otherwise of the lower Court's finding on the alleged point of law is rarely looked into, as it should be, at the admission stage. Not infrequently, as soon as the appellant's advocate has made out what is called "an arguable point of law", or "a *prima facie* good point of law", the Judge shows an inclination to admit the appeal without further scrutiny in order, as it is sometimes stated, to give the appellant another chance. This is obviously unsound. The demonstration by the appellant's counsel that a point of law has been decided and that there is an argument possible on that point would be obviously irrelevant, if the decision reached on that point is correct. When the Judges talk of the appellant being given another chance, they forget the plight of the respondent who has been subjected to the trouble and expense of fighting a litigation in two Courts and is being attempted to be dragged by the appellant into a third fight.

Complaints
by the Bar.

13. Notwithstanding the small percentage of summary dismissals in Second Appeals which, largely, are cases of decisions based on findings of fact and do not involve a point of law, it was surprising how quite a considerable section of the Bar seemed to complain that the Courts were too strict in the admission of second appeals. They seemed to proceed on the view that it was inappropriate for the Court at the hearing under Order XLI, Rule 11, to enter upon the merits of the questions of law, if questions of law did arise in the appeal.

As stated already, this view is erroneous. We have also dealt above with the true scope of sections 100 and 101 of the Code. In this connection, attention may be drawn to the provision of Rule 18 of Order LXI which entitles the Court, even after notice has been served upon the respondent to dismiss the appeal without hearing the respondent.

14. The extent to which the duty of the Court to scrutinise appeals under Rule 11 of Order XLI has been neglected is shown by the fact that in two High Courts, Allahabad and Patna, the power to admit Second Appeals has been delegated to the Registrar of the High Court. It is open to him to decide whether or not notice should issue to the respondent. He refers the case to a judge only if he is of the view that there is no substance in the appeal. Commenting on this practice which then obtained in the Patna High Court, the Civil Justice Committee observed: "This, we consider, is a judicial function which should only be exercised by a High Court Judge or Bench."¹ It is surprising that, in spite of this criticism with which we agree, the practice should have spread and been adopted by the High Court of Allahabad also. This comment also applies to the practice prevailing in the Madras High Court of leaving the admission of civil miscellaneous appeals to the Deputy Registrar.

Delegation of powers of admission to Registrar inadvisable.

15. It has, indeed, been urged that the practice tends to save judicial time, inasmuch as judges need not spend any time in Court in hearing arguments in appeals which on their face deserve to be admitted. But this saving of time can be equally well effected by adopting the practice obtaining in some High Courts of circulating the papers relating to a second appeal to the judge who looks at them outside Court hours. Upon a perusal of the papers the judge either orders notice to issue to the respondent or orders the appeal to be posted for a preliminary hearing under Order XLI, Rule 11.

Circulation of papers to Judges.

We recommend the general adoption of this practice which has also been commended by the High Court Arrears Committee. It results in a substantial saving of judicial time and also ensures that the judicial function of admitting an appeal is performed by a trained judge and not by a ministerial officer. It is necessary not only that the scrutiny of appeals at the admission stage should be by a judge but, in our view, this task should, as far as possible, be entrusted to senior and experienced judges.

16. We may suggest a further course which may be useful in all cases in which an appeal is admitted after the preliminary hearing under Order XLI, Rule 11. The High Court might well specify in such cases the point or points of law which arise for determination in the appeal. It may in its discretion even go further and order that the

High Court to state point of law at time of admission.

¹Report, page 282, para. 6.

appellant should be heard only on the point or points of law stated by the judge admitting the appeal.

Admission on certain points only.

There appears to be a conflict of decisions on the question as to whether appeals, particularly second appeals, can be admitted on certain grounds only. However, this difficulty can be met by an amendment of the law. In our view, a statutory requirement, providing that the judge admitting the appeal should state the point or points of law which arise for consideration in the second appeal, will ensure a stricter and better scrutiny at the stage of admission.

Papers accompanying memorandum of second appeal.

17. In view of the more rigid scrutiny at the admission stage which we are recommending, it may be useful to provide, as has been done by the High Courts of Calcutta, Madras, Bombay, Allahabad and the Punjab, that where a second appeal is filed, certified copies of the judgments of both the Courts below should accompany the memorandum of appeal. The High Courts of Madras and Andhra Pradesh have gone further and have directed that if the appellant seeks to raise, in his appeal, any question of the construction of a document, a true translation of the document should accompany the memorandum of appeal. The adoption of these rules will ensure that at the hearing at the admission stage, the High Court has before it all materials necessary for a proper scrutiny of the appeal.

Short judgments when admission refused.

18. We have been informed that, sometimes, when a High Court dismisses an appeal summarily, fairly long judgments referring to a number of decided cases are written running sometimes into as many as ten pages. It is obvious that an elaborate judgment is altogether inappropriate in cases of such summary dismissals. All that is needed is a very brief statement of the reasons which have led to the dismissal.

We believe that the measures advocated by us will go far to prevent the admission of appeals which, after a lapse of some years and after considerable expenditure to all the parties, are eventually dismissed. It may also happen that these measures taken at the admission stage of second appeals may act as a deterrent against the filing of frivolous second appeals.

Delays in issuing notice.

19. If the appeal is not dismissed summarily, the next stage is the issue of notice to the respondent. Delays frequently occur at this stage. As has been stated by the Judicial Reforms Committee for the State of West Bengal: "Constant adjournments have to be given.....for the filing of addresses to which notices should be sent and talabana to cover the cost of such notices. Frequently adjournment after adjournment is given merely to enable the acting advocate to furnish an address or two and to file a few rupees as talabana."¹

¹Report, page 32.

20. In our view, this difficulty can be easily met by providing that the appellant shall, in the memorandum of appeal, state the address for service of notices and other proceedings both on himself and the respondent. Rules of many of the High Courts provide for the parties filing their addresses in Court for the purpose of proceedings. We are recommending in another place that both the plaintiff and the defendant shall be required to file their addresses in Court. The appellant can, in his memorandum of appeal, state the address of the opponent as furnished in the Court below.

Memorandum of appeal to state address for service.

21. In case of parties who have not appeared in the Court below and who have not filed any address for service, provision may be made, as has been done in certain High Courts, empowering the Courts to dispense with service of notice of appeal on the respondents who have not appeared in the lower Court by an amendment of Order LXI Rule 14.

Dispensing with service on persons *set ex-parte*.

22. As regards delays arising from the non-payment of process fees we would suggest the framing of rules by the High Court requiring the memorandum of appeal to be accompanied by the requisite process fees for service of notice on the respondent. This has been done by the Madras High Court. It may be provided that, unless such fees are paid, the memorandum would be liable to be rejected. It may be that, if the appeal happens to be dismissed summarily, the appellant would have paid the process fees unnecessarily. A provision may, therefore, be made for a refund of the process fees to the appellant in such cases. As to the appellant being required to pay the process fee a second time, the first notice not having been served on the respondent, provision may be made enabling the Court, in the event of non-payment by the appellant of such process fees as required to dismiss the appeal for want of prosecution as has been done by some High Courts. We would also suggest, as we have done in the case of plaints elsewhere, that the rules should require the memorandum of appeal to be accompanied by process forms duly filled in. It might be advisable to permit service of notice by registered post in the first instance as is done in Andhra Pradesh and Madras, where notices are ordinarily issued within three days.

Process fees to be paid with appeal memorandum.

Refund of process fee in case of summary dismissal.

Dismissal for non-prosecution.

Process forms to be filled by appellant.

Service by registered post.

23. Under the procedure laid down in the Code, no obligation is laid on the respondent after a notice of appeal is served on him to enter an appearance or to take any other steps to defend the appeal, unless he desires to prefer a memorandum of cross objections under Rule 22 of Order XLI. He is not bound to inform, either the Court or the appellant, of his intention to contest the appeal and can come forward on the very date of the hearing to support the judgment of the lower Court and he may do so even on grounds decided against him in that Court.

Respondent to enter appearance.

We are of the view that such a position encourages irresponsibility on the part of the respondent. If an appeal

Forms of
summons
to be
amended.

is uncontested and is to be heard *ex parte*, it may not be necessary to put the appellant to the expense of preparing a paper book or, in any case, a large number of copies thereof. Further, the appeal can be dealt with expeditiously without its being made to wait to take its turn in the regular list. It is, therefore, desirable that a provision should be made for enabling the Court to be informed at an early stage whether the respondent intends to contest the appeal or not. This can be achieved by the enactment of a rule similar to that found in Order LXI-A Rule 3 of the Civil Procedure Code as amended by the Madras High Court which provides that a respondent intending to appear and defend the appeal has to enter an appearance in the appellate Court by filing a memorandum of appearance within a specified period. Form VI-A has been inserted in Appendix G of the Civil Procedure Code by the Madras High Court to ensure that proper notice of the necessity of entering an appearance is given to the respondent. Rule 4 of Order XLI-A also casts upon the respondent a duty to furnish, in the memorandum of appearance, his address for service. We would recommend the adoption of similar rules by the other High Courts.

Allahabad
rule.

24. After the respondent has entered his appearance, the next stage which arises for consideration is the preparation of the paper books in the appeal. The Allahabad High Court has framed a rule providing that the respondents to a first appeal valued at less than Rs. 20,000 who have not filed cross-objections may, on receipt of a notice to enter an appearance, move for the summary determination of the appeal, without the preparation of a paper book on the ground that the appeal is frivolous or vexatious or that it is capable of being disposed of on a preliminary ground. The application of this rule would result in the disposal of certain appeals on the ground of limitation, want of competency of the appeal and the like without the delay and expense resulting from the preparation of paper books. We have not been able to gather whether this rule has been largely availed of and has served a useful purpose. We would leave it to the consideration of the High Courts whether such a rule could be usefully made.

Preparation
of paper
books.

25. As to the preparation of paper books, one does not find uniformity in the rules of the various High Courts. This question has to be approached from two points of view: first, the time taken in their preparation which, naturally, causes delay in the disposal of the appeal, and second, the cost of its preparation. As the files of the High Courts stand at present, the preparation of paper books has not been the cause of delay in the disposal of appeals. Even if the printing of the record has taken a year or more, the first appeal is not any nearer reaching a hearing. In fact, one High Court has discontinued printing the records of

first appeals for the somewhat startling reason that it has not space for storing paper books even in appeals which are ready for hearing. The question, therefore, of delays which occur in the preparation of these books in the course of printing or otherwise can occasion concern only after the present accumulated arrears of first appeals are well on the way to being cleared.

26. As to the question of the costs of the preparation of paper books, many High Courts have dispensed with translation and printing in cases below Rs. 20,000 as they would not ordinarily be taken to the Supreme Court. As the printing of paper books in Government Presses has been known to cause considerable delay, we think that in all cases which are not likely to be taken to the Supreme Court, the printing of the record should be reduced to the minimum, and whatever printing is necessary, should be permitted to be done in private presses. In regard to these appeals, we would comment the practice followed in the Bombay High Court in the preparation of paper books in appeals before that Court. In that State, only the memorandum of appeal and the judgment of the lower Court are required to be printed. These are generally printed at the Government printing press. The evidence and other proceedings are typed in the district court and are sent to the High Court in book form. After these books are received, a combined paper book is prepared in the High Court which comprises the proceedings of the case, the memorandum of appeal or cross-objections, if any, the judgment of the lower Court, the evidence recorded in the case and the exhibits, if any. Typing involves less cost than printing and we think that the method followed in Bombay is less expensive and more expeditious on account of the division of work in the preparation of the paper book between the district Court and the High Court. We, therefore, consider this method suitable for general adoption.

A further saving in costs and time may be brought about if judgments are printed locally under the supervision of the subordinate Courts. This is done in Madras where copies of judgments are printed locally at approved presses. This practice may be generally adopted. In West Bengal, the responsibility for preparing the paper book in second appeal and furnishing a copy thereof to the respondent is cast on the appellant. Such a practice together with the grant of a power to the Court to dismiss the appeal for non-prosecution in case of default may also be adopted elsewhere.

One may go further and recommend that judgments and the memorandum of appeal may, instead of being printed, be cyclostyled as it will cost less than printing.

The Evershed Committee in England has recommended that:

"the Rules of the Supreme Court should be amended so as to render printing no longer permissive, except by leave in special circumstances."¹

Reduction
in size of
paper book.

Costs to be
disallowed
in taxation.

Appeals
over Rs.
20,000.

Uniform
printing
in English.

27. A somewhat important question affecting the costs of paper books needs mention. Not infrequently, a party or parties insist on unnecessary parts of the record being included in the paper book and the administrative officer who has supervision over its preparation has no other course open to him but to permit them to be printed, sometimes, making a reservation that they were so permitted subject to the question of costs. At the hearing, the question of costs incurred by the unnecessary inclusion of certain parts of the record at the instance of a party or some parties is rarely considered. If the appellate courts made it a practice to deal with this question when awarding costs of the appeal and took care to punish the party who has insisted upon the inclusion of these unnecessary documents by either refusing to award him the costs to that extent or making him pay those costs, the costs unnecessarily incurred will not be payable by the losing party and, perhaps, parties will be deterred from insisting on unnecessary parts of the record being included in the paper book.

28. We may next turn to the preparation of paper books in appeals of the value of Rs. 20,000 and more, which, by reason of their valuation, are likely to go to the Supreme Court. Rule 2 of Order XV of the Supreme Court Rules provides that where the record has been printed for the purpose of the appeals in the High Court concerned, and a sufficient number of copies of the printed record are available for the purpose of the Supreme Court appeal, no fresh printing of the record shall be necessary except for such additional papers as may be required. Under this rule, therefore, if a sufficient number of paper books is prepared in the High Court and is available for the purpose of the Supreme Court appeal, such paper books can be used in the Supreme Court. But when such printed copies are not available or when additional printing is required, we understand, that the form in which the Supreme Court rules require such printing to be done adds considerably to the cost of printing. It appears that printing of the record in the form prescribed by the Supreme Court costs about Rs. 12 per page, whereas according to the High Court forms the cost would be much less.

29. We suggest that the printing of paper books in these appeals should be made compulsory throughout the country in the English language, subject to what has been stated in the chapter on 'Language' and that the paper books should be printed in a uniform manner so that they could be used

¹Final Report of the Committee on Supreme Court Practice and procedure, page 263, para. 758.

in the High Courts as well as in the Supreme Court in cases where the matters do reach the Supreme Court. The number of paper books printed in these appeals should also be sufficient for use in the Supreme Court, in the event of the appeals being taken to the Supreme Court.

30. We may here refer to a somewhat curious rule (rule 44 of the Rules of Court, 1952, Vol. I) of the Allahabad High Court which provides that, if translation and printing of papers in an appeal is done out of turn under the special orders of the Chief Justice, the party in whose favour the order is made has to pay an additional sum amounting to 50 per cent. of the cost of the paper books. This extra 50 per cent is not charged for payment of any overtime to the press or for any other similar reason. This extra payment appears to us to be a penalty levied on a party whose case is expedited. We do not see any reason or principle which can support this rule. If, in the interests of justice, a particular appeal merits speedy disposal and paper books have, therefore, to be printed out of turn; it seems hardly fair that the party whose appeal deserves priority should be mulcted in costs. This rule should, in our opinion, be deleted.

Allahabad
rule or out
of turn
printing
to be
deleted

31. After the paper book is ready, the appeal is posted for hearing on the date fixed by the appellate Court. We have found, in the course of our inquiries, that in several States an appeal is rarely taken up for hearing on the date so fixed. In the subordinate Courts, adjournments of appeals, on the ground of the parties not being ready or by reason of interruptions caused by the posting of a sessions case or the continuance of a civil suit, are matters of everyday occurrence. These adjournments occur more frequently in those States where the officers presiding over the subordinate civil Courts exercise civil appellate jurisdiction and are also invested with powers to try sessions cases. What happens in such cases has been graphically described by a Judge of the Calcutta High Court in the course of a note made by him in 1953, after inspecting the civil courts at Alipore, 24-Parganas:

Adjourn-
ment of
appeals.

"In most of these appeals, I found that after service on respondents was complete and the lower court records had been received, the hearing of the appeal was adjourned *sine die*—a wholly irregular procedure. This was followed at varying intervals—the interval was more than nine months in T.A. 300 of 1950—by an order by the District Judge fixing a certain date for hearing. On the date thus fixed, the appeal was transferred to the court of an Additional Judge, or Subordinate Judge, without any regard apparently to the state of the file of the transferee court. I say this, as I found, in almost every case, that the transferee court did not take up the hearing of the appeal on the date of

Chaotic con-
ditions in
certain
Courts.

transfer. Instead, the transferee court adjourned the hearing to a later date—on the ground generally that the court was otherwise engaged. Thereafter, the process of adjournment has gone on merrily. The ground of the adjournment is either that the court is engaged in Sessions, or that it is engaged in hearing a suit or some other appeal; or that the appellant or the respondent, or both parties had applied for adjournment. I am constrained to say that I did not discover any anxiety on the part of the Judges to deal with the appeals quickly. Interlocutory matters, which would perhaps not take more than a few minutes, were left unheard of for months together.

“What perturbed me most was that even when appeals and suits were remanded by the High Court for rehearing, no attention was paid to the need of quick hearing. T.A. 431 of 1945 was disposed of on the 29th April, 1947; but the High Court, in second appeal, remanded, the appeal for hearing. It was received on remand, on 18th November, 1949. It is still to be heard—there have been 26 adjournments. T.A. 182 of 1947 was received back on remand, on 12th September, 1951, and is still pending for hearing. So also T.S. 1037 of 1948 which was received back on remand, on 30th January, 1951.

“While it is very necessary to secure the best help from the lawyers for the proper decision of these cases, and for that purpose, one or two adjournments may have to be given, I cannot believe that lawyers of either side would refuse their help and co-operation, if these were taken up for hearing, say, a month after they were received on remand. It seems probable that most of the Judicial Officers when repeatedly adjourning the hearing of these remanded cases, were unaware of the fact that these are old cases, which had come back on remand; and followed the path of least resistance, by not taking any positive action to secure early disposal. It is very disturbing that Judges presiding over courts would not know or remember such important matters as orders of remand from superior courts.

“No less disturbing to me was the discovery that it often happened that after an appeal had for some time been before an Additional Judge, or a Subordinate Judge, it was suddenly withdrawn from his file by the District Judge and transferred to another Judge for disposal, though that other court was not in a position to take up that case, in the immediate future. As instances of this, I mention T.As. 274, 300, 506, 717, 804 and 1206 of 1950. I find it difficult to resist the impression that the District Judges who signed these orders of transfer, signed them without proper application of their minds to the relevant facts; and

that often, though the hand that signed the order of transfer was the hand of the District Judge, the mind behind the order of transfer was the mind of the Bench Clerk. It is necessary that these orders of transfer should be not only in form, but in substance, the order of the District Judge; and he should not transfer appeals to another court nor withdraw appeals from a transferee court, without careful consideration of the state of the files of the different courts."

32. As we have stated earlier, in several States in the country, civil judicial officers of the rank of Subordinate Judges are required to do civil appellate work and sessions work in addition to trying original civil suits of higher valuation. In all these places, the greatest single cause which contributes to delay in the disposal of civil appeals and trial work is the interruption by a sessions case suddenly transferred to the Court. The obvious remedy for this state of affairs is to assign to a particular Judge or Judges exclusively the work of hearing either civil appeals or sessions cases or original suits instead of putting on their file simultaneously all these different types of work. If this were done, a particular judge would be free for a fortnight or for a whole month to devote himself exclusively to one type of work and interruptions by sessions cases or other work entitled to priority could be avoided. If at any station, the number of pending civil appeals is large enough to occupy the entire time of an officer for, say, a continuous period of three months or more, the Government can, in consultation with the High Court, post an officer to that station exclusively for the disposal of such appeals.

Assignment of Judges to particular kinds of work.

We understand that in Bombay, the hearing of civil appeals is seldom interfered with by sessions cases or original suits. The reason is that all ordinary original civil work in that State is done exclusively by the Civil Judges of the Senior and Junior Division. The Civil Judges of the Senior Division in Bombay are not, as in other States, invested with civil appellate powers or with the powers of an Assistant Sessions Judge. All appeals, civil and criminal, and all sessions cases are heard by District Judges and Assistant Judges who are generally additional Sessions Judges. The distribution of this work amongst his colleagues is made by the District Judge well in advance of the probable dates of hearing. Ordinarily, according to the instructions of the High Court, the distribution of civil and criminal work is made in such a way that, in any given month, a particular officer will hear and dispose of only civil appeals while another officer may, at the same time, deal with sessions cases and criminal appeals. The sessions cases which the Sessions Judge does not wish to try himself are made over to the Additional or Assistant Sessions Judge as soon as the

committal papers are received and the dates of trial are left to be fixed by the trial Judge himself. We are of the view that this method under which only one type of work is assigned to officers in rotation for periods of time will avoid the great delays which have occurred in the disposal of civil appellate work in certain States.

Posting of appeals in subordinate courts.

33. We would also suggest that in subordinate Courts as soon as the respondent has entered his appearance, the Court should ascertain from the advocates of both parties the amount of time the appeal is likely to take and post the appeal peremptorily to a date on which the Court can find the time to take it up and which would suit the advocates. The adoption of this method will avoid the necessity of adjournments on the ground of the advocates being otherwise engaged or not being ready.

Fixed dates unsuitable for the High Court.

34. With regard to the hearing of civil appeals in the High Court, it appears to us that the system of giving fixed days for the hearing results in interruptions and delays, if an appeal fixed for a particular date is not reached on that date by reason of prior work having taken longer time than expected. Under this system appeals are adjourned to another date which may well be after a number of months. Apart from the delay in such cases, the time spent by advocates and, perhaps, the Judges in the perusal of the papers is wasted. We would, wherever such a system prevails, recommend the adoption of a system under which, a continuous list of ready cases according to the order of their institution is maintained. The daily list for hearing is drawn from this continuous list and the hearing of appeals proceeds from day to day in the order in which they appear in the list. If in any particular appeal, counsel from outside has to appear, a fixed date can be ordered. In fixing such dates or in granting adjournments for other reasons, the time which will be needed for the hearing of the appeals must not be lost sight of.

Continuous list system recommended.

Reading of papers by Judges before hearing.

35. We shall next deal with the questions whether reading of the papers beforehand, at any rate, the judgment and the memorandum of appeal—will result in a saving of time in the hearing of the appeal and, if so, whether the adoption of such a practice is desirable.

Divergent views

There has been a wide cleavage of opinion on the desirability of the judgment, the memorandum of appeal and some other papers being looked into by the Judges before the hearing. A strong view against such a practice has been expressed not only by several members of the Bar but also by some experienced Judges. It was said that this practice was bad for a Judge, as he would come to the Court with fixed ideas from which it would be difficult, and even impossible, to dislodge him. It was not right, it was urged, that any case should be approached by a Judge with pre-conceived ideas. On the other hand,

it was said that acquainting himself with the facts of the case and the points arising therein from a perusal of the judgment and other papers should not ordinarily result in the Judge forming any view of the case. What is essential in a Judge is that he should approach the case with an open mind, but an open mind need not necessarily be a blank mind.

We think that we are entitled to assume that a person filling the office of an appellate judge will be a man of experience accustomed to approach the differing points of view which may be taken in regard to a case with detachment and that he would not be disposed to form a premature view of the correctness or otherwise of any of these points of view. Can it be that the mind of a Judge will be gripped by the point of view which gets impressed upon his mind first? If such were the mental equipment of the Judge, he would never be able to get away from the point of view put to him by the appellant's counsel which always would be listened to by him first.

36. The practice of the Judges reading the papers beforehand so as to know the facts of the case has prevailed for a number of years in many of our Courts and also in Courts in other countries. As we have pointed out in another chapter, in the United States the practice of submitting written briefs obtains in the Supreme Court of the United States and in the State Appellate Courts. We had the practice of filing a statement of the case in the Privy Council and the same practice has been continued in the Supreme Court. The Judges have, in those statements of cases, the points of view of both parties with the arguments in support presented to them. The practice of looking at the judgments and other papers has also prevailed in several High Courts. Notwithstanding the wide prevalence of this practice, it has not been suggested that the Judges of these Courts do not approach the hearing of appeals with an open mind. Indeed, a Judge would not possess the most essential quality of a Judge, if he were not able to keep an open mind to the very last minute of the hearing of a case or an appeal.

Practice prevailed at present.

Not untoward consequences.

37. The question received careful consideration at the hands of the Evershed Committee before whom two main objections against the practice were urged. In the first place it was contended, as before us, that "there would be a real risk of the members of the Court forming a premature view of the case, so that they would come to the hearing with their minds already to some extent biassed one way or the other".¹ The second objection was that "if the Court read all the papers beforehand it would rob

Views of the Evershed Committee.

¹Final Report of the Committee on Supreme Court Practice and Procedure, page 196, para. 585.

counsel of the advantage of commenting on the evidence during the process of reading it to the court.¹

The Committee took the view that neither of the two objections was a sound one. Dealing with the first objection they said: "there is little substance in this objection and that it does less than justice to the capacity for impartiality of the members of the Court of Appeal. We would point out that at the present time the members of the Court of Appeal will in many instances have read in the law reports or legal periodicals of the proceedings in the Court below. We think that most Judges, reading the papers in a case to themselves for the first time, would be likely to concentrate in the main on trying to ascertain what the case was all about, rather than endeavouring to form even tentative views at that stage as to what the correct solution might be. In so far as any member of the Court were to form even a tentative view on the merits of the case, this might be not wholly without advantage—for it would enable the Court in the early stages of the hearing to focus the attention of counsel on that part of the case which was felt to be decisive, thereby concentrating the argument on that which was really material."²

Dealing with the second objection, the answer of the Committee was that if that objection was a good one "it is more important that justice should be done than that counsel should win their cases. It may well be that the members of the Court would more easily be able to evaluate the evidence impartially if they read it to themselves as one continuous whole, rather than by having it read to them, as at present, with the interpolation of a tendentious commentary by counsel".³ It will be observed that the Committee expressed themselves in favour not only of the appellate Judges reading the judgment and the notice of appeal but also the evidence in the appeal. The Committee recommended that it would be helpful if, in all cases, the member of the Court of Appeal were to read beforehand the notice or notices and also the judgment of the judge below or such part of it as was relevant to the appeal. As to the other papers, they left it to the discretion of the Court of Appeal to select appropriate cases in which they could be read with advantage. So impressed were the Committee with the saving of time which would result from the introduction of this practice that they did not shrink from making a recommendation for shortening the hours of sitting to enable the Judges to read the papers "since we are satisfied that, if in appropriate cases the papers can be read beforehand, even with reduced hours of sitting the Court

¹ *Ibid*, page 197, para. 586.

² *Ibid*, pages 196 and 197, para. 585.

³ *Ibid*, page 197, para. 586.

of Appeal would be able to get through a greater volume of work than is possible at present."¹

38. More important, however, is the actual experience of the working of this practice in the High Courts of Madras and Bombay and in the Supreme Court. We were informed that in these Courts, papers both in civil and criminal appeals are circulated to the Judges and that in most cases judgments and some other papers are looked into by the Judges before the hearing. We did not hear it suggested in the course of the evidence taken by us that the adoption of this practice in any of these Courts had led even to an impression among members of the Bar that the Judges approached the hearing of the appeals with any preconceived ideas.

Actual experience of working in India.

39. It appears to us that in this matter, as in many other matters, those of us who have become accustomed to a particular practice come to regard it as necessary to the impartial administration of justice and are afraid of a change.

Usage—Obstacle to change.

40. The further question as to whether the adoption of this practice will result in the saving of time is answered; we think, by the rate of disposal of appeals in the Madras and the Bombay High Courts which is much higher than in the other High Courts. In England, at the instance of the Evershed Committee, the Court of Appeal "tried the experiment, in the case of a substantial appeal from a Special Commissioner, of reading the documents beforehand and that a considerable saving of time at the hearing resulted."²

Effect—Increase in rate of disposals.

41. It has been said that acquaintance with the facts of a case from the judgment and the papers would lead to questions by the Court tending to disturb counsel's presentation of his case and eventually lengthen the hearing. The habit of putting questions in the course of arguments flows from the temperament of the Judge and a questioning Judge would probably ask as many, if not more, questions, if he had not read the papers beforehand.

Questioning by Judges.

42. We, therefore, have no hesitation in recommending that papers relating to an appeal should be circulated to the Judges beforehand so that they can come prepared in a certain measure before the hearing of the appeal. We do not recommend that the working hours of the Courts should be curtailed to enable the Judges to read the papers. We think that Judges should be able to cope with the work of reading the papers without such curtailment as has happened in Madras and Bombay. The notion which once prevailed that a Judge's duties were confined to working only during Court hours is long outmoded and the High Court judiciary as well as the

Recommendation.

Judges to read papers in advance.

¹Ibid, page 198, para. 590.

²Ibid, page 196, para. 584.

subordinate judiciary has to devote a certain amount of time to its work at home in order to be able efficiently to discharge its duties.

The powers of a single judge.

43. We have already noted the wide variations in the powers of a single judge in the different High Courts. We have also expressed the view that the enlargement of the powers of a single judge will, without detriment to the administration of justice, result in a saving of judge power and quicken the rate of disposal of appeals in the High Courts. We are of the opinion that the rules of the High Courts should be amended so as to confer upon a single judge power to hear and dispose of some of the cases which, at present, are being placed before a division Bench, always reserving the power to the single judge to refer a case to a Bench in cases of exceptional difficulty or importance. In view of the abolition of Letters Patent Appeals, which we have recommended, no question arises of the number of these appeals being increased by reason of the widening of the powers of the single judge. We, therefore, recommend that the powers of a single judge of a High Court should be increased in regard to civil matters so as to enable him to dispose of all first appeals and miscellaneous appeals in the High Court up to the value of Rs. 10,000 and all second appeals.

Enhancement recommended.

Powers of the appellate court.

44. The question of the powers of the appellate Court may next be considered. Section 107 of the Code of Civil Procedure empowers the appellate Court:—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for retrial; and
- (d) to take additional evidence or to require such evidence to be taken.

These powers are regulated by section 99 of the Code which provides that no decree is to be reversed or modified for an error or irregularity not affecting the merits of the case or the jurisdiction of the Court.

Power to take additional evidence.

45. We shall, in the first instance, deal with the powers of an appellate Court to take additional evidence under Order XLI Rule 27. This provision has been repeatedly considered by the Privy Council and the law as to the reception of evidence not produced before the trial Court is now settled. Under sub-rule (1) (b) "it is only where the appellate court 'requires' it (i.e., finds it needful) that additional evidence can be admitted. It may be required to enable the Court to pronounce judgment or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence,

but "when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent."¹

Thus, the right to adduce additional evidence in the appellate Court is strictly limited. A party, who has discovered new evidence of high probative value which he could not, with due diligence, have produced in the lower Court, will be unable to produce it in the appellate Court as a matter of right. It is true that Order XLVII Rule 1, gives a right of review in such cases but that right cannot be availed of in an appeal. The High Courts of Madras, Allahabad, Patna, Orissa and Andhra Pradesh have amended Order XLI Rule 27, so as to permit a party to an appeal to adduce additional evidence if he satisfies the appellate Court that he could not, in spite of due diligence, produce such evidence at the time of the original hearing or that it was not within his knowledge at that time. We are not aware of this amendment having resulted in an increase in the number of applications to receive additional evidence, or of its otherwise having been abused. In our view, it makes a very necessary improvement in the appellate procedure and we recommend its general adoption by a suitable amendment to the Code.

Amendment
of Order
XLI Rule
27.

46. The power of remand by an appellate Court is regulated by Rules 23 and 25 of Order XLI. The power under rule 23 is a strictly limited power. A case can be remanded under that rule only when the lower Court has disposed of the case upon a preliminary point and the finding on that point is reversed in appeal. In practice, cases often arise in which a remand is necessitated for some other reason. In such cases, in order to make a remand, the Courts have resorted to their inherent power under section 151 of the Code. This is not a satisfactory position. Further, an order of remand under the inherent power of the Court is not appealable like an order under rule 23. An attempt has been made to get over this difficulty by the High Courts of Allahabad, Andhra Pradesh and Madras by empowering the appellate Court to remand a case if it thinks it "necessary in the interest of justice" (Madras) or "where an appellate Court has reversed a decree and all questions arising in the case have not been decided" (Allahabad). The Uttar Pradesh Judicial Reforms Committee has recommended² an amendment to Rule 23 on the lines of the amendment made in Madras. We recommend an amendment of the rule empowering the appellate Court to remand a case whenever it thinks it necessary in the interests of justice

Power of
remand.

Amendment
suggested.

47. It is well-known that a remand results in considerable delay in the disposal of the case. We are of the view that when a case is remanded for trial of a particular issue

Delay
after
remand.

¹Parsotim Thakur v. Lal Mohar Thakur, I.L.R. 10 Patna (P.C.) 654 at page 668.

²Report, pages 61 and 62.

Fixing date of appearance and resubmission.

or for recording additional evidence and resubmission to the appellate Court, the latter Court should, in its order of remand, fix a date by which the lower Court has to resubmit the case to the appellate Court. In cases where the time allowed is found to be inadequate by the lower Court, it should ask for an extension of time. We also recommend that whenever a case is remanded, the appellate Court should fix a date on which the parties should appear before the lower Court to receive its directions regarding the suit or proceeding.

Difference of opinion between Judges.

48. Under section 98 of the Code, when an appeal is heard by a Bench of two or more Judges, the opinion of the majority prevails but when they are equally divided in their opinion, the decree of the lower Court is deemed to have been affirmed. The section also empowers the judges, if they differ on a question of law, to state the point of law for the decision of a third judge in such cases, after the third judge has heard the matter, the opinion of the majority prevails.

Power to refer question of fact to third Judge.

There is, however, no provision in the section for reference to a third judge in the event of there being a difference of opinion among the judges on questions of fact. It may, however, be noticed that clause 36 of the Letters Patent of the Calcutta, Madras and Bombay High Courts provides that in the event of a difference of opinion between the judges of a Division Bench on any point, such point shall be decided according to the opinion of the majority of the judges, if there shall be a majority, but if the judges should be equally divided, they shall state the point upon which they differ and the case shall then be heard on that point by one or more of the other judges and the point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it. It is true that difference of opinion on questions of fact are not very frequent; but even in the rare cases in which such differences arise, we think, it is not fair to the appellant that the decision against him should be affirmed even though the appellate Court is equally divided. We would, therefore, recommend an amendment of section 98 so as to bring it in line with clause 36 of the Letters Patent.

Delivery of judgments.

49. We have been informed of considerable delays in the delivery of judgments in some of the lower appellate Courts as well as in certain High Courts. We believe that most of the High Courts have made rules fixing periods of time within which subordinate Courts have to deliver their judgments. If the High Courts discharge their duties of supervision effectively, the evil of such delays in the subordinate Courts can be cured by an insistence upon the observance of these rules. In regard to High Courts, our information is that in most cases judgments follow immediately after the conclusion of the hearing in the Court. However, there are cases in which

Delays.

judgments have been delivered by some High Court judges about a year after the conclusion of the hearing of a case or an appeal. It is needless to state that such cases can arise only from a total want of responsibility in the judges concerned. A judgment delivered after such a length of time can never do adequate justice to the arguments advanced by Counsel on either side, however sharp the memory of the judge may be, or whatever be the length of the notes made by him of the arguments. So great is the importance of the judge delivering judgment when the arguments advanced at the hearing are fresh in his mind that in one State Supreme Court in the United States a provision has been made that if a judgment is not delivered within a fortnight, the case should be reheard by the judge. Though ordinarily the most convenient course for the judges would be to deliver a judgment straightway at the close of the hearing, there would be certain cases in which judgments need to be reserved; but it is obvious that judgment should follow the conclusion of the hearing within a reasonable time which in most cases should not exceed a fortnight. The time for the delivery of a judgment by a High Court judge can hardly appropriately form the subject of a rule of the Court; but the matter is certainly capable of being regulated by a watchful Chief Justice. The Civil Justice Committee has deprecated the practice of reserving judgments in very emphatic terms:—

“As a general rule there is little reason why judgments should not be delivered at the close of the arguments. It should be the exception and not the rule to reserve judgment. It militates very strongly against reasonable expedition on the part of Judges if the more cases they try the greater the number of treatises they have to compile during the week-end. This is an unnecessary burden to the judge. To the Bar nothing can be less encouraging than to know that the ultimate decision will be taken by the judge after writing several other judgments setting out and discussing the facts and law of other cases.

“The result is too apt to be that the case is determined ‘on the paper book’ and with too little attention to the arguments which are represented only by the pale reflection of the judge’s note-book. The practice of constantly reserving judgment is not only disadvantageous; it is feeble. It gives an impression that the court cannot grasp facts or does not know its law or cannot state in a reasonable clear form what it knows. As members of the legal profession have to be able to present and discuss cases, the spectacle of a judge who will rarely undertake to give judgment at the time is peculiarly unimpressive.”¹

50. The practice of not sitting in Courts during working hours in order to consider and dictate judgments, or taking a working day off for that purpose which prevail

¹Report, page 281, para. 5.

in certain High Courts involves, in our opinion, an unjustified waste of judicial time. If care is taken to deliver judgment as far as possible immediately after the conclusion of the arguments, a few judgments would be reserved and these can be prepared by the judges over the week-end.

Reading out reserved judgments unnecessary.

51. The practice of reading out reserved judgments in open Court also leads, in our view, to a considerable waste of judicial time. It has been sought to be defended on the ground that, after all, the proportion of reserved judgments is very small and that reading them out in Court adds to the dignity of the Court. We are unable to agree. The Court's prestige and the respect in which it is held by the lawyers and the public must depend on more substantial attributes of the judiciary than a sonorous or pompous reading of the judgment in the Court.

In the former Nagpur High Court, a practice used to be followed of making available to the parties reserved judgments, in draft, two or three days before they were signed, for the perusal of the Counsel with a view to enabling them to make their submissions as to any error or consequential orders. We do not approve of this practice. It is liable to result in reopening discussion on a number of matters argued at the hearing.

The most satisfactory manner of dealing with reserved judgments would, we think, be to read out only the operative part thereof and hand them down, copies being made available to Counsel for their perusal. We understand that this is the practice followed by most subordinate Courts and also in the Privy Council and there is no reason why it should not be followed by the superior Courts. The Evershed Committee has also favoured this practice in the generality of cases.¹

Summary of recommendations.

52. Our recommendations on Civil Appellate Procedure may be summarised as follows:—

1. In appeals under special enactments to which Parts II and III of the Limitation Act do not apply, an appellant may be permitted to file an appeal without copies of the decree or judgment of the lower Court. Order XLI Rule 1 may be amended as has been done in Madras for this purpose.

2. Rules should be made to provide that before an appellate Court condones delay under section 5 of the Limitation Act, it gives notice to the parties and decides the petition only after hearing them.

3. In appeals from final decrees in partition suits containing allotment papers, the appellate Court may

accept copies of the decree containing only a portion of the papers. A rule similar to the one made by the Patna High Court may be framed in all the States.

4. When an appeal is filed against several decrees which have been disposed of by a common judgment, the appellate Court may be empowered to dispense with the requirement of filing of more than one copy of the judgment of the lower Court.

5. Every appellant should be required to state, in his memorandum of appeal, the precise form of the order which he proposes to ask the appellate Court to make.

6. The subordinate appellate Courts should apply the provisions of Order XLI Rule 11 to appeals in their Courts.

7. When a subordinate appellate Court dismisses an appeal under Order XLI Rule 11, it should deliver a brief judgment setting out its conclusions.

8. Second Appeals should be scrutinised with greater strictness at the stage of admission.

9. A second appeal should be admitted, not on the ground that it raises a question of law, but, only if the appellate Court feels that the decision of the subordinate Court on the point of law is erroneous.

10. The power of admitting appeals (particularly second appeals) should not be delegated to the Registrar or the Deputy Registrar.

11. The practice of circulating the papers relating to a second appeal to a Judge outside the Court hours for the purpose of enabling him to determine whether it should be admitted (as set out in para. 15, ante) may be generally adopted.

12. The Code should be amended so as to cast an obligation on the High Court, when admitting a second appeal, to specify the point or points of law that arise.

13. The High Court should be empowered to admit a second appeal on specified points only.

14. A memorandum of second appeal should be accompanied by judgments of both the trial Court and the lower appellate Court and, if any question of the construction of a document is raised in it, a true translation thereof.

15. Long judgments are out of place when appeals are dismissed summarily.

16. The memorandum of appeal should contain the address for service filed by the respondent in the Court below.

17. Order XLI Rule 14 of the Code of Civil Procedure should be amended so as to empower the appellate Court to dispense with service of notice on respondents who have not appeared in the lower Court.

18. The memorandum of appeal should be accompanied by the requisite process fee and the process form duly filed in by the appellant.

19. In the event of summary dismissal of the appeal, the appellant should be entitled to a refund of the process fee.

20. Notice of appeal should be sent in the first instance by registered post.

21. The Courts should be empowered to dismiss an appeal for non-prosecution, in the event of non-payment of process fees or for failure to take steps to have the paper books prepared.

22. The respondent should be required to enter an appearance, in the event of his desiring to contest the appeal, within a stated period of the service of the notice of appeal on him.

23. The form of summons in an appeal should be amended, as has been done in Madras, to apprise the respondent of the need for his entering an appearance.

24. The respondent should be required to furnish, in the memorandum of appearance, his address for service in the appellate Court.

25. The High Court might consider the advisability of framing a rule on the lines of the Allahabad rule referred to in para. 24 *ante*.

26. The preparation of paper books should not be entrusted to the government press and private printing may be allowed.

27. The methods of preparation of paper books set out in para. 26 *ante* may usefully be adopted.

28. Whenever possible, cyclostyling may be permitted instead of printing.

29. In taxing the costs of an appeal the appellate Court should be vigilant and disallow the costs of including unnecessary papers in the paper book.

30. In appeals valued over Rs. 20,000 all papers should be translated into English and a sufficient number of paper books should be prepared including paper books needed for use in the Supreme Court.

31. The rule of the Allahabad High Court imposing a special charge on an appellant whose paper book is prepared out of turn should be deleted.

32. In subordinate appellate Courts a particular judge or judges should be assigned exclusively to the task of hearing appeals for stated periods of time.

33. Whenever the number of appeals pending in a station is sufficient to occupy the entire time of an officer for a period of three months or more, an officer may be posted exclusively for their disposal.

34. In subordinate appellate Courts, as soon as the respondent has entered an appearance, the Court should ascertain the time required for its hearing, consult the convenience of both the advocates and post the appeal peremptorily for hearing on a date when it can be taken up.

35. Fixed dates should not be given for the hearing of appeals in High Court except when counsel from outside have to appear. In all other cases, a continuous list of ready cases should be prepared and cases taken from that list day after day.

36. Judges should read at least the memorandum of appeal and the judgment of the Court below outside the Court hours before the hearing of an appeal.

37. It is unnecessary to shorten the hours of work for this purpose as judicial officers have to put in certain amount of work at their residence outside the regular working hours.

38. The powers of a single judge should be raised in all the High Courts so as to enable them to hear and dispose of finally all first appeals and miscellaneous appeals valued below Rs. 10,000 and also all second appeals.

39. Order XLVI Rule 27, Code of Civil Procedure, should be amended to enable a party to an appeal to adduce additional evidence if he could not, with due diligence, have produced it in the lower Court.

40. Order XLI Rules 23 and 25, Code of Civil Procedure should be amended to enable an appellate Court to remand a case whenever it considers it "necessary in the interests of justice."

41. When a case is remanded, the appellate Court should, in its order of remand, fix a date by which the lower Court has to resubmit the case.

42. In such cases, the appellate Court should also fix a date on which the parties have to appear before the lower Court to receive its directions.

43. Section 98 of the Civil Procedure Code should be amended on the lines of Clause 36 of the Letters

Patent (of Calcutta, Madras and Bombay) to enable the judges to refer any point on which they differ to a third judge.

44. Judgments should as far as possible be delivered immediately on the conclusion of the hearing.

45. Judges should not retire to their chambers or take working day off in order to write reserved judgments.

46. The practice of reading out reserved judgments in open Court should be discontinued in order to save time.

47. It is not desirable to place the draft judgment on the table before signature, as this is likely to lead to a reopening of the case.

17.—CIVIL REVISIONS

1. The powers of the High Court to exercise revisional jurisdiction over the proceedings of subordinate civil courts arise principally under section 115 of the Code of Civil Procedure, 1908 and section 25 of the Provincial Small Cause Court Act, 1887 or under corresponding provisions in the laws of the erstwhile Part B States. High Courts have also the power of superintendence over subordinate civil courts under article 227 of the Constitution.

Revisional jurisdiction of the High Courts.

Under section 115 of the Code, the High Court has power to call for the record of any case decided by any subordinate civil court and in which no appeal lies thereto (to the High Court), and to revise the order if such subordinate court appears to have—

(a) exercised a jurisdiction not vested in it by law, or

(b) failed to exercise a jurisdiction so vested, or

(c) acted in the exercise of its jurisdiction illegally or with material irregularity.

2. As a large number of revision applications to the High Courts are stated to be without substance and filed principally for the purpose of delaying the conclusion of the litigation, the question arises whether the revisional jurisdiction should be continued.

Revisions a source of delay.

3. The figures of revision applications which are given in the annual reports on the administration of justice issued by the different High Courts show only the annual institutions, disposals and pendency. They do not give any information as to the nature of the applications, the law under which they are filed or the general result of their disposal. Nor do these figures make it possible for us to draw any inference as regards the time taken for their disposal. We have, however, been able to collect some informative data in respect of these proceedings for the years 1952 to 1954. The Table set out below shows, among other things, the manner in which these revision applications under section 115 of the Code of Civil Procedure and other provisions of law were disposed of in the year 1954 in most of the States. In the case of some States, we have not been able to obtain the figures of applications under section 115 of the Code and other provisions separately.

Figures not informative.

TABLE

State	Particulars of the Application	Pending at the beginning of the year	Instituted during the year	Total for disposal	Summarily dismissed	Confirmed	Reversed	Otherwise disposed of	Total disposal	Pending at the end of the year	Remarks
1	2	3	4	5	6	7	8	9	10	11	12
Andhra	Under Sec. 115 C.P.C.	891	370	1,261	142	69	7	1	219	1,042	
	Other civil revisions	467	223	690	48	50	11	3	112	578	
	Total	1,358	593	1,951	190	119	18	4	331	1,620	
Assam	Under Sec. 115 C.P.C.	10	52	62	15	14	14	2	45	17	
	Other civil revisions	6	23	29	3	9	3	..	15	14	
	Total	16	75	91	18	23	17	2	60	31	
Bihar	Under Sec. 115 C.P.C.	516	977	1,493	546	293	152	29	1,020	473	
	Other civil revisions	283	158	441	75	54	32	6	167	274	
	Total	799	1,135	1,934	621	347	184	35	1,187	747	
Bombay	Under Sec. 115 C.P.C.	708	2,078	2,786	1,245	317	145	4	1,711	1,075	
	Other civil revisions										Total
Madhya Pradesh	Under Sec. 115 C.P.C.	344	623	967	351	173	79	28	631	336	
	Other civil revisions	187	359	546	148	97	49	28	322	224	
	Total	531	982	1,513	499	270	128	56	953	560	

Madras	Under Sec. 115 C.P.C.	3,103	1,802	4,905	605	884*	219	118	3273**	1,632	*Disposals after hearing. **1447 transferred to Andhra High Court.
	Other civil revisions										
	Total										
Mysore	Under Sec. 115 C.P.C.	139	374	513	1	225	58	9	293	220	
	Other Civil revisions	188	318	579	2	199	51	26	276	230	
	Total	327	692	1,092	3	424	109	35	569	450	
Orissa	Under Sec. 115 C.P.C.	81	108	249	43	125	48	1	217	32	
	Other civil revisions	85	45	130	1	29	6	1	37	93	
	Total	166	213@	379	44	154	54	2	254	125	@ Includes 7 restored cases.
Punjab	Under Sec. 115 C.P.C.	337	848	1,185	..	..	..	..	840	345	
	Other civil revisions										
	Total										
Uttar Pradesh	Under Sec. 115 C.P.C.	2,690	944	3,634	279	432	55	65	831	2,803	
	Other civil revisions	1,926	726	2,652	211	306	34	10	601	2,051	
	Total	4,616	1,670	6,286	490	738	89	115	1,432	4,854	
West Bengal	Under Sec. 115 C.P.C.	1,978	2,181	4,163	..	..	..	..	2,021	2,122	
	Other civil revisions										
	Total										

NOTE.—The figures furnished in this Table have been taken from the reports on the administration of justice published by the various High Courts.

Large number of petitions unsuccessful.

4. The statement shows that over fifty per cent of these applications are dismissed summarily by the High Courts and that the percentage of ultimate success is very low even out of those in which a rule nisi is issued. For instance, in Bihar, out of 1,020 applications under section 115 of the Code disposed of in 1954, 546 were dismissed summarily and out of the rest the rule was made absolute only in 152 applications. In Bombay, out of a total of 1,711 applications disposed of in the same year, as many as 1,245 applications were summarily dismissed and orders were reversed only in 145 applications. In Madhya Pradesh, the total number of applications disposed of was 631 out of which 351 were summarily dismissed and the orders were reversed only in 79 applications. In Madras, excluding 1,447 applications transferred in that year to Andhra, 1,826 applications were disposed of, out of which 605 were summarily dismissed and the orders were reversed only in 219 applications.

Petitions from interlocutory orders.

5. As already stated, the figures do not furnish any information as to the nature of these revision applications. But an examination of the decided cases shows that many are made against interlocutory orders passed by the subordinate courts in pending proceedings. Considerable delays arise in the disposal of the proceedings in the course of which these revisions against interlocutory orders are filed. When a rule nisi is issued, the proceeding in the lower court is generally stayed and its further progress is held up during the pendency of the petition in the High Court. Further, whenever a rule is issued on such applications, the record of the case is generally called for from the subordinate courts so that, even when no order of stay has been made, the subordinate court cannot proceed in the absence of the record and, thus, there is, in effect, an automatic stay of proceedings. The delays which arise are graphically described by the Judicial Reforms Committee of West Bengal:¹

Stays and Delays.

“Suits tried in the mufassal are constantly stayed pending the disposal of the revisional applications and appeals from interlocutory orders by this Court. It was said in jest recently that half the records of the Alipore Courts are permanently in the High Court. Many a true word is spoken in jest and unfortunately there is much truth in this remark. Orders made by the Courts at Alipore are constantly challenged during the progress of suits with the result that such suits are held up frequently for months and even longer until this Court has dealt with the matters in controversy.”

We were informed of a case in which a stay was granted by the High Court in Calcutta in 1951 and in which for

¹Report page 13.

some reason the revision application was not disposed of till 1956. The proceedings in the court below were held up in the meanwhile.

6. We have been informed that a rule has recently been framed by the Calcutta High Court which provides, that when upon the admission of an appeal the records of the subordinate court are called for, that court should send up not the original record but only copies of relevant papers compendiously called the "copy records" so that the lower court might be free to proceed with the case before it. It is said that the rule has had the effect of preventing to a large extent the interruption of the proceedings in the subordinate courts. It appears that similar rules have been made by some other High Courts also.

Avoidance of automatic stays.

7. Though such rules may mitigate the evil of what has been called above an automatic stay of proceedings, there will still remain revision petitions in which stays are obtained. It has to be remembered, as stated by a senior Chief Justice that—

"in the great majority of cases, applications in revision against interlocutory orders are made by judgment-debtors and the whole object of such applications is to hold up the execution case as long as possible."

8. The extent to which the original proceeding might be held up for an unconscionable length of time by resorting to the expedient of filing a revision petition will appear from the Table on next page showing the number of applications pending in the High Courts on the 1st of January 1957

Extent of delays.

TABLE

Name of the State	1945 and earlier	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	Total
Andhra Pradesh (A)	6	..	2	5	6	6	34	63	70	428	1,374	1,583	3,577
Assam	..	..	..	..	..	..	..	..	..	..	7	25	32
Bihar	..	..	..	1	..	..	..	4	41	110	330	554	1,042
Bombay (B)	..	..	..	..	..	..	1	4	8	34	204	991	1,242
Kerala	*1	..	..	..	..	..	2	1	3	27	74	418	526
Madhya Pradesh	..	..	..	..	..	..	..	13	16	30	81	676	816
Madras	..	..	..	..	..	3	1	8	19	62	312	955	1,360
Mysore (C)	..	..	..	..	..	..	1	1	8	96	300	630	1,036
Orissa	..	..	..	..	..	..	..	..	..	9	63	159	232
Punjab	..	..	..	..	..	..	3	34	14	267	206	339	989
Rajasthan	..	..	..	..	..	2	8	23	99	182	246	376	936
Uttar Pradesh	2**	5	4	11	21	118	703	715	778	786	913	1,222	5,278
West Bengal	..	..	1	..	5	4	5	30	88	352	679	2,503	3,667

NOTE.— *1 of 1944.

**1 of 1944 and 1 of 1945.

(A) The figures shown against this State include the pendency received from the erstwhile High Court of Hyderabad.

(B) Includes the pendency in the Nagpur and Rajkot Benches.

(C) Does not include the receipts by transfer as a result of reorganisation of States.

The figures furnished in this Table have been supplied to us by the High Courts.

according to the year of their institution. If one assumes that stay orders were made in about fifty per cent of these applications, they reveal an alarming state of affairs when one remembers that finally about eighty per cent of these applications are unsuccessful.

9. Since a large number of these revision applications is filed against interlocutory orders, we invited opinion through our questionnaire on a proposal that the right of revision against interlocutory orders should be drastically curtailed and that revision should be restricted only to cases falling within clause (a) of section 115 of the Civil Procedure Code and not be permitted in cases falling under clauses (b) and (c) of that section.

Proposal to curtail right of revision.

Although there was general agreement that many of these applications are lacking in substance and are filed with the sole object of delaying the proceedings, the proposal made by us met with general opposition. Dealing with the question of curtailment of the right of revision in respect of interlocutory orders, an experienced Chief Justice stated that "it is not unoften that a very wrong order is made. If it be made impossible to challenge the order immediately and have it set aside and if the error is left to be corrected in the appeal from the final order if and when such an appeal is taken, the intermediate proceedings will necessarily all be on an erroneous basis and it can hardly be just to compel the parties to submit to the order without any change of instant redress".

Opposition to curtailment.

Value of revisional jurisdiction.

10. It was alternatively proposed that in such cases, in lieu of a revision to the High Court, the aggrieved party might be given a right of appeal to a lower appellate court in cases in which the orders made were such as would lead to the whole proceedings being conducted on an erroneous basis, or where the order was one which went to the root of the proceedings. This, however, appeared merely to substitute one type of proceeding for another leaving the right of revision to the High Court against the order in appeal still open to the party concerned.

An alternative suggestion.

11. It was pressed upon us that "provided a superior Court is discerning and firm, there ought not to be any undue interruptions of the proceedings of the subordinate Courts, simply because a right of revision is provided in the law. The evil of a voluminous body of Rules against interlocutory orders with all the undesirable consequences of such Rules, which has undoubtedly grown in to my mind not due to any deficiency or superfluity in the law but due entirely to laxity in its administration." This is no doubt true and, as in the case of second appeals, we are driven to the conclusion that enough care is not exercised in granting rule nisi and issuing stay orders at the time of admission of these revision applications. Nor have

Careful scrutiny absent.

Rankin
Committee's
recommendation.

Method of
dealing with
revisions.

the High Courts, except a few, accepted as they well might have, the recommendation of the Rankin Committee,¹ of which we approve, for obtaining from the subordinate courts a periodical return of cases in which stay orders have been granted or records called for so that they may be expeditiously disposed of. The real remedy lies, in our opinion, in the superior courts keeping in view the following essential rules in dealing with these revisions:

(1) That the rule *nisi* should not be issued except upon a very careful and strict scrutiny;

(2) That where a stay is not granted, the records of the subordinate courts should not be called for and when the records are necessary, only copies of the records should be required to be produced; and

(3) That whenever a rule *nisi* is granted and a stay order issued, every effort should be made to dispose of the revision application within two or three months.

No grounds
for abolishing
revisions.

12. On the whole and after careful consideration of the views and information placed before us, we are of opinion, that the fact that a large percentage of these revision applications, particularly against interlocutory orders, are lacking in substance and are eventually dismissed is not a ground for curtailing the powers of the High Court in revision generally.

But scope
for curtailment.

13. But, nevertheless, an amendment of the law is necessary in order to remedy the grave evil of delays arising out of revision applications in interlocutory orders. It appears to us that it would be unsafe to expect an improvement in the situation merely by reason of the superior courts observing the rules mentioned above. We are of the view that it would strengthen the hands of the revising courts and constantly remind them of the danger of entertaining and granting stay in revision applications against interlocutory orders, if provision were made in section 115 of the Code that nothing therein shall apply to interlocutory orders from which no appeal lies, unless the order is likely to occasion a failure of justice or cause an irreparable injury.

Restriction
on power to
grant stay.

14. It is, we think, also necessary to enact provisions similar to those in Order XLI, Rule 5, Code of Civil Procedure limiting the powers of the Court to grant stays in revision applications.

Conflict of
opinion.

15. Difficulties have been created by conflict of judicial opinion on the interpretation of section 115 of the Code. Under this section, the High Court may only call for the record of "any case which has been decided by any Court subordinate to such High Court". It is further provided

¹Report of the Civil Justice Committee page 281, para. 4.

that the case which has been decided by the subordinate court must be one "in which no appeal lies thereto", i.e., to the High Court.

A difference of opinion has arisen between the High Courts in the interpretation of the words "case decided". The High Court of Allahabad has held that these words do not include an issue or part of a case; in other words, they do not include interlocutory orders. It has, therefore, held that the High Court has no power to interfere in revision against an interlocutory order made in any case.¹ The Rajasthan High Court has also taken a similar view.² The majority of the High Courts has, however, taken the contrary view and held that a revision does lie to the High Court against interlocutory orders.³

16. A somewhat similar divergence of view has arisen also in the interpretation of the words "in which no appeal lies". The Rajasthan High Court has held⁴ that if it is open to a party to raise as a ground of appeal in the High Court (under section 105 of the Civil Procedure Code from the final decree or order) the correctness of any order which has been passed during the pendency of a suit or proceeding, no revision will lie to the High Court from that order inasmuch as an appeal would eventually lie to the High Court and the condition in the section contained in the words "in which no appeal lies thereto" will not have been satisfied. In effect, on the Rajasthan view, it is only when the order in question cannot be challenged in the High Court either in first or in second appeal or even as a ground of appeal under section 105, that the High Court will be able to entertain a revision under section 115.⁵ A different view, however, has been taken by a number of other High Courts in regard to the interpretation of these words and it has been held that these words have reference only to a first appeal.⁶

17. The High Courts are also not agreed on what amounts to an illegality or material irregularity within the meaning of clause (c) of the section. What is not an illegality or a material irregularity within the meaning of the section was decided by the Privy Council in *Amir Hassan Khan v. Sheo Baksh Singh*,⁶ where the Judicial Committee laid down that where a Court has jurisdiction to decide a question before it and, in fact, decides the

¹*Buddhu Lal v. Mewa Ram*, I.L.R. 43 Allahabad 564 and *Mt. Sup Pali v. Ariya Pretinidhi Sabha* A.I.R. 1936 Allahabad 686.

²*Pyar Chand v. Dugar Singh*, A.I.R. 1953 Rajasthan 90.

³*Dhapi v. Ram Pershad* 14 Calcutta 768. *Mani Lal v. Durga Prasad* 3 Patna 930. *C. Janardhanan and another v. N. M. Verghese and others* A.I.R. 1925 Madras 707. *Secretary of State for India in Council v. Narsibhai Dadabhai Patel and others* 48 Bom. 43.

⁴*Tipan Prasad Singh v. Secretary of State* A.I.R. 1935 Patna 86. *Narayana Sarajee Sagne v. Seshrao Vithoba and others* A.I.R. 1948 Nagpur 258.

⁵I.L.R. 11 Calcutta page 6.

Views of the Privy Council. question, it cannot be regarded as acting in exercise of its jurisdiction illegally or with material irregularity, merely because its decision is erroneous. This was further emphasized by the Judicial Committee in *Balakrishna Udayar vs. Vasudeva Aiyar*¹ in which it was laid down that the section applies to jurisdiction alone, to the irregular exercise or non-exercise of it or the illegal assumption of it and is not directed against erroneous conclusions of law or fact in which the question of jurisdiction is not involved. The High Courts have, however, placed varying interpretations upon the principles laid down by the Privy Council, so that, there is a mass of conflicting judicial opinion as to what constitutes illegality or material irregularity within the meaning of the section.

Recommendations of the Rankin Committee. 18. The difficulties in the interpretation of the section and the need to resolve the conflict of decisions which, in the opinion of the Civil Justice Committee, had given rise to "much bad law" was felt by that Committee and it made certain recommendations for the amendment of the law. Those amendments related not only to the clarification of the language of section 115 but also to a curtailment of the High Courts' revisional powers. As we are making recommendations of our own in regard to the clarification of the language of section 115, it is unnecessary to enter into the history of the legislation which was introduced to implement the recommendations of the Civil Justice Committee and which was eventually not enacted.

Recommendations on section 115 C.P.C. 19. Though we do not feel justified in recommending any general curtailment in the powers of revision conferred by section 115, we are of the view that the difficulties created by conflicting judicial views in the interpretation of the section need to be removed. We, therefore, make the following recommendations indicating the lines on which section 115 should, in our opinion, be amended:

(1) The expression 'case decided' in the section should be clarified so as to include within it an interlocutory order including an order deciding an issue from which no appeal lies.

(2) Provision should, however, be made in the section, limiting the power of revision to such interlocutory orders which, if decided in favour of the petitioner would be sufficient for the final disposal of the suit or proceeding; or in which the order is likely to occasion a failure of justice or cause an irreparable injury.

(3) The words "in which no appeal lies thereto" in the first part of the section should be altered so as to make untenable the view of the Rajasthan High Court that no revision will lie if the order could be

brought before the High Court eventually in second appeal or be made the subject matter of a ground of appeal to the High Court under section 105 of the Civil Procedure Code. Our intention is that the right of moving the High Court in revision should be denied only in cases where an appeal lies either to the High Court or to the district court from the order in question.

20. Apart from the provisions of section 115, it is not unusual to invoke jurisdiction under article 227 of the Constitution in order to induce the High Courts to interfere in revision. We are of the view, however, that such powers as the High Courts possess under article 227 need to be preserved, notwithstanding their occasional use for the purpose of reviewing decisions of the Courts below.

Revision under article 227

21. We may in this connection consider a draft Bill prepared by the Chief Justice of one of the States who was firmly of the view that legislation of the nature contemplated by it would result in expediting the disposal of civil revision petitions. Although the Bill in its terms was applicable only to revision petitions, yet the procedure contemplated by it was equally applicable to appeals.

A suggested method for securing expedition.

The idea underlying the scheme contained in the Bill was, that on an order being made the party against whom it is made should be required to decide within a specified time whether he wished to proceed in revision against it. If he decided to do so the court passing the order would issue the necessary notices and fix a day for the hearing of the matter in the High Court. It was said that the court itself having been seized of the proceedings, much of the delay that now occurs in serving processes and so forth could be avoided.

In the draft Bill revision petitions are divided into two categories—petitions against final orders and those against interlocutory orders.

As regards revision against final orders, the Bill provides that whenever a court or tribunal passes a final order from which a revision lies to the High Court, it shall at the time of passing the order fix a date, being not earlier than 15 days and not later than 30 days for the appearance of the parties appearing in the case for the confirmation of the order or judgment.

On the date so fixed, any party wishing to file a revision against that order is required to file his objections to the order or judgment before the trial court together with copies for the other parties present. The trial court is then required to fix a date for the appearance of the parties in the High Court and send the records together with objections to the High Court for its decision after handing over copies of the ground of objections to the respondents.

It is proposed that thereafter the High Court should either on the date fixed by the subordinate court or on any subsequent date, hear and finally dispose of the petition, and that further notices to the parties present in the trial court or to those who are *ex-parte* in that court would not be necessary. If no objections are filed the order of the lower court is confirmed by it and cannot thereafter be challenged in revision.

The procedure contemplated in the Bill for the filing of revisions against interlocutory orders under section 115 of the Civil Procedure Code is substantially the same. The only modification is, that the person objecting to the order passed should file his petition of objections to the trial court within 15 days of the said order whereupon the court shall give notice of the objection to the opposite parties and fix a date for their appearance in the High Court.

It will be noticed, that in substance, what the proposed Bill contemplates is that notices of revisions should be served on the respondents not by the High Court but by the trial court and thus delays in the service of notice by the High Court to a party in a subordinate court is avoided.

Not
favoured.

22. In our opinion the results sought to be achieved by this Bill can be easily secured without prescribing any such elaborate procedure. In our chapter on the "Trial of Civil Suits" we have recommended that parties on their first appearance in a trial court should file a registered address, service at which will be effective not only for the purposes of the pending proceeding but also for any appeal or revision arising out of that proceeding. We have also drawn attention to an amendment effected in West Bengal in Order VI of the Civil Procedure Code by the addition of Rule 14-A under which service of any process may be effected upon a party at his registered address for a period of two years even after the final disposal of the suit or matter.

If such a rule is made by all the High Courts and the revision petitioner is required to state in his petition the address for service given by the respondent in the lower court and service of notice by registered post is authorised delays occurring by reason of notices having to be served will be avoided. Further, generally in pending suits the registered address of a party is likely to be that of his advocate and hence service of notices will not present much difficulty. The lower court can serve a notice upon a party as easily and effectively at his registered address as by requiring him to appear in court on a particular date to take notice of objections.

We do not, therefore, consider that the legislation on the lines proposed will be particularly useful. Its objectives, as we have seen, can be attained equally well by an amendment of the rules and by insisting upon the petitioner stating in his petition the registered address of the

respondents and also paying process fees at the time when the petition is filed.

23. In regard to revision applications under section 25 of the Provincial Small Cause Courts Act, 1887 two points were raised. Firstly, whether the admission of an application for revision under that section should be made conditional on the applicant depositing the decretal amount in Court; secondly, whether this revisional jurisdiction should be conferred upon the district court without a further revision to the High Court.

Section 25
Provincial
Small Cause
Courts Act.

Two sugges-
tions.

24. The idea of making a deposit of the decretal amount a condition precedent was strongly recommended by the Civil Justice Committee. They relied on the analogy of the proviso to section 17 of the Provincial Small Cause Courts Act, 1887, under which an applicant for an order to set aside an *ex parte* decree is required to deposit in Court the decretal amount or to give security. The Committee stated: "We believed these conditions are admitted on all hands to have made for justice and indeed to be highly necessary to prevent gross abuse; we have some difficulty in seeing why an application asking for the special interference of the High Court should not be subjected to similar conditions."¹ In making this recommendation the Committee was influenced by the need of giving protection to the respondents in these applications who were dragged to the High Court in a large number of cases which were ultimately dismissed. It further thought, that there was a tendency in some of the High Courts to regard section 25 as though it gave a right of appeal on a point of law similar to that conferred by section 100 of the Civil Procedure Code. It observed: ".....there are Judges who consider even under section 25 that if on a Small Cause Court judgment a point of law can be raised which they are not prepared to dismiss forthwith as bad, they ought to issue a rule on the respondent to show cause why his decree should not be set aside."² They recommended that in order to give some protection to the respondent it was necessary that a compulsory deposit limited at any rate to Rs. 400 should in all cases be made with the petition without prejudice to the right of the court to require a deposit of the whole amount if it thought fit.³

Deposit
condition
precedent
to revision.

Recommend-
ations of
the Rankin
Committee.

Its reason.

25. We entirely agree with the Committee in deprecating the practice adopted by some of the High Courts. We have dealt at some length with the duty of the courts in admitting appeals under section 100, Civil Procedure Code, and the need for a very careful scrutiny under Order VLI, Rule 11 of the memorandum of appeal in these cases. We have also indicated the principles which should guide the courts in deciding whether an appeal should be admitted.

¹Report page 369 para 9.

²Report page 366 para 3.

³Report page 370 para 9.

Admission
of revision
petitions.

We have, earlier in this chapter, emphasized the necessity for a closer scrutiny of the applications for revision made under section 115 of the Civil Procedure Code. In our view, analogous principles should be applied in admitting applications under section 25 of the Provincial Small Cause Courts Act, 1887. Under section 25, as in section 115 of the Code, it is for the High Court to satisfy itself that the requirements laid down in these sections have been complied with. There is no right vested in a party to a revision. The granting of it is entirely a matter for the discretion of the court. The court, therefore, has to strictly satisfy itself that the conditions laid down in the section have been fulfilled, before it decides that the case is one in which this extraordinary jurisdiction of the court should be exercised.

The true
remedy.

It is, however, difficult to see why this erroneous practice in some of the High Courts, which results in the courts freely granting rules in undeserving cases in disregard of the principles to be followed, should result in subjecting an applicant in a genuine case to the hardship of having to deposit the decretal amount or a part of it in cash. The true remedy lies, in our view, in emphasizing the principles on which the High Court should act in these matters and in insistence on the observance of these principles.

Views of the
Rankin
Committee
examined.

26. It may be mentioned that the Committee could not obtain the statistical data in regard to the number of applications under section 25, the number of cases in which notices had been issued to the respondents, the number of cases in which the courts ultimately revised the decree of the lower court and the average duration of the revisions under that section. The Committee seems to have examined in Madras a hundred applications under this section for the purpose of supporting its criticism against the practice which then prevailed in Madras of the Deputy Registrar admitting such applications. It was found that out of these hundred applications so admitted by the Deputy Registrar, sixty three per cent had failed. The Committee appear to have taken the view that if as many as sixty per cent of the applications made ultimately resulted in failure, it would be consonant with justice to require a deposit in the case of all such applications. We are unable to accept this view. Assuming that the figures of ultimate dismissal are as high as sixty per cent, that would seem to indicate the necessity of a closer scrutiny of these applications at the stage of admission. The high percentage of dismissals would not, we think, justify a rule which would subject the genuine applicant to the hardship mentioned above.

Deposit
unnecessary.

27. Having given careful consideration to the matter, we feel ourselves unable to recommend an amendment of the law requiring such a deposit to be made. Indeed, it

appears to us that the proviso to section 17 of the Provincial Small Cause Courts Act relied on by the Civil Justice Committee in so far as it requires a deposit of the decretal amount or security from an applicant for setting aside a decree passed *ex parte* inflicts an unjustified hardship on such an applicant. There would appear to be no reason why, if a person seeking to have an *ex parte* decree set aside under Order IX, Rule 13, Code of Civil Procedure is not necessarily required to make a deposit of the decretal amount or to give security, a different rule should apply to a person seeking to have an *ex parte* decree passed by a small cause court.

Amendment of section 17 Provincial Small Cause Courts Act.

28. The question of transferring this revisional jurisdiction from the High Court to the District Court was considered by the High Court Arrears Committee who recommended the adoption of that course. It may be mentioned that the State of Uttar Pradesh has accepted that recommendation and passed legislation¹, substituting an amended section 25 for the existing section, which enables a district judge to exercise the powers hitherto exercised by the High Court under the section.

Transfer of revisional jurisdictions to the District Court.

In order to ascertain whether the number of these revision applications really imposed a burden on the High Courts which required to be relieved, we have collected the number of these applications filed in the years 1953, 1954 and 1955 in some of the States in respect of which figures could be made available. Unfortunately, we have not been able to obtain figures for all these States showing how many of these applications were summarily rejected and in how many of them the High Court passed orders reversing or varying the decree of the small cause court. The figures collected by us are set out in the Table below.

Number of petitions not large.

¹The Provincial Small Cause Courts (U.P. Amendment) Act, 1957 (U.P. Act No. 17 of 1957).

Comparative Table showing the number of civil revision petitions instituted under section 25 of the Provincial Small Cause Courts Act and under other Acts in the High Courts of certain States in the years 1953, 1954 and 1955

Name of the State	Number of petitions filed under section 25 of the Provincial Small Cause Courts Act			Number of revision petitions filed under other Acts			Remarks
	1953	1954	1955	1953	1954	1955	
Assam (A)	4	..	..	39	61	61	(A) The figures shown against this State do not include rules connected with appeals.
Bihar	172	158	N.A.	887	977	N.A.	
Madras	613	561	192	1792	1433	1430	
Madhya Pradesh	469	359	N.A.	488	623	N.A.	
West Bengal	161	486	104	2000	1699	1856	

NOTE.—These figures have been taken from the reports on the administration of justice published by the High Courts.

29. It will be noticed that the number of these applications is not considerable; and in some of the States the number seems to be decreasing. We, therefore, do not feel justified in recommending the transfer of this revisional jurisdiction to the District Court and barring a further revision to the High Court for the following reasons:—

Transfer of jurisdiction to district judge undesirable.

Firstly, as appears from the above Table, the number of petitions filed in the High Court under this section is not considerable.

Secondly, a transfer of this jurisdiction to the district courts may probably result in an increase in the number of these applications.

Thirdly, as questions of law would arise for disposal in these applications, there is a possibility of divergence of views among different District Courts dealing with the applications which would disturb the uniformity of law throughout the State which is now attained by the High Court dealing with these matters.

Fourthly, it is but appropriate that the special and extraordinary remedy of revision which enables the Court to correct jurisdictional errors or errors in law should rest with the highest court in the State.

30. Our recommendations regarding civil revisions are set out below :—

Summary of Recommendations.

(1) The right of revision against interlocutory orders is a valuable one and should not be abolished.

(2) A rule nisi should not be issued except upon strict scrutiny.

(3) The records of the lower court should not be sent for, except when a stay order is passed.

(4) In other cases, if the court requires the records, it should call upon the parties to file certified copies of the records necessary for disposing of the revision.

(5) An effort should be made to dispose of all revisions in which stay orders have been granted within a period of two or three months.

(6) The High Court should obtain from subordinate courts, a periodical return showing the cases which have been held up on account of the pendency of revision petitions.

(7) A rule similar to that contained in Order XLI Rule 5 Civil Procedure Code should be enacted regulating the power of the High Courts to grant stay in revision applications.

(8) Section 115 of the Civil Procedure Code should be amended so as to make it clear that the expression "case decided" includes an interlocutory order including an order deciding an issue, from which no appeal lies.

(9) It should be made clear by a suitable amendment in section 115 that the power of revision is limited to such interlocutory orders which, if decided in favour of the petitioner would be sufficient for the final disposal of the Suit or proceeding; or in which the order is likely to occasion a failure of justice or cause an irreparable injury.

(10) Section 115 of the Civil Procedure Code should be amended so as to make the views of the Rajasthan High Court set out in para 16 *ante* untenable and to permit a revision application to be filed against an order, if otherwise capable of being revised, in cases in which no appeal lies either to the High Court or to the district court from the order in question.

(11) The revisional power of the High Courts under article 227 of the Constitution should be left untouched.

(12) It is not desirable to make the admission of a revision petition under section 25 of the Provincial Small Cause Courts Act conditional on the petitioner depositing the decretal amount in court.

(13) The courts should scrutinise such applications for revision carefully at the stage of their admission.

(14) The revisional jurisdiction under section 25 of the Provincial Small Cause Courts Act should continue to remain with the High Court and not be transferred to the District Judge.

(15) The proviso to section 17 of the Provincial Small Cause Courts Act, in so far as it requires a deposit of the decretal amount or security from an applicant for setting aside an *ex parte* decree should be repealed.

18.-EXECUTION OF DECREES

1. The general complaint against the system of execution of decrees of civil courts in India is that in a large number of cases the decree-holders who have obtained after much trouble and expense, decrees for payment of money or for delivery of specific property or for other relief are not able to obtain full or even a partial satisfaction of their decrees. The evil was noticed as far back as 1872 by the Privy Council in the Maharaja of Darbhanga's case¹ where it was stated that the difficulties of a litigant in India begin when he has obtained a decree.

Difficulty of obtaining satisfaction for decrees—
an old complaint.

This was echoed in 1923 by the Government of India in their letter dated 25/28-6-1923 addressed to the Provincial Governments: "It is clear, however, that there are substantial facts to support the common criticism that litigants are unable to gain adequate satisfaction for the decrees passed in their favour. Thus taking the figures reported by provinces in 1921.....it will be found that the Bengal mofussil courts returned execution proceedings as infructuous in no less than 245, 344 cases, the percentage of the total of infructuous cases in some districts being as high as 71 and 63 per cent. In the same year the mofussil courts of Madras except village courts obtained satisfaction in full in only 16.56 per cent of the applications for execution, and satisfaction in part in 7.19 per cent while the number of wholly infructuous applications was 239,421. The courts subordinate to the Allahabad High Court dealt with 1,41,639 applications for execution of decrees, and of these 57,711 were totally infructuous. Those subordinate to the Lahore High Court dealt with 174,566 applications out of which 83,902 were returned as totally infructuous; out of 139,742 applications before the courts in the districts of the Central Provinces and Berar 66,286 were returned as infructuous."²

The position in 1923.

2. To assess the validity of the criticism that litigants are generally unable to gain adequate satisfaction for their decrees, it is necessary to examine the present situation with reference to the figures of applications for execution of decrees and their results. The following table (Table I) shows at a glance the general result of such applications for the years 1954 and 1955 in eleven States. Table II shows the percentages of the number of applications in which satisfaction was obtained in full or in part and the applications which were wholly infructuous to the total number of applications disposed of in the two years.

General results of execution.

The present position.

¹The General Manager of the Raj Darbhanga v. Maharaj Coomarr Ramput Singh, 14 Moore's Indian Appeals 612.
²Civil Justice Committee Report pp(v) and (vi) para 2.

TABLE I

General Result of Applications for Execution of Decrees for the years 1954 and 1955

State	No. of applications for disposal		By transfer		Full satisfaction		Partial satisfaction		Infructuous		Total disposals		Pendency	
	1954	1955	1954	1955	1954	1955	1954	1955	1954	1955	1954	1955	1954	1955
Andhra	71,980	75,862	1,122	1,556	10,336	9,899	5,617	6,124	37,224	39,494	54,299	57,073	17,681	18,789
Bihar	94,086	..	4,441	..	30,154	..	3,211	..	17,441	..	55,247	..	38,839	..
Bombay	1,64,667	1,75,279	2,452	4,088	19,045	19,298	25,253	30,184	38,978	40,745	85,728	90,325	78,939	84,954
Kerala	80,425	78,553	2,309	2,897	8,055	7,307	8,523	9,723	26,686	26,182	45,573	46,109	34,852	32,444
Madhya Prade	67,102	..	..	..	(1)20.1%	..	15.4%	..	56.3%	..	48,776	..	18,326	..
Madras	1,03,195	1,48,420	356	395	14,446	19,114	11,643	19,008	47,860	67,111	74,305	1,05,628	28,890	42,792
Orissa	15,368	14,335	..	..	2,460	2,23	1,479	1,462	4,464	3,648	8,403	7,345	6,965	6,990
Punjab	28,465	28,716	544	491	6,390	6,461	3,215	3,320	11,254	11,474	21,401	21,745	7,062	6,970
Rajasthan	79,069	79,566	2,748	..	(2)16,403	(2)16,205	..	..	32,117	33,551	48,520	49,756	27,801	29,810
Uttar Pradesh	1,02,510	1,09,216	5,502	6,312	17,351	18,781	11,609	12,360	35,439	38,284	69,901	75,737	32,609	33,479
West Bengal	1,20,171	1,04,347	844	145	56,724	50,651	3,485	3,359	22,096	21,813	83,149	75,968	37,022	28,379

- (1) No separate figures are available. Only percentages are available.
 (2) Includes also figures of partial satisfaction.
 (3) Bihar and Madhya Pradesh figures for the year 1955 are not available.

TABLE II

States	Total disposals		Percentage of Full satisfaction		Percentage of partial satisfaction		Percentage of infructuous applications	
	1954	1955	1954	1955	1954	1955	1954	1955
Andhra	54,299	57,073	19·3%	17·3%	10·3%	10·7%	68·3%	69·1%
Bihar	55,247	N.A.	54·0%	N.A.	5·9%	N.A.	31·5%	N.A.
Bombay	85,728	90,325	22·2%	21·3%	29·4%	33·3%	45·4%	45·1%
Kerala	45,573	46,109	17·6%	15·8%	18·7%	21·0%	58·5%	56·8%
Madhya Pradesh	48,776	N.A.	20·1	N.A.	15·5	N.A.	56·3	N.A.
Madras	74,305	105,628	19·5	18·1	15·6	17·9	64·4	63·5
Orissa	8,403	7,345	29·3	29·1	17·6	19·9	53·1	49·6
Punjab	21,403	21,746	29·8	29·6	15·0	15·2	52·1	52·1
Rajasthan	48,520	49,756	34·0	32·6	32·0	N.A.	66·0	67·2
Uttar Pradesh	69,901	75,737	24·8	24·8	16·5	16·6	50·7	50·5
West Bengal	83,149	75,968	68·9	66·8	4·2	4·8	26·9	28·8

Percentage of execution applications resulting in satisfaction.

3. Taking the year 1954 the number of execution applications in which the decree-holders obtained full satisfaction was the highest in West Bengal (68.9 per cent) and Bihar (54 per cent) while it was the lowest in Kerala (17.6 per cent) and Andhra and Madras (19 per cent). In Madhya Pradesh only 20 per cent of the applications resulted in full satisfaction, in Bombay it was 22.2 per cent, in Uttar Pradesh 24 per cent while Orissa and Punjab came next with 29 per cent and Rajasthan with 34 per cent. The results of 1955 are very nearly the same; West Bengal again heading the percentage of full satisfaction with 66 per cent, and Rajasthan coming next at 32.6 per cent. There was no change in the returns of Orissa, Uttar Pradesh and Punjab while the lowest returns were again in Kerala 15 per cent, Andhra 17 per cent and Madras 18 per cent. Turning to the percentages of applications which were totally infructuous in both the years the highest were in Andhra (68 per cent and 69 per cent), Madras (64 per cent and 63 per cent) and Rajasthan (66 per cent and 67 per cent).

Lack of uniformity.

Figures misleading.

4. The above figures do not reveal a uniform pattern and show a certain amount of variation from State to State in the percentages of applications which were wholly infructuous and those in which the decree-holders were able to obtain full or partial satisfaction. Moreover, these figures do not indicate the period during which the decree remained unsatisfied from the date on which it was passed. Therefore in drawing inferences from the figures of fructuous and infructuous execution proceedings in any given year, it must be borne in mind that the figures may to some extent be misleading and may not be a true reflection of the actual result of the execution proceedings launched by the decree-holders.

Immediate satisfaction not expected.

It must be remembered that a large majority of the ordinary civil suits which are filed in our courts are in respect of money claims in the nature of liquidated demands. In many of such cases the plaintiff files the suit not so much because he hopes to get immediate satisfaction of his decree but because he wants to get his claim established and secured by a decree before it becomes barred by limitation. This is one reason why some suits are filed only on the last day of the period of limitation.

Reasons for misleading figures.

5. Once the decree-holder has obtained his decree, section 48 of the Code of Civil Procedure gives him an outside period of twelve years to execute the decree. Having this long period for execution, the decree-holder would not ordinarily like to put himself to the trouble and expense of starting execution proceedings unless he has a reasonable expectation of obtaining a full or even a partial satisfaction of his claim. However, article 132 of the Limitation Act compels him to take action. Although section 48 provides for a maximum period of twelve years

for execution of a decree or order of any civil court, article 182 compels the decree-holders to keep the decree alive by making an application every three years irrespective of the judgment-debtor's capacity to pay or otherwise satisfy the decree. This provision has been responsible for an enormous number of futile applications which are described as wholly infructuous. The decree-holder is obliged to file such applications only to take what are known as steps-in-aid of execution. These applications having served their purpose are then allowed to be dismissed for default without, in many cases, even the payment of the process fees.

Petitions as
a step-in-aid.

6. Another class of cases goes to augment the figures of infructuous execution proceedings. Very often, on process for execution being issued, the judgment-debtor makes some part payment out of court and the decree-holder thereupon allows the proceedings in the court to be dismissed without pressing them and hoping to recover the balance in the future. If as often happens, the payment is not reported to the court, the application is shown as infructuous.

Settlement
out of court.

7. The statistical figures of the returns of execution applications have therefore to be read subject to these considerations. The number of infructuous proceedings should not necessarily be taken to indicate that in every such case the decree-holder failed to realise his dues by reason of some default on the part of the judgment-debtor or by reason of some defect in the procedure relating to the execution of decrees. The ever-increasing number of persons who come into court with money claims asking for money decrees is an indication that the Indian judicial system is working more successfully than the figures above mentioned seem to show; for, if the vast majority of proceedings resulted in no satisfaction, it would be extremely strange that people who have already parted with money should care to spend further money in obtaining a worthless piece of paper.¹¹

Exaggerated
notions of
failure of
executions.

8. Nevertheless, it is well known that inordinate delays do frequently occur at various stages of the progress of an execution application. Some of these delays are caused by several personal factors which play a part in the trial of a proceeding and which cannot be remedied by a mere amendment of the law. Others are due to defects in the law relating to execution which, by providing too many safeguards against the abuse of execution proceedings, have made them cumbersome and ineffective. It will be useful at the outset to give a brief summary of the various steps which a decree-holder must take and the stages at which he is likely to meet objections or obstructions on the part of the judgment-debtor.

Delays.

Stages in an
execution
proceeding.

¹¹Civil Justice Committee Report, page 377, para-2.

Execution
procedure.

9. The decree of a civil court may be either (1) for the payment of money, (2) for delivery of possession of immovable property, (3) for recovery of any movable property or (4) for specific relief, that is, ordering any person to do some act other than payment of money or to abstain from doing something. The proceedings in execution of any decree commence by an application made in accordance with Order XXI, Rule 10 of the Civil Procedure Code by the decree-holder or by his transferee or legal representative. Execution may be taken out either against the judgment-debtor or against his legal representative if he is dead. In the latter case the decree is executed only against the judgment-debtor's property. Except in certain specified cases no notice is to be issued to the party against whom execution is sought. If notice has been served upon the judgment-debtor and he appears and objects to the execution, the court will inquire into his objections. If his objections are allowed, the petition will be dismissed; if not, the execution proceeds further.

Money de-
crees.
Modes
of execution.

10. In the case of a money decree there are two modes of execution: (1) the arrest of the judgment-debtor and his detention in civil prison and (2) the attachment and sale of his property, movable and immovable. A notice must precede a warrant of arrest to enable the judgment-debtor to show cause why he should not be committed to civil prison. If the decree is sought to be executed by the attachment of property, the rules prescribed several modes of attachment for different categories of property. Any claim or objection raised to the attachment of any property has to be investigated by the court in a summary inquiry as distinct from a regular trial of the question of title to the property concerned. The order of the executing court in this inquiry is conclusive subject to the result of any suit which may be filed by the party against whom an order has been made.

Claims and
objections.

If the claim or objection is disallowed, the attached property is ordered to be sold either by public auction or otherwise as the court may direct and the sale proceeds are paid to the decree-holder subject to the claims of other decree-holders to rateable distribution.

Sale of
immovable
property.

11. The sale of immovable property must be preceded by a proclamation of sale settled after notice to the judgment-debtor. Further, such a sale can be set aside either (1) on the deposit of the amount mentioned in the proclamation of sale plus five per cent of the sale proceeds for payment to the purchaser or (2) on the ground of material irregularity or fraud in publishing or conducting the sale provided substantial injury has resulted by reason of such irregularity or fraud or (3) on the ground that the judgment-debtor had no saleable interest in the property. If no applications have been made as aforesaid or have been made and disallowed, the court makes an order confirming the sale and thereupon the sale becomes absolute and an order is made for the delivery of possession to the purchaser.

12. If there is any resistance to the delivery of possession to the decree-holder or purchaser, the executing court holds an enquiry into the matter. As in the case of claim petitions against orders of attachment, the order of the court made in this inquiry is final subject to the result of any suit which may be instituted by any aggrieved party not being the judgment-debtor.

Delivery of possession.

These are the principal stages through which the holder of an ordinary decree for the payment of money has to proceed before he can obtain satisfaction. Experience has shown that there is much scope for delay at the different stages of execution. The procedural rules for execution of decrees are contained in Part II of the Code comprising sections 36 to 74, and in Order XXI. We shall now consider the provisions of Part II and of Order XXI in the order in which they are given in the Code, pointing out the defects in the law, which cause delays, and making recommendations with a view to expedite the progress of the execution of decrees.

13. A decree may be executed either by the court which passed it or by a court to which it is transferred for execution. Under section 39 the court which passed the decree is empowered, on the application of the decree-holder, to transfer a decree for execution to another court. Under Section 41 the court to which a decree is sent for execution has to certify to the court which passed it the fact of such execution or if it fails to execute it, the circumstances attending such failure. The powers of the transferee court are defined in section 42. Its powers to execute a decree are the same as those of the court which passed the decree and are subject to the same limitations, but its jurisdiction is limited to the execution of the decree only and extends to no other matters. It cannot, for instance, transfer a decree to some other court under section 39. A single illustration will suffice to prove how this restriction on the powers of the transferee court is likely to cause delay. A decree passed by court A is transferred for execution to court B within the limits of whose jurisdiction the judgment-debtor resides. If, after the transfer of the decree and before execution, the judgment-debtor leaves the jurisdiction of court B and goes to reside within the jurisdiction of court C, court B will be unable to execute the decree and is obliged to return the proceedings to court A with a certificate of failure of execution. The decree-holder must then again apply to court A for transfer of the decree to court C. This is unsatisfactory as it causes delays and unnecessary expense.

Powers of a transferee court.

Limitations—consequences.

14. We see no reason why the transferee court should not on the application of the decree-holder transfer the decree direct to court C. We elicited opinion on the question whether the court to which the decree is transferred under section 39 should be armed with the following

additional powers which are now exercised only by the court which passed the decree, namely:—

Increased powers for transferee court.

(1) Power under section 39 to transfer the decree to another court;

(2) Power under section 50(1) to add the legal representative of a deceased judgment-debtor as a party;

(3) Power under Order XXI, Rule 16 to recognize assignments of a decree;

(4) Power under Order XXI, Rule 50(2) to grant leave to a decree-holder;

(5) Power under Order XXI, Rule 53(1) (b) to give notice of attachment of a decree passed by another court; and

(6) Power under section 152 to correct clerical or arithmetical errors in the decree.

Recommended.

15. The views expressed to us unanimously favour the proposal to invest the transferee court with these additional powers. We recommend that these powers be conferred by an appropriate amendment of section 42 of the Civil Procedure Code.

Section 47.

16. We shall next deal with a very important section of the Code relating to execution. Under section 47 all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. The determination of a question under this section is a decree within the meaning of section 2(2) and is appealable as such. The section provides a cheap and expeditious procedure for the trial of certain questions arising in execution proceedings without recourse to a separate suit. The conditions barring a separate suit are (1) that questions relating to execution, discharge or satisfaction of the decree must arise in the execution proceedings and (2) they must arise between the parties to the suit in which the decree was passed or their representatives. With reference to this section three distinct suggestions arise for consideration. These are:—

Points for consideration.

(1) The purchaser at the sale in execution of a decree who is a stranger should be deemed to be a representative of the parties within the meaning of that section.

(2) The principle of direct and constructive *res Judicata* should be applied to proceedings in execution.

(3) The right of appeal against orders passed under section 47 should be substantially curtailed; at any rate such orders should be made non-appealable to the extent of the executing court's small cause jurisdiction.

17. The proposal that the purchaser at an execution sale should be deemed to be a representative of the parties was made in view of the large volume of conflicting decisions on this question. It is unnecessary to deal further with this proposal because in the meantime the proposal has been implemented by the Civil Procedure Code (Amendment) Act of 1956 which amends the Explanation to that section as under:

Whether purchaser a representative of the parties.
Recent amendment.

"Explanation.—For the purpose of this section, a plaintiff whose suit has been dismissed, a defendant against whom a suit has been dismissed and a purchaser at a sale in execution of the decree are parties to the suit."

18. Should the principle of *res judicata* embodied in section 11 of the Civil Procedure Code be statutorily extended to proceedings in execution, particularly to orders passed under section 47 which are in the nature of decrees? It is settled law that section 11 is not exhaustive and that the principle of *res judicata* can be applied to execution proceedings as well. The Privy Council has held¹ that when a question had been raised in an execution proceedings and decided, the decision even if erroneous is binding on the parties and cannot be reopened in subsequent proceedings in execution. This principle has been consistently followed by the High Courts in India. However the question whether the principle of constructive *res judicata* incorporated in Explanation IV to section 11 is applicable to execution proceedings is not free from doubt. "A great deal of time is wasted in execution proceedings because there is great divergence of opinion as to the application of the principle of *res judicata* to such proceedings. Some High Courts have held that only when a point has been actually raised and decided that it becomes *res judicata* in execution proceedings. The result of this is that many a time judgment-debtors take objections and allow them to be dismissed for default and then take them again at a later stage with impunity. Further, on other occasions judgment-debtors take the opportunity of raising three or four points under section 47 one after the other instead of raising them all in one objection. This also leads to waste of time of the courts."² The Bill for the amendment of the Civil Procedure Code introduced in the Lok Sabha in 1955 sought to amend section 47 by substituting the following for the original subsection (3):

Res judicata in execution proceedings.

"(3) No court executing a decree shall entertain any question arising in a proceeding under this section between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, if the question had been

¹Ram Kirpal v. Rup Kuar, L. R. 6 All 269.

²U. P. Judicial Reforms Committee Report page 48.

directly and substantially raised in a former proceeding relating to that decree between the same parties or their representatives and had been finally determined therein."

The following two Explanations were sought to be added by way of clarification of the amendment:

"Explanation II.—The expression 'former proceeding' shall denote a proceeding which has been decided prior to the proceeding in question, whether or not it was instituted prior thereto.

Explanation III.—A question shall be deemed to have been raised in the former proceeding, if the matter in dispute had been alleged by one party and either denied or admitted, expressly or impliedly by the other."

It may be noticed that the proposed amendment did not purport to apply the principle of constructive *res judicata* of Explanation IV to section 11 to execution proceedings. That is probably why the Joint Select Committee which considered the Bill dropped the proposed amendment of sub-section (3) and the Explanations II and III. The Committee felt that since the Supreme Court had in a recent case¹ applied the principle of *res judicata* to execution cases, the proposed amendment was unnecessary and was likely to create complications.² Clearly, the amendment introduced by the Bill would not have solved the conflicting judicial opinion on the application of the principle of constructive *res judicata* to execution proceedings to which a specific reference was made by the U.P. Judicial Reforms Committee. The Supreme Court has unequivocally held in the case referred to above that it is no longer open to doubt that the principle of constructive *res judicata* is applicable to execution proceedings. In our opinion, it is necessary to give statutory effect to the judicial decisions which hold that the principle of constructive *res judicata* applies to execution proceedings. We suggest that the amendment proposed in the Bill should be given effect to but with an additional Explanation as set out below:

Amendment suggested.

"Explanation IV.—Any question which might and ought to have been raised in the former proceeding shall be deemed to have been a question directly and substantially raised in such proceeding."

Right of Appeal from Orders in Execution.

19. The question of the extent of the right of appeal against orders passed under this section arises out of the fact that many appeals preferred against orders in execution are ultimately dismissed as they are found to be frivolous and filed only to delay the execution of the decree.

¹Mohan Lal Goenka, v. Benoy Kishna Mukherjee, A. I. R. 1953, Supreme Court page 65.

²Report of the Joint Select Committee on the Code of Civil Procedure (Amendment) Bill 1955, p. iv para 14.

All orders under section 47 are deemed to be decrees under section 2(2) and are therefore subject to an appeal and also a second appeal unless they are also appealable orders under Order XLIII Rule 1 in which case only one appeal will lie. The right of appeal against a decree is, however, subject to the other provisions of the Code relating to appeals. Thus section 96 of the Code provides that "Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court". The section thus prevents an appeal where it is barred by other express provisions in the body of the Code or by any other law for the time being in force. Section 27 of the Provincial Small Causes Courts Act makes the decree or order of a small cause court final and not subject to any appeal. This being a provision of "any other law for the time being in force" no appeal lies from an order under section 47 in execution of a decree of a court of small causes. Section 102 provides that no second appeal shall lie in any suit of the nature cognizable by a court of small causes when the amount or value of the subject matter of the original suit does not exceed Rs. 1,000. If therefore the decree under execution is passed in a suit of the nature described in section 102, no second appeal will lie against any order passed under section 47 in execution of such a decree¹. Further, as already stated, there are certain orders in execution which fall under section 47 as orders relating to the execution, discharge or satisfaction of a decree and are also among the appealable orders in Order XLIII, Rule 1. In the case of such orders whatever be the nature of the suit in which the original decree was passed only one appeal would be permissible under section 104 and a second appeal would be barred.

20. Having regard to the above provisions it appears to us difficult to devise any further restrictions on the right of appeal against orders under section 47. No appeal in certain cases.

However in the case of a money decree passed in a regular suit, orders in execution could be made non-appealable, at any rate, if they deal only with pleas of payment of an amount within the limits of the small cause jurisdiction of the court executing the decree. An illustration would be a decree for Rs. 2,000 passed in a regular suit for the execution of which a petition is made before the Judge who passed the decree and whose small cause jurisdiction is upto Rs. 500. If the judgment-debtor pleads a payment of Rs. 400, the court's decision on the question would not be appealable. Remembering that one of the most fruitful sources of delay in execution is the dishonest and frivolous pleas of payment or adjustment by the judgment-debtors

¹See *Janki Sahu Trust v. Ram Palat A. I. R. 1950 All. 580*; *Narayan v. Nagdas I. L. R. 30 Bom., 113.*

we are of the view that the proposed restriction will help in expediting execution proceedings.

Admission of appeal conditional on security.

21. The Civil Justice Committee proposed that in the case of orders in execution of money decrees restrictions should be placed on the right of appeal by requiring the appellant judgment-debtor to deposit or at least give security for the decretal amount as a condition precedent to the admission of an appeal. We recommend the acceptance of this proposal by an amendment of the Code.

Total prohibition of second appeals not desirable.

22. The Civil Justice Committee also recommended the total prohibition of second appeals against orders in execution under section 47 except by special leave. As we have pointed out above, the right of second appeal in orders under section 47 is itself subject to the limitations of section 102. In a later chapter we have proposed a further restriction on the right to prefer second appeals by an amendment of section 102. We are, however, unable to recommend the total abolition of second appeals in orders passed under this section. Questions of great importance frequently arise in execution of decrees in complicated suits of a higher valuation and the prevention of second appeals altogether against orders in execution of such decrees might result in injustice and hardship.

Limitation, articles 182-183.

23. As regards the period of limitation for execution of decrees we invited opinion on two suggestions. The first was the omission of Articles 182 and 183 of Schedule I to the Indian Limitation Act leaving the decree-holder to execute his decree at any time within the period prescribed by section 48 of the Code; the second was the shortening of the period prescribed by section 48. So far as articles 182 and 183 are concerned we need only refer to the recommendations which we have already made in our Report on the Limitation Act of 1908. We have there recommended that articles 182 and 183 of the Limitation Act be deleted and that except in the case of mandatory injunctions, the period of limitation for the execution of all decrees should be the period of 12 years prescribed in section 48 of the Civil Procedure Code¹.

Section 48.

24. As regards the period of limitation provided by section 48 we did not think it advisable to recommend a reduction of the period. The omission of articles 182 and 183 will result in cutting out a large mass of applications. It will, we hope, ensure that the decree-holder will file an application for execution only when he is reasonably sure that the judgment-debtor will be able to satisfy the decree. It frequently happens that the judgment-debtor is not in a position to satisfy the decree in the years immediately following the decree but may acquire property afterwards. It is therefore just that the decree-holder should have a sufficiently long time to enable him to obtain satisfaction from the judgment-debtor.

¹Report, para 70.

25. We shall next consider and make our recommendations with reference to certain provisions of Order XXI.

Rule 1 prescribes the modes of payment of money payable under a decree and Rule 2 casts certain obligations upon the decree-holder and the judgment-debtor to certify to the court the fact of any payment or other adjustment of a decree out of court. Under Rule 1 payment may be made into the court executing the decree or out of the court to the decree-holder or otherwise as the court passing the decree directs. Under Rule 2, the decree-holder has to certify to the court any payment of money payable under a decree or any adjustment of the decree in whole or in part and the court has to record it. If the decree-holder fails to certify the payment or adjustment, it is open to the judgment-debtor also to inform the court of such payment or adjustment and to apply to the court for issuing a notice to the decree-holder to show cause why the payment or adjustment should not be recorded as certified. Such an application must, under article 174 of the Limitation Act be made within 90 days of the payment or adjustment. If the decree-holder fails to certify the payment or adjustment and does not show cause, the court shall record the same.

Oral pleas
of payment
and adjust-
ment. 12

It is the usual experience of executing courts all over the country that the most common objection to execution is a plea of payment or of discharge of the decree out of court, supported by oral evidence and not evidenced by anything in writing. The judgment-debtor usually pleads a payment or some other adjustment either in full or part satisfaction of the decree which is alleged to have been made within 90 days and adduces evidence in support of it. In a large number of cases such pleas of payment or adjustment are not made *bona fide* and a good deal of the time of the executing court is wasted at the early stage in taking evidence and deciding such pleas which are ultimately rejected. The opinion before us is unanimous that some restrictions should be imposed upon the mode or proof of such payment or adjustment in execution. In the words of the U.P. Judicial Reforms Committee, "The time has now come when courts should insist on all payments to be made towards a decree by the well-recognized modes of payment." Following the recommendations of that Committee the High Court of Allahabad has amended Rule 1 by inserting in clause (b) of sub-rule (1) after the words "decree-holder" the words "through a bank or by postal money order or evidenced by a document". The High Courts of Calcutta and Patna and the former High Court of Nagpur have amended only clause (a) of sub-rule (1) so as to enable the judgment-debtor to send money payable under a decree to the court by money order. These amendments deal with two aspects of the matter. The first relates to a convenient method of payment into the

Frivolous.
pleas.

Some amend-
ments.

Two aspects. court which will evidence the satisfaction in part or whole of the decree. The second aspect relates to the exclusion of oral testimony in regard to alleged adjustments or satisfaction of the decree by requiring evidence of it in writing. We recommend an amendment of the Code which would give effect to the changes introduced by the amended rules of the High Courts from both these points of view.

Oral pleas barred. 26. It is true that the refusal to accept an oral pleas of payment will not finally decide the dispute against the judgment-debtor for he would still be entitled to sue the decree-holder for damages for the omission to certify the payment to the court or for refund of the money paid and in such suits he can lead oral evidence. But "What is sought to be made a rule now is that in execution proceedings, with a view to avoid delay, only a certain kind of proof should be accepted. The principle that in execution proceedings special restrictions may justifiably be put on the judgment-debtor's right to plead payment and adjustment had the approval of the legislature when it provided that though the right of suit to recover the amount can be exercised in three years the payment, to be recognized in execution, must have been made within ninety days".

Special form of money order. 27. To facilitate the keeping of proper records for this purpose and avoiding mistakes and misunderstandings, it may be necessary to prescribe a special form of money order for payment of decretal amount. The space provided for communications from the payer to the payee may be utilized for providing columns for giving necessary particulars, such as, the number of the suit, the amount remitted, whether it is towards the principal or interest or costs. Such forms have been prescribed in some States like Bihar

No limitation on certain cases. 28. We also recommend a consequential amendment proposed by the Uttar Pradesh Committee. If the payment of the decretal amount or part thereof is made through a bank or post office, the limitation of ninety days prescribed for the judgment-debtor to get the payment certified may be deleted. It should also be provided that an adjustment not made in writing should not be recognized. We therefore recommend an amendment of sub-rule (3) of Rule 2 in the manner made by the Allahabad High Court which reads as follows:

"Any payment not made in the manner provided in Rule 1 or any adjustment not made in writing shall not be recognized by any court executing the decree."

Contents of application. 29. Rules 11 to 14 of Order XXI state the particulars to be given in an application for execution. We consider that some of the particulars required in the tabular form

given under Rule 11, sub-rule (2) are unnecessary and may well be omitted. The High Courts of Allahabad, Madras and the former High Court of Nagpur provide by their rules that when a certified copy of the decree is filed with the application under sub-rule (3), clauses (b), (c) and (h) (the names of the parties, the date of the decree and the amount of costs) need not be furnished. We think that clauses (d) and (f) should also be omitted as the particulars relating to appeals and previous applications for execution can easily be ascertained from the register of suits kept under Order IV, Rule 2. The particulars in clause (f) were presumably necessary in order to ascertain whether the application was filed within the period of limitation under Article 182. If that Article is omitted, as recommended by us clause (f) would be unnecessary. We therefore recommend that the Rule 11(2) should be amended by providing that clauses (b), (c) and (h) need not be filled in when a copy of the decree is annexed to the application and that clauses (d) and (f) of the Rule may be omitted.

Modification
of
tabular
form.

30. Rule 17 prescribes the procedure to be followed in receiving the application for execution. If any of the requirements of Rules 11 to 14 are found not to have been complied with, the rule gives to the court power either to reject the application or to allow the defect to be remedied then and there or within a time to be fixed by it. This option to the court to reject the application leads to petty corruption amongst the staff of the executing branch and it is stated that the executing clerk often rejects the applications on trivial grounds. To prevent delays, several High Courts have amended Rule 17 taking away the court's discretion to reject the application summarily and providing that the courts should either allow the defect to be remedied there and then or within a time to be fixed and reject the application only if the defect is not remedied within the time allowed. A general provision to this effect may be made by a suitable amendment.

Rejection of
petition.

31. In this connection in our view a recommendation made by the Rankin Committee merits acceptance. "...an application for execution is often returned for the correction of the amount due on the ground that it is inaccurate. The officer returning it does not say why or how it is inaccurate or what the correct amount is, with the result that the petition passes from the vakil to the court and from the court back to the vakil more than once. It seems to us either that it should be made the duty of the court to say in the return what the correct amount is, or that an order should be passed subject to objections by the petitioner that execution do issue for what the court fixes as the correct amount". We recommend an amendment of Rule 17 so as to give effect to the above recommendation made by the Committee.

Recommendation of the
Rankin
Committee.

Notice to
judgment-
debtor.

32. Rule 22 speaks of the cases in which notice must be given to the judgment-debtor to show cause why the decree should not be executed against him. It will be convenient at this stage to discuss the general question of notice in execution proceedings. It has been said that the procedure in respect of execution should as far as possible be brought into line with that of the trial of an original suit and only a preliminary intimation of the execution petition should be given to the judgment-debtor, after which the petition should be adjourned to definite dates for further steps such as order for attachment, settling or proclamation, sale and the like. The judgment-debtor must personally take notice of such steps by being present in court or otherwise.

Theory of
giving notice.

We may begin with an examination of the different stages in execution of which notice is required to be given to the judgment-debtor. The underlying theory of the rules relating to the execution procedure is that ordinarily a person against whom a decree is passed is expected to know his liability to the decree-holder and of the various processes by which the latter can realise the decretal claim and therefore it is unnecessary to give him any notice of execution. Taking the initial intimation of the execution application itself there are only three cases in which notice is required to be given to the judgment-debtor to show cause why the decree should not be executed. Such notice has to be given when an application is made (1) more than one year after the date of the decree or (2) against the legal representative of a party (Order XXI, Rule 22), (3) if the application is for the execution of a money decree by the arrest and detention in civil prison of a judgment-debtor. (Order XXI, Rule 37). The object of these notices is to give a judgment-debtor an opportunity of showing cause why execution should not issue. So far as notice under Rule 22 is concerned, the Rule itself lays down two exceptions under which notice is dispensed with: firstly, when the application is made after the expiry of one year from the date of decree but within one year from the last order made on any previous application for execution against the same person, or, if the application is made against the legal representative, if upon a previous application for execution against the same person, the court has ordered execution to issue against him. Secondly, the court can dispense with notice if, for reasons to be recorded, it considers that such notice would cause unreasonable delay or defeat the ends of justice. Excepting in these cases, notice is obligatory under sub-rule (1) and omission to give it or omission to record the reasons for dispensing with the notice under sub-rule (1) renders all subsequent execution proceedings void. It has been held in a number of decisions that notice under sub-rule (1) affords the very foundation of jurisdiction and if execution is issued without such notice and property belonging to the judgment-debtor is sold, the sale is a nullity.

33. It has been suggested that no notice need be given to a judgment-debtor against whom a decree has been passed even if the execution petition is made more than one year after the date of the decree since he is not likely to forget the decree obtained against him. Accordingly, it has been proposed to omit clause (a) of sub-rule (1). A modified form of this proposal is to extend the period prescribed in clause (a) to two or three years. The High Court of Allahabad has omitted clause (a) altogether whereas the High Courts of Bombay, Madras and the Punjab have raised the period to two years and the High Courts of Kerala and Nagpur to three years.

The rigour of the law as to the consequences of an omission to give notice, can be mitigated by an amendment of the rule providing that omission to issue the notice required under sub-rule (1) or to record reasons in a case where notice is dispensed with under sub-rule (2) shall not affect the jurisdiction of the court executing the decree or invalidate any subsequent proceedings unless the judgment-debtor has sustained substantial injury by reason of such omission. Recommend-
ded.

34. We do not consider the omission of clause (a) of sub-rule (1) necessary. If our recommendation that it should not be necessary for the decree-holder to be compelled to keep the decree alive by applying for execution every three years is accepted, it would be open to a decree-holder to apply for execution several years after the decree is passed. In such cases we think that having regard to the long interval between the date of the decree and the application, it is fair that the judgment-debtor should have an opportunity of showing cause against the issue of execution. We therefore recommend that clause (a) be amended by substituting 'three years' for 'one year' and that the following new sub-rule may be added to Rule 22:

"(3). Omission to issue a notice under sub-rule (1) or to record reasons in a case where notice is dispensed with under sub-rule (2) shall not affect the jurisdiction of the court executing the decree or render invalid the subsequent proceedings in execution unless the judgment-debtor has sustained substantial injury by reason of such omission." Recommen-
dation.

35. Notice is also required to be given to the judgment-debtor of the initiation of execution proceedings against him when the decree is sought to be executed by his arrest and detention in civil prison. Under Rule 37 it is obligatory on the court, before issuing a warrant of arrest, to issue a notice to the judgment-debtor to appear and show cause why he should not be committed to the civil prison. The court may, however, dispense with notice if it is satisfied that with the object or effect of delaying the execution of the decree the judgment-debtor is likely to Notice before
arrest.

abscond or leave the local limits of the court's jurisdiction. Before the amendment of the Code by Act XXI of 1936 it was in the discretion of the court either to issue a warrant without issuing notice or to give a notice in the first instance. By the amendment of 1936 the word "shall" has been substituted for the word "may" in sub-rule (1).

Notice to be
discretion-
ary.

36. Execution by arrest and detention is often very effective as a quick way of realization of money payable under a decree and the view is largely held that the obligation to issue a notice in the first instance defeats the very purpose of this mode of execution by enabling a judgment-debtor to abscond before the issue of the arrest warrant. The Civil Justice Committee thought that no notice was necessary before issuing an arrest warrant. We are, however, in agreement with the view of the Uttar Pradesh Judicial Reforms Committee that under Rule 37, it should be left to the discretion of the court whether to issue a notice or not, because "if execution by arrest has to continue and is to be of any value, it should not be compulsory for the court to issue notice in every case." We recommend, therefore, that the law should be restored to what it was before 1936 by substituting the word "may" for the word "shall" in sub-rule (1).

Notice under
Rule 64.

Necessary.

37. A notice in the first instance is also necessary when the decree is for the execution of a document or for the endorsement of a negotiable instrument. In such a case if the judgment-debtor neglects or refuses to obey the decree, the decree-holder can prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court for execution. Before the court executes the documents, the draft has to be served on the judgment-debtor with a notice requiring his objections to be made within a time to be fixed by the court. Such a notice is, in our view, essential and cannot be dispensed with.

Notice under
Rule 66.

To be dis-
pensed with.

38. We have so far considered cases in which notice is given to the judgment-debtor of the initiation of the execution proceedings. As to notice at subsequent stages of execution we need consider only the stage at which immovable property is ordered to be sold in execution of a decree. The order to sell the property is made under Rule 64 which does not require any notice to be given to the judgment-debtor. But under Order XXI Rule 66 notice has to be given to him for settling the terms of the proclamation of sale after an order for sale has been made under Rule 64. We suggest that this notice may be dispensed with and at the time when the prohibitory order is issued under Rule 54, the judgment-debtor be required instead to attend court on a given date to take notice of all further steps as in the case of a suit.

39. The execution of a decree may be stayed either under Order XXI, Rule 26 or by an injunction under Order XXXIX, Rule 1 or under Order XLI, Rule 5. Under Order XXI, Rule 26 execution can be stayed by a court to which a decree is sent for execution on sufficient cause being shown to enable a judgment-debtor to bring a stay order from the court which passed the decree or from an appellate court. Likewise the court which passed the decree may for sufficient cause stay execution of an appealable decree under Order XLI, Rule 5, sub-rule (2) if the application for stay is made within the time allowed for appealing therefrom. In practice, the courts stay the proceedings just to give time to the judgment-debtor to bring a stay order from the appellate court. Once the appeal is preferred, it is the appellate court alone that can stay the execution under Order XLI, Rule 5, sub-rule (1) for sufficient reason. Under Order XXXIX, Rule 1 the court may in any pending suit, by a temporary injunction, stay the sale in execution of any property if it is proved by affidavit or otherwise that the property is in danger of being wrongfully sold in execution of a decree.

40. Proceedings in execution are no doubt delayed by reason of the stay orders granted in all these cases. In genuine cases where the judgment-debtor or other party may have a real and substantial grievance against the decree, such stay is necessary and the delay occasioned thereby is unavoidable. But in exercising their discretion under those provisions the courts do not sufficiently discriminate between the claims of an honest judgment-debtor and of one whose only aim is to postpone the evil day of execution. It is impossible to prescribe any hard and fast rule or to enumerate cases in which the courts ought and those in which they ought not to order stay of execution. The matter has of necessity to be left to the court's discretion. But under all the aforesaid provisions the courts have power to impose conditions subject to which a stay can be granted. Dealing first with Rule 26 or Order XXI, sub-rule (3) thereof empowers the court before making the stay order to require such security or impose such conditions as it thinks fit. We are of opinion that the requiring of security or the imposing of conditions should be made compulsory and not left to the court's discretion. Sub-rule (3) should be amended by substituting the word "shall" for the word "may" occurring therein. Such an amendment has already been made by the High Courts of Allahabad, Calcutta, Orissa, Nagpur, Patna and Punjab.

41. As regards money decrees, we invited views on two alternative proposals. First, that there should be no interim stay of a money decree; or, secondly, that the payment of the decretal amount or a substantial part thereof into court should be a condition precedent to the grant of stay of execution of such a decree. The first proposal of a total ban on the stay of money decrees was considered too

drastic and did not receive much support. The second was considered more practicable and received general approval.

Deposit of money not to be insisted on.

We do not think it advisable to make a specific provision requiring the deposit of the decretal amount or a substantial part thereof as a condition precedent to the grant of a stay of a money decree if sub-rule (3) is amended in the manner indicated above. We think it more appropriate, even in respect of money decrees to leave it to the court's discretion either to demand security or to impose conditions such as payment of the decretal amount according to the circumstances in each case. To make an absolute rule requiring the deposit of the decretal amount in all cases and to require a refusal of stay of execution in proper cases even if the judgment-debtor be in a position to furnish sufficient security other than a deposit might lead to great hardship.

Stay by injunction.

42. As regards Order XXXIX, Rule 1, suits are sometimes filed by persons who are strangers to the original decree claiming rights over property under attachment by the executing court and in such suits, at the instance of such parties, the court issues a temporary injunction restraining the sale of the property. The Patna High Court has amended Rule 1 of Order XXXIX by adding a proviso that an injunction to restrain a sale or confirmation of a sale or to restrain delivery of possession shall not be granted except in a case where the applicant cannot lawfully prefer, and could not have lawfully preferred a claim to the property or objection to the sale, or to the attachment preceding it, before the court executing the decree.

Power to be taken away.

43. We are, however, of the opinion that the court's power to order the stay of execution of sales by temporary injunction should be taken away by omitting the words "or wrongfully sold in execution of a decree" from clause (a) of sub-rule (1). The need for such an amendment has been well expressed by the Civil Justice Committee in the following words: "..... an injunction under that rule practically negatives the right of the decree-holder in most cases. The court that can best know whether the execution should be stopped or not is the executing court. A person who has filed a suit can very well apply to the court executing the decree to stay its hand pending the result of the suit, if he is a party to the decree. He should not be allowed to ask a court which knows nothing and can only act upon affidavits till a very elaborate enquiry is held, to stay the hands of another court often superior in grade. It may be that in certain cases the executing court may wrongly refuse to stay execution but that can be remedied by an appeal against the order and by applying to the appellate court to stay the execution under Order XLI, rules 5 and 8. If the appellate court refuses to stay execution, the case is not one for the issue of a temporary injunction under Order 39, rule 1. In these circumstances we think that if the applicant under Order XXXIX, rule 1, is a party to the decree, there is absolutely no necessity to invest a third court with

power to stay execution. If he is not a party to the decree then his interests will not be affected by the sale and therefore there is no necessity to stop the sale at all. At the worst it may happen that he may be put out of possession in execution by the purchaser. But he can object to the delivery of possession and if there is any substance in his claim he would not be disturbed; for that will be a case to which Order XXI, rule 99, will apply."¹

44. As regards stay by the appellate court the provisions made in Rule 5 of Order XLI are in our opinion sufficient and need no change. Sub-rule (1) gives to the court a discretion to order stay of execution for sufficient reason but sub-rule (3) makes it obligatory upon the court to impose certain conditions subject to which stay can be granted. Here again hardships to the decree-holder arise only if the powers granted to the appellate court for ordering stay and imposing conditions are not carefully and properly exercised. It has come to our notice that very often the imperative requirements of the rule are overlooked by the Courts. If the power to ask for security is properly exercised and if in proper cases the security is made to take the form of a money deposit in court, there will be little room for complaint against the operation of this provision.

45. The present law in regard to the realization of garnishee debts in execution is in our opinion needlessly dilatory. Under Rule 46 a debt not secured by a negotiable instrument is attached by an order prohibiting the creditor from recovering it and the debtor from making payment thereof until further orders of the court. If the garnishee admits the debt, the court orders payment of it or so much of it as is admitted to be due into the court. If, however, he denies the debt, the executing court has no power to investigate into the existence of the debt. In such a case one of the following courses may be adopted. The decree-holder may have the debt sold in execution. Or, the decree-holder may have a receiver appointed under section 51 with power to sue for the recovery of the debt. Finally, the garnishee may apply under Rule 58 for releasing the debt from attachment and the party aggrieved by the order in such proceedings may be driven to file a suit under Rule 63 with the usual consequences of further appeals and stay of execution during the pendency of the suits and appeals. To avoid the delays which arise, some High Courts have framed rules for garnishee proceedings under which, when the garnishee denies the debt, an issue can be framed by the executing court itself and decided as an issue in a suit with a right of appeal. Such rules have been framed by the High Courts of Calcutta, Madras, Patna and Orissa. We would recommend the incorporation into the Code of rules similar to Rules 46A to 46H made by the Calcutta High Court.

46. We now come to a group of rules in Order XXI, the application of which causes long delays in execution proceedings. These are Rules 58 to 63 relating to the investiga-

Stay by
appellate
court.

Garnishee
debts.

Claims and
objections to
attachment.

¹Civil Justice Committee Report, pp. 413-414, paragraph 6.

tion of claims and objections to the attachment of property and Rules 97 to 103 relating to investigation into resistance or obstruction to the delivery of possession of immovable property to the decree-holder or auction purchaser. The objections of a judgment-debtor or his representative to the attachment of any property fall within the scope of section 47 while Rules 58 to 63 deal with objections to the attachment raised by third parties. Under Rule 58 a claim may be preferred or objection raised to the attachment of any property in execution on the ground that such property is not liable to attachment. The court has to investigate into such claim or objection and pending this inquiry the sale may be postponed. The scope of the inquiry under Rules 59 to 61 is limited, "the Code does not prescribe the extent to which the investigation should go; and though in some cases it may be very proper that there should be as full an investigation as if a suit were instituted for the very purpose of trying the question, in other cases it may also be the most prudent and proper course to deliver an opinion on such facts as are before the Subordinate Judge at the time, leaving the aggrieved party to bring the suit which the law allows to him."¹ The rules provide for a summary investigation into possession of the property as distinguished from a suit as to the title to it. The result of such an enquiry by the executing court is conclusive subject however to the result of a suit which the aggrieved party is entitled to bring under Rule 63.

Resistance or obstruction to delivery of possession.

47. Similarly the court has to make an investigation in a summary way whenever the holder of a decree for possession of immovable property or the purchaser of any such property at a sale in execution of a decree is resisted or obstructed by any person in obtaining possession. Under Rule 100 where any person other than the judgment-debtor is dispossessed of such property by the holder of a decree or the purchaser in execution, he can also make an application to the court complaining of such dispossession. If the court finds that the resistance or obstruction was occasioned without any just cause by the judgment-debtor, or any person acting at his instigation, it has to direct the applicant to be put into possession and may also order the obstructor to be detained in civil prison if there is further resistance or obstruction.

If, however, the resistance or obstruction is caused by a *bona fide* claimant claiming to be in possession on his own account or on account of a person other than the judgment-debtor, the application has to be dismissed. The result of such an inquiry is conclusive subject however to the result of any suit which any party, not being a judgment-debtor against whom an order has been made, is entitled to bring. A very substantial body of opinion has agreed that the claims or objections to attachment under Rule 58 and the resistance or obstruction to the delivery of possession under

¹. Sardhari Lal v. Ambika Pershad, I. L. R. 15 Calcutta (P. C.) 527 & 526.

Rule 97 and the subsequent suits filed under Rules 63 and 103 are often frivolous and are made at the instigation of the judgment-debtor, who takes advantage of these provisions as one more opportunity for defeating or delaying the decree-holder or of postponing the sale of his property. In order to control such proceedings it has been suggested that while retaining the existing provisions without any change, the court fees for suits filed under Rule 63 or 103 should be substantially raised. It was also suggested that the party making such a claim or objection to attachment or delivery of possession should be required to deposit cash security refundable to him if he succeeds and that if he fails, three-fourths of the cash security should go to the opposite party and the balance forfeited to Government. Yet another suggestion was the reduction of the limit of time for filing such applications and suits. Finally, it was suggested that these claims and objections should be inquired into fully by the executing court whose order should be subject to only one appeal and that suits should be barred.

48. We are convinced that a very large proportion of the proceedings taken under these provisions are instituted only as a means of gaining time and postponing the sale. Rule 58, sub-rule (2) gives to the court a discretion to postpone the sale pending an investigation and a great deal of laxity prevails in the exercise of this discretion. We do not see why the sale should be postponed in such cases. What passes at a court sale is only the right, title or interest of the judgment-debtor so that even if the sale is held during the inquiry the interests of the claimant or objector, if any, will not be prejudiced by it. The purchaser will get nothing more than the right, title or interest of the judgment-debtor, whatever that interest may be. We are of the view that in such cases the interests of claimant will be sufficiently protected by not making the sale absolute and by postponing delivery of possession until the conclusion of the inquiry.

Postponement of sale unnecessary

49. In regard to suits under Rule 63 or 103 we have no hesitation in accepting the suggestion which has been made by a number of persons including some eminent members of the judiciary that the executing court itself should make a full inquiry into the ultimate right and title of the parties and not merely a summary inquiry into possession leaving it open to the aggrieved party to file a suit. Such a recommendation has been made by us in our report on the Limitation Act.¹ The order passed in such inquiries should be deemed to be a decree within the meaning of section 2, sub-section (2) as in the case of orders under section 47 and be subject to such appeals as are allowed by the law relating to appeals from decrees. We recommend that the law be amended in this manner and

Suits under Rules 63 and 103 to be barred.

¹ Report, paragraph 149.

the provisions saving or enabling suits to be filed in Rules 63 and 103 be omitted.

Proclamation
of sale.

50. Rules 64 to 73 contain provisions for the sale of property generally. We have dealt with the notice of the proclamation of sale to be given to the judgment-debtor under Rule 66. The proclamation which is drawn up under sub-rule (2) of Rule 66 must contain several particulars relating to the description of the property. Under clause (e) of sub-rule (2) the court is required to state in the proclamation every thing material for a purchaser to know in order to judge of the nature and value of the property. The court has to make an approximate estimates of the market value of the property to be stated in the proclamation. This requirement has been known to cause much trouble and delay. Under the present law, an omission to state the correct market value of the property or an undervaluation of it has been regarded as a material irregularity affecting the sale under Rule 90. In practice, a judgment-debtor who is intent upon postponing the sale of property allows the sale to be held knowing that the particulars as regards the valuation in the proclamation are defective and thereafter makes an application under Rule 90 for setting aside the sale on the ground of a material irregularity in publishing or conducting the sale. These proceedings involve delays which may well be avoided by omitting the item of the court's estimate of the price. The Patna High Court has made what is in our view a very wholesome and salutary amendment by adding a proviso to clause (e) of sub-rule (2) of Rule 66 as follows:

"Provided that no estimate of the value of the property other than those, if any, made by the decree-holder and the judgment-debtor respectively together with the statement that the court does not vouch for the accuracy of either shall be inserted in the sale proclamation."

Similar amendments have also been made by the High Courts of Calcutta, Madras, Orissa and Punjab. We are of the view that clause (e) may itself be amended on these lines.

Setting aside
of sale.

51. Under Rule 90 a sale of immovable property in execution of a decree can be set aside on the ground of material irregularity or fraud in publishing or conducting the sale. The right to apply under this Rule is given to the decree-holder or to any person entitled to a share in the rateable distribution of assets or whose interests are affected by the sale. It is generally accepted that a large percentage of applications made by the judgment-debtors to set aside sales under this Rule are frivolous and are filed with the object of delaying the delivery of possession. It is therefore necessary to make an amendment in Rule 90 by providing that no sale shall be set aside on the ground of any defect in the proclamation of sale at the instance of any person who did not attend, though given notice to

appear at the drawing up of the proclamation or of any person in whose presence the proclamation was drawn up, unless an objection was taken by him before the sale was held. Following the recommendations of the Uttar Pradesh Judicial Reforms Committee the High Court of Allahabad has added sub-rule (2) to Rule 90 providing for an award of costs to the decree-holder or auction-purchaser or both as against the party whose application under Rule 90 has been rejected. Another useful amendment made by the Allahabad High Court in sub-rule (1) is to the effect that the application to set aside a sale shall not be entertained unless the applicant deposits such amount *not exceeding* 12½ per cent of the sum realized at the sale or furnishes such security as may be fixed by the court, except when the court for reasons to be recorded dispenses with the requirements of this clause. This provision is presumably made in order to compensate the purchaser. Under Rule 89 the applicant at whose instance the sale is set aside has to deposit 5 per cent of the purchase money for payment to the purchaser. We recommend that a provision similar to that in the Allahabad amendment be inserted in Rule 90. An amendment of the Rule on these lines would, in our opinion, serve to control the filing of frivolous applications.

52. Some minor amendments to other Rules of Order XXI may now be referred to. Minor amendments.

53. Under sub-rule (2) of Rule 31, movable property which has remained under attachment for six months may be sold on the application of the decree-holder if the judgment-debtor has not obeyed the decree. The period of six months may be reduced to three months. This has been done by a majority of the High Courts. Rule 31.

54. Sub-rule (3) of Rule 32 provides for the sale of property attached in execution of a decree for restitution of conjugal rights or for an injunction if the attachment has remained in force for one year and the judgment-debtor has not obeyed the decree. The period of one year appears to us to be too long. The High Court of Kerala has reduced it to six months and other High Courts like those of Allahabad, Calcutta and Patna have reduced the period to three months. In our opinion, a period of six months would be sufficient. Rule 32.

55. Rule 68 provides for a time limit of thirty days and fifteen days respectively for the sale of immovable and movable property calculated from the date of publication of the proclamation of sale under Rule 66. This limit may be reduced to fifteen days in the case of immovable property and seven days in the case of movable property. Rule 68.

56. Under sub-rule (1) of Rule 69 the court has power to adjourn a sale to a further date. Under sub-rule (2) if it is adjourned for a longer period than seven days a fresh proclamation is necessary. The High Courts of Bombay, Rule 69.

Calcutta, Madras, Punjab and Allahabad have extended this period to thirty days. Such an amendment should be of general application. Similarly under sub-rule (2) a fresh proclamation is necessary unless the judgment-debtor consents to waive it. The High Courts of Patna and Allahabad have amended this provision by providing that the consent of the judgment-debtor may be dispensed with if he has failed to attend in answer to the notice issued under Rule 66. We have recommended the omission of this notice and have recommended that the prohibitory order under Rule 54 itself should contain a direction to the judgment-debtor to appear on a given date to take notice of further proceedings. We suggest that the judgment-debtor's consent may be dispensed with in the event of his failure to appear even under the procedure suggested by us.

Rule 72.

57. Rule 72 debars a decree-holder from bidding or purchasing property at a sale in execution of a decree without the express permission of the court. This rule frequently causes delay when the warrant of sale is returned unexecuted in the absence of bidders. There appears to be little justification for the continuance of this rule. The amendment of the rule made by the Patna High Court is in substance a reversal of the original rule. Under the Patna amendment, no decree holder is precluded from bidding or purchasing a property unless an express order to that effect is made by the court. We would, however, recommend the adoption of the amendment of sub-rule (1) made in the former North-West Frontier Province to the following effect:

(1) "The holder of a decree in execution of which the property is sold, shall be competent to bid for or purchase the property without express permission of the Court, provided that the Court may on application of the judgment-debtor and for sufficient cause debar him from so bidding or purchasing."

Neglect of execution work.

58. We have examined some of the defects in the execution procedure which cause delay. Apart from these defects, however, execution work also suffers from the neglect to which it is subject in most of the courts. Under the system obtaining in a very large number of States, each court in a particular local area executes its own decrees. If there are more than one civil court for a given area, the aggregate execution work for that area is divided amongst all the courts, each court doing a portion of the work. The main complaint against this system is that the presiding officers do not pay to this branch of their work the attention that it deserves and leave it to be managed by their clerks. Not only does this result in delay but it also leads to corruption in the clerical and process-serving staff dealing with execution.

A not entirely unfounded belief prevails among judicial officers that their capacity is judged by the number of

contested suits disposed of by them. Obsessed with this notion, the presiding officers concentrate on the disposal of suits and all routine execution work is left to the execution clerk. All first and subsequent orders in execution are sometimes written out by the clerk and put up for signature before the judge who seldom looks into each matter before putting his initials. Matters involving contest are often put aside in the unrealized hope of the judge being able to find time to deal with them at some future date. The manner in which the work of execution suffers by reason of the judicial officers' inability to apply their minds to the matter at successive stages is amply illustrated by the example in the Appendix to this Chapter.

59. It is necessary to impress upon judicial officers that their work would be judged as a whole and not merely by the quantum of contested original suits disposed of by them. The High Court and the District Judges should impress upon judicial officers that execution work is as much a part of their regular work as the trial of suits and that any neglect of such work appearing at the time of inspection or noticed otherwise would be a matter for serious notice. Each officer should set apart at least half an hour each day to attend to first and subsequent orders in execution applications in which there is very little or no contest, while half a day per week should be reserved for contested work. Our recommendations for expediting disposal of original suits such as methodical arrangement of work and avoidance of unnecessary adjournments will apply also to proceedings in execution.

60. An effective method of assuring speedy and effective execution of decrees is to concentrate all execution work for a given area as far as possible in the hands of a single officer. The opinion elicited on the desirability of setting up a single executing court for a given local area is evenly divided. Obviously the question of setting up such a court does not arise in a tehsil headquarters where there is only one civil court functioning. After careful consideration we have reached the conclusion that it is not necessary to establish a separate court merely for the purpose of the execution of decrees for any local area. But wherever there are more courts than one of the same class, we are of the opinion that a more effective way of dealing with execution would be to allow only one court of each class to do the work of execution in addition to its normal civil work. We understand that wherever this experiment has been tried it has met with a fair measure of success. In order to avoid difficulties as to pecuniary jurisdiction we suggest that the work should be entrusted to the officer having the highest jurisdiction.

Single ex-
cuting court

61. We summarize our recommendations as follows:—

(1) The court to which a decree is transferred for execution under section 39 should be given additional powers which are now exercisable only by the court which passed the decree.

(2) Statutory effect should be given to the judicial decisions which apply the principle of direct and constructive *res judicata* to execution proceedings.

(3) Orders in execution should be non-appealable if they deal with pleas of payment within the limits of the small cause jurisdiction of the court executing the decree.

(4) In appeals against orders in execution of money decree the appellant judgment-debtor should be required to deposit or at least give security for the decretal amount as a condition precedent to the admission of the appeal.

(5) Rule 1 of Order XXI should be amended so as to provide for payment of the decretal amount through a bank or by a postal money order or by payment evidenced by a writing.

(6) If money is paid through a bank or the post office, the limitation of 90 days prescribed for getting the payment certified should be deleted.

(7) A special form of money order should be prescribed to enable parties to pay decretal amounts into court.

(8) Clauses (b), (c), (d), (f) and (h) in Order XXI, Rule 11 (2) should be omitted.

(9) The amendment of Rule 17 of Order XXI made by the Calcutta High Court should be incorporated into the Civil Procedure Code.

(10) In Order XXI, Rule 22 (1) (a), the words "three years" should be substituted for "one year".

(11) In warrants of arrest under Rule 37 notice to the judgment-debtor should be issued only at the discretion of the court. The rule should be suitably amended.

(12) The notice for settling proclamation of sale under Order XXI, Rule 66 may be omitted and the judgment-debtor asked to take notice of all further steps by appearance on the date fixed in the prohibitory order under Rule 54.

(13) The requirement of security or imposition of conditions before granting stay of decree under Rule 26, Order XXI should be mandatory and not discretionary.

(14) The court's power to stay execution by issuing a temporary injunction under Order XXXIX, Rule 1 should be taken away.

(15) Rules for garnishee proceedings on the lines of Rules 46-A to 46-H of Order XXI made by the Calcutta High Court should be made by all High Courts for enforcement in all subordinate courts.

(16) Execution sales should not be postponed pending the investigation into claim petitions under Rule 58 of Order XXI.

(17) The confirmation of the sale and the delivery of possession may be postponed until the conclusion of the inquiry.

(18) The provision for suits under Rules 63 and 103 of Order XXI should be omitted and the executing court itself should make a full inquiry into the right and title of the parties.

(19) The proclamation of sale need not mention the court's estimate of the price.

(20) Deposit of an amount not exceeding 12½ per cent of the sale proceeds or security for a like amount should be a condition precedent to the admission of an application under Order XXI, Rule 90.

(21) The volume of execution work done by a judicial officer should be taken into consideration in judging the quantum of his work.

(22) Judicial officers should take a more lively interest in execution work and set aside a specific time for it.

(23) Wherever there are more courts than one of the same class in one centre, one court should be entrusted with the entire execution work of all such courts. This work may be entrusted to the officer with the highest jurisdiction.

APPENDIX I

This is a short history of a proceeding in execution of a decree in the Court of a Munsif in West Bengal. It illustrates the difficulties which a decree-holder has to encounter in recovering the fruits of his decree. It is one of those cases—by no means rare—in which proceedings, be they regular suits, appeals or execution proceedings, drag on interminably causing enormous waste of public time and money. The proceedings which were in execution of a decree for possession of immovable property (house) commenced in 1948 and continued till December 1956 without any progress whatever having been made towards the satisfaction of the decree. During the eight years of its pendency the execution proceeding followed a certain well defined pattern described below:—

(i) Warrant of possession is issued at the instance of the decree-holder.

(ii) Warrant returned unserved because of judgment-debtor's obstruction.

(iii) Warrant re-issued to be executed with police help.

(iv) Judgment-debtor files objection petition (Section 47, Civil Procedure Code) raising irrelevant and frivolous grounds.

(v) Objections heard and dismissed and warrant ordered to be re-issued.

(vi) Proceedings stayed by District Court in an appeal preferred by judgment-debtor.

(vii) Warrant re-issued on dismissal of appeal: returned unserved.

(viii) Warrant ordered to be re-issued with police help.

(ix) Judgment-debtor files objection petition under section 47 raising different grounds.

Between these stages the proceedings were adjourned many times because the court was otherwise engaged or because the lawyers "cannot be found" or for the convenience of the parties or on the ground that the parties wanted to compromise till December 1956 and after a lapse of eight years the warrant of possession had not been executed.

The following excerpt from the case diary shows how the case proceeded (or did not proceed) during its pendency of eight years:—

8-9-1948 .. Execution petition filed by decree-holder.

- 6-11-1948 .. Notice to judgment-debtor returned after service and time given to file objections.
- 15-11-1948 .. Warrant of possession ordered under Order 21 Rule 35.
- 13-12-1948 .. Warrant returned unexecuted, Decree-holder applied for execution with police help.
(Upto 21-2-1949 no intimation had been received from the police in spite of reminders).
- 19-2-1949 (1st application under section 47). Judgment-debtor filed Misc. Application 31/49 under section 47, Civil Procedure Code objecting to execution.

(Three adjournments on intermediate dates for fixing the date of hearing. Between 18-6-1949 and 18-3-1950 four more adjournments followed on Judgment-debtor's request though Decree-holder was ready).
- 18-3-1950 .. Joint application by parties for time to compromise granted.
- 31-3-1950 .. Judgment/debtor absent. Misc. No. 31/49, dismissed for default. (This intermediate proceeding went on for nearly 13 months).
- 1-4-1950 .. Judgment-debtor's application under section 151 to restore Misc. No. 31/49.
- 19-8-1950 .. The above was dismissed after four intermediate adjournments. (Another 4½ months taken up in hearing an interlocutory application).
- 23-8-1950 .. Decree-holder applies for re-issue of warrant of possession.
- 24-8-1950 .. Judgment-debtor given 15 days time to bring a stay order from appellate court. (It should by now have been obvious to the executing court that the judgment-debtor was deliberately following obstructionist tactics and raising frivolous objections and proceedings to delay the execution. The court would have exercised its discretion more judiciously if it had refused to grant the time).
- 14-9-1950 .. Stay granted by appellate court.
- 16-12-1952 .. Appeal decided and stay order vacated. (Thus, more than two years were again spent in an interlocutory appeal. It is more than probable that the appellate

- court had not applied its mind to the case before admitting the appeal and granting a stay order).
- 16-12-1952 .. Warrant of possession re-issued and made returnable on 16-1-1953.
- 19-1-1953 (2nd application under section 47). Judgment-debtor files objection petition under section 47 being Misc. No. 11/53.
- 14-3-1953 .. Judgment-debtor's application under section 47 dismissed. (The order of the court which is reproduced in the case diary shows that this was another entirely frivolous application which the Court could have summarily dismissed as soon as it was filed without calling upon the decree-holder to reply and thereby taking a further two months).
- 16-3-1953 .. Decree-holder applied for warrant of possession returnable on 18-4-1953.
- 1-4-1953 .. District Court issues a stay order in Misc. Application No. 101/53.
(The District Court could very easily have disposed of this appeal summarily after reading the executing court's orders. There was no justification for a stay of execution proceedings).
- 29-3-1954 .. Appeal dismissed and stay vacated. Postponed to 12-4-1954 for further steps.
(Thus one more year was taken up by a frivolous appeal).
- 12-4-1954 .. Decree-holder applied for police help to execute warrant of possession.
- 22-5-1954 (3rd application under section 47). Another application by Judgment-debtor under section 47 Civil Procedure Code No. Misc. 67/54.
- 10-6-1954 .. Misc. No. 67/54 dismissed.
- 22-6-1954 .. Warrant under Order 21, Rule 35 ordered to be re-issued.
- 21-7-1954 .. Warrant returned unserved. Decree-holder again applies for police help, warrant returnable on 16-8-1954.
- 9-8-1954 (4th application under section 47). Judgment-debtor files another objection petition under section 47 Civil Procedure Code No. 108/54.

- 11-8-1954 .. Decree-holder files his objections. (At first this was postponed for decree-holder's objections on 28-8-1954 but decree-holder promptly replied on 11-8-1954. Hence the matter could well have been heard or disposed of on 28-8-1954).
- 28-8-1954 .. Fixed for 18-9-1954 for peremptory hearing. (Two more adjournments followed for compromise).
- 13-11-1954 ... Misc. No. 108/54, dismissed for default.
- 16-11-1954 .. Judgment-debtor files application under section 151 Civil Procedure Code for restoring 108/54.
- 27-11-1954 .. Pleadings absent.

(Between 27-11-1954 and 2-4-1955 four to five adjournments followed at the instance of both the parties for a compromise. It is difficult to understand why the court at that stage did not pass orders on the Judgment-debtor's application of 16-11-1954.
- 2-4-1955 .. Judgment-debtor's application under section 151 allowed and 108/54 restored to file. (Hearing of Misc. 108/54 postponed 6 times for compromise and on other grounds upto 28-1-1956).
- 28-1-1956 .. Misc. 108/54 dismissed. (It took one year and a half to decide this application).
- 10-2-1956 .. Decree-holder applies for possession with police help.
- 1-3-1956 .. Execution stayed by District Court in Misc. Appeal 39/56. (This is the third time execution is stayed by District Court in an interlocutory appeal).
- 15-9-1956 .. Stay vacated.
- 26-9-1956 .. Decree-holder applies for possession with police help.

The Roznama is written upto 12-11-1956 upto which date the warrant of possession to be given with the police help had not been returned.

It will be noticed that no progress at all was made in this case and eight years were taken up in frivolous and irrelevant proceedings. Although the judgment-debtor

seems to have been primarily responsible for this inordinate delay, we think that the proceedings could have been considerably shortened if the original and the appellate courts had been able to apply their minds to the merits of the case.

The case set out above is a type of many similar cases the files of which were made available to us

19.—WRITTEN ARGUMENTS

1. We have noticed in an earlier chapter the state of the file of the Supreme Court. It has been observed that the hearing of appeals and other matters in the Supreme Court takes a long time, sometimes much longer than is taken in the High Court. The position in most of the High Courts in the matter of arrears, as we have noticed earlier, is even more acute. The heavy accumulation of first and second appeals and other matters has been rightly looked upon as an evil which calls for immediate and drastic measures.

Arrears and delays in the Supreme Court and the High Courts.

2. One of the measures suggested to remedy this state of affairs is the submission of written arguments or briefs before the hearing of appeals, with the time allowed to counsel for oral argument being restricted to one or two hours. The suggestion is based on the pattern largely followed in the United States in dealing with appellate matters.

A suggested remedy: Written briefs and restricted oral arguments.

3. The system of conducting an appeal in our country follows closely the British method. Oral arguments are unrestricted as regards time. The judgment of the Court below, pleadings and portions of the evidence are generally read out and commented upon and authorities cited and elaborately discussed. This lengthy and dilatory process can be replaced, it is said, by the American system the adoption of which, it is urged, would result in a great saving of time.

Our System.

4. It is necessary first to appreciate fully what the American system is, before we can usefully discuss the feasibility of its adoption in our High Courts and the Supreme Court. It is thus described by the Evershed Committee in its Report: "In the United States of America it has for many years been found to be impossible in practice to allow the hearing of appeals to occupy the length of time which is habitually occupied in this country. Sheer pressure of business has forced on the American Courts the necessity of rationing the time allowed to either side for the oral hearing of appeals. In order to enable this to be done a special procedure has been evolved in the United States whereby each party to an appeal is obliged to lodge with the appellate Court a printed 'brief', which consists of a full, written arguments, setting out in detail the grounds on which it is sought to attack or support the judgment of the Court below. In the 'brief' the authorities relied on are cited and reference is made to the documents and passages of the evidence

The American system of Written "briefs".

passages of the evidence relied on in support of the argument. The documents and transcript of evidence are themselves bound up in an Appendix, which is lodged with the court together with the 'brief', rather on the lines of the procedure followed in this country in relation to appeals to the House of Lords.

"Under this system the members of the appeal Court are not obliged to read the 'briefs' and documents before the hearing of the appeal unless they wish to do so. We were informed that some Judges in practice prefer to do so, while others like to hear the oral argument first. But all the Judges must and do read the 'briefs' and documents at some time, and no Judge would think of preparing his judgment until he had carefully read and considered the written argument and documentary material. The point is that the members of the Court have this written material to take away with them and refer to. This makes it possible for counsel to present the appeal at the hearing with a very abbreviated oral argument. In fact we were informed that in almost all the appellate tribunals in the United States, including the Supreme Court, they are required by Rules of Court to do so, the time allowed for oral arguments being strictly limited, usually to not more than one hour for each side. Only so, we were given to understand, would it be possible for the appellate Courts in the United States to get through the immense mass of work with which they have to deal."

Strain on the Judges.

5. It will be appreciated that the system of submitting written briefs which the Judges study before or after the limited oral arguments must put a very great strain upon the Judges. How does the American system enable the Judges to shoulder this burden? This may be explained by the working of the system in the Supreme Court of the United States about which we have been able to gather reliable information.

Relief by competent Secretaries.

6. Each of the Justices of the Supreme Court is provided with two or three highly qualified Legal Assistants called Law Clerks or Secretaries. It is customary to pick out these Legal Assistants from the men who have earned the highest distinction at the Universities. "Each Justice was entitled to a secretary, paid by the government. Holmes had a new one every year, sent down by John Gray (later sent by E. R. Thayer and Felix Frankfurter) from the Harvard Law School. They arrived in September, the pick of the graduating class

"The young men were like sons to Holmes. He showed them his written opinions talked to them about the cases. Sometimes he lent one of them to another Justice; none of his brethren had secretaries beyond the stenographer class, and it was good to have someone who could

¹Final Report of the Committee on Supreme Court Practice and Procedure, page 190, para 570 and 571.

be trusted with details of cases while they were pending..... There were in the end thirty of them. 'Holmes's Annuals' they were called. They became later on, Attorney-Generals of the United States, Chairman of the Board of U.S. Steel, Presidents of New York Life Insurance, Presidents of Federal Banks, professors at Harvard and professors elsewhere."¹

These Secretaries study the briefs submitted to the Court in the first instance and do in connection with these briefs much of the research work which counsel would otherwise have to do. The Justices, therefore, have the advantage of independent research conducted by their own staff. The examination of the material collected by the Secretaries of the Justices necessarily occupies a great deal of the time of the Justices so that, during term time, only half of the time is spent in hearing in Courts and the rest of the time is occupied in the Justices' examining the cases in their chambers and discussing them at their meetings. In fact, we are told that only a small proportion of the cases filed in the Supreme Court is given an oral hearing and the rest disposed of by the Justices sitting by themselves. The way in which the Supreme Court of the United States works has been graphically described by the late Justice Jackson of the Supreme Court in his book "The Supreme Court in the American System of Government".

"No conclusion as to what can be expected of the Court is valid which overlooks the measure of its incapacity to entertain and decide cases under its traditional working methods. With few exceptions, Congress has found it necessary to make review in the Supreme Court not the right of a litigant but a discretionary matter with the Court itself, in order to keep the volume of its business within its capacity. Last term, review was sought by appeal and certiorari in 1,452 cases, only 119 of which were allowed. It is not necessary to detail the considerations which move the Court to grant review beyond saying that the grant is not intended merely to give a litigant another chance, nor does it depend on the dollars involved or the private interests affected, but upon the importance of the case to a uniform and just system of federal law.

The working
of the
System.

"The routine during the Court term has been to hear arguments the first 5 days of each two weeks, followed by two weeks of recess for the writing of opinions and the study of the appeals and certiorari petitions, which must be disposed of periodically. The time allowed for each side to argue its case is normally one hour, and, in cases where the question seems not complex, it is half of that. In the early days of the Supreme Court, the volume of work permitted argument to extend over several days, as it still does in the

¹Yankee from Olympus—Oliver Wendell Holmes C. D. Bowen :
Bennant Student Edition pages 289 and 290.

House of Lords. Many cases argued before us to-day in two hours have taken days, weeks, and even months in the trial court or administrative body.

"What really matters to the lawyer and the law is what happens between the argument and the decision. On each Saturday following argument or preceding a decision Monday, the Court holds its only regularly scheduled conference. It begins at 11 a.m. and rarely ends before 5-30 p.m. With a half-hour for lunch, this gives about 360 minutes in which to complete final consideration of forthcoming opinions, the noting of probable jurisdiction of appeals, the disposition of petitions for certiorari, petitions for rehearing and miscellaneous matters, and the decision of argued cases. The largest conference list during October 1953 term contained 145 items, the shortest 24, the average 70. A little computation will show that the average list would permit, at the average conference, an average of five minutes of deliberation per item, or about 33 seconds of discussion per item by each of the nine Justices, assuming, of course, that each is an average Justice who does the average amount of talking.¹ *** The individual study which any case receives before or after argument is the affair of each Justice. All receive the printed briefs and record, in some cases short, in others running to a great many volumes. Some records take five feet of shelf space. It is easily demonstrated that no Justice possibly could read more than a fraction of the printed matter filed with the Court each year. Nor is it necessary that he should. But as to his individual labors, with this mountain of papers, each Justice is the keeper of his own conscience."²

Special nature of jurisdiction of Supreme Court in the U.S.A.

7. This glimpse into the method of functioning of the Supreme Court of the United States reveals an essential difference between the jurisdiction and powers of that Court and those of our Supreme Court and High Courts. It appears that in most of the matters coming before it, even in matters where review is sought by way of appeal, the Supreme Court of the United States enjoys a very wide discretion. There would not appear to exist a right of appeal in the litigant as under our Constitution and laws. It is not, therefore, surprising that a different system enabling the Judges by a quick preliminary examination not to admit at all the review by way of appeal should have been adopted in that Court.

Assumptions underlying American System.

8. Apart from this essential difference, it will be realized that the system operating in the United States proceeds on three fundamental hypotheses. It postulates:

(i) A competent Bar which should be able to prepare and submit an exhaustive and fully documented brief;

¹The Supreme Court in the American System of Government by Robert H. Jackson, pp 13-15.

²*Ibid* page 16.

(ii) Judges who would be able to comprehend the full bearings of the points involved in an appeal by a mere perusal of the briefs;

(iii) Expert qualified assistants to the Judges who would make research into the questions arising so as to assist the Judges to get thoroughly seized of the briefs filed.

9. We may, perhaps, with some hesitation accept that the first requisite would be available at the Bar of the Supreme Court and the High Courts. It would be difficult to say the same with regard to the second. Our Judges are trained to gather facts and perceive the relevant points of law from fairly full oral arguments. Indeed, they from time to time, resolve doubts both as to inferences of facts and validity of legal contentions by questions put to counsel. As to the third, its introduction into the working of the judicial system in our country will be an entirely novel feature. It involves the question whether we would not be in many cases substituting the efficient Legal Assistants for the Judges. Lawyers in the United States have not infrequently a feeling that cases are disposed of by the Legal Assistants and not by the Judges. "In fact, a suspicion has grown at the Bar that the law clerks already constitute a kind of junior court which decides the fate of certiorari petitions. This idea of the law clerk's influence gave rise to a lawyer's waggish statement that the Senate need no longer bother about confirmation of Justices but ought to confirm the appointment of law clerks. Twice during the last term I was asked by prominent lawyers, once by letter and once orally, how they could get their petitions for certiorari past law clerks and to the consideration of the Justices themselves. The answer is that every petition is on the conference list, and its fate is decided by the vote or agreement without formal vote of every Justice who does not disqualify himself."¹

The position in India. Difficulties in introducing written arguments.

10. What is more, the United States system involves the practice of granting what is called free time to the Judges to peruse the briefs the Judges working in Court half the time, the remaining half being devoted to study and disposal of briefs. It also means the increased cost of the employment of a number of very capable well paid legal assistants.

Free time to Judges.

Cost of secretarial assistance.

Having regard to the essential difference in the jurisdiction and powers of our Courts and the entirely differing conditions in which they function, is the adoption of the American system by us at all practicable?

11. The adoption of the American method of disposing of appeals was considered by the Evershed Committee and it carefully examined the arguments in favour of and

¹Jackson : Op. Cit. page 20.

against the method. "Apparent advantages" of the system were briefly summarised as follows:—

Case for
written ar-
guments.

"(a) Since the grounds of appeal are precisely stated and the authorities relied on are cited in the written "brief", there is no room for surprise. Not only are the members of the Court apprised at once of the point that is to be decided, but the other side are fully aware, before the hearing, of what is going to be said against them.

(b) Formulation beforehand of the precise grounds of the appeal makes it possible in many cases to eliminate much of the evidence, both oral and documentary, which came before the trial Judge but which is not relevant to the particular question that forms the subject of appeal. This enables considerable economies to be made in the transcribing of evidence and duplication of documents.

(c) The "brief" constitutes a permanent record of the argument on either side, which the Judges can take away and consider at leisure. They are not so dependent, therefore, on the notes which they are themselves able to make during the hearing or on their fleeting recollection of counsel's oral argument.

(d) Above all, at the cost of preparing the written argument, there is, at any rate in all but the smallest cases, an immediate economy in relation to the time occupies in the hearing of the appeal. As already pointed out, the consumption of time, involving as it does the payment of refresher fees to counsel, is the most expensive feature of our English appellate procedure.¹

Contrary
views.

12. The Committee stated that "Whatever may be thought to be the advantage of the American system of "briefs" * * * * we found singularly little enthusiasm for it amongst the witnesses whose opinions we sought. The members of the Court of Appeal whom we consulted were emphatically opposed to the adoption of such a system in this country as also were the representatives of the Bar Council and Law Society. We also had the advantage of hearing evidence from Mr. Justice Frankfurter, of the United States Supreme Court, as well as from Mr. John W. Davis, who was able to speak with a wealth of experience of appellate work in the United States Courts: We gained the impression from these witnesses that they were by no means whole-heartedly in favour of the American system of conducting appeals, but that they rather envied the system prevailing here of unrestricted oral argument. They appeared to regard the American "brief" system, with

"Brief"
System a
necessary
evil.

¹Report, page 191, para 572

its strict limitation of the time for oral argument, as a necessary evil forced upon them by the pressure of appellate work, the volume of which is so great that it would be simply impossible to get through it if unrestricted oral argument were permitted."¹

13. The Evershed Committee reached the conclusion "that the American system would provide in this country a less satisfactory system for conducting appeals than that now prevailing. Furthermore, we are satisfied that the American system would be quite unsuitable for adoption in this country in view of the different conditions prevailing here and would not be likely to lead to any marked reduction in the costs of appeals."²

Committee
against the
American
System.

14. The Committee summarised its reasons for arriving at these conclusions briefly as follows :—

The case for
the present
system.

"(a) We are satisfied that there are real and substantial advantages in our system of unrestricted oral argument, whereby every point in a party's case is thoroughly sifted in the process of discussion between counsel and the members of the Court. Furthermore, our system enables the members of the Court to work together as a team, each member having the advantage of hearing the questions put by the other members and of weighing the answers of counsel thereto. Under this system, it is thought, there is a far greater chance of the Court arriving at a common conclusion, so that in the majority of cases the parties have the advantage of a unanimous decision, and the Court's decision on the question in issue carries all the greater authority.

(b) By contrast, the system prevailing in the United States leads to a higher proportion of dissenting judgments. It has seemed to us that the members of the appellate Courts, reading the "briefs" and documents for themselves, and without the advantages of hearing unrestricted oral argument together, must tend to bring their individual minds in the case rather than work as a team.

(c) Under the American system there is likely to be much greater delay in reaching a decision. * * * * The oral argument having been necessarily abbreviated, the members of the Court must go away and digest the written argument and evidence, by reaching it to themselves after the hearing, before they can form their opinions and are ready to give judgment. In the appellate Courts of the United States almost every judgment must be reserved, and we were informed that it is not uncommon for a substantial time to elapse, often extending to many months, before the judgments are delivered.

¹Report, page 191, para 573.

²Report, page 191, para 574.

(d) * * * * it is to be remembered that counsel would have to get up the case twice-once for the purpose of preparing the "brief", and again for the oral argument, for which purpose he would have to be prepared for any point that might be raised against him in Court. Bearing in mind this additional burden on counsel, we do not think that any marked reduction in counsel's fees could be expected. On the contrary the overall total of counsel's fees for the preparation and hearing of an appeal might well be greater than it is at present."¹

Some advantages of written argument already exist.

15. It may be pointed out that some of the "apparent advantages" of the system referred to by the Evershed Committee namely the first and second already exist in our system by reason of our requirements in regard to memoranda of appeal and cross-objections and putting in the record only relevant documents and evidence.

Introduction in India inadvisable.

16. Though no doubt some of the grounds given by the Evershed Committee for expressing itself against the adoption of the system in England may not apply to us, we are of the view after giving our careful consideration to the matter, that it would be inadvisable and even harmful to introduce the American system into India.

Additional expense.

The change would be so revolutionary and foreign to the system of oral arguments which we have followed all these years that its introduction will be beset with difficulties. Its adoption will involve considerable additional expense. Further, if the system is to be worked as in the United States there will be no saving of judicial time. The free time which will have to be given to the Judges to digest the briefs will very likely be equal to or even exceed the time saved by the restriction put on the length of the oral argument. The American system has, as we have seen, its disadvantages and some American Judges of experience have indicated a preference for the system of unrestricted oral hearing.

No saving in time.

The opinion elicited by us has almost unanimously expressed itself against the introduction of this system in our Courts. We understand that the Chief Justices of the various High Courts have also expressed themselves against it.

The true remedy: Better personnel.

17. Is then the evil of protracted hearings of appeals to be allowed to continue unchecked? Is there no remedy for it? The true remedy for these delays in the hearing, as in many other matters lies, in our view, in a judiciary capable of controlling the hearing.

Much of the time during the hearing of an appeal is taken up by a reading of proceedings in the record. Indeed,

¹Report pages 191 to 193, para 574.

in some Courts it seems to be the normal practice to start the opening of an appeal with a reading of the plaint in the suit and taking the appellate Court through the pleadings, the issues and the oral and documentary evidence. There is no reason why time should be spent in reading the whole record. If the Judges have previously read the judgment under appeal, as we think they ought to, there should be no difficulty in their following a statement of facts in the opening on broad lines, attention being drawn only to such parts of the pleadings or the evidence as are germane to the points to be argued in the appeal.

Judges to read papers in advance.

Time is also spent in some Courts in needless questions relating to points of fact and law which doubtless would in due course be referred to and dealt with by counsel.

18. We have also considered the desirability of introducing in the High Courts at any rate in the heavier appeals a system of filing a statement of the case as now obtains in the Supreme Court. The adoption of a somewhat similar system was recommended by the High Court Arrears Committee.

The suggestion has received our careful consideration but has not commended itself to us. So far as second appeals are concerned many of them are of small value—and only a very small number of them involve important point of law which would justify the filing of a statement of case. Even as regards first appeals, under the system of appeals envisaged by us a fairly large number will continue to be below Rs. 20,000 in value. Further a statement of case unless it is carefully drawn is not capable of rendering much assistance to the court. Hence an insistence on the filing of a statement of case in the High Courts is not likely to serve any useful purpose but will merely tend to increase costs. We were also informed that this system was tried in at least one High Court, but without success.

In our opinion the object sought to be achieved by filing a statement of case can be equally well served by the judges reading the papers relating to an appeal before the hearing—and we have already made a recommendation to that effect. We are therefore unable to recommend the acceptance of this suggestion.

What perhaps makes most for a saving of time during the course of the hearing of the appeal is an appreciation of the real points in the appeal by the Judges hearing it. If such appreciation exists, it will not at all be difficult for the Bench to confine counsel, assuming he is inclined to be prolix, to the real points arising and shut out all references to and discussion of matters which are no longer of importance at the stage of the hearing of the appeal. It is a matter of common experience that an appeal which takes before a certain Bench a day for the hearing may take as many as three or four days before another Bench of Judges

This emphasizes what we have stated, namely, that Judges who have a grip of the real issues in the appeal can easily regulate the proceeding so as to lead to its quick disposal. We have heard complaints about the prolixity of some members of the Bar and the difficulty of the Bench in controlling them. In our view no such difficulty will be felt, once the Bench is able to gather the real points in the appeal.

Exchange
of authorities.

19. We would however suggest that, in order to prevent surprise and to ensure adequate and speedy assistance to the Court, counsel should exchange before the date of the hearing lists of the authorities they propose to cite. The Evershed Committee was also of the view that¹ in the appellate Court counsel should disclose to each other, the cases which they propose to cite and which have not been cited in the Court below.

Summary of
recommendations.

20. We may summarise our conclusions on the adoption of written arguments as follows:—

(1) The American system of "written briefs" and restricted oral arguments is not suitable for introduction in our country.

(2) It is not necessary to insist on the filing of a statement of case in appeals to the High Courts.

(3) Counsel should exchange before the date of the hearing lists of the authorities they propose to cite.

¹Final Report, page 201.

20.—SUITS AGAINST GOVERNMENT

We may at this stage refer to a difficulty experienced by persons who wish to enforce a claim against the State.

Section 80 of the Civil Procedure Code provides that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months after a notice in writing in the manner provided in the section has been given. The section is explicit and mandatory and admits of no exceptions. It is a prohibition against the institution of a civil suit without compliance with its provisions. The object of the prescribed notice is to give to the Government or to the public officer an opportunity to reconsider the legal position and to settle the claim, if so advised, without litigation.

Suits against Government.

Requirements of Section 80 Civil Procedure Code.

The section has worked hardship in a large number of cases where immediate relief by way of injunction against Government or a public officer was necessary in the interests of justice. The question whether notice was necessary in suits for injunctions was at one time the subject of a conflict of judicial decisions. The Bombay view was that no notice was necessary in such a suit against Government or a public officer, when the act to be restrained might occasion serious or irreparable damage if the party was compelled to wait for two months after giving notice.¹ The opposite view was taken by the Calcutta, Madras and Allahabad High Courts. These Courts held that the section should be strictly complied with and was applicable to all forms of actions and all kinds of reliefs. The conflict was set at rest by the decision of the Privy Council in the case of *Bhagchand v. Secretary of State*² which over-ruled the Bombay decisions. So construed, the provision must inevitably work injustice by denying to the citizen the right of immediate preventive relief when needed.

The views expressed to us, except those of some Governments and Government officials, which were in general agreement, urged that the section needed modification so as to safeguard the rights of the citizens and at the same time give the State the necessary opportunity to consider its legal position. The evidence disclosed that in a large majority of cases, the Government or the public officer made no use of the opportunity afforded by the section. In

¹ *Secretary of State v. Gajanan*, I. L. R. 35 Bom. 362.

² I. L. R. 51 Bom. 725.

**Resulting
Hardship**

most cases the notice given under section 80 remained unanswered till the expiry of the period of two months provided by the section. It was also clear that in a large number of cases, Governments and public offices utilized the section merely to raise technical defences contending either that no notice had been given or that the notice actually given did not comply with the requirements of the section. These technical defences appeared to have succeeded in a number of cases defeating the just claims of the citizens.

**Requirement
of notice to
be dispensed
with.**

Having regard to these considerations, we are clearly of the view that the provision requiring notice in such cases should be omitted. There is no justification for placing Government and public officers in a different position from private parties in this respect. The interests of the State will, in our opinion, be sufficiently safeguarded by a provision to the effect that if a suit against the Government or a public officer is filed without reasonable notice, the plaintiff would be deprived of his costs in the event of a settlement of his claim by Government or the public officer before the date fixed for the settlement of issues.

We are also of the view that provisions similar to Section 80 requiring notice in other Acts like the Cantonments Act, the Railways Act and the State Municipal Acts should also be omitted; and a provision inserted in regard to a party being deprived of his costs in the circumstances stated above.

1. A question of principle which calls for consideration is whether the costs awarded to a successful party in a civil proceeding should be a fair indemnity to him for the expenses incurred in asserting or defending his legal rights.

2. The early English Statutes would seem to show that a right to recover costs from the opposite party was conferred upon a litigant with the object of checking frivolous suits and defences. We may quote the preamble to one of them. Original
object :
Checking fri-
volous suits
and defences.

“Foreasmuch as for want of a sufficient provision by law for the payment of costs of suit, divers evil disposed persons are encouraged to bring frivolous and vexatious actions, and others to neglect the due payment of their debts, etc.”¹

The award of costs was thus made for its deterrent effect on litigants who may be disposed to file vexatious claims or adopt frivolous defences. The vexatious claimant or the defaulting debtor would before making a false claim or taking an unjustifiable defence remember that if he failed as he would, he would have not only to bear his own expenses but to pay those of the other side.

3. Whatever may be the origin of the provision requiring the losing party to pay the expenses of the winning party, it is clear that in such systems of law as have adopted the principle of awarding such costs, the underlying purpose is to indemnify fairly the party who is proved to be in the right for the expenses legitimately incurred by him. The true principle underlying the award of costs was thus explained by Mookerjee, A.C.J.:— Purpose :
Indemnity.

“We must remember that whatever the origin of costs might have been, they are now awarded, not as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected, or, as Lord Coke puts it, for whatever appears to the Court to be the legal expenses incurred by the party in prosecuting his suit or his defence. * * * * The theory on which costs are now awarded to a plaintiff is that default of the defendant made it necessary to sue him, and to a defendant is that the plaintiff sued him without cause; costs are thus in the nature of incidental damages allowed

¹8. & 9 W. III. c 11 f. 2 (1696)

to indemnify a party against the expense of successfully vindicating his rights in Court and consequently the party to blame pays costs to the party without fault. These principles apply, not merely in the award of costs, but also in the award of extra allowance or special costs. Courts are authorized to allow such special allowances, not to inflict a penalty on the unsuccessful party, but to indemnify the successful litigant for actual expenses necessarily or reasonably incurred in what are designated as important cases or difficult and extraordinary cases.¹

Award of costs not universal.

4. Certain systems of law have not however adopted the principle of awarding costs as an indemnity to the successful litigants. We understand that the system of awarding substantial costs does not obtain in the United States.

Objections to the system.

5. A view has been taken that the award of costs results in unfairness and leads to extravagant litigation. It has been argued that it is unfair that a losing party should have to pay all the expenditure incurred by his opponent when he may honestly have believed that the position he has taken was in law defensible and correct.

Unfairness encourages extravagance. Answered.

6. It appears to us that these arguments overlook the provisions, which systems of law providing for the award of costs generally contain, to combat the alleged tendency of the award of costs to encourage extravagance in litigation. It must not be forgotten that the costs awarded to the winning party are not the actual expenses incurred by him in prosecuting his claim or defence, but only expenses reasonably incurred by him for that purpose. In order that the amount recoverable by the winning party may be limited to such reasonable expenditure, these systems provide either that the costs be quantified or that they be limited to such reasonable expenditure, these systems provide either that the costs be quantified or that they be taxed on scales laid down by the Court itself. To the argument that the unsuccessful claimant or defendant may have honestly believed in the correctness of his claim or defence and prosecuted or defended it in good faith there is a two-fold answer. Firstly, such good faith may equally exist in the successful claimant or the successful defendant. If both the contending parties acted in good faith, it is only fair notwithstanding the *bona fides* of the opponent, that the person turning out to be right should get his expenses. Secondly, it does some times happen that the successful litigant has taken up an attitude which though correct in law is not just or fair. In such cases it is always open to the adjudicating Court in the exercise of its discretion to deprive even the successful litigant of his costs. In fact, Courts frequently do so.

System awarding of costs to continue.

7. However, ever since the introduction of the British System of administration of justice into our country over

¹Maniandra Chandra Nandi v. Asiwani Kumar Acharjya, I. L. 48 Calcutta p. 427 at pp. 440-41.

a century ago, we have adopted the principle that costs should be awarded to the successful party against the losing party as an indemnity for the expenses to which he has been put by the opponent. A discussion therefore on the correctness or the propriety of awarding costs to a successful party against his opponent as compensation for the expenses incurred by him, is it appears to us, not much in point.

8. The more important question is whether the rules as to the award of costs which are followed by our Courts do serve the purpose of awarding costs *viz.*, compensation to the successful party for all expenses necessarily or reasonably incurred by him in the prosecution or defence of the litigation. It is obvious that the successful party cannot expect to be compensated for any unnecessary or luxury expenses which he may have incurred. The true principle for measuring the indemnity to which the successful party may be said to be fairly entitled was laid down by Malins V. C. in the following words¹:—

True basis of the indemnity rule.

“Costs chargeable under a taxation as between party and party are all that are necessary to enable the adverse party to conduct the litigation, and no more. Any charges merely for conducting litigation more conveniently may be called luxuries, and must be paid by the party incurring them.”

9. Adopting the measure of indemnity so laid down, it is clear that by and large, the costs at present awarded by the Courts in India on the basis of the provisions of the Civil Procedure Code and the form set out therein do not give the successful party the indemnity which the law contemplates.

Costs in India not an indemnity.

This view was expressed by the Judicial Reforms Committee for the State of West Bengal.

“It is admitted on all hands that the costs allowed by the rules of this Court form a very small percentage of the costs actually incurred and for which the parties are liable.” * * * Admittedly, the costs allowed in the courts of the districts and on the Appellate Side of this Court bear, as we have said earlier, no relation to the actual costs of the proceedings. Such costs are fixed on an *ad valorem* basis and though in some cases they may be generous, they usually form a very small proportion of the actual cost of the litigation. In seriously contested cases and in matters of difficulty the costs allowed by the rules of this Court, where the unitary system prevails, are hopelessly inadequate and that is the view of everyone who has any knowledge of litigation in this State.”²

¹Smith v. Buller, 19 Eq. 21 p. 475.

²Report, page 11.

³Ibid page 33.

The same conclusion was reached by the Rankin Committee as far back as 1925 and they made certain recommendations in that regard.¹ Notwithstanding the view expressed by that Committee, adequate steps have not been taken to increase the costs which may be awarded to the successful party so as to give him an indemnity on the principles indicated above.

A large mass of opinion elicited by us in the course of our enquiry which includes the views expressed by some High Courts, agrees that the position is as we have indicated, and that measures are necessary to make the costs awarded a fair indemnity to the successful party.

Items of expenditure. 10. It therefore becomes necessary to ascertain the various items of expenditure that are actually incurred by a litigant in the conduct of a suit or proceeding and to determine whether or not the existing provisions of law or the rules made by the High Courts provide for adequate compensation for such expenditure.

Charges for lawyer's notice. 11. We shall start with the stage prior to the filing of a suit. Generally the filing of suit is preceded by an advocate's or a solicitor's notice demanding redress and these notices form the foundation of the suit which is filed subsequently.

To rush to court without sending a lawyer's notice in advance is to invite a disallowance by the court of the costs incurred in the suit. Further, in certain categories of cases, viz., suits against railway authorities, municipal authorities, cantonment boards or the Government, a statutory notice setting out certain details is obligatory and is a prerequisite to the filing of a suit. Suits filed without such a notice are liable to summary dismissal. The technical and formal requirements of the contents of these notices are such that they can be given only after taking professional advice and it is usually necessary to have them drafted by a legal practitioner.

To be awarded. We are conscious of our recommendation that the statutory provisions making these notices obligatory should be repealed. However the implementation of that recommendation is bound to take some time. It would therefore seem to be only just, that in those cases where an individual is required to give a statutory notice before filing a suit, the costs of such a notice should be allowed to him in the suit or proceeding in the event of his success.

The Courts might also be empowered in accordance with such rules as the High Courts may frame, to award in appropriate cases, notice charges in suits filed against private individuals.

¹ Report of the Civil Justice Committee, page 518.

12. The next major items of expenditure which in fact constitute the great bulk of the out-of-pocket expenses of a litigant are court fees and the lawyer's fee.

The present rules do give an adequate indemnity to the litigant for the amounts which he has to disburse as court fees. The court fees are allowable in full in proper cases as a necessary item of the taxed costs. Court fees.

13. The fees paid to a lawyer so long as they do not exceed the amounts prescribed by the rules framed by the several High Courts under the Legal Practitioners Act, 1879 are also recoverable from the opposite party, if a certificate is filed to the effect that the lawyer has actually received the fee claimed. No doubt the successful litigant does often pay higher fees to his lawyer than he gets from his opponent on taxation. These are however luxury expenses incurred by him for his convenience in respect of which he is not entitled to an indemnity. It may be that if the scales of lawyer's fees have for legitimate reasons risen in particular States, alterations may have to be made in the percentages prescribed by the High Courts under the rules. Lawyer's fees.

14. Though the remuneration of the advocate for the drawing of the pleadings is included in the fee payable to him, the party has, in addition, to incur some additional expenditure to get his pleadings typed and to have the necessary copies prepared for service on the other side. Typing charges.

Even in cases where the rules of the court do not require pleadings being type-written, considerations of legibility, neatness and expedition necessitate that pleadings should, if possible, be type-written. But typing involves payment to the typists, particularly in the mofussil where this work is frequently done not in the lawyer's office but by a job typist. This puts the party to additional expense in paying the typist. Even in cases where the typing is done by a clerk or someone else attached to the pleader's office "writing charges" have to be paid by the parties. In cases where the pleadings are lengthy or a large number of documents have to be annexed to them, the expenditure on paper and typing charges is considerable.

Rarely, however, is provision made for the recovery of such expenses though they have necessarily to be incurred by a party.

We may in this connection mention that the Rankin Committee also recommended that a successful party who had filed his pleadings in type should be allowed to recover his typing charges¹.

The practice of typing pleadings and documents has since the Committee made its Report grown and is fairly

¹Report, page 520.

extensively resorted to and typing charges and the cost of stationery have considerably increased. Nevertheless, the suggestion of the Rankin Committee has not yet been accepted by some of the High Courts. Indeed it has been said that this expenditure would be included in the charge of the lawyer's fee which is allowed.

Such a view is obviously unsound. Pleadet's fees represent only counsel's charges for drawing the pleadings, but do not include typing or copying charges for which the client has always to pay an additional charge.

It may be pointed out that the High Court of Patna has amended the form of decree in Appendix D of Schedule I of the Civil Procedure Code so that it now includes typing charges also as an item payable by the losing side. The Calcutta High Court has also provided by its rules for making the costs of demi paper payable by the losing side in civil suits.

To be allowed in taxation.

15. We therefore favour a general amendment making such costs recoverable in all the States. The typing and stationery charges may be fixed by the High Courts concerned from time to time in accordance with local conditions or they may be made to correspond with the copying charges levied by the courts.

Rates of batta for witness.

16. We would point out that the rates fixed for subsistence and travelling allowances, are very low in many States and need revision if the costs awarded are to correspond with the expenses actually incurred by the parties. In Bihar, the maximum diet allowance allowed per day to a witness of the lowest class is only 4 annas, which is obviously inadequate. This is true also of other classes of witnesses and of other States.

Expenses of witnesses brought without summons.

17. We have in an earlier chapter recommended that parties should be permitted if possible, to bring their witnesses to court without taking out summonses or to serve the summonses themselves upon their witnesses.

However, in many States, the batta and travelling allowance of witnesses are not allowed on taxation, unless the witnesses have been summoned through the Court. We recommend an immediate amendment of this rule so as to encourage parties to bring their own witnesses without the issue of summonses by the Courts.

Costs of documents.

18. Apart from the expenses of the issue of summonses to and the subsistence of witnesses, a party may have to incur expenditure upon the production of documentary evidence for use in court.

The form of decree in Appendix D of Schedule I of the Code of Civil Procedure, 1908 allows only the expenditure incurred on the stamp affixed to the exhibits as costs. The cost of obtaining the exhibit itself as distinct from the stamp duty upon it is not recoverable in many States. This is obviously unfair.

To obtain the necessary documents, searches have to be instituted in various subregistry offices and copies of the documents taken. This necessarily involves expenditure on search fees and copying charges. The High Courts of West Bengal and Bihar have amended the decree forms and allow the recovery as costs not only of the stamp duty levied on exhibits but also the cost of obtaining them. In West Bengal the cost of copies made under the Bankers' Books Evidence Act, 1891 is also recoverable. We leave it to the High Courts to consider the advisability of adopting a similar rule, with such modifications and safeguards as they think necessary.

19. A striking defect of the present practice of awarding costs to which also reference was made by the Rankin Committee, is the omission to provide for the expenses of the parties themselves who have to attend the Court on a large number of occasions. Even if the case is taken up and tried from day-to-day, which is rarely done, parties are put to considerable expense in having to attend the court. They also suffer loss of their earnings. Expenses of parties.

In this connection the Rankin Committee observed:¹

"it is well known that the costs awarded by courts under rules framed by the High Courts, do not make any provision for the loss of time caused to the successful party...."

The Committee recommended that a party should be paid his costs for attending a court as if he were a witness. The number of permitted attendances for the purpose of costs were to be three in a contested suit and two in an uncontested case. They recommended² the allowance of similar expenses in execution petitions and in appeals.

It is surprising that this recommendation should have been accepted only by the High Courts of Calcutta and Patna. In both West Bengal and Bihar, an amendment has been made in the form in Appendix D of Schedule I to provide for the payment of subsistence and travelling allowance of the party, if allowed by the Judge.

In Bihar, the High Court has gone further than in West Bengal and has made provision for the allowance of such expenditure not merely in the case of a party but even in the case of his agent in appropriate cases.

We may point out that the need for such a provision as we have advocated has been emphasised by a number of witnesses including representatives of Bar associations.

20. In the course of a suit or proceeding, it also becomes necessary for the parties to inspect the records of the Court. Inspection charges are invariably levied for every Inspection charges.

¹Report of the Civil Justice Committee, page 518.

²*Ibid*, page 519.

such inspection and we would recommend that in proper cases the court should make such inspection charges also recoverable as costs.

Costs in appeal. 21. We turn now to a consideration of the costs incurred by a party in an appeal.

The form of appellate decree prescribed in the Civil Procedure Code, Appendix G of Schedule I allows only the stamp for the memorandum of appeal, *vakalatnama*, the process fee and the pleader's fee.

Not adequate. No uniformity. 22. Other items of expenditure which a party has necessarily to incur in prosecuting or defending an appeal are not provided for in the appendix. We have examined a certain number of decree forms in use in the several States and are struck by the total lack of uniformity in this regard and the striking variation in the costs actually allowed.

Charges for obtaining copies of decree and judgment. 23. In view of the provisions of Order XLI, Rule I every memorandum of appeal has to be accompanied by a copy of the decree appealed from and also the judgment on which it is founded. The appellant, therefore, has inevitably to incur expenditure in obtaining copies of these documents. In many States the cost of obtaining such certified copies is not allowable on taxation in the appeal, although some Courts allow the value of the stamps which have to be affixed on the decree and the judgment to be included in the costs recoverable in the appeal.

We, therefore, recommend that the rules should be suitably amended and that provision should be made as has been done in Andhra Pradesh, Madras and some other States to allow as a part of the recoverable costs the charges for copies of the decree or Order and the judgment on which it is founded as well as the stamps affixed thereon.

24. We have not thought it necessary to examine the other numerous items of costs such as, costs of summary records in appeals, cost of papers for the appeal, adjournment costs, costs of filling process forms, etc., for which some High Courts have framed rules. Though charges under some of these heads are levied by the Courts, it is not always that they are made recoverable as costs by the successful party. The levy of some of these charges does not appear to be justified. It would therefore be desirable that the High Courts should examine these and other items of charges and consistently with the principle of indemnity we have set out, revise or amend their rules in this regard.

Courts to be "costs conscious." 25. Apart from the specific recommendations made by us, what is mainly needed is that the Courts should be "costs conscious"—and that presiding officers should apply their minds to the task of awarding costs and not leave it in the hands of the ministerial staff. Even in the existing state of the law and under the present rules of the High Courts, much can be achieved if only judges would realise

that they have a large amount of discretion in awarding costs and that the items of costs at the foot of the forms of the decree are not exhaustive, and exercise the discretion they have in a judicial manner.

26. We may summarise our recommendations under the head of costs as follows:

Summary of
recommendations.

(1) The system of awarding costs to the successful party, subject to the discretion of the Courts, should continue.

(2) The costs so awarded should be adequate to indemnify the successful party for all necessary expenses incurred by him in connection with the litigation.

(3) The costs at present awarded by Courts in India do not afford such indemnity and need to be revised for this purpose.

(4) A party should be entitled to recover the costs of any notice which he is required by law to give before instituting a suit.

(5) The courts might also be empowered in accordance with such rules as the High Courts may frame, to award notice charges, in appropriate cases, in suits filed against private individuals.

(6) In States where the scales of lawyers' fees have risen for legitimate reasons, the High Courts may examine the possibility of revising the percentages prescribed for calculating the fees allowed on taxation.

(7) A party should be allowed as in West Bengal and Bihar to recover the expenses of typing pleadings and other documents that are filed in court. The High Courts should fix the scales that can be allowed for this purpose.

(8) Rates of *batta* and travelling allowances admissible to witnesses should be revised.

(9) Parties should be allowed to recover the charges of producing witnesses who have not been summoned through Court.

(10) The High Courts might consider the advisability of allowing the expenses incurred in securing documentary evidence such as search fees, copying charges, etc., as costs as in West Bengal and Bihar.

(11) A party to a suit should be allowed to recover in taxation the costs of his own attendance in Court for a certain number of hearings. In proper cases, these expenses may be allowable even when an agent attends the Court on behalf of the party.

(12) An appellant should be entitled to recover the costs of obtaining certified copies of the decree and judgment which are filed along the memorandum of appeal as well as the stamps affixed.

(13) The High Courts may examine their rules regarding various charges levied by them and also items of costs allowed on taxation and revise them to the extent it is necessary, consistently with the principle of indemnity set out by us in this chapter.

(14) Courts should be more "costs conscious" and realising that they have a large discretion in these matters, apply their minds to the task of awarding costs and not delegate it to the ministerial staff.

22.—COURT FEES

1. India is, so 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. Our States provide hospitals which give free treatment to persons who are physically afflicted. But if a person is injured in the matter of his fundamental or other legal rights, we bar his approach to the Courts except on payment of a heavy fee. The fee which we charge is so excessive that the civil litigant seeking to enforce his legal right pays not only the entire cost of the administration of civil justice but also the cost incurred by the State in prosecuting and punishing criminals for crimes with which the civil litigant has no concern.

Heavy court fees—a unique feature of India.

2. The Hindu sovereign of yore regarded it his function as the guardian of the State to administer justice without making any charge on the aggrieved party. During the Mohamedan rule prior to the Moghul period and even subsequently, administration of justice by the State was free. It was the advent of the British rule that brought in its wake regulations which imposed court fees. Initially they do not appear to have been heavy. The proportions which they have now reached as will appear from the figures which we give later make it an extortionate levy.

Court fees absent prior to British rule.

3. Court fees appear to have been first levied in the 18th century by Madras Regulation III of 1782, Bengal Regulation XXXVIII of 1795 and a Bombay Regulation of 1802.

History.

4. The preamble to the Bengal Regulation which was described by Lord Macaulay in 1835 as "the most eminently absurd preamble that ever was drawn" justified the imposition of these fees on the ground that it would prevent the institution of frivolous litigation. It stated that the imposition of these fees "on the institution and trial of suits and on petitions presented to the Courts is considered as the best mode of putting a stop to this abuse without obstructing the bringing forward of just claims."

Object of the levy—Stopping false suits.

5. The justification put forward in the preamble was regarded as indefensible even as far back as 1835. We quote the views expressed by Lord Macaulay in his minute dated the 25th of June 1835. Referring to Court fees he stated: "They are desirable, it seems, because they diminish the quantity of litigation. Litigation is an appeal to

An untenable ground.

Views of Lord Macaulay.

the Courts of Law, and is a good thing or a bad thing, according as the laws and the Courts are good or bad. If what the Courts administer be injustice, these taxes are defensible or are objectionable only as being far too low. They ought to be raised till they amount to a prohibitory duty, or rather the Courts ought to be shut up and the whole expense of our judicial establishments saved to the State. But, if what the Courts administer be justice, is justice a thing which the Government ought to grudge to the people? If it be good that there should be laws, if it be good that men should have recourse to the laws, if in proportion as recourse to the laws is made difficult men must either suffer wrongs without redress or redress their wrongs by the strong hand. If in the happiest and most enlightened societies, when all that wisdom and benevolence can do to improve jurisprudence has been done, the great mass of the people must still have some difficulty in resorting to the laws, is it fit that Government should off set purpose add to that difficulty? I am utterly unable to find any reason for taxing litigation which would not be a reason for prohibiting litigation altogether." Dealing specifically with the alleged purpose of preventing frivolous litigation by the imposition of these fees he stated: "It is undoubtedly a great evil that frivolous and vexatious actions should be instituted. But it is an evil for which the Government has only itself and its agents to blame, and for which it has the power of providing a most sufficient remedy. The real way to prevent unjust suits is to take care that there shall be just decisions. No man goes to law except from the hope of succeeding. No man hopes to succeed in a bad cause unless he has reason to believe that it will be determined according to bad laws or by bad Judges. Dishonest suits will never be common unless the public entertains an unfavourable opinion of the administration of justice. And the public will never long entertain such an opinion without good reason. If the subject were not one which most deeply concerned the welfare of the people, there could be no better object of ridicule than a Government which constitutes its Courts of law in such a manner as to give fraud an advantage over honesty, and then fines every man who goes to such infamous places." Dealing with the assertion in the preamble that a tax on a suit would have a tendency to drive away a dishonest plaintiff he stated: "This is * * * directly in the teeth of all reason. Why did dishonest plaintiffs apply to the Courts before the institution fee was imposed? Evidently because they thought that they had a chance of success. Does the institution fee diminish that chance? Not in the smallest degree. It neither makes pleadings clearer, nor the law plainer, nor the corrupt Judge purer, nor the stupid Judge wiser. It will no doubt drive away dishonest plaintiffs who cannot pay the fee. But it will also drive away honest plaintiffs who are in the same situation. There is not the smallest reason to think that it will exclude a greater proportion of the one sort than

of the other. It divides all plaintiffs into two classes. But the principle of the division is not that honest men are admitted and dishonest men excluded, but that the richer are admitted and the poorer excluded. * * * * We might just as well give a man a handful of rice to chew and let him bring his suit if the rice proved moist and send him away if it continued dry as apply this ordeal—for it deserves no other name—as a mode of discriminating between honest and dishonest suitors."

6. However unfounded the view that fees would have a tendency to put a restraint on frivolous litigation, that view at any rate had the merit of seeking to achieve a purpose which was believed to have some relevance to the administration of justice. At the present day the levy of these fees on much heavier scales would seem to find its justification, not in any purpose related to the sound administration of justice, but in the need of the State Governments for revenue. The Court Fees Act of 1870 fixed, what may be described in view of later happenings, a moderate scale of Court fees. Since its enactment the financial needs of the Governments have grown enormously. In their anxiety to tap every possible source of revenue the State Governments have not hesitated to go on piling an increasingly heavy burden of taxation on litigation. Most of the States have amended the original Act out of recognition and increased the scale of fees to an oppressive level. The fee is no longer a fee; it is a heavy tax.

Present day
objective—
Securing
Revenue.

7. It is not surprising that the scale of these fees should shock the conscience of persons familiar with the administration of justice in the Western countries. A former Chief Justice of Madras observed as follows:

Unfavour-
able com-
ments.

"They" (the litigants) "pay high court-fees and it is beyond question that the aggregate amount is far more than sufficient to cover the total cost of the administration of civil justice. When I came to India, I was amazed at the high court-fees which litigants were called upon to pay, the position being so different in England."¹

8. The administration of justice is, it has to be conceded, one of the principal functions of the State in its narrowest concept. Even if the State confined its role only to the maintenance of law and order, the administration of justice would be essential. But the functions of the modern State are far more extensive. A system of administration of justice has to be maintained not only for the maintenance of law and order but also for enabling the citizen to assert his rights against fellow citizens and the State. This is

Levy un-
justified.

truer today than ever before because of the growing tendency of all States to project themselves into various social and industrial spheres of society in a manner not dreamt of fifty years ago. It is obvious therefore that a State which levies an exorbitant tax for making available its machinery for the administration of justice to the ordinary citizen fails to perform one of its elementary functions. A modern welfare State cannot with any justification sell the dispensation of justice at a price. Perhaps a small regulatory fee may be justified; but the present scales of court-fees are wholly indefensible.

Defence of
court fees.

9. It has been urged that the litigant should at any rate bear the burden of maintaining the judicial machinery. As already stated, it is one of the fundamental duties of the State to provide the machinery for the administration of justice. This duty is just as fundamental as its duty to provide for education or health or sanitation. But while we find that all citizens and not only the illiterate or the sick are called upon to pay taxes to meet the charges incurred by the State on these heads, in respect of judicial administration, it is the litigant alone who is being made to pay the entire cost. The injustice to the civil litigant is the graver because he is made to bear the expenses of administration of criminal justice—which is but an activity of the State for the maintenance of law and order. Civil disputes are also a part of the framework of the social order; to leave them unsettled would promote disorder. No State can therefore claim to be immune from the responsibility of providing suitable curative measures or to insist that it would so provide them only on payment of a fee or tax. If the levy of a fee or a tax is justified, it should be one of general application and not one imposed on the litigant alone.

Present rate
of courts-
fees high.

10. Unfortunately, however, the view adopted by the State Governments seems to be that the court fee is an ideal source of revenue, which can be collected without any difficulty and made available for the purposes of general administration. Every State has step by step raised the court fees higher and higher till the rate has reached an alarmingly high figure. The table below shows the latest position with regard to the *ad valorem* court fees charged in each State as compared with the fee fixed by the Central Act of 1870.

Value of plaint in rupees for the purpose of Court fee	Fee leviable under the Court Fees Act, 1870	Andhra Pradesh	Assam	Bihar	Bombay	Kerala	Madhya Pradesh	Madras
1	2	3	4	5	6	7	8	9
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
100 . . .	7 8 0	11 4 0	8 2 0	11 4 0	9 6 0	7 8 0	10 0 0	7 8 0
500 . . .	37 8 0	56 4 0	56 4 0	56 4 0	46 14 0	37 8 0	50 0 0	37 8 0
1,000 . . .	75 0 0	112 8 0	112 8 0	112 8 0	93 12 0	75 0 0	100 0 0	75 0 0
5,000 . . .	275 0 0	412 8 0	412 8 0	412 8 0	343 12 0	275 0 0	420 0 0	375 0 0
10,000 . . .	475 0 0	787 8 0	750 0 0	712 8 0	718 12 0	475 0 0	753 5 0	750 0 0
25,000 . . .	875 0 0	1,587 8 0	1,350 0 0	1,312 0 0	1,468 12 0	875 0 0	1,486 10 0	1,875 0 0
50,000 . . .	1,175 0 0	2,387 8 0	2,100 0 0	1,762 8 0	2,031 4 0	1,175 0 0	2,086 10 0	3,750 0 0
75,000 . . .	1,300 0 0	2,947 8 0	2,287 8 0	1,950 0 0	2,218 12 0	1,300 0 0	2,253 4 8	5,625 0 0
1,00,000 . . .	1,425 0 0	3,427 8 0	2,475 0 0	2,137 8 0	2,406 4 0	1,425 0 0	2,419 15 4	7,500 0 0
3,00,000 . . .	2,425 0 0	5,427 8 0	4,012 8 0	3,637 8 0	3,906 4 0	2,425 0 0	3,753 4 8	22,500 0 0
5,00,000 . . .	3,000 0 0	7,427 8 0	5,512 8 0	7,683 12 0	5,406 4 0	3,000 0 0	(C)	37,500 0 0
7,00,000 . . .	(A)	9,427 8 0	7,012 8 0	9,933 12 0	6,906 4 0	The maximum fee leviable beyond the value of Rs. 410,000 is Rs. 3,000/-		52,500 0 0
10,00,000 . . .	..	12,427 8 0	9,262 8 0	10,000 0 0 (B)	9,156 4 0 The maximum fee leviable is Rs. 12,500/-			75,000 0 0

Mysore	Orissa	Punjab	Rajasthan	Uttar Pradesh	West Bengal	Remarks
10	11	12	13	14	15	16
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
11 3 0	11 4 0	10 0 0	7 8 0	10 0 0	8 2 0	Andhra : Andhra Act VII of 1956.
56 3 0	56 4 0	50 0 0	37 8 0	55 0 0	56 4 0	Assam : Court Fees Act, 1870 as amended by the Assam Act XIV of 1936.
112 7 0	112 8 0	150 0 0	75 0 0	142 8 0	121 8 0	Bihar : Court Fees Act, 1870 as amended by the Bihar Acts XVII of 1939 and XXV of 1948.
412 7 0	412 8 0	635 0 0	275 0 0	522 8 0	412 8 0	Bombay : Court Fees Act, 1870 as amended by the Bombay Act LVII of 1954.
712 7 0	712 8 0	1,122 8 0	475 0 0	897 8 0	750 0 0	Kerala : The Travancore-Cochin Court Fees Act (II of 1125).
1,312 7 0	1,312 8 0	2,096 4 0	875 0 0	1,650 0 0	1,350 0 0	Madhya Pradesh : Court Fees Act, 1870 as amended by Madhya Pradesh Court Fees (Amendment) Act (IX of 1953).
1,762 7 0	1,762 8 0	2,827 8 0	1,175 0 0	2,212 8 0	2,100 0 0	Madras : Madras Court Fees Act (XIV of 1955).
1,625 0 0 (D).	1,950 0 0	3,071 4 0	1,300 0 0	2,447 8 0	2,287 8 0	Mysore : Mysore Court Fees Act (III of 1900).
1,775 0 0	2,137 8 0	3,315 0 0	1,425 0 0	2,682 8 0	2,475 0 0	Orissa : Court Fees Act, 1870 as amended by the Orissa Act (XXVII of 1951).
3,000 0 0	3,637 8 0	5,265 0 0	2,425 0 0	4,562 8 0	4,012 8 0	Punjab : Court Fees Act, 1870 as amended by the Punjab Act XIX of 1957.

10	11	12	13	14	15	16
7,683 12 0	7,212 8 0	3,425 0 0	6,442 8 0	5,512 8 0	Uttar Pradesh :	Court Fees Act, 1870 as amended upto 1952 by the U. P. Court Fees (amendment) Act (XXV of 1952).
9,933 12 0	9,157 8 0	4,425 0 0	8,322 8 0	7,012 8 0		
10,000 0 0	12,075 0 0	5,425 0 0 Maximum payable is Rs. 7,500/-	11,142 8 0	9,262 8 0 (B)	West Bengal:	Court Fees Act, 1870 as modified upto March, 1940.

(A) The maximum fee leviable is Rs. 3,000/-.

(B) The maximum fee leviable is Rs. 10,000/-.

(C) When the amount or value of the subject matter exceeds Rs. 50,000/- a fee of Rs. $33\frac{1}{4}$ shall be leviable for every Rs. 5,000/- or part thereof in excess of Rs. 50,000/-. The maximum fee leviable under the provisions of the Act is Rs. 4,000/-.

(D) When the amount or value of the subject matter exceeds Rs. 50,000/- for every Rs. 5,000/- or part thereof in excess of Rs. 5,000/- . . . thirty rupees.

Administration of justice a duty of the State.

11. It has already been pointed out that the administration of justice is but a part of the functions of the State in maintaining law and order and the peace of the community and it is manifestly unfair that a section of the public, the civil litigants, alone should be made to pay for the upkeep of the establishment intended for that purpose. The cost of administration of justice should like the cost of other services fall on the tax paying public as a whole.

However, even if the view were taken that the cost of the administration of civil justice should fall on the civil litigant it is obviously unjust that he should be made to pay not only such cost but also the cost of the administration of justice as a whole including justice administered in the criminal Courts. Such a view is obviously unsustainable. That, however, as we shall point out later appears to be the view accepted in most of the States. Some States like Uttar Pradesh seem to go even further and add to the general revenues from the proceeds of the administration of justice.

Surplus realised by the States from the administration of justice. The position in U. P.

12. The Uttar Pradesh Judicial Reforms Committee which examined the question in so far as it related to the State of Uttar Pradesh found that the State was left with a surplus even after debiting against the proceeds from court fees the cost of the administration of criminal justice. The table prepared by the Committee showing the revenue and expenditure under the head administration of justice is set out below:

Statement showing revenue from and expenditure on administration of justice during 1938-49 in the State of Uttar Pradesh.

Year	Revenue	Expenditure	Saving
1938-39	1,07,26,318	69,35,186	37,91,132
1939-40	1,08,79,510	70,57,680	38,21,830
1940-41	1,18,53,882	71,44,502	47,09,380
1941-42	1,30,26,077	72,02,419	58,23,658
1942-43	1,29,74,340	74,83,279	55,91,061
1943-44	1,50,79,850	79,26,276	71,53,574
1944-45	1,63,84,009	84,41,974	79,42,935
1945-46	1,62,69,247	94,95,071	68,04,176
1946-47	1,48,29,269	1,00,93,085	47,36,184
1947-48	1,51,38,722	1,01,03,790	50,34,932
1948-49	1,70,74,954	1,14,77,134	55,97,820

N.B.—The figures under the head "Revenue" do not include receipts from magisterial fines.

In the figures that are embodied in the above statement, the receipts from magisterial fines have not been included under the head of revenue. If these were included the surplus would be larger. In other States also the receipts

from the administration of civil justice exceed the expenditure on it.

13. The task of allocating expenditure under the head of Administration of Justice between the cost of the Civil and Criminal administration of justice is not easy, but we are of the view that a fairly accurate allocation can be achieved.

Allocation of expenditure to administration of justice.

14. The Rankin Committee made an attempt in this direction. They stated:¹

Views of the Rankin Committee.

"We appreciate the difficulty in analysing income and expenditure, so as to attribute an exact figure to (a) civil justice, (b) criminal justice, especially where the existence of revenue courts introduces a complication. Still we would insist that no useful purpose is served by publishing meaningless or erroneous figures. This question should be examined by competent financial authority. If possible, certain principles should be laid down for the allocation of disputable items as between civil and criminal justice."

15. Whatever difficulties might have existed when the Civil Justice Committee dealt with the matter, we are of the view that it is practicable to separate the charges of civil and criminal administration of justice on a proper basis. We have attempted to analyse the budget statements of several States with a view to isolate the revenue derived from and expenditure incurred in the administration of civil justice. The task has not been easy; and the allocation of the several sub-items had to be made on certain assumptions. Notwithstanding these difficulties, however, we consider that we have been able to arrive at a fairly reliable estimate of the revenue from and the expenditure on the administration of civil justice. The result of our analysis leads us to the conclusion that the revenue derived by the States from civil justice leaves a large surplus after meeting the expenditure on the administration of civil justice.

Our analysis.

Except at the level of the Sessions Judges and the High Court, the civil and criminal courts are generally distinct. Revenue courts have largely disappeared; where they exist, they are manned by executive officers. Every court maintains registers recording items of revenue; the expenditure can likewise be clearly differentiated. At the level of the Sessions and High Courts, the matter may prove somewhat difficult but the difficulties are certainly not insuperable. Even if complete accuracy cannot be reached, a reclassification such as we have made would furnish valuable data for an appraisal of the results of the working of the different departments of the State.

States driving surplus.

16. An analysis of the budget figures under the head of "administration of justice" in several States reveals that as a rule receipts derived from court fees and other items of revenue from the civil courts, substantially exceed the expenditure incurred on civil justice and leaves a sizable surplus. For the purpose of illustration, we set out below the manner in which these figures taken from the budget have been analysed in reference to the State of Bombay.

STATE OF BOMBAY FOR 1953-54

	Total Receipts	Total charges
	Rs.	Rs.
IX-B. Stamps judicial	1,22,51,290	9. Stamps 1,64,534
XXI.—Administration of justice	77,14,095	27. Administration of justice 2,07,87,806*
	<u>1,99,64,385</u>	<u>2,09,82,340</u>

*Includes the remuneration paid to the Law Officers.

Misleading figures.

17. A perusal of the above figures gives the impression at first sight that the administration of justice has to depend upon the general revenues for meeting the excess of expenditure over revenue. That is not the true position. The head of charges includes several items which cannot justifiably find a place under it. We shall deal with such items seriatim.

1. Under the head of account "XXVII—Administration of Justice" is one item—"remuneration paid to Law Officers—Rs. 10,80,067."

Inclusion of remuneration of Law Officers under this head.

18. Examining the budget figures we find that under this item is included the remuneration paid to such officers as the Advocate General, Government Solicitor, Government Pleader (High Court), Public Prosecutor (Greater Bombay), Government Pleader (City Civil Court, Bombay) and Government Pleaders (Moffusil). It also includes the charges for the establishments of these officers. In addition to the remuneration of Law Officers employed to assist in the administration of criminal justice we find that the charges of Law Officers engaged by the State for giving it advice or in the conduct or defence of civil actions by or against the State are also debited against the administration of justice. It is clear that in instituting or defending suits the State is in the position of an ordinary litigant. Though State funds might be used to meet such expenses, they are not expenses relating to or arising out of the maintenance of the system of judicial administration. The State being in no better position than an ordinary suitor in a court of law, the expenses incurred in launching and prosecuting a litigation must necessarily fall on the general revenues. The view that such expenses may be regarded as part of the cost of the system of administration of justice

in a State appears to us to be untenable. If the view were correct one could well go further and urge that if the State fails in a suit and is directed to pay costs to the opposite party, such costs should be shown as a part of the cost of judicial administration.

19. We are therefore of the view that sums paid towards remuneration of Law Officers employed to assist the State in prosecuting or defending civil claims against it or advise the State in connection with them cannot be treated as part of the charges of judicial administration. If these items are omitted from the expenditure side the position will be as follows:

<i>Total receipts</i>	<i>Total charges</i>
Rs. 1,99,65,385	Rs. 1,98,72,274
<i>Surplus—Rs. 98,111.</i>	

The totals represent the realisations from both civil and criminal courts and the expenditure for the maintenance of both civil and criminal courts.

The remuneration paid to Public Prosecutors and other prosecuting agencies is so paid in discharge of the general responsibility of the State in regard to the administration of criminal justice. As the maintenance of law and order is one of the fundamental functions of the State, it follows that imprisonment of the criminal is a duty owed by the State to the public. The maintenance of the machinery for the administration of criminal justice is the inevitable sequel to the discharge of this general responsibility laid on the State.

A private person moving the criminal courts or setting in motion the criminal judicial machinery incurs virtually no expense by way of court fees. If the case is a cognizable one, the police undertake the investigation of the case and the prosecution of the offender. If it is a non-cognizable case, the party can himself move the court paying a small fee. The citizen is thus not expected to pay any substantial fee such as the civil litigant pays. As the prosecution of the offender is rightly considered to be a matter of public interest the State has to provide the necessary prosecuting and judicial machinery for the purpose. The remuneration paid to the prosecuting agency must therefore necessarily form part of the cost of discharging this general responsibility by the State. It is clearly unjust that this cost or any part of it should fall on the civil litigant.

20. We shall now endeavour to allocate both receipts and charges to the respective heads of civil and criminal administration of justice in so far as it is possible to do so on the basis of the detailed statements given in the budget.

The first item of receipt is the realisation by way of court fees. Under the head of account "IXB" Stamps judicial, the following figures are given:

XXI—Administration of Justice		Accounts 1953-54
		Rs.
Court fees realised in stamps other than probate duty		1,19,02,451
Probate duty		10,44,825
Fines and Penalties		16,476
Miscellaneous		8,277
TOTAL		1,29,72,029
<i>Less</i> refund		7,20,739
NET TOTAL		1,22,51,290

Receipts.

21. The receipts by way of court fees in criminal courts are very small. We would therefore be correct in assuming that the revenue from court fees is almost wholly derived from civil courts.

The next item of receipt is under "XXI—Administration of Justice".

Revenue and Receipts

XXI—Administration of Justice		Accounts 1953-54
		Rs.
1. Sale proceeds of unclaimed and escheated property		2,41,654
2. Court fees realised in cash		73,966
3. General fees, fines and forfeitures		57,99,618
4. Pledership and Mukhtearship examination fees		19,834
5. Receipts of the Official Assignee		1,38,568
6. Miscellaneous Fees and Fines		12,63,351
7. Miscellaneous		2,40,488
8. Recoveries of overpayments		62,187
9. Collection of payments for services rendered		75,419
TOTAL		80,15,085
<i>Deduct</i> refunds		3,00,990
NET TOTAL		77,14,095

There would appear to be no doubt that items 2 and 5 are exclusively attributable to the civil courts. We have excluded item 4 altogether from consideration as it is really not derived from the administration of justice. It is

not clear whether sale proceeds of unclaimed and escheated property, recoveries of overpayments and collection of payments for services rendered, relate to civil or criminal administration. Though it is highly probable that these items of revenue are mostly derived from civil administration, we have thought it fair to allocate these amounts in equal shares between civil and criminal administration. Similarly, on examining the details of other heads, we find clear indications in respect of some of these items establishing that they relate to civil or criminal justice. Obviously magisterial fines and fines realized in prosecutions instituted by Societies for the Prevention of Cruelty to Animals would be wholly derived from criminal courts. These are parts of the items of general fines. In the case of the other items, they could equally be derived either from civil or criminal courts. We have divided them in equal shares. We have dealt with other items included in "miscellaneous fees and fines" on similar lines. Fees of Court Receiver and Liquidator, and fees of the Administrator General and Official Trustee are clearly attributable to civil courts. Some other sub-items are allocable wholly to criminal justice while others have been split into equal shares. Analysed in the above manner the total receipts on the criminal and civil side will be as below:—

	Civil	Criminal
	Rs.	Rs.
IXB	1,22,51,290	..
XXI	19,61,846	57,32,417
TOTAL	1,42,13,136	57,32,417

22. We shall now proceed to examine the heads of expenditure and try to analyze them so as to separate the cost related to the administration of civil justice. The budget shows the following items under the head "27-Administration of Justice":—

Allocation of expenditure.

EXPENDITURE

27—Administration of Justice	Accounts 1953-54
	Rs.
1. High Court	18,80,383
2. Administrator General and Official Trustee	83,643
3. Sheriff and Reporter, Bombay	94,837
4. Official Assignee	1,54,033
5. Coroner's Court	39,164
6. Presidency Magistrates' Courts	9,89,351
7. Civil and Sessions Courts	1,13,33,851
8. Courts of Small Causes	7,09,531
9. Criminal Courts	37,24,099
10. Pleadership and Mukhtearship Examination Charges . . . . .	..
11. Charges in England . . . . .	..
12. Charges in connection with the Administration of the Bombay Agriculturists Debt Relief Act	6,98,847

Out of these items, the whole of items 2, 4, 8 and 12 are undeniably related to the civil side. An examination of the details of the remaining items gives us a fair indication of the part of the expense which relates to the civil judicial administration. Taking item 1, for example, part of it includes charges relating to the maintenance of the Original Side of the High Court. Leaving out the salaries of the Judges with which we shall deal separately, such items as relate to the Prothonotary and Senior Master, Translator, Commissioner for taking accounts, Taxing Master, and the Insolvency Registrar are clearly attributable to the civil side.

In the case of the salaries of Judges, we have divided it in the ratio of 2 : 1 between the civil and the criminal side. In support of this division it may be stated that in the Report on the Administration of Justice prepared every year by the High Court itself, we find it so apportioned between the Civil and the Criminal Side. In High Courts which have an original side, more Judge-days appear to be spent on the civil side than on the criminal. In other High Courts, the time spent on the two sides is almost equal. In the case of such items as the Sheriff and the Reporters on the Appellate Side and the Accounts Section, an equal division has been made. We have set out these details to make it clear that it is possible to effect a fairly reasonable allocation of the charges between the civil and criminal side of the administration of justice, even from the broad details found in the budget statements.

Item 6 "Presidency Magistrates' Courts" and item 9 "Criminal Courts" are obviously items which fall on the criminal side. One of the important items is item 7, "Civil and Sessions Courts". This item is made up of several sub-items such as Bombay City Civil and Sessions Judges, District and Sessions Judges, Civil Judges and Process serving establishment. The last two items relate only to the civil side. A difficulty however arises in dealing with items 1 and 2, as the officers and the establishment referred to therein are required to do both civil and criminal work. We can in the circumstances make only an arbitrary division. Though we have divided these amounts in equal shares, it is our view that Civil and Sessions Judges or District and Sessions Judges in fact devote more of their time to the trial of sessions cases than to the disposal of civil work. In fact, the present heavy accumulation of arrears of civil work is mainly due to the fact that District and Sessions Judges are unable to find the time required for disposal of civil work.

23. Analysed in the above manner the charges become ^{Final} divisible between the civil and criminal side as follows:— ^{analysis.}

CHARGES

	Civil	Criminal	Total
	Rs.	Rs.	Rs.
High Courts	14,04,541	4,75,781	18,80,322
Administrator General and Official Trustee	83,643	..	83,643
Sheriff and Reporter	47,419	47,419	94,838
Official Assignee	1,54,033	..	1,54,033
Coroner's Court . . . . .	..	39,164	39,164
Presidency Magistrates' Courts . . . . .	..	9,89,351	9,89,351
Courts of Small Causes	7,09,531	..	7,09,531
Civil and Sessions Courts	92,88,494	20,45,358	1,13,33,852
Criminal Courts . . . . .	..	37,24,099	37,24,099
Charges in connection with the administration of Bombay Agriculturists' Debt Relief Act	6,98,847	..	6,98,847
TOTAL	1,23,86,508	73,21,172	1,97,01,680

The resulting final figures relating to the Civil Judicial Administration are therefore as follows:

<i>Receipts</i>	<i>Charges</i>
1,42,73,136	1,23,86,508

The result accordingly is that there is a surplus of about 18 lacs to the credit of civil judicial administration. We must emphasise that obviously absolute accuracy cannot be claimed for figures arrived at in this manner. We feel, however, that we have made a fair apportionment of the charges on the basis of the information available in the budget statement.

24. We thus reach the clear conclusion that the revenue ^{Position in} derived from the civil side of the administration not only ^{States.} meets the charges attributable to it but leaves a substantial surplus. A similar analysis of the budget statements of the other States has yielded a like result. We set out below a statement showing on this basis the final figures of receipts, charges and the surplus in the case of all the States:

Comparative table showing the revenue and receipts from and expenditure on the Administration of Justice in the various States during the financial years 1952-53, 1953-54 and 1954-55

Name of the State	Financial year	Receipts in rupees	Charges in rupees	Surplus (+) or Deficit (-)	Remarks
1	2	3	4	5	6
Andhra	1953-54 (A)	40,91,782	25,43,471	(+)15,48,311	(A) For six months only.
	1954-55	86,97,434	65,23,325	(+)21,74,109	(B) For the second six months.
Assam	1952-53	20,50,260	14,37,572	(+)6,12,688	NOTE.—Revenue and receipts from "Law Officers", "Pledership and Mukhrearship Examination fees" have not been included in this Statement; similarly expenditure incurred on "Law Officers" and "Charges in England" have not been taken into account.
	1953-54	21,94,393	15,28,513	(+)6,65,880	
	1954-55	20,86,155	15,57,469	(+)5,28,686	
Bihar	1952-53	1,19,39,280	84,53,908	(+)34,85,372	
	1953-54	Not available.	Not available.	Not available.	
	1954-55	1,19,14,601	86,10,434	(+)33,04,167	
Bombay	1952-53	2,22,45,655	2,00,37,894	(+)22,07,761	
	1953-54	1,99,45,555	1,98,72,274	(+)73,281	
	1954-55	2,15,85,722	1,95,81,449	(+)20,04,273	
Hyderabad	1952-53	31,24,515	51,59,078	(-)20,34,563	
	1953-54	Not available.	Not available.	Not available.	
	1954-55	21,28,990	54,50,271	(-)33,21,281	
Madhya Bharat	1952-53	27,72,000	34,74,231	(-)4,02,231	
	1953-54	28,33,000	32,57,431	(-)4,24,431	
	1954-55	24,19,000	35,99,000	(-)11,80,000	
Madhya Pradesh	1952-53	76,78,704	45,06,144	(+)31,72,560	
	1953-54	72,61,956	46,15,215	(+)26,46,741	
	1954-55	77,38,903	49,85,699	(+)27,53,204	

Madras	1952-53	2,56,38,497	1,78,54,860	(+)77,83,637
	1953-54 (B)	869,88,629	53,28,575	(+)6,60,114
	1954-55	1,22,12,475	1,20,51,874	(+)11,54,601
Mysore	1952-53	23,37,205	26,56,047	(-)3,18,842
	1953-54	26,69,000	27,92,000	(-)1,23,000
	1954-55	29,75,733	28,46,437	(+)1,29,296
Orissa	1952-53	38,52,389	21,20,278	(+)17,32,111
	1953-54	36,31,805	21,71,974	(+)14,59,831
	1954-55	33,06,823	22,90,203	(+)10,16,620
Punjab	1952-53	52,19,626	38,37,500	(+)13,82,126
	1953-54	76,56,346	40,47,978	(+)36,08,368
	1954-55	85,18,603	43,99,029	(+)41,19,574
PEPSU	1952-53	10,95,980	15,38,485	(-)4,42,505
	1953-54	11,30,458	15,63,459	(-)4,33,001
	1954-55	11,71,841	15,69,696	(-)3,97,855
Rajasthan	1952-53	33,05,157	30,84,140	(+)2,21,017
	1953-54	36,19,691	31,30,741	(+)4,88,950
	1954-55	37,85,182	33,84,940	(+)4,00,242
Saurashtra	1952-53	11,61,356	17,97,537	(-)6,36,181
	1953-54	13,36,908	17,33,241	(-)3,96,333
	1954-55	Not available.	Not available.	Not available.
Travancore-Cochin	1952-53	33,84,874	38,19,274	(-)4,34,400
	1953-54	32,37,921	39,73,073	(-)7,35,152
	1954-55	34,29,441	40,50,429	(-)6,20,988
Uttar Pradesh	1952-53	2,14,16,251	1,31,54,359	(+)82,61,892
	1953-54	2,20,16,497	1,33,67,262	(+)86,49,235
	1954-55	2,13,64,796	1,36,71,717	(+)76,93,077
West Bengal	1952-53	1,46,11,867	98,96,967	(+)47,14,900
	1953-54	1,49,23,348	1,02,30,626	(+)46,92,722
	1954-55	1,51,62,824	1,04,02,458	(+)47,60,366

View of the
Taxation
Enquiry
Commission.

25. The Taxation Enquiry Commission basing itself on the fact that the total charges under the head of Administration of Justice exceeded the total receipts from court fees reached the conclusion that administration of justice as a whole did not pay its way and that a part of its costs had to be borne by the general revenues. According to them "The figures ought to dispel any impression that State Governments make large income out of the administration of justice."¹

Mistaken
View.

26. Having regard to the detailed examination of the figures made by us in regard to one State which in its broad outline is applicable to other States, in our view, the conclusion of the Taxation Enquiry Commission was not justified. As the figures show if one considers the cost of administration of both civil and criminal justice, the actual receipts exceed the expenditure incurred by a substantial amount. This arises, as already pointed out, by the erroneous inclusion in the charges of the remuneration of the law officers of the State, and some other charges, which, in principle for reasons already stated, cannot be regarded as a part of the cost of the administration of justice.

Court Fees—
a heavy item
of expenditure.

27. Court fees paid by the litigant form a high percentage of the taxed costs. A few sample decrees selected at random are set out below:

<i>Value of suit Rs. 230/-</i>			<i>Value of suit Rs. 25,000</i>		
	Rs.	As. P.		Rs.	As. P.
Stamp for plaint . . .	21	9 0	Stamp for plaint etc.	1488	0 0
Vakalatnama . . .	2	0 0		0	10 0
Applications . . .	0	10 0		11	4 0
	<u>24</u>	<u>3 0</u>		<u>1499</u>	<u>14 0</u>
Pleaders fees . . .	14	6 0	Pleaders fees . . .	550	0 0
Process . . .	0	15 0	Miscellaneous . . .	17	13 0
	<u>39</u>	<u>8 0</u>		<u>2067</u>	<u>11 0</u>
			<i>Value of suit Rs.</i>		
			Rs. nP.		
Stamps			917.63		
Pleader			402.50		
Miscellaneous			9.37		
			<u>1329.50</u>		
				13143	9 9

It is therefore not correct to say as was said by the Taxation Enquiry Commission that "The abolition of court fees, even if that was feasible, would not by itself lower the cost of justice as there are other factors like lawyers fees which also determine such cost¹," particularly as the court fees in all the above cases amount to more than half the taxed costs.

¹Report, Volume III, page 108.

We must however state that in cases where the value for purposes of Court fees and jurisdiction is arrived at on the artificial basis sometimes prescribed in the Court Fees Act, the court fee paid by the litigant is likely to form a smaller proportion of the total taxed costs. But in the generality of cases, it is equally likely to be otherwise. There are other numerous items of expenses like the stamp affixed to exhibits, applications and so forth which the litigant cannot avoid.

Having regard to court fees alone and ignoring other items of expense, to an honest litigant trying to vindicate a just claim, the Courts of justice would seem to wear a stern and even cruel frown instead of an inviting and friendly look.

28. The question of court fees may be looked at also from another angle. There has been a loud outcry that justice has been unduly delayed in recent years. The situation arising from delays has been described as grave in governmental circles. The inadequacy of judicial personnel has been repeatedly pointed out by the High Courts of several States. It is clear that a large number of courts have more cases on their files than they despatch. To complaints that the situation has not received the attention it merits from the State Governments, the perennial answer has been that financial stringency ties their hands. There would appear to be no justification for this answer. Even if part of the surplus of the court-fee revenue had been utilised in making good these deficiencies, the State would have rendered a great service to the cause of justice. The litigant would not grudge paying a heavy court fee if he is assured that the proceeds are spent on efficient and adequate services rendered to him. He does not pay a heavy court fee so that State may meet the expenses of hospitals or schools, however worthy these objects. The State seems to have dealt with the litigant in the matter of court fees in no better manner than does the rapacious landlord with his tenant or the profiteering trader with the consumer.

Lack of adequate judicial strength or facilities.

29. The argument that it is necessary to impose high court fees to prevent frivolous litigation, already referred to, has no substance. Indeed that has not been the reason assigned by the States for increasing the scales of court fees. These increases have been generally justified, as far as we know, on the ground of the need of increased revenue by reason of the increased cost of the administration of justice.

Court fees and frivolous litigation.

30. In England, the principle governing the levy of court fees is that the salaries and pensions of Judges are paid by the State out of public funds it being accepted that it is the obligation of the State to provide the machinery for the dispensation of justice in all its courts—civil, criminal and revenue—and that only the other expenses of administration of justice shall be borne by the litigants. In

Principles governing the levy of court fees.

dealing with this matter, the Committee on Court Fees in England presided over by Mr. Justice Macnaghten observed as follows¹:

Views in
England.
Macnaghten
Committee.

"The Supreme Court is not merely engaged in the work of dispensing Justice to the private suitors who resort there; it administers public Justice not only in criminal cases but also in civil matters, such as proceedings on the Crown side of the King's Bench. For the cost of administration of Justice, where the public itself is directly concerned, the State ought, it is suggested, to provide the necessary funds, since there can be no reason why the private suitors should do so. Though it would no doubt be difficult to calculate exactly how much of the expenditure of the Supreme Court is attributable to the administration of public, as distinguished from private Justice, the salaries and pensions paid to the judges may perhaps be taken to represent fairly that figure."

Evershed
Committee.

31. In 1951, the Committee on Supreme Court Practice and Procedure in its Second Interim Report dealt in detail with the fees charged by the courts. Broadly speaking, their recommendations included a suggestion for the reduction of court fees, without injustice to the taxpayer. They laid down that there should be an initiating fee to cover all proceedings up to settling-down and a further settling-down fee to cover the trial of the action in all proceedings up to judgment, including the order of the court. While they advocated the retention of the various fees payable in respect of filing documents such as searches, taking copies and other matters, they were of the view that a number of small fees could be abolished; and that the number of fees charged should be reduced to the minimum possible in order to ensure that the litigant pays a fair fee for the services which are in fact rendered. They also held that there should be some relation between the amount of the fee and the nature of the services in respect of which it was charged, though they rejected the suggestion that fees should be graded on a scale depending upon the amount at stake in the action. They accordingly approved the present practice of requiring the same fee in respect of the same service, whatever be the amount at stake.

32. The principle seems to have met with official acceptance in India also. The Taxation Enquiry Commission expressed itself on this point as follows: "****We feel ourselves in entire agreement with a view which has been expressed by the Chief Justice of India and the Chief Justices of certain High Courts**** to the effect that court fees (assuming they are charged at all) should only be on the basis of covering the expenses of the administration of justice ****. On the more restricted question of reduction of court fees, however, we recommend an

¹Quoted in the Second Interim Report of the Committee on Supreme Court Practice and Procedure, page, 43.

urgent review of these fees by those few State Governments which now have from them a revenue which substantially exceeds the cost of the administration of justice in order that the fees may be suitably reduced and readjusted as soon as possible. Within the overall limits of the principle we have endorsed viz., that the total receipts from court fees should be such as by and large only to cover the cost of administration of justice.....¹.

As already stated the Taxation Enquiry Commission not having before it an analysis of the figures on the Revenue and Expenditure side under the head "Administration of Justice" failed to appreciate that there was on the civil side an appreciable surplus calling for the application of the principle they had endorsed.

In practice therefore the principle which governs the levy of court fees in India is clearly opposed to the principle accepted by the Commission.

33. The Code providing for the payment of fees in the United States Courts lays down that a party instituting any civil action, suit or proceeding, whether by original process, removal or otherwise should pay a filing fee of \$ 15. On an application for a writ of *habeas corpus*, however, the fee payable is only \$ 5. In the case of an appeal, a fee of only \$ 5 is payable by the appellant. In the scale of taxation of costs, however, there are several items in respect of which costs may be awarded, such as fees of the clerk and marshal's fees, fees of the Court Reporter for all or any part of the stenographic transcript necessarily obtained for use in the case, fees and disbursements for printing and witnesses; fees for copies; Attorney's and proctor's docket fees, Marshal's fees are specified. These are in the nature of process fees levied in our courts for service of writs, for effecting seizure, sale of property, for attachment, proclamation, for copies and the like.

Court fees
in the
U. S. A.

34. Neither in the United Kingdom nor in the United States does a system of levy of court fees graded on the stake in action prevail. In the United Kingdom there are, however, a few items where *ad valorem* fees are charged. Generally speaking, a simple initiating fee is charged in the generality of cases in both the countries. In the United Kingdom, in addition to the initiating fee, there is another fee known as the "setting down" fee, which covers the later stages of the trial. Various small fees occasioned by the circumstances of each case are also charged.

Ad-valorem
fees not
common
abroad.

35. The large difference in the scale of court fees levied in different States is surprising. The variation from State to State in the scale of remuneration of judicial officers and ministerial staff is small. It is true that the number of the personnel employed differs from State to State in

Diversity
in court
fees in
the States.

¹Report, Volume III, page 108.

accordance with the number of courts and the needs of the public. But as a rule, more courts are established only when there is more litigation. The greater the number of suits, the larger the court fee income. The Table at an earlier page shows the large variation in the court fees charged in different States. It is difficult to appreciate the reasons for these large differences in the scale of fees from State to State unless it be the varying needs of the States for revenue. The position is similar with regard to fees leviable under Schedule II of the Court Fees Act.

36. Why should State A levy an *ad valorem* court fee of Rs. 142-8-0 on a plaint claim of Rs. 1,000 when State B levies only Rs. 75-0-0? On higher valuations, the differences are even more striking. On a suit claim of Rs. 50,000 the fee under the Court Fees Act of 1870 was Rs. 1175/-. In Bombay, it is now Rs. 1625-0-0, in Uttar Pradesh it is Rs. 2,190-10-0 and in Madras it is Rs. 3,750/-. In Andhra Pradesh and Madras, new Court Fees Acts have been enacted which take the place of the Court Fees Act of 1870 and scales of fees have been prescribed which are higher than those obtaining anywhere else in India. In these States and some others, there is no limit to the maximum fee that can be levied. While States may well be within their rights in amending the Court Fees Act or enacting Court fees legislation of their own, the result appears to be a complete want of equality between litigants in different States. We are of the view, apart from the question of the heavy burden of court fees, that there should be some measure of uniformity in this matter.

37. We have already indicated our view that the administration of justice is a service which the State is bound to render to its citizens and that the charge for such administration should, broadly speaking, fall on the general taxpayer. The position in regard to this service should, in our view, be no different from that in regard to any other service rendered by the State. The State should, therefore, have as at its ultimate objective the charging of nominal fees, as we understand is being done in the United States. We are conscious, however, of the financial condition of the States and realize that this objective can be reached only by degrees over a period of time. It is imperative however, that the civil litigant should on no account be made to pay for the costs of the administration of criminal justice. Private justice and public justice must for this purpose and to this extent be kept apart. We recommend the immediate acceptance of the principle accepted and applied in England that the cost of the judiciary be looked upon as a charge to be borne by the general taxpayer and that the remaining cost of the administration of civil justice only should be borne by the fees paid by the civil litigant. The cost of the administration of public justice should be borne entirely by the State.

Uniformity,
desirable.

Principle
governing
the levy of
court fees.

38. We are of the view that it is the duty of the State to make it very easy for the citizen to vindicate his fundamental and other legal rights. Making the courts easy of access for this purpose is an important objective of our Constitution. The State must, therefore, further the objective laid down in articles 32 and 226 of the Constitution by providing that court fees payable on applications under these two articles should be very small if not nominal. No further argument is needed in support of this recommendation.

Court fee on Article 226 petitions to be small.

39. We also recommend the abolition of court fees which are at present charged on items like certified copies, admission of exhibits and so forth. The levy of these court fees occasions delays and expense and put a heavy burden on the ministerial staff. The State should be content to charge a fee at the initiation of the proceeding and not to charge fees in dribblets at various stages of the proceeding.

Abolition of miscellaneous charges.

40. We also recommend that in cases which are disposed of *ex parte* or which are compromised before the actual hearing half of the court fee should be refunded to the plaintiff. We understand that a similar provision providing for the refund of half the court fee in cases which are dismissed as settled out of court before any evidence has been recorded on the merits of the claim exist in Madras.

Refund of portion of court fee in certain cases.

41. Finally, we recommend that the court fee payable on First and Second Appeals should be half of the amount paid in the trial court as the time taken in the hearing of an appeal is very much shorter than that taken by the trial of the suit.

Lower court fees for appeals.

42. Our recommendations regarding court fees may be summarised as follows:

Summary of recommendations.

(1) It is one of the primary duties of the State to provide the machinery for the administration of justice and on principle it is not proper for the State to charge fees from suitors in courts.

(2) Even if court fees are charged, the revenue derived from them should not exceed the cost of the administration of civil justice.

(3) The making of a profit by the State from the administration of justice is not justified.

(4) Steps should be taken to reduce court fees so that the revenue from it is sufficient to cover the cost of the civil judicial establishment. Principles analogous to those applied in England should be applied to measure the cost of such establishment. The salaries of judicial officers should be a charge on the general taxpayer.

(5) There should be a broad measure of equality in the scales of court fees all over the country. There should also be a fixed maximum to the fee chargeable.

(6) The rates of court fees on petitions under Articles 32 and 226 of the Constitution should be very low if not nominal.

(7) The fees which are now levied at various stages such as the stamp to be affixed on certified copies and exhibits and the like should be abolished.

(8) When a case is disposed of *ex parte* or is compromised before the actual hearing, half the court fee should be refunded to the plaintiff.

(9) The court fee payable in an appeal should be half the amount levied in the trial court.

23.—INSOLVENCY

1. There are two principal Acts governing insolvency: one is the Presidency-towns Insolvency Act of 1909 which is applicable to the three presidency towns alone while the other, the Provincial Insolvency Act of 1920 governs insolvency procedure outside the presidency towns. Separate Insolvency Acts modelled on the Provincial Insolvency Act are in force in some of the former Part B States like Mysore and Kerala. For a long time, it has been felt, that two different procedures and enactments are unnecessary.

Laws relating to insolvency in India.

2. When for the first time a statute to deal with insolvency was sought to be enacted in India, a single Bill was introduced to regulate the procedure throughout what was then British India. It was however felt that the proposed legislation was too ambitious in its scope, and, in due course two different Acts applying respectively to the presidency-towns and the mofussil came to be passed. To a certain extent, differing procedures were no doubt needed in the two areas, principally for the reason, that the conditions of life, economic and commercial, in the large cities were different from those obtaining in the mofussil. But the difficulties arising from the existence of such differing conditions can be adequately met by having a special set of provisions and a special machinery applicable to places, where insolvencies of large commercial firms are likely to occur, without having two separate enactments dealing with the same subject matter.

Reasons for the existence of two systems.

3. It is to be noticed that the insolvency jurisdiction in the presidency-towns has been conferred exclusively upon the High Court. As the entrustment of this jurisdiction to the High Court is necessary in the interests of the better administration of the insolvency law, we are of the opinion that such exclusive jurisdiction should continue even though the two Acts are consolidated into one.

Exclusive jurisdiction of High Courts in the Presidency towns to continue.

4. There is a general consensus of opinion, that the two Acts should be consolidated into one. It was stated by some witnesses that the conditions in the mofussil areas had greatly changed and that with the growth of trade and industry, the differences between the conditions of life in the presidency towns and in the principal cities in the mofussil had ceased to be appreciable. It has to be remembered, that the principal object of all insolvency law is to effect a proper distribution of the assets of the insolvent among his creditors, and broadly the procedure provided is intended to achieve this object. It is true, that

Consolidation of enactments desirable.

in the case of large insolvencies complicated questions of law and fact tend to arise, which may need a superior Court for their proper determination. This need can be met by conferring an exclusive jurisdiction on the High Courts or the superior courts in the mofussil. We are in agreement on the whole with the view favouring the consolidation of the insolvency laws. A detailed examination of provisions of the two Acts, with a view to their revision and consolidation has been undertaken by us and will form the subject matter of a separate report.

5. We propose therefore to consider in this report only two matters, namely, the avoidance of delays in the administration of insolvents' estates and the provision for the appointment of Official Receivers.

Under section 28 of the Provincial Insolvency Act, on the making of an order of adjudication, the whole of the property of the insolvent vests in the Court or in a receiver. Under section 56 of the Act, the Court may appoint a receiver for the property of the insolvent. Further, under section 57 the State Government has the power to appoint such persons as it thinks fit to be Official Receivers under the Act within such local limits as it may prescribe.

Under this Act the Court may take one of three courses. The Court itself may take possession of the property and deal with it. Or the Court may appoint a suitable person to be receiver of the property of the insolvent. When the State has appointed a person to be the Official Receiver for a local area, in all cases of insolvencies arising in such an area, the Official Receiver shall be the receiver for the purpose of every order appointing a receiver or an interim receiver issued by any Court, unless the Court otherwise directs for special reasons. The main duty of the receiver or the Official Receiver in whom the property has vested is to take steps for the realisation of the assets of the insolvent and to effect a distribution of the assets among the creditors in accordance with the procedure laid down in the Act.

6. We have been informed that in several States, the State Government has not appointed Official Receivers under section 57. There prevails instead the practice of appointing as a receiver a suitable person from among the lawyers practising in that Court. It happens that different lawyers are appointed receivers in different insolvencies. The lawyer is naturally busy with his practice and the result is, that more often than not, the administration of the insolvents' estate does not receive adequate personal attention from him but is left in the hands of a clerk. Sometimes junior members of the Bar or in some cases even members of the ministerial staff of the Court are appointed receivers. The administration of an insolvent's estate requires experience and ability and we are

Appoint-
ment of
Official
Receivers.

Defects of
the present
system.

of the view, that duties of this nature cannot be satisfactorily performed by this class of persons. In most insolvency cases attention has to be paid to the details of day to day administration. A receiver may have to take proceedings under sections 53 and 54 of the Provincial Insolvency Act. He may have to issue notices to the creditors, scrutinise proofs submitted to him, prepare a schedule of creditors and perform other duties. If a composition or a scheme of arrangement is proposed, the receiver may have to take steps in that connection. The distribution of assets among the creditors is a fairly onerous and responsible task. All these duties are bound to take a considerable amount of time particularly in the case of substantial insolvencies. In making the appointments of receivers, it is therefore necessary to ensure that they are in a position to devote the time and attention which the performance of these duties require.

7. Under the Presidency-towns Insolvency Act, there is a permanent full-time officer known as the Official Assignee in whom the properties of the insolvent vest on the making of an order of adjudication. (Section 17 of the Presidency-towns Insolvency Act). Under this Act there is a single officer for the whole of the Presidency-town in charge of the estates of all the insolvents.

Official
Assignees
in the
Presidency
Towns.

8. In the mofussil, appointments of Official Receivers are made from different sources in different States. In Madras and Andhra Pradesh, full-time Official Receivers are appointed by the State Government under section 57 of the Provincial Insolvency Act. They are appointed for particular areas and deal with all the insolvency matters arising within those areas. Wherever the insolvency work is not sufficient to occupy their whole time, they are employed on additional duties such as Small Cause Court Judges and Rent Controllers. They are borne on a regular cadre like other Government Servants. In some other States, the Insolvency Courts select one of the practising lawyers to act as a receiver. They are appointed *ad hoc* and receive remuneration by way of commission generally calculated on the basis of income from or realisation of the insolvents' assets. In some other places, the courts select a ministerial officer to act as a receiver in a particular insolvency.

Appoint-
ment of
Receivers
in the
mofussil.

We understand, that the system of appointing Official Receivers on whole-time basis as regular Government Servants in Andhra Pradesh and Madras has been functioning quite satisfactorily. They are recruited from among members of the Bar and such of them as are found suitable, are eligible for recruitment as district munsifs. For the purpose of this recruitment, they are included in the category of other ministerial officers, such as Sheristadars, Head Clerks, Superintendents in the Secretariat Legal Department etc. We have, however,

elsewhere made a general recommendation that ministerial officers should not be promoted to the Judicial Service. In the absence of reasonable prospects for their promotion, we cannot recommend the creation of a separate cadre of Official Receivers, as it would not be possible to get efficient hands on the comparatively low salary which the post of an Official Receiver would normally carry. The practice of appointing ministerial officers of the court who are mostly not legally qualified as receivers is undesirable. Their hands are generally full with the normal routine work of their office and as such, they are hardly in a position to devote the required time and attention to the insolvency work. The only source, therefore, from which the Official Receivers can be selected is the Bar. It is true, that it may not be practicable for busy lawyers to be appointed as receivers as they may not have either time or the inclination to take up insolvency work; but we feel, that it should be possible to select some of the capable junior members of the Bar for this work. We heard complaints that if lawyers are appointed as receivers on commission basis, there is a tendency among them to prolong the proceedings in the hope of getting larger remuneration. It is possible that there may be some justification in this complaint. This objection can, however, be met by appointing a member of the Bar *ad hoc* as an Official Receiver, but as a regular part-time officer with a fixed monthly salary, in the same way as part-time lecturers are appointed in law colleges. They may be appointed for a fixed term, say three to five years and their term may be extended from time to time. They should be allowed the right of private practice at the Bar. We think that this will ensure a certain degree of security of tenure to the holder of the post, who can be expected to devote the required time and attention which the performance of the duties of an Official Receiver require. However, in places where the insolvency work is sufficient to occupy the whole time of an officer, full time Official Receivers may be appointed on monthly salary from among the members of the Bar.

Suggestions
for amend-
ment of
law.

9. We may also refer to some suggestions made to us. It is stated that the examination of a debtor under section 24 of the Presidency-towns Insolvency Act, 1909 with regard to his conduct, dealings and property before the order for adjudication is made, is premature as there is hardly any material on which the debtor could be examined at that stage. It is accordingly suggested, that there should be a provision in the Provincial Act also, for the public examination of the insolvent after the adjudication order is made. A suggestion was also made, that the Court may be empowered to annul the adjudication in cases where the insolvent has been found guilty of keeping false books or suppressing them, or of suppression of and fraudulent disposition of assets, or of non-compliance with the duties imposed upon him by the insolvency

law, such as, assisting the Official Assignee or the Official Receiver as the case may be; by not filing the schedule, and failing to serve a notice of adjudication on the creditors. In our opinion these suggestions deserve acceptance.

10. It has also been suggested that the Official Assignee or the Official Receiver in big commercial cities should have at least one qualified accountant attached to his office, so that he may be able to have a thorough and complete investigation of the affairs of the insolvents made with his assistance. This in our view is a very necessary step which should be taken whenever sufficient funds are available with the Official Assignee or Receiver.

11. Our recommendations regarding Insolvency Administration can be summarised as follows:—

(1) The several laws relating to insolvency which are in force in different parts of India should be consolidated into one enactment. Summary
of re-
commen-
dations.

(2) The High Courts should continue to retain their exclusive jurisdiction in insolvency matters in the Presidency Towns.

(3) Official Receivers may be appointed *ad hoc* from among the members of the Bar, as regular part-time officers, like Lecturers in law colleges on a fixed monthly salary. They may be appointed for a fixed term of three to five years, which may be extended from time to time.

(4) But wherever the insolvency work is sufficient to occupy the whole time of an officer, a full time Official Receiver may be appointed for that area, to look after the insolvency work arising in that area.

(5) Whenever sufficient funds are available with the official assignee or an official receiver, a qualified accountant should be attached to his office.

(6) The suggestions for the amendment of the insolvency law set out in paragraph 10 *ante* should be accepted.

Reform of the Law of Evidence. The hearsay rule.

1. Our Questionnaire referred to the need for the reform and the modernization of the law of evidence with particular reference to the relaxation of the rules against the admission of what has been called 'hearsay' evidence, the admissibility of secondary evidence and cognate matters.

Meaning of hearsay.

What is commonly known as 'hearsay' is what the term conveys; something that is heard by a witness from a third party. It may be described as oral secondary evidence of an oral statement. The expression is, however, understood by some writers in a much wider sense and applies to what has been called 'unoriginal' evidence. "All evidence is either *original* or *unoriginal*. The *original* is that which a witness reports himself to have seen or heard through the medium of his own senses. *Unoriginal*, also called derivative, transmitted second-hand or hearsay, is, that which a witness is merely reporting not what he himself saw or heard, not what has come under the immediate observation of his own bodily senses, but what he has learnt respecting the fact through the medium of a third person".¹ In its wider sense of unoriginal evidence it will include not only oral statements but written statements by persons not called as witnesses.

The position in England.

2. In England where broadly speaking the admission of evidence is regulated by the English common law, exceptions have from time to time been made to the strict rule against the admission of hearsay evidence. These exceptions relate in the main to statements made by deceased persons.

Exceptions to the hearsay rule.

3. In many cases the admission of hearsay evidence was hedged in with limitations and qualifications which created difficulties. For example, dying declarations of deceased persons were excluded from evidence if at the time of the declarations there was any prospect of their recovery, however slight. Statements and documents prepared by public officers in the course of their duties were admitted but such documents had to be available for public inspection. Though evidence of statements of deceased persons could be admitted subject to certain restrictions the law would not admit in evidence the statements of witnesses where the witnesses though alive were for good and sufficient reasons not available for giving evidence.

¹Best on Evidence, 9th Ed. sec. 27 cited in Law of Evidence Sarkar 8th Edition, page 23.

4. These and various other difficulties in regard to the admission of hearsay evidence gave rise to considerable criticism and eventually led to the enactment of the English Evidence Act of 1938. Leaving intact the exceptions to the rule of hearsay developed by the common law the Act has enacted some further exceptions. The legislation has however been criticised as not having gone far enough in relaxing the rule against hearsay.

English
Evidence
Act, 1938.

5. Attempts have also been made in the United States to mitigate the rigour of the application of the rule. Attention may be drawn in this connection to the American Model Code of Evidence compiled and published by the American Law Institute in 1942.

Develop-
ments in
the U.S.A.

6. The suggestions received by us in answer to the Questionnaire and the evidence given before us has not afforded much assistance to us.

Considering the provisions in regard to the admission of hearsay evidence in our Evidence Act such as section 32 of the Act, it appears to us that our Act contains provisions for the admission of hearsay evidence in several matters in which it became admissible in England only after the Act of 1938. Indeed in certain matters the provisions of the Act are wider and permit evidence to be given of matters which may not be admissible evidence in England even after the recent legislation. It is unnecessary to discuss the matter further in detail. We do not feel justified on the evidence before us in making any recommendations in this respect. The matter may call for further consideration at our hands at a later stage when the revision of the Evidence Act is undertaken by us and proper material is made available to us.

The position
in India
satisfac-
tory.

7. The admission of secondary evidence of documents is governed by the provisions of Chapter V of the Indian Evidence Act. The primary evidence is the document itself produced for the inspection of the Court. The law, however, enables secondary evidence of the document to be given in certain cases. The circumstances under which secondary evidence can be given of the existence, condition or contents of a document are stated in section 65 and section 66 of the Act. In so far as documents inter-parties are concerned, the rules relating to their proof by secondary evidence seem to be sufficiently wide and no suggestions have been made to us for their enlargement.

Secondary
evidence.

8. The position appears to be different however in regard to public documents. The law enables the proof of the contents of public documents to be made by the production of certified copies thereof. It has been justly said that delays in the disposal of cases are frequently caused by the need for the production of certified copies of public documents. But it is difficult to conceive of any manner other than the production of a certified copy by which the contents of public documents can be permitted

Proof of
Public
Docu-
ments.

to be proved. If it were left open to parties to adduce other proof of such documents the Court would have to enter into conflicting evidence about their contents and assess its worth. This is obviously undesirable when the document is a public document, the contents of which can be proved beyond dispute by the production of a certified copy. This question may also receive the further attention of the Commission at the time of the revision of the Evidence Act.

Whether section 90 should be made applicable to certified copies of documents thirty years old.

9. Under section 90 of the Evidence Act, when any document purporting or proved to be thirty years old is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting and in the case of a document executed or attested that it was duly executed and attested by the persons by whom it purports to be executed and attested. A question has been raised whether this presumption should be made applicable to certified copies of documents thirty years old. What is urged is that if a certified copy is produced before the Court of a document which purports to be thirty years old, the presumption of genuineness should be extended to the original document itself although it is not produced. It is to be noted that what is produced in Court is a certified copy. All that Court can therefore rightly presume is that it is a true copy of the original document. But no inherent testimony is afforded by the certified copy as to the circumstances under which the original came into existence and whether the original itself possessed any feature which would have destroyed or affected its validity. In order to enable the Court to draw the presumption mentioned in section 90, two requirements are necessary. The first is that the document should be thirty years old and the other is that it should be produced from custody which the Court considers proper. By what process of reasoning could the Court raise these presumptions in regard to the original document when all that is produced before it is a mere certified copy? It may be that the original of which a certified copy more than thirty years old is produced was a fabricated document. It does not therefore seem to us reasonable to extend these presumptions to the original when it is not before the Court.

A view was once taken¹ that section 90 enables the presumptions mentioned above to be drawn in the case of the original on the production of a certified copy of a document more than 30 years old. That view is however no longer good law.²

¹Subramanya Somayajulu v. Seethayya 1923 I. L. R. 46 Madras page 92. Reversed on another point subnom Seethayya vs. Subramanya Somayajulu I.L.R. 52 Mad. 453 (H.C.)

²Basant Singh v. Brij Raj Saran Singh A. I. R. 1935 P. C. 132.

10. For these reasons we do not recommend the acceptance of the suggestion. Change
undesirable.

What we recommend is that questions relating to the relaxation of the rule against hearsay evidence, the rule as to circumstances under which secondary evidence should be admissible, judicial notice and ancient documents may be examined by Commission when revising the Evidence Act. Summary
of Re-
commenda-
tions.

25.—LEGAL EDUCATION

Previous
enquiries.

1. The question of legal education which is one of the matters specifically referred to us has been examined from time to time by a large number of Commissions and Committees. Amongst these may be mentioned the Calcutta University Commission of 1917—19, the University Education Commission of 1948-49, the Bombay Legal Education Committee of 1949, the All India Bar Committee of 1953 and the Rajasthan Legal Education Committee of 1955. Naturally, much of the ground covered by us has been the subject-matter of consideration by these bodies from whose reports we have derived considerable assistance.

The need for reforms

2. The need for reform in the system of legal education in our country was felt as far back as 1885. Speaking in Madras in that year, Mr. Justice Muthuswami Iyer said:

“Law is hitherto studied in this Presidency more as an art founded on certain arbitrary and technical rules than as a science which consists of principles laid down for protecting human interests in various life relations. **** A College, therefore, where legal education is to be imparted on a scientific basis, will be of great value to the country, and exercise a very beneficial influence on the practice of law as an art.”¹

The situation had not appreciably altered fifty years later. In 1935, the Unemployment Committee appointed by the Government of Uttar Pradesh, presided over by Sir Tej Bahadur Sapru, observed in its report:

“Our own view is that so far as Universities in these provinces are concerned legal education has not occupied the place to which its importance entitled it; and we are not prepared to say that the standard of legal education has risen to the extent to which it has risen in certain other departments.”²

Original
object
of law
teaching
in India.

3. It has been said that the main purpose of University Legal Education seems hitherto to have been not the teaching of law as a science or, as a branch of learning, but merely imparting to students a knowledge of certain principles and provisions of law to enable them to enter the legal profession. With the passing of the governance of India directly under the Crown in 1858, the needs of a new and expanding judicial system called for an increasing number of professional men of law to fill the roles of legal practitioners, judges and administrators. The legal

¹Cited in the Bombay Legal Education Committee Report, 1949, p. 17 para. 34.

²Report of U. P. Unemployment Committee, 1935, para. 158.

curricula were, therefore, it is said, framed mainly with an eye to the professional needs of such practitioners and judicial and other officers. The system, said to have been designed to meet this need has, by and large, continued unchanged for over a hundred years. Law has not been looked upon by the Universities as an educational or cultural subject. Speaking of the University of Bombay, the Bombay University Reforms Committee stated in 1925 that ".....the course of this University seems to have too much in view the practice of the lawyer and case law, and too little the science and principles of law."¹

4. Thus, the objective which the Universities seem to have kept before themselves all these years has been the professional training of the future lawyer. Part-time institutions have been regarded as sufficient for this purpose. Those institutions seemed to have suited both the teacher and the taught. Most of the students who attended the morning and evening classes conducted by those institutions were in employment somewhere or prosecuted some other post-graduate study while the teachers in law were generally practising lawyers who had to attend to their professional business during office hours.

Character
of Law
Colleges.

Part-time
institutions.

5. The results of the working of this system have been contrasted with those of the advanced systems of legal education adopted in Europe and America by the Radhakrishnan Commission in the following words:

The results,]

"In Europe and America, legal education has long occupied a high niche among the learned curricula. Products of the study of law have frequently risen to positions of distinction in public service or have amassed fortunes in the private practice of law or have acquired wide reputation as scholars even without entering practice. Legal education is on an elevated plane and teachers of law enjoy a high respect, perhaps as high or higher than those of any other field of instruction. * * * * In our country, we have eminent practitioners and excellent judges. * * * * The law has also given us great leaders and men consecrated to public service. Most conspicuous of these is Gandhiji. Here the comparison ends. We have no internationally known expounders of jurisprudence and legal studies. Our colleges of law do not hold a place of high esteem either at home or abroad, nor has law become an area of profound scholarship and enlightened research."²

Absence of
Jurists.

The absence of juristic thought and publications in our country is no doubt due, in part, to our defective system of legal education which fails to recognize the study of law as a branch of learning and as a science.

Legal
education,
defective.]

¹Cited in the Bombay Legal Education Committee Report, p. 17, para. 35.

²Report of the University Education Commission ; Vol. I, p. 257.

Nor is the education in law imparted at the Universities such as to fit the law-graduate for the profession notwithstanding its supposed bias in favour of a professional career. The inadequacy of our legal training to equip men for the profession can be easily realised if one compares the education and training imparted in our law schools with the intensive and scientific training given in some of the American schools of law. It is true that our country has produced eminent practitioners in law and learned judges. But have they owed their eminence and learning to the education received by them in the Universities? Their achievements probably arise from their own intellectual brilliance and capacity rather than to the education received by them at the Universities.

Deterioration in standards.

6. In the period of about ten years which has elapsed since the publication of the Report of the Radhakrishnan Commission, the position in regard to legal education in the country has, it appears, definitely deteriorated. Excepting in certain centres like Bombay and Madras where full-time law colleges exist, education is imparted in part-time classes held in the mornings or in the evenings. The teachers are mainly legal practitioners who give tuition outside court hours. Some of these institutions are run exclusively by part-time teachers. Many of these institutions have no buildings or libraries of their own and classes are held in buildings belonging to arts colleges and other institutions. Large numbers of the pupils serve in Government offices or elsewhere while attending the institutions and take the law course with a view to better their prospects in service by obtaining a law degree. Some are post-graduate students who, in addition to the post-graduate courses which they have taken and which are their main objective, wish to add to their qualifications a degree in law. Most of the students who crowd these institutions are young men who have not been able to secure employment; they take a course in law while waiting for a job with no intention of practising law as a profession.

Part-time teachers and students.

Over-crowding in law colleges.

7. Owing to the growth of unemployment in the educated youth of the country, some of these institutions are so overcrowded that classes are held in shifts and there are on the rolls of each class a large number of pupils, sometimes exceeding hundred. It is to these crowded classes that the part-time lecturer imparts his instruction, and the attendance he commands is only due to the anxiety of the pupil to have his attendance marked when the lecturer calls the roll. It is not surprising that in this chaotic state of affairs in a number of these institutions, there is hardly a pretence at teaching and that the holding of tutorials or seminars would be unthinkable. A senior lawyer characterized these institutions as "a profit-making industry".

8. The Gorakhpur University which has recently come into existence and the Agra University, do not have law colleges affiliated to them nor a law department but, nevertheless, confer law degrees on students who seem to receive instruction in law in arts colleges. The Head of the Law College affiliated to the Utkal University informed us that the University had recently decided that permission be granted to persons of over thirty years of age to appear at the law examinations held by the University without submitting themselves to a course of teaching. The so-called teaching imparted at institutions of this character is followed by law examinations held by the Universities, many of which are mere tests of memory and poor ones at that—which the students manage to pass by cramming short summaries or catechisms published by enterprising publishers. The results of such a system of education and its products were graphically described by a law teacher of experience and a former member of the Union Public Service Commission:

Arts colleges running law classes.

Instruction unnecessary.

“There are already a plethora of LL.B's half-baked lawyers, who do not know even the elements of law and who are let loose upon society as drones and parasites in different parts of the country. As a member of the Union Public Service Commission, I have had occasions to interview several *first class graduates* of law from different Universities. Several of them did not know what subjects were prescribed either in the first or second LL.B; did not know the names of the books prescribed; did not know the sight of the books, because they had not seen them and asserted cheerfully that all they had done was to cram the lecturer's notes. *I can produce the names of the candidates who have given these answers to me, and the date and the time of the answers.* This is a shocking thing, this kind of answer from a candidate who has obtained a first class in both parts of the LL.B. is indeed a sad state of affairs and must be corrected at an early date.” This is what may truly be described as mass production of law graduates. What would one have thought of doctors or engineers or other technical men being trained in such a manner and let loose upon society?

9. We annex a Statement at the end of this chapter showing the various institutions in the country imparting legal education and such particulars about them as we have been able to gather.

Number of law colleges and their particulars.

It is unfortunate that we should have to present so dismal a picture of the character of the legal education imparted in the majority of institutions in our country. Apart from other considerations, the changes that have occurred and are occurring in the political, economic, and social life of the nation since the emergence of India as a sovereign democratic State require a radical alteration in the patterns of legal education, its objectives, scope and technique. In the India of today, men of law are bound to be called upon to play many and varied roles. “If society

Role of
lawyers in
modern
India.

is to be adapted to the profound changes in the basis of social and economic life, resulting from changes in world conditions after the war, and in India, particularly after 1947, we feel that it is mainly the lawyers that India must look to. The legal profession is called upon to take stock of this situation and to contribute to wide social adjustments. If it fails to do it, it will ultimately be eliminated from the revolutionary scene. ***** We feel that lawyers cannot remain aloof from these processes of evolution and legal education cannot wait until all other problems of the nation are solved. On the contrary, lawyers will be called upon to play an important part in these evolutionary processes. Their education, therefore, is of vital importance. This, therefore, is the right time for setting legal education on a sound basis."¹

The Radhakrishnan Commission also expressed similar views².

Reorien-
tation of
legal
education
imperative.

10. We express our entire agreement with these views. The conditions in India to-day make a complete reorientation of the outlook on legal education imperative. Before we consider specific problems relating to legal education, it is necessary to deal with some fundamental questions.

Academic
and voca-
tional
training.

11. Law, like other subjects studied at our Universities such as mathematics and philosophy, has great value as a cultural discipline. A study of law, therefore, can itself be a means of intellectual development and an instrument of liberal education. Law, like mathematics and philosophy, is a vast field of study needing application and research for its development. Law may also be studied as a vocational training for entering the legal profession. There are also those who take courses in law with a view to entering the public services, international organizations or business concerns in which a knowledge of law is essential or helpful, or those who take such courses to better their prospects in the occupations in which they are already engaged. In our Universities, legal studies are pursued with these different objectives.

The sup-
posed an-
tithesis —
false.

A frequent theme of controversy is the supposed anti-thesis between an academic legal education and a training in law for the profession. The bifurcation of legal education into what may be called University or academic legal education and professional legal education, the first being imparted at the Universities and the latter by organizations of professional men is, perhaps, based on this distinction. It appears to us, however, that there need be no conflict between an academic and a practical training in law. As has been said by the Bombay Legal Education Committee "there is no real antimony between the professional and the cultural aspects of law. A lawyer will be a better lawyer and a judge a better judge, if he has studied the science of law. A thorough grounding in the principles of law is

¹Report of the Bombay Legal Education Committee, 1949, p. 5.
²Report of the University Education Commission, Vol. 1, p. 258.

absolutely necessary in the make-up of a real lawyer."¹ To those who believe that an academic training hardly furnishes any useful equipment to the practical lawyer and believe that what is really important is the practical aspect which can only be learnt in a lawyer's office, a convincing answer can be made in the words of Dean Mc Clain of the Duke University Law School, that there is yet one serious danger in "allowing the student to pursue the so-called practical training to the neglect of thorough and indispensable scholarly and analytical legal training. Without this, the student is hopelessly lost in practice and practical 'know-how' becomes empty and meaningless. The young graduate's lack of 'know-how' is soon cured by experience, whereas the graduate without broad scholarship background and strong analytical reasoning ability never recovers. The public is much more apt to suffer seriously from the latter type of lawyer over the long-pull than from the neophyte who lacks practical 'know-how' at the beginning of his practice."² As Professor Sidney Post Simpson has said "Competence in the practical pursuits of the law is promoted far more by an understanding of the law's underlying principles and theories than by acquaintance with tricks of the trade."³

12. In the system of legal education which prevails in the American Law Schools, attempts have been made broadly to combine theoretical and practical training. In many schools the students are given opportunities during vacations, while receiving their academic training, to derive practical knowledge of the working of the law by associating themselves with lawyers' offices for certain periods. This type of training is called "performance courses." In England, the academic and practical training are strictly separated; the Universities impart the academic training while the Inns of Court and the Council of Legal Education and the Law Society deal with the training of professional lawyers. In India, broadly speaking the task of academic legal education is left to the law colleges affiliated to the Universities which admit to their courses graduates who have undergone a liberal education while we leave the professional training of the law graduate either to bodies like Bar Councils or to senior lawyers who receive apprentices in their chambers.

The position in India and abroad.

13. We think that our needs in regard to legal education will be well served by first subjecting our young men who have received a liberal education to University courses in law which will teach them the science of law and the principles underlying different branches of law. The law graduate produced by the University has to be a person who has a mastery of legal theory and legal principles.

Our suggestion : University training followed by a professional course.

¹Report (1949) p. 27, para. 44.

²Is Legal Education doing its Job? A Reply, Deen Mc Clain, American Bar Association Journal, February 1953, p. 120 at p. 123.

³49 Harvard Law Journal, p. 1060.

The young law graduate would then have to make his choice between an academic and a professional career. If he prefers a further study of the science of law and wants to undertake research in any of its branches, he could, after his bachelor's degree in law, pursue further studies, do research at the University and qualify for a Master's degree and thereafter for a Doctor's degree.

If he chooses to enter the profession of law, he will have to take a practical course in law which, perhaps, would be best imparted by bodies of professional men like the Bar Councils. The grounding in the theory and principles of law imparted to the law graduates will also serve the purpose of those who have taken the legal course with the object of obtaining a cultural or liberal education or with a view to equipping themselves for the public services or commercial employments. A system so ordered, will in our view, harmonize with the way in which legal education has developed in our country in the past and lead, if such education is imparted in the right manner, to our young men growing into scholars in diverse branches of law and erudite and efficient practitioners of law.

Standard of admission to the study of law.

14. We shall now turn to some of the specific problems relating to legal education. The stage at which a student should be permitted to embark upon his legal studies has been a matter of considerable controversy. This recently, in the University of Bombay, now split up into the regional Universities of Bombay, Poona, Gujerat and Karnataka, and in the University of Andhra the requirement for admission to a law degree course was either a degree of these Universities or its equivalent or the Law Preliminary Examination of the University. The duration of the law course in these Universities is two years after graduation in arts or science, or other subjects or three years after the intermediate examination of which one year is taken for the Law Preliminary course.

Admission after Intermediate.

In the Bombay University, admission to the degree course in law was, upto 1934-35, open only to graduates in arts, science or other subjects; it was only in 1938, as a consequence of the Report of the Legal Education Reforms Committee of 1935, that law course was thrown open to students who had passed the intermediate examination also, a full time law college being simultaneously established. The Bombay Legal Education Committee which made its Report in 1949 expressed itself in favour of the retention of the intermediate examination as the standard of admission to the degree courses in law. After considering the views of several Indian and foreign experts it came to the conclusion that admission at that stage resulted in efficiency and economy. "If a law student has to spend at least six years after the Matriculation, as he does in other Universities, we are of the opinion that the only course that can be adopted is to curtail the period of pre-legal

Views of the Chagla Committee.

education and extend the law course."¹ Dealing with the criticism that persons entering the legal profession must have a mature understanding and wider culture than can be attained by students who have passed only the intermediate examination, the Committee said: "It appears to us that the real question is not whether a graduate has a more mature mind than the Intermediate student, for that is a proposition which one may not like to controvert. But the more pertinent question is—has the Intermediate student a sufficiently mature understanding to be able to study the course which we are recommending for the law degree." And we are of the opinion that he has."² The Committee supported its view by referring to the practice in England where a student who has passed the Matriculation examination is considered capable of entering upon the study of subjects like Jurisprudence and to the one in Canada where a two year college course is accepted by many Universities as sufficient for entrance to the law course.

The Committee, however, was not unanimous in reaching this conclusion. Two of its members, Mahamahopadhyaya Dr. P. V. Kane and Mr. Justice N. H. Bhagwati expressed a dissenting opinion. Dr. Kane pointed out in his minute of dissent that those who passed the intermediate arts or intermediate commerce examination did not possess "the necessary mental equipment to enable them to grasp easily the fundamental principles of law" and that they were "immature in years" because most students passed the Matriculation or Secondary School Certificate examination at about 16 and the Intermediate examination at about 18 while a person who had graduated in any faculty would be about 20 or 21 when he took his degree. Dr. Kane also thought that there should be uniformity as far as possible in all the Indian Universities in regard to the standards of law examinations. He was of the view that the experiment made in the Bombay University since 1938 had practically failed. Mr. Justice Bhagwati took the same view and for similar reasons. Quoting extensively from the Examiners' Reports of the First and Second LL.B. examinations held since 1938, he observed that in spite of instruction in law being imparted in full-time institutions, the fact that the stage of admission was the passing of the Intermediate examination had contributed to the unsatisfactory results which were achieved. "I am confident," he observed, "and I agree with the examiners when they state that if the graduation was the stage of admission to the studies in law, the results would have been much better and the instruction which is imparted in the full-time institutions would have borne greater fruit and the complaints as regards the turning out by the University of

Dissenting minutes.

The case for graduation.

¹Report, p. 32, para. 67.

²Ibid p., 27, para. 56.

half-baked and ill-equipped lawyers would never have come into existence.¹

Foreign
practice
irrelevant.

15. The practice in England and Canada which has been referred to by the majority of the Bombay Legal Education Committee in support of its conclusions has to be examined in reference to the conditions prevailing in those countries which, as Mr. Justice Bhagwati pointed out in his minute of dissent, are different from those obtaining in India. The students, in those countries are taught in their mother tongue with the aid of text books written in their mother tongue. They are in the hands of competent teachers at schools where the general standard of teaching is much higher than in India. With this may be contrasted the practice in a large number of American States which requires the completion of a three year course for a Bachelor's degree in an accredited college or University as a condition of eligibility for admission to law course.

Present day
opinion
favouring
graduation.

16. Moreover, since the Committee made its recommendations in 1949, opinion has hardened in favour of the system, generally prevailing, of insisting on a University arts or science degree as a condition for admission into a law college. The Rajasthan Legal Education Committee which made its Report in 1955 took the view that only graduates should be admitted to the LL.B. course which, it proposed, should be a three-year course.² It, however, proposed that students who had taken law in their B.A. classes and graduated with law should be required to take only a two-year course for the LL.B. degree.³ It is interesting to note that Professor L. R. Sivasubramanian, the Dean of the Faculty of Law of the Delhi University, and Dr. R. U. Singh, Professor of Law of the Lucknow University (since deceased) whom the Bombay Committee quoted as favouring the admission of students who have passed the Intermediate examination to law course have in the evidence given before us expressed a contrary view. Both these gentlemen stated before us that a University degree should be a condition for admission to law course. Dr. R. U. Singh went further and stated that the admission to those courses of persons who had passed the Intermediate examination had proved unsatisfactory.

It may be mentioned that the Andhra University appointed a Committee presided over by Mr. Justice Wadia which made its Report in 1955 recommending the continuance of the admission of students who had passed the Intermediate arts examination to the law courses. Notwithstanding this recommendation, we understand that the Andhra University has decided that admission to law courses should be granted only to graduates.

¹Ibid p. 94.

²Report, pp. 39 and 42.

³Ibid p. 44.

Most of the witnesses engaged in imparting legal education who appeared before us, were of the view that for a proper appreciation of the legal principles by a law student it was essential that he should have obtained graduation at the University. The Principal of the Government Law College, Bombay, however, expressed the view that the Law Preliminary course of the Bombay University was as good as a degree course in arts or science.

Majority for graduation.

17. On a consideration of the evidence given before us by University teachers of law in the various States we have come to the conclusion that admission to law courses should be restricted to those who have obtained a University degree in arts, science, commerce or other courses. We have no doubt that a general liberal education in cultural or scientific subjects which a student usually receives in a four-year degree course in an arts or science college is an essential pre-requisite to his embarking upon a study of law. We may state that the All India Bar Committee also considered graduation in arts, science or commerce as necessary for admission to law course¹. The Radhakrishnan Commission appears to have taken the same view pointing out that "the best colleges of law including Harvard, Columbia, Michigan, Chicago, California and others require completion of a four-year degree course in Arts and Science before admission to the law courses."²

Graduation essential for admission to a law course.

18. The question of the duration of the law course at a University is to a certain extent allied with the scope of legal education which the Universities should impart as, the larger the number of subjects that has to be taught in the law colleges, the longer will be the course. Should the Universities have a purely academic course leaving the procedural and cognate laws to be the subject of a further practical training? At the moment there is no such well defined distinction in the University courses.

Scope of legal education in the Universities.

19. In all the Universities, excepting the Universities of Calcutta and Gauhati, the University law degree course is of two years' duration. The opinion of a large number of witnesses who spoke from long experience of teaching law was that the period of two years was not sufficient for covering the large number of subjects attempted to be taught with a view to equipping the student either for later higher academic studies and research or for a professional career. In most of the Universities the subjects taught during these two years are Roman Law and Jurisprudence, Constitutional Law, Law of Crimes, Law of Contracts and Torts, Easements, Law of Property and Registration, Hindu and Mohammedan Law, Company Law, Law of Partnership and the procedural laws like laws of Civil and Criminal Procedure, Limitation and Evidence. In some of

Duration of Law Course.

¹Report of the All India Bar Committee, 1953, p. 23, para. 60.

²Report of the University Education Commission, Volume I, p. 260.

the Universities, the courses also include local laws relating to land tenures and other matters.

Academic
year too
short.

Two years
insufficient.

20. Most of the law colleges are, as we have seen, part-time institutions conducting classes in the mornings or in the evenings. The academic year generally begins in June or July and ends in March. Excluding the vacations and holidays, the total number of working days is between 170 and 180 per year and the student is not required to keep his attendance for more than about 75 per cent of the working days. The result, in the words of Sir Tej Bahadur Sapru, is that "it is impossible to traverse even a respectable area of law within two years." He proceeds to state that "if the Universities want to raise their standard of legal education, if the Universities want their graduates in law should have a more extensive, if not more intensive, knowledge of law, then the least they can do is they must provide three years' course."¹

The case
for a
three year
law course.

21. The trend of modern opinion seems to be in favour of a three-year course. Most of the American Law Schools prescribe a three-year course in law following a University degree in Arts as an essential pre-requisite for admission. Professor Sivasubramanian of the Delhi University and Dr. R. U. Singh of the Lucknow University (since deceased) made before us a strong plea for a three-year degree course in law. In his dissenting minute to the Report of the U.P. Legal Education Reforms Committee, Dr. Singh observed that there was hardly any time at the student's disposal for mentally digesting what was placed before him and the result was that the student indulged in unprofitable cramming. According to him "a good training in law is not possible in two years. The Universities of Calcutta, Delhi and Punjab have already discarded the two-year law course in favour of a three-year one. The necessity of a three-year law course is recognized in all the leading countries of the world, the course of legal studies in France, Germany, England and the United States of America generally covering a period of three years."² Indeed, Dr. Singh went so far as to plead for a minimum period of three years for a law degree in addition to a year's professional course of study after a student had graduated in law.

Views of
the
Bombay
Legal
Education
Committee.

22. The Bombay Legal Education Committee of 1949, however, recommended a three year scheme of legal studies which comprised the study of law for two years at the University for a law degree followed by a third year spent in the study of vocational subjects ending with a

¹Purpose and Method of Law Schools'—Address delivered at the Allahabad University in 1934. Cited in the Bombay Legal Education Committee Report, p. 36.

²Cited in the Bombay Legal Education Committee Report, p. 37. The statement that the Delhi and Punjab Universities have adopted a three year's course for the law degree appears to be inaccurate.

professional examination conducted either by the Bar Council or by the Council of Legal Education, the establishment of which was proposed by it.

Views of
the All India
Bar;

The question of the duration of a course of legal studies was also considered by the All-India Bar Committee of 1951. Its recommendation was as follows:—

"After considering all the aspects of the question the Committee has come to the conclusion that the uniform minimum qualification for admission to the roll of Advocates should be a law degree obtained after at least a two years' study of law in the University after having first graduated in Arts, Science or Commerce and a further apprentice course of study for one year in practical subjects **** after attending a certain percentage of lectures arranged for imparting instruction during this apprentice course."¹

Committee.

It will be observed that those who have advocated a three year course of legal studies at the Universities seem to proceed on the basis that legal education for the University degree will be imparted in part-time institutions, as generally done at present, and that the courses at the Universities will include also the procedural and other cognate laws. However, as will appear later, what we envisage is a system of legal education in which instruction for a law degree will be imparted only in properly equipped and full-time law colleges. Further, what we contemplate is that teaching at the Universities should not include procedural, taxation, and local laws and other cognate subjects which may, with advantage, be left to be taught later to those who intend to take a professional career, in a course where teaching will be imparted by professional men. We are of the view that, on the basis of the recommendations which we propose to make, a two year course at the University would be adequate to give the students a sufficient and sound knowledge of the theory and principles of law. We have reached this conclusion because the full-time institutions will be able to give instruction to the students for a larger number of periods so as to cover more closely the different aspects of the subjects taught by them and at the same time the training imparted at these institutions will be more intensive than that now in vogue. Further, the vocational and procedural subjects being removed from the University courses, the scope of the subjects to be taught will be more wide.

Two years
full-time
study :
Exclusion
of pro-
cedural
subjects
from
University
course.

23. We have indicated our view that the teaching of law at the University should be confined to a scientific and academic study of the theory and principles of law, the more practical aspects being left to be dealt with later in the instruction to be imparted by the professional bodies. In

Universities
to teach
only
theory
and
principles.

¹Report, p. 23, para. 60.

this connection, we may refer to the observations of Mr. A. E. W. Hazel:

"The function of University law teachers is in the main to teach fully those subjects which, while valuable to the properly equipped lawyer are not definitely practical, and the main principles only of those subjects which are definitely practical. The detailed study of procedure, of the law of evidence, of conveyancing, and of specialized topics such as negotiable instruments or bankruptcy is not well suited to a University course."¹

Procedure to be taught during professional training.

24. When the fundamental principles of substantive law have been fully grasped, the student will more easily appreciate the procedural and practical aspects which are but the application of the general and fundamental principles. Moreover, the procedural and practical aspects of law would have more importance to the students aspiring for a professional career.

Subjects of the degree course.

25. Though a certain body of evidence was brought before us in regard to the actual subjects, which should form the subject to instruction in the University courses and the order in which they should be taught, we feel that it would be outside the scope of our inquiry to enter into a detailed examination of this subject. We shall content ourselves with making a few general observations.

The place of Roman Law.

26. One of the subjects, the utility of which in the University courses was much debated upon was, Roman Law. The subject is, at present, included in the legal curricula of most of the Universities in India either as a compulsory or as an optional subject. It appears that this subject is taught at the Universities in a large number of the European countries. The Radhakrishnan Commission has expressed the view that "Roman Law, basic to practically all modern systems and the most complete and systematic body of law ever developed, should have a place."² However, it appears that Roman Law is not taught in the Universities of the North American Continent. Even in the London University it is only an optional subject. There is also a very strong current of opinion both in this country and abroad favouring the exclusion of Roman Law as a subject from law courses. Professor W. I. Jennings of the London University and Mr. H. F. Jolowicz of the University of Oxford have expressed themselves in favour of omitting Roman Law from the syllabus of legal studies. Jolowicz remarks:

"The ultimate difficulty is that we all feel that for us Roman Law is part of the theoretical side of legal instruction, and yet, as our own law is not based on Roman principles, we cannot make the teaching of it

¹"Law Teaching and Law Practice", 47 Law Quarterly Review, p. 511.

²Report of the University Education Commission, p. 261.

part of an introductory course on law in general, as it is to a certain extent on the continent where the student, while learning Roman Law, is at the same time learning the elementary principles of his own law."¹

The reasoning of Mr. Jolowicz is, perhaps, applicable in a greater degree to us in India as the principles of law taught to our students are based less on Roman principles than on the English Common Law.

An Indian student's ignorance of Latin which is commonly known to the English or the Continental student, is another factor which makes the study of Roman Law inept at the Indian Universities. The Indian University Commission of 1902 referred to this factor as a reason for not recommending Roman Law as a subject of study at the Universities. On the whole, we agree with the view that Roman Law should not be taught as a compulsory subject but that, as recommended by the Bombay Legal Education Committee, it may be studied only in comparison with modern law so that the teacher, while dealing with any principles of modern law, may also refer to the relevant principles of Roman Law having a bearing on the subject. In the words of the late Sir Percey Winfield, the teaching of Roman Law "might be humanised more so as to show the connection between Roman Law and existing systems."²

27. The stage at which the subject of jurisprudence should be taught at the Universities has also been a matter of some controversy. The recent trend has been to teach it at a later stage so that the students who are imparted instruction in it may have some general idea as to laws and legal principles. Such a knowledge would be necessary to enable them to grasp the principles of jurisprudence. This accords with the view expressed by Maitland³ and our own inclination is in the same direction.

28. We have recommended a two year course in law at the Universities on the basis that instruction in law will be given at full-time institutions. We have already referred to the very haphazard and cursory methods of teaching which now prevail—methods which would be unthinkable for the efficient teaching of any subject and which are wholly unsuitable to the teaching of an intricate and complex subject like law. If, therefore, the teaching of law is to have any purpose, whether it be the imparting of a cultural and

Jurisprudence in the second year.

Law colleges to be full-time institutions.

¹Journal of the Society of Public Teachers of Law (1926) "The Teaching of Roman Law"—p. 22 ; cited in the Rajasthan Legal Education Committee Report, p. 51.

²Journal of the Society of Public Teachers of Law (1930) 'Reforms in the Teaching of Law' page 34 cited in the Bombay Legal Education Committee Report, p. 44.

³Collected Papers Vol. III, pp. 427 to 429.

liberal education or of instruction preparatory to undertaking a course of research or the training of young men in the profession of law, such teaching must be imparted only at full-time institutions and by thorough and modern methods. One has only to look at the institutions which teach law in countries like the United States, England and the Continent to realize how grievously backward we are in the matter of adequate and efficient institutions for legal teaching. As stated above, law is a social science closely related to other social sciences and, if the country is to hold its own and develop so as to fall into line with advanced nations, it is indispensable that our institutions and methods of legal teaching should be of the same nature as are to be found in the advanced nations of the West.

29. The question of the financial implications involved must naturally arise. It may be asked how resources are to be made available for establishing full-time institutions which will afford instruction to the larger number of law students in the various colleges spread over the country. We shall deal later with the question of the number of students seeking admission to the Law Colleges and the further question whether it is possible to limit or to divide them into categories and admit to the colleges only those who wish to study law seriously. What, however needs to be basically recognized is that teaching and development in law are as much a vital concern of the nation as its development in other educational, cultural and industrial fields. Large sums have been set apart—and rightly set apart—for the building of the Nation in various directions by our Five-Year Plans. There is no reason why adequate—even ample funds—should not be made available for placing the imparting of legal instruction on a sound and modern footing.

Pointing out that legal education in the United States was being "starved financially" Dean Griswold of the Harvard University Law School stated in 1951¹:—

"The School with which I am associated is perhaps as well financed as any law school in the country. Yet the Law School's portion of the total endowment of Harvard University is about 3 percent. And at the present time the Harvard Medical School spends seven times as much per student each year as the Harvard Law School".

30. We have not been able to obtain figures as to the relative expenditure on legal education and other education in our country. But the evidence before us shows that the authorities running a number of the law colleges make a profit out of these institutions. Clearly, therefore, the State and other authorities are not discharging their duty in a proper measure to legal education. It is, we consider,

¹"Educating Lawyers for a changing world" American Bar Association Journal, November, 1951, p. 305 at 303.

Financial
implications.

Financial
assistance
from the
States.

imperative in the interests of the nation that adequate finance should be made available for the establishment of these full-time institutions.

31. It has been and is the practice at most of the Universities to leave the teaching of law in the hands of junior practising lawyers who seek appointment as lecturers with a view to supplement their income at the Bar during the initial waiting period. It may be that practising lawyers may be useful and even essential as teachers at the stage of teaching the practical side of the law as part of a professional training. But it is obvious that for the teaching of law in its scientific, cultural and educational aspects we need full-time teachers, and, as far as possible, men of outstanding distinction in law and legal research. We already have in some of our law colleges very capable men who are devoting all their time to the task of teaching law and at the same time conducting legal research. We had the advantage of being assisted by some of those able teachers and scholars who gave evidence before us. Though, in the initial stages, we might find it difficult to staff all our full-time institutions with adequately equipped personnel, there is no reason why we should not have, in course of time, distinguished jurists and scholars like Lauterpacht, Jennings, or Griswold directing legal teaching in our Universities.

Full-time teachers necessary.

32. We might make a few observations on the methods of teaching in our law colleges. As in any other branch of learning, the accepted methods are delivery of lectures, the holding of group discussions, seminars and tutorials and in addition the case method, moot courts and mock trials are also recognized as valuable additional aids to law students aspiring for a professional career. The relative merits and advantages of these methods have been discussed in the Reports of the Bombay and Rajasthan Legal Education Committees and there is little that we can add to the recommendations made by them.

Methods of teaching.

33. The best and the most accepted method of teaching is by the delivery of formal lectures. The opinions of Professors Winfield, Holdsworth and Hazeltine cited in the two Reports are wholly in favour of the retention of this system under which the teacher stresses what, in his view, are the important aspects of a subject and calls the attention of the student to the latest developments in legislation and case law. Frequently, however, the method of delivery of lectures degenerates into a system of mere dictation of notes having reference to the probable questions in the examination. In the words of the Indian University Commission, 1902:—"the greatest evil from which the system of University education in India suffers is that teaching is subordinated to Examination and not Examination to teaching". This evil is not peculiar to us. It has been found to exist in various foreign Universities.

Lectures dominated by examinations.

The average law student merely crams the notes, the cheap guides and question and answer pamphlets prepared by anonymous or pseudonymous writers of dubious qualifications. Standard books by reputed authors are an unwanted luxury to the student.

Merits and demerits of lectures.

Preparation and handing out of synopsis.

The lecture method is, no doubt, very useful in the hands of the right type of teacher who can, by the force of the originality of his discourse of exposition, stimulate the students to think for themselves and to follow up the lectures by working on their own initiative. In order, however, that the student may derive the largest measure of benefit from the lectures, many experts recommend that the lecturer should give to the students, in advance a synopsis of his lecture so that the student may, in taking his own notes of the lecture, not miss any of the finer points made by the lecturer and may, without losing the thread of the discussion, later systematise his own reading with the help of the synopsis. At the same time, care has to be taken not to make the synopsis too exhaustive as such a synopsis would make it unnecessary for the student to take his own notes. The synopsis should contain only the essential parts of the lecture and the preparatory reading required for each lecture.

Seminars.

34. The lecture method can be supplemented by seminars or group discussions amongst a small group of students and teachers on some particular topic which is selected before-hand and on which the students are expected to have done some reading. The manner in which such a discussion ought to be conducted has been thus described by the Bombay Legal Education Committee:—

“The student is expected to have read about the subject and to have thought over it as deeply as he is capable of thinking. In the discussion of such a topic the teacher and the taught take part and this necessarily leads to a lively discussion and personal contact. The teacher is in a position, thus, to try to find the ways of thought of each individual and find out where he goes off the rails and put him back on his own rails. A good teacher knows that he must listen as well as talk, otherwise he is no good. The student must attend these discussion groups and make it a point to prepare for them by attempting to work out the problems for himself before the class. The value of the class is lost if the student sits back and lets the teacher or the other members of the class do the problems for him. It is necessary that the student should speak.”¹

Difficulties of holding seminars.

The success of this method will depend on various factors, not the least important of them being the size of the class, the number of teachers in relation to the number of students, the time available to the students and teachers.

¹Report of the Bombay Legal Education Committee, p. 57.

the number of lectures and the number of subjects to be taught. If such group discussions are to be held in each subject amongst a group of twenty to twenty-five students as recommended by the Bombay Legal Education Committee, it would be difficult to find the time to use this method with the large number of students in each class that are to be found in the existing law colleges. The utility of this method cannot, however, be in doubt and, wherever possible, it should be adopted as a supplement to the formal delivery of lectures.

35. The tutorial method is even more difficult to arrange with the large classes that we have in our existing colleges. Under this method, a small batch of five or six students is placed in charge of a single teacher who coaches them individually and the students are asked to write a given number of essays on different subjects. This method is commonly adopted in the English Universities and its merit lies in the individual attention which each student gets at the hands of the teacher. This system which would require one qualified tutor for every five or six students would be a great strain on the financial capacity of our law colleges. A feature of this system, namely, the writing of a given number of essays on certain subjects was, it appears from the evidence before us, tried at the Delhi University, students being required to submit a certain number of essays before they could take their examinations. It is not surprising it failed, divorced from the other necessary elements of the system and worked with a staff inadequate to the number of students. It is clear that this system cannot yield any useful results unless a proper ratio is maintained between the students and the number of teachers capable of stimulating a student's interest. The method could hardly receive a favourable response from classes largely composed of students who are employees giving the best of their time during the day to their legitimate work.

Tutorial method.

Obstacles to introduction.

36. Moot courts and mock trials have occasionally been held in certain institutions with a view to train the future lawyer. Such courts and trials are, in our view, intended to give the student a practical training for his professional career and an idea of the atmosphere of a law court. These methods are, therefore, more appropriate for adoption in the third year's professional course rather than during the academic training in law at the Universities.

Moot courts : limited value.

37. A method which has been adopted more or less universally in the American Law Schools is the case method originally introduced by Professor Langdell at the Harvard School of Law in 1871. In this system, a student is required to study the judgments of certain important cases delivered by the superior courts on a particular point. Such a study has the advantage of the student understanding the abstract principles of law against a background of actual facts. It further helps the student to apply the theories and

Case method.

principles which he has learnt to a given set of facts. It has the advantage of making the study of principles more interesting. The student also benefits from a study of the manner in which eminent judges have applied the principles to a given set of facts and have occasionally deduced some new principles from well accepted ones. After the cases have been studied, there is a discussion between the students and the teacher on the cases so studied and the principles laid down in them. Thus, there is an active interaction between the minds of the teacher and the taught in relation to the principles discussed in the cases. It is claimed that the case method of teaching tends to develop among the students the power of analysis and a sense of values and discrimination essential to the practical application of the law. The method is, it appears, being gradually adopted in the English Universities.

Useful.

The application of this method in our colleges is also fraught with difficulties. Its successful application postulates students who are able to devote ample time to their studies and their division into small groups who can meet and discuss their studies with competent teachers. There may also be other difficulties in the application of this method, such as, the want of the necessary case books, which are printed volumes containing a collection of leading cases on a particular subject, and the inapplicability of the method to the teaching of certain subjects. Notwithstanding these difficulties, we would recommend the adoption of this method in so far as it may be feasible and the difficulties in its application can be overcome.

Law examination proper standards necessary.

38. We have discussed above the nature of the institutions for imparting legal education, the need for an adequate and efficient teaching staff for them and the methods which may be adopted in imparting instruction. The training and the teaching imparted to the students will necessarily aim at enabling them to pass their examinations for the law degree. The nature of the examinations and the manner in which they are conducted must, therefore, largely and inevitably influence the teaching imparted to the students at these institutions. However well conducted and well staffed these institutions and whatever the methods of teaching adopted, if the examinations for the degree are conducted as at present, the efficiency of the teaching is bound to be completely undermined. As already stated, the examinations have to be designed to assist and subserve the purpose of a proper and scientific training. The examination papers have to be drawn so as to encourage and award recognition not to the student who memorizes a certain amount of information but the student who has devoted some thought to the subject and shows a capacity to apply legal principles to given facts. Unless, therefore, there is a radical change in the method of conducting examinations, the other measures taken to put legal education on a sound footing are bound to fail.

39. The evidence before us revealed the completely unsatisfactory nature of the examinations which, to use the words of a teacher of experience at one of the Universities, are "conducted on more or less stereotyped lines or mechanical basis". That inevitably leads, as pointed out by the Rajasthan Legal Education Committee, to a resort by the students not to the text books prescribed which lay down and discuss principles but to short notes and summaries and catechisms on various subjects. "Majority of students do not purchase text books that are prescribed or recommended by the University. They purchase cheap popular series notes and University examination papers and their answers. It shows that either the students cannot afford to purchase prescribed or recommended books or they consider purchasing of such books and (sic) mere waste of money when they can get the degree without the books. This has become a chronic habit. For the subject of contract 'Anson's Law of Contract' is recommended by the University for study. Not a single student purchased the book".¹ It is not for us to go into and prescribe adequate methods of testing intelligence in examinations and encouraging thought and application of principles to facts. There is no reason why work done by the students at the Universities during their course of studies in the shape of essays and studies written by them should not be valued and considered in judging their fitness for the award of the degree. It is, perhaps, trite to point out that the obvious method of testing intelligence in a student is not to ask him to summarize the law on a certain subject but to set to him decided or hypothetical cases which would lead him to exercise his mind and discuss the principles of law applicable to the given facts. It would be an advantage to permit him to do so with the assistance of statutes and other law books which may be made available to him at the examination.

Law examinations—
a test of
memory.

Proper
standards
and tests
necessary.

40. A graver condition of affairs at some of the Universities in regard to the conduct of examinations was also revealed to us in the course of the evidence—the existence of nepotism and a total lack of standards in the examiners. We were told by an eminent judge who was at one time connected with a law school, of an instance where an examiner at a university had given as many as seventy examinees first class marks, namely, sixty-seven per cent. and more of the total marks. The matter was looked into and the papers were again valued by a judge who reported that, in his opinion, only one out of the seventy examinees should have been given a first class. This judge stated that "there is a lot of corruption even in the University in the matter of marking of answer books". Evidence of a similar nature was given before us also by some principals and professors of law colleges. It does not need to be emphasized that examinations conducted in this manner must result in the complete destruction of the whole fabric of legal education. It is not for us to suggest

Nepotism in
examinations.

¹Report . 5, 69.

measures to remedy this deplorable state of affairs in certain Universities.

Combination of employment or post-graduate studies with legal education to stop.

41. The evidence shows that there has been in several places, a large influx of students into the law colleges and that in some places admission has to be refused. The scheme envisaged by us of adequately staffed full-time institutions where modern methods of teaching would be used will necessarily result in the refusal of admission to a considerable number of students who now seek to enter these colleges. Those in employment and those prosecuting other studies at the University or elsewhere will naturally be ineligible for admission to these full-time institutions.

Part-time diploma courses.

42. It should, in our view, be possible for the Universities to meet the demands of those who, while not wishing to enter the profession, seek part-time instruction in law, in order to better their prospects in their employment or for other purposes. Persons with a knowledge of law are preferred in many public and private employments and we feel that it is right that the Universities should devise methods for supplying these needs. This can be done by the Universities instituting diploma courses for which part-time instruction may be given in the mornings or evenings. These may be followed by a suitable examination, success in which would entitle the examinee to a diploma in law.

Admission to law colleges to be restricted by tests.

43. In spite of the institution of such part-time courses for this class of students, the students seeking admission to the full-time institutions may exceed the number which these institutions can admit if they are to be run in the efficient manner we have envisaged. It is obvious that the number of admissions will have to be limited by reference to various considerations such as the accommodation available for housing the classes, the numbers of the teaching staff and the nature of the library and other facilities available to each institution. The admission of a number larger than what an institution can efficiently teach will result in the deterioration in the quality of the instruction imparted in it. If the numbers seeking admission exceed the accommodation available in these institutions, we would unhesitatingly recommend the institution of a system of selecting the entrants by subjecting them to a test as in the engineering and medical colleges. The excess of students seeking admission over the accommodation available in our education institutions is a general problem facing the authorities in all the branches of education and is inseparably linked up with the larger question of finding avenues of employment for our young men. Attempts to solve this problem are being made by the Planning Commission and other Governmental bodies.

Legal research necessary.

44. Closely allied to the subject of University legal education is that of research in law. We have made a reference to this subject earlier. "The challenge which I think is being put to the law schools by our times is that, in addition to being effective teaching agencies, they should

become, on a scale far greater than has heretofore been the case, centres for the carrying on of research into the law and its development and its application to the solution of current problems encountered in the adjustment of human relations".¹ The law schools have been compared to scientific, technical and medical schools. In the technical schools, many of the personnel engage themselves in research activities side by side with teaching activities. The research so conducted contributes to the efficiency of teaching. The students themselves "can often engage directly in the research activities, especially the more advanced students, and can derive great educational benefits from such work".² It has been asked that if a medical school or a physics department cannot be considered efficient unless it carries on research activities, why should it be different with a law school? "Can it be said that the problem of the adjustment of human relations, with which the law deals, are any less important or any less difficult than those which are dealt with in the natural sciences?"³

45. The task of promoting research and combining it with teaching which has been advocated in the United States as being within the legitimate sphere of the law schools falls in our country, probably more appropriately, within the scope of the activities of the Universities. Our needs in this respect are greater than those of the United States or of England where research projects and programmes in law are already being carried on by a number of institutions and have resulted in valuable and learned publications on different legal subjects. Need in India.

The remedy lies in our Universities establishing institutions where legal research can be carried on. Such institutions have been established by some of the Universities for research on scientific and economic subjects and the establishment of similar institutions for legal research is essential. At the moment, hardly any research in law is being carried on at any of the Universities. Most of the Universities are merely holding examinations conferring higher degrees in law like the LL.M., or the M.L. Legal research, like research in other subjects, can be individual and collective and has to be directed by distinguished scholars in law in adequately equipped institutions. No doubt, the institution of some lectureships like the Tagore Law Lectures has resulted in stimulating legal thought and has resulted in the publication of notable treatises on certain legal subjects. But far more needs to be done in the direction of establishing centres at which legal research can be carried out, and of instituting fellowships and granting scholarships which can be taken advantage of by persons eager to undertake research in law. In the matter of higher

¹ "Educating lawyers for a changing world": Erwin N. Griswold American Bar Association Journal, Nov. 1951, p. 805 at 806.

² *Ibid* at 806.

³ *Ibid* at 806.

studies in law in the Universities, the emphasis again has unfortunately been in the direction of examinations rather than towards the stimulation of original thought, and the training of students in the writing of theses on legal subjects which, if they possess the necessary merit, would entitle them to a degree.

Financial aid necessary for research.

46. We are conscious that these research centres which we advocate must involve substantial financial obligations. We are also conscious that all our resources are being collected and put to the utmost strain in order that our nation-building activities may proceed in the true order of priority. Nevertheless, we are of the view that law as a subject of study and research is, in the interest of the nation, entitled to a reasonable share in the large outlays that are being made for its progress.

Professional training necessary for lawyers.

47. We have already recommended the division of legal training into two years' training in the principles and theory of the law to be imparted in full-time institutions and a year's practical training to be imparted under the direction of a body of professional men. At the end of the University training of two years, the law graduate will have to decide whether he wishes to embark on an academic career through research in law or a professional career through a practical training in law. As has been said by the Bombay Legal Education Committee "there cannot be water-tight compartments in the study of law and that the scientific study of law cannot be completely divorced from the professional, and that the work which the two bodies will be doing will be more or less complementary."²

After taking the degree.

The inter-relation of the two kinds of training—academic and professional—was explained and emphasized by the Legal Education Committee in England presided over by Lord Atkin—"It is inevitable that instruction in law, whether given for University course or for professional qualification, must, to some extent, be the same; just as the test by examination of proficiency in law will be to some extent the same. Your committee fully accept the principle that it is for the professional bodies alone to decide what degree of professional knowledge shall qualify for admission to the profession and to determine the tests by which that proficiency shall be ascertained. It is inherent in the differentiation of function of University and professional body that the teaching and examination in such a subject as law should to some extent differ. The professional body will necessarily emphasise the practical side of the teaching and test proficiency from that point of view. The application of principles to concrete cases, the multitudinous provisions of statute law must form a considerable part of the body of knowledge required from a student before he is "let loose" upon a world of laymen. The University is more concerned with the teaching of

²Report, p. 38, para. 75.

law as part of the universities as of knowledge; it will necessarily emphasise principles and, as far as it can, will develop the scientific side of its subject. Nevertheless it would be a mistake to exaggerate the distinction between academic and professional teaching of law."¹

A practical training is as essential to the making of a professional lawyer as a thorough academic training. The matter has been picturesquely put in the following words by a writer: "All the theory in the world ill equips the lawyer who has all the legal lore at his fingertips, but doesn't know how to draw a summons, a will, a deed or a bill of sale. Law schools furnish their graduates with new, shiny, potent tools. Unfortunately, the average graduate has as little knowledge of how to use them as a two year old child has of how to use a blow torch."² The position of a law graduate freshly emerging from a law school has been forcibly but justly described as follows:³

"The graduate has studied real property but probably has never examined abstract of title—He passed contracts, but he has never written one—He may have led his class in wills, yet he has never prepared one".

Perhaps, Chief Justice Vanderbilt had graduates of this kind in mind when he observed that law schools should be concerned not only with the principles of law "but with the know-how of putting the principles to work. The law schools of the country cannot continue to lag behind the engineering and scientific schools with their laboratory work or the medical colleges with their clinics. It is not right that young lawyers should learn the skills required in the profession at the expense of their clients."⁴

48. We have to consider the nature of the bodies to which the task of imparting this practical instruction and holding the necessary tests at the end of it should be entrusted. The legal profession is vitally interested in this task because it will be the examination at the end of this practical training which will regulate the entrance to the profession. A body consisting of professional men would be the most competent to lay down from time to time the essential requirements of this practical training and the nature of the test that should follow it.

Practical training by professional bodies.

In England, the practical training is imparted and the professional examination regulated by a body called the

¹Report, p. 6 cited in the Report of the Bombay Legal Education Committee pp. 38 and 39.

²"Inadequate law school training", American Bar Association Journal March 1951, p. 203 at p. 204.

³Performance courses in the study of law, American Bar Association Journal, January 1950, p. 17.

⁴Cited by the American Bar Association Journal, Nov. 1952, in the article captioned "Is legal education doing its job", p. 907 at p. 908.

Council of Legal Education which consists exclusively of representatives of the Inns of Court which in turn are bodies of professional men. As already noticed, in America, practical training is in some of the States given at the law schools at the same time as academic training. However, in a number of States, the profession has a voice in the regulation of training for admission to the Bar inasmuch as only persons trained at schools of law approved by the American Bar Association are admitted to the Bar. The Bar Association lays down certain minimum standards to be attained by the law schools for recognition by the association which maintains and publishes a list of approved and unapproved law schools. Before according its approval to an institution, the association inspects the schools.

Apprentice courses, Bar Council lectures & examinations.

49. Since the constitution of the Bar Councils under the Bar Councils Act of 1926, Bar Councils in several States have been holding examinations in procedural matters which are a condition for admission to the Bar in exercise of the powers conferred on them by rules framed under section 9 of the Act. In some of the States like Madras, in addition to holding examinations in procedural and other matters, the Bar Council has instituted courses of lectures which the entrants to the examination are bound to attend. A certain course of apprenticeship has also been made a condition precedent, except in some special cases, to being allowed to appear at the Bar Council examination in Madras.

All India Bar Committee's recommendations.

50. The question of imparting a practical training before admission to the Bar was considered by the All-India Bar Committee and they expressed the view that the State Bar Councils should arrange for lectures for the practical training which they call "the apprentice course" and for holding an examination at the end of that course¹. Having regard to the facts and considerations mentioned above, we are of the view that the task of imparting this practical instruction and holding an examination at the end of it should be entrusted to our Bar Councils which are statutorily recognised bodies consisting mostly of professional men.

Council of legal education.

51. As far back as 1936, Dr. B. R. Ambedkar suggested the establishment of a Council of Legal Education to supervise legal education and to conduct examinations in law². The need for such a Council has since been given expression to by a number of bodies and eminent persons. The Bombay Legal Education Committee proposed that such a Council should be established. One of the reasons which induced the Committee to propose the establishment of such a Council was the "feeling in the country that legal education ought to be standardised in all the Provinces with

Their function.

¹Report, p. 23, para. 60.

²Law College Magazine (Bombay) : 1936 p. 15.

the ultimate object of creating unified Bar." The functions of the Council which they envisaged were:

"(1) To advise the Universities in the matter of law courses and text books.

(2) To bring about a co-ordination into the work of instruction and examinations carried on by different professional bodies and the Universities so that overlapping may be prevented.

(3) To hold Diploma Examinations and confer Diplomas in Law, and

(4) Generally to supervise legal education in the Province so that a uniformity of standard may be maintained."²

They made it clear, however, that it was not their desire to take away the autonomy of the Universities in the matter of legal education. The Council of Legal Education was merely to prescribe the minimum legal education required for admission to the Bar. The Universities were at liberty to add to these minimum requirements. The Council of Legal Education was to function at the Provincial level and was to be presided over by the Chief Justice of the Province and was to have as its members, judges, the Advocate-General, the Government Pleader, the President of the Incorporated Law Society, representatives of the University and nominated representatives of the Bar, the law teachers and the Bar Council.

A similar recommendation for the establishment of a Council of Legal Education was made by the Rajasthan Legal Education Committee.³ Views in favour.

52. If we are not to interfere with the autonomy of the Universities in the matter of legal education and if the professional training and the examination for admission to the Bar are to be under the control of the Bar Council, the question arises whether it is necessary to bring into existence a new supervisory body of the nature recommended by these Committees. The main object which appears to have induced the acceptance of this suggestion by these Committees, seems to have been the bringing about of a uniform standard of legal education for admission to the Bar with a view to the formation of a unified Indian Bar. It appears to us unnecessary to establish a new body of this character for achieving this purpose. Indeed, it is a matter of doubt whether the establishment of such separate Councils of Legal Education for each State would at all achieve this purpose. Establishment unnecessary.

¹Report, p. 47, para. 74.

²Report, p. 48, para. 94.

³Report, pp. 74 to 77.

53. One of the main subjects to which the All-India Bar Committee of 1953 gave its attention was the formation of a unified Indian Bar. The Committee had made detailed and practical recommendations which envisaged a common roll of advocates for the whole country with liberty to practise in all courts in the country. It considered the qualifications for admission to the common roll of advocates and recognised the need for co-ordination between the professional bodies which would impart practical instruction in law, hold examinations in it and thus regulate admission to the Bar and the Universities which would deal with the academic side of legal education. For achieving this end, it suggested that the All-India Bar Council which was to consist of representatives of the various State Bar Councils should have a Legal Education Committee of twelve persons. The Committee was to consist of two judges, five persons to be elected by the All-India Bar Council and five other persons from the Universities co-opted by these seven members¹.

All India Bar Council to lay down standards.

We understand that legislation on the lines suggested by the All-India Bar Committee is on the anvil. It appears to us that the object of achieving a uniform standard of legal education for admission to the Bar will be equally, if not better, served by this recommendation of the All-India Bar Committee. The unnecessary multiplication of statutory and other bodies is a feature common in our country and needs to be avoided.

Power to All-India Bar Council to require minimum standards.

54. We have already seen how in England professional legal education and the admission to the profession are controlled by a body consisting exclusively of professional men. There is no reason why a similar control and regulation should not be vested in the profession in India. Co-ordination between the bodies regulating professional training and the Universities with a view to ensuring minimum standards can be achieved in the manner indicated above. In our view, the Legal Education Committee of the All-India Bar Council may be empowered to keep itself in touch with the standards of legal education imparted at the various Universities by visits and inspection as in the case of the medical and dental professions or as is done by the American Bar Association in the case of the American Law Schools. If the Council or its Committee is of the view that the standards prescribed by a particular University in legal education are not adequate or that institutions established by it or affiliated to it for imparting legal education are not well equipped or properly run, it may decide to refuse admission of the graduates of that University to the professional examination till the University has taken steps to reach the minimum standards.

Inspection and recognition of law schools.

Course of professional training.

55. It is necessary to add a few words on the subjects of study and the manner of instruction in the professional

¹Report, pp. 22 and 40, paragraphs 59 and 92.

course which the law graduate will have to take for admission to the Bar. The procedural laws, the laws of evidence and limitation, company law, insolvency law, the court Fees and Suits Valuation Acts and certain important local laws must obviously form part of the syllabus. It is further essential that law graduates should be made to appreciate either by lectures or through text books the responsibilities and ethics of the profession for which they are qualifying themselves. The absence of such instruction is, in a considerable measure, responsible for many entrants to the profession looking upon it as a mere trade and not as a profession with traditions and a code of conduct of its own. The element, however, of the largest single importance in the practical course is a knowledge of the art of drafting and conveyancing and of the practical working of the law courts.

56. The task of imparting instruction in the procedural and other laws can be discharged by the Bar Councils by institution of a course of morning or evening lectures given at some suitable college or institution. The lecturers will have to be selected, no doubt, from legal practitioners. But care will have to be taken to select persons who would be able to devote time and attention not only to the preparation of their lectures but to the questions and difficulties which may be put to them by the pupils. We understand that some of the Bar Councils have already taken steps to impart instruction by institution of a series of lectures in the manner indicated above. Attendance at a specified number of these lectures will have to be made compulsory.

Teaching and examination by Bar Councils.

57. The greater difficulty lies in arranging simultaneously with the lectures a suitable course of practical training for the students. Two methods have been suggested. The first is apprenticeship with a lawyer approved by the Bar Council. The second method is the requirement of attendance for a certain number of days in the High Court and other principal courts. We are of the view that, for obtaining the requisite practical knowledge, a combination of both these methods is necessary. We are conscious that the apprentice system has not worked satisfactorily in many places and that very frequently the senior lawyers (to whom the pupil is apprenticed) takes very little interest in the apprentice. Not infrequently the blame also lies on the apprentice who is interested merely in taking a certificate from the senior lawyer at the end of his apprenticeship.

Practical

Reading in chambers and attendance in courts.

58. Whatever the difficulties in working this system, we feel that the young apprentice can learn the work of drafting pleadings and documents and have an idea of professional work generally, only by attendance in an experienced lawyer's chamber for a certain period of time. A limit will have to be assigned to the number of apprentices which the senior lawyer can, at a time, take as apprentices; and

Nature of the apprentice course.

in order that the cost of reading in a chamber may not be prohibitive, the Bar Councils will have to prescribe a maximum fee to be paid by the pupil to the lawyer. The apprentice who will be watching and keeping himself informed of the work of his senior will be present to watch his senior conducting cases and, if permitted, to assist him. In this manner, he will gather experience of the working of the law courts as well. The apprentice may be required to keep a diary of his daily work and attendance in courts and this diary may, from time to time, be signed by the senior lawyer. At the end of the term of apprenticeship there should be a certificate by the senior lawyer of the apprentice having read in his chambers for the prescribed period which, in our opinion, should not be less than one year.

Arrangement of lectures.

59. The lectures organized by the Bar Council will naturally have to be held at the headquarters of the Bar Council. The pupil may very often belong to the mofussil in which case he will have to arrange to be in the principal town for the Bar Council lectures. He may, however, be apprentice to a senior lawyer on the approved list practising in the districts. We have been informed that a system combining lectures and apprenticeship is being worked in Madras by the Bar Council and that it causes no hardship to students from the mofussil. A note giving particulars of the working of the system in Madras is annexed at the end of the chapter.

Stiff professional examinations and high standards.

60. The year's professional course should be followed by a stiff test. Where examinations are at present being held by the Bar Council, the tendency is to make the test almost a nominal one. The pupils pass it with very little preparation and the percentage of failures is very small. In our view, the examination at the end of the professional training should be a very strict test. Whereas very stiff tests are applied for admission to other professions like engineering and medicine, it has been customary to regard the legal profession as one which needs very little training. Not an uncommon notion even among legal practitioners is that the lawyer will have plenty of opportunity of practical training after he has started practice. We have already dealt fully with this aspect of the matter and pointed out how these views are erroneous and unfounded. It should be the duty of the professional bodies that conduct these courses of instruction and examinations to see that the young man admitted to the profession is well-equipped and fully fit to do justice to the cases of his clients.

Summary of recommendations.

61. Our conclusions on Legal Education may be summarised as follows:—

(1) The legal education imparted in our country so far has been extremely defective and is not calculated to produce either jurists or competent legal practitioners.

(2) In recent years, there has been considerable deterioration in the standards of legal education.

(3) Only graduates should be allowed to take the degree course in law.

(4) The University course in law should extend for a period of two years and should be confined to the teaching of the theory and principles of the law. Procedural, taxation and other laws of a practical character should not be included in the University course.

(5) Roman Law should not be taught as a compulsory subject in the Universities.

(6) It would be advisable if jurisprudence is taught in the second year after the student has acquired some knowledge of law and legal principles.

(7) Law teaching should be imparted only in full-time institutions.

(8) The law colleges should be manned by full-time teachers.

(9) Persons who are in employment and who are pursuing any other course of study should not be permitted to join the law colleges.

(10) The principal method of teaching law is and must continue to be lectures.

(11) Every lecturer should prepare a synopsis or outline of his lecture and distribute it to the students in advance of the lecture.

(12) Lectures should be supplemented by seminars or group discussions.

(13) An effort should be made to introduce the tutorial methods in our law colleges.

(14) The case method of teaching law is very valuable and should be adopted in the case of certain subjects.

(15) The utility of moot courts and mock trials is strictly limited and they may more properly find a place in the third year professional course.

(16) The existing standards of law examinations are on the whole deplorably low.

(17) There is evidence to support the suspicion that there is nepotism in the conduct of some law examinations.

(18) For the benefit of persons in employment who wish to acquire a knowledge of law, diploma course may be conducted but diploma holders should not be eligible to enter the legal profession.

(19) Entry to the law colleges should be restricted by a system of strict tests so that only deserving candidates are admitted. This restriction of admission is necessary so that proper standards of teaching may be maintained.

(20) Law colleges in this country should be encouraged to undertake research in law.

(21) It is necessary that financial assistance should be provided by the Government to enable law colleges to attain and maintain proper standards and for carrying out legal research.

(22) A person who has only a degree in law should not be permitted to practise the profession.

(23) A person who after obtaining his degree wishes to enter the profession should pursue a professional course conducted by the Bar Council in procedural and practical subjects.

(24) It is unnecessary to establish a Council of Legal Education as recommended by certain Committees.

(25) The All-India Bar Council should be empowered to ascertain whether law colleges maintain the requisite minimum standards and should be empowered to refuse recognition, for the purpose of entry into the profession, of degrees conferred by institutions which do not conform to the minimum standards.

(26) Professional courses conducted by the Bar Council should comprise the procedural laws and other subjects mentioned in paragraph 53 as well as a course in professional ethics and drafting.

(27) The Bar Councils should arrange lectures for the benefit of apprentices undergoing this professional course.

(28) Attendance by the apprentice of a certain minimum number of lectures should be compulsory.

(29) Those who wish to enter the legal profession should be required to work in the chambers of an experienced lawyer and maintain diaries showing the work done by them.

(30) The apprentice course should be of one year's duration.

(31) The apprentices should be subjected to a very stiff practical test.

THE TRAINING OF LAW APPRENTICES IN THE STATE OF MADRAS¹

Under the Rules of the Madras Bar Council, with certain exceptions, no person shall be entitled to be enrolled as an advocate of the Madras High Court unless he has studied for a period of one year as a pupil in the chambers of an advocate of not less than ten years' standing actually practising in the High Court or a district court and passed an examination conducted by it. For some time, the rules of the Bar Council permitted advocates of five years' standing to take pupils but as the changed position did not prove satisfactory the rule was again amended restoring the original position.

The rules make no provision for the payment of any premium to the master and it is understood that generally advocates do not charge any premium from their pupils though some years back, a few advocates used to insist on its payment. No advocate is permitted without the permission of the Bar Council to take more than two pupils to read in his chambers at one and the same time.

It is required by the rules that a pupil shall reside in the town where the office of his master is situate, study the cases of his master in his chambers, and attend the court where the master generally practises. Where the work of his master is of a specialised type, the pupil is permitted with the permission of the master to attend the chamber of any other advocate for a limited period of time. The pupil is required to attend the office of his master regularly throughout the period of his training, but is allowed to absent himself with the master's permission for a period of thirty days in the year excluding vacations.

To ensure that the apprentices take their training seriously, the Council insists on each apprentice maintaining two diaries—the chamber diary and the court diary. The chamber diary is required to contain details of the work done by him such as complaints, affidavits and petitions etc. drafted, case papers studied and authorities looked up. Similarly, the court diary has to give details of the date, the number of the case attended, the argument, the result, whether the case is that of the master, whether the papers were previously studied by the apprentice, the facts of the case, questions of law argued and the decisions cited etc.

¹We are indebted to the Chairman and the Secretary of the Madras Bar Council for much of the information contained in this Note.

An apprentice has to submit his diaries to his master for scrutiny and obtain his signatures therein every thirty days. The fact of such submission and signature has also to be intimated to the Bar Council by the apprentice in a prescribed form countersigned by the master. A further check is provided by the requirement that apprentices in the City of Madras have to submit their diaries for the scrutiny of the Secretary, Bar Council, once in two or three months. Apprentices in mofussil are also required to do it when they come to the city to attend their lectures.

The diaries are again scrutinised by the Secretary at the time of the enrolment application.

In addition to insisting on the maintenance of diaries, the Council arranges lectures on various professional subjects attendance at which is compulsory. Originally, lectures were arranged only on the Procedural Codes but now they cover a large number of subjects. Details of the subjects on which lectures are given and the number of lectures are set out below:—

Civil Procedure	8 lectures
Criminal Procedure	8 lectures
Limitation	4 lectures
Company Law	4 lectures
Professional Conduct	5 lectures
Insolvency	4 lectures

additional lectures in 1958 on motor transport, rent control and labour laws.

The lectures are delivered by members of the Bar and excepting senior members other lectures are remunerated. At one time, special lectures on professional conduct by a senior member of the Bar or a retired High Court Judge were arranged on a payment of Rs. 500; Since 1951, however, the subject of professional conduct has been split into different heads and senior lawyers or retired judges deliver lectures on different heads without charging any remuneration.

The lectures which are generally arranged in the month of August-September are delivered in the premises of the Madras Law College and are spread over a period of 30 to 40 days and attendance at them is compulsory. The apprentices are required to attend not less than fifty per cent of the lectures on each subject.

The Bar Council holds two examinations a year in March and November. The November examination is the principal one which is taken by apprentices who have completed their year's reading in chambers. The March examination is more in the nature of a supplementary one. The Council charges an examination fee of Rs. 25.

Every apprentice has to take four papers—two on Civil Procedure and two on Criminal Procedure. The subjects prescribed for these two examinations are set out below:—

PART I

(1) Code of Civil Procedure with decided cases thereon.

(2) Rules relating to procedure issued by the High Court under the Code of Civil Procedure and rules connected with procedure in civil courts and in the High Court, appellate side, issued under other enactments.

(3) Rules of the original side of the High Court of Judicature at Madras.

PART II

(4) Criminal Procedure Code with decided cases thereon.

(5) Criminal Rules of Practice.

The first paper in each subject carries seventy marks and has to be answered in two hours. The second which can be answered with books has a maximum of thirty marks and is of a strictly practical character. The time allowed is one hour.

A candidate is required to obtain at least forty per cent of the marks for passing the examination and only those who are successful are entitled to be enrolled as advocates.

The percentage of passes in these examinations between the years 1950 and 1958 varies from 66.09 to 86 in each part.

The Bar Council also awards prizes to the most meritorious apprentice.

ANNEXURE

Statistics of Law Colleges etc. (1955-56).

UNIVERSITY	Number of Law Departments	Number of Law Colleges*	Number of students in Law Departments		Number of students in Law Colleges		Number of passes in Law Examination		Minimum Qualifications for admission to Law Department/colleges	Duration of the Course
			B.L./LL.B.	M.L./LL.M.	B.L./LL.B.	M.L./LL.M.	B.L./LL.B.	M.L./LL.M.		
I	2	3	4	5	6	7	8	9	10	11
Agra . . . . .	..	..	..	..	2,784	534	944	..	Degree	2 years
Aligarh	1	..	381	..	..	..	104*	..	Degree	2 years
Allahabad	1	..	607	10	..	..	185	..	Degree	2 years
Andhra . . . . .	..	1	..	..	517	2	171	..	Degree/Inter	2 years/3 years
Banaras . . . . .	..	1	..	..	386	2	187	..	Degree	2 years
Bihar . . . . .	..	2	..	..	361	..	127‡	..	Degree	2 years
Bombay . . . . .	..	..	..	..	2,467	120	587	4	Intermediate/ Degree	3 years/2 years
Calcutta . . . . .	..	2	..	..	2,249	..	327	..	Degree	3 years
Delhi	1	..	689	9	..	..	222	6	Degree	2 years
Gauhati . . . . .	..	1	..	..	283	..	23	..	Degree	3 years
Gujarat . . . . .	..	3	..	..	1,028	38	292	1	Intermediate/ Degree	3 years/2 years

Karnatak	2	275	19	122	1	Intermediate/ Degree	3 years/2 years
Lucknow	I	..	915	25	345	5	Degree	2 years
Madras†	I	I	..	22	1,254	13	556	3	Degree	2 years	
Mysore	2	446	..	105	..	Degree	2 years
Nagpur	..	3(A)	..	..	786 (A)	12	171	..	Degree	2 years
Osmania	..	I	..	..	1,024	23	97	7	Degree	2 years
Punjab	..	I	..	..	567	..	163 (A)	..	Degree	3 years
Patna	..	I	..	..	714	..	260	..	Degree	2 years
Poona	..	2	..	..	264	28	76	4	Inter/Degree	3 years /2 year
Rajputana	..	5	..	..	894	..	268	..	Degree	2 years
Saugar	I	I	35	25	287	65	98	..	Degree	2 years	
Travancore	..	2	..	..	538	..	111	..	Degree	2 years
Utkal	I	..	239	..	..	..	..	49	Degree	2 years
Gorakhpur	..	2‡	..	..	166	..	33	..	Degree	2 years
TOTAL	7	36	2866	191	17293	856	5623	31			

*Excludes Law Classes attached to Arts & Science Colleges.

†Includes enrolment in Law Classes attached to Arts & Science Colleges.

‡Figures relate to 1954-55.

§There is no Law College. But Law Classes are held in two of the Colleges affiliated to the University.

NOTE—The figures have been collected from the Ministry of Education except those shown against Calcutta, Rajputana and Gorakhpur Universities and those marked (A). They have been collected from the Registrars of the respective Universities.

Importance
of the Bar.

1. A well-organized system of judicial administration postulates a properly equipped and efficient Bar. It is not surprising therefore that our terms of reference mention among other subjects the level of the Bar.

Fall in
Standards.

2. The evidence given before us reveals a general consensus that there is a fall in efficiency and standards at the Bar. The recent recruit to the profession is said to be inferior in his legal equipment, less pains-taking and in a hurry to find work.

Poor calibre
of law stu-
dents.

3. This decline is undoubtedly due in part to our Law Schools attracting by and large students of mediocre ability and indifferent merit. Several heads of law teaching institutions have told us that the majority of students are those who have barely succeeded in qualifying for the B.A. pass degree and walk into a law course with no fixed intention of entering the profession but merely because they have not been able to get, or are awaiting the chance of getting, employment. Entrance to other professional courses like engineering or medicine is subject to stiff tests and difficult to obtain. The portals of our law teaching institutions—manned by part time lecturers—open ever wider and are accessible to any graduate.

Legal pro-
fession no
longer at-
tractive.

4. The legal profession at one time, drew the best of talent; for, it offered glittering prizes and a career of independence with opportunities for distinguished public service. Success in it was worth while, even though it meant a long period of waiting and strenuous work. The prizes are no longer so attractive, the lawyer has lost his leadership in public life and above all the profession is so overcrowded that the young man entering it has to face years of struggle with no certainty of eventual success. There is overwhelming evidence that the vast majority of the junior Bar are hardly able to make a living.

A retired Chief Justice of India pointed out that the number of lawyers in the High Court of Madras and their annual increase was such that no Court could support it.¹ No doubt we are living under a Constitution which guarantees freedom to practise any profession but, as was put to us by a leading lawyer, the time has arrived when "we must make up our minds whether we think that democracy means that anybody should become a lawyer and

¹A. I. R. Journal 1955 p. 25 at p. 26.

(The figure of 725 given in the journal of the number of advocates on the rolls of the Madras High Court is a misprint for 7325).

engage in any cut-throat competition or whether it means that anyone who has a talent can join in any honourable profession”.

5. Owing to difficult economic conditions, the brilliant young graduate is no longer able to face a long waiting period, though it may end in a very remunerative career and prefers openings which promise an immediate and assured income. The expanding activities of the Government require an ever-increasing number of trained personnel in the All-India and State Services. Our growing industrial, scientific and engineering establishments rightly draw away our brilliant young men. There is also an increasing demand for the educated young man with a personality in numerous business concerns. No wonder therefore that our more talented graduates seek these avenues of employment in preference to a professional career in law.

Diversio n
of talent to
other fields.

6. As we have noticed in the chapter on Legal Education, even such recruits of indifferent ability as we are able to draw are given a training which is deplorably deficient and can hardly lay a claim to be called a training in law.

Indifferen-
legal train-
ing in
colleges.

Formerly, it was usual for a junior entering the profession to work in the chambers of a senior where he received a training, assisting his senior in various kinds of work, watching him conduct cases in the preparation of which he has assisted, and occasionally getting opportunities of making a bow to the Court. With the very large increase in the number of juniors, it is difficult for many of them to obtain admission to the chambers of a senior. Nor does the present day junior, pressed by his needs to make an immediate living, show much inclination to plod this weary way of equipping himself for the profession. We have been told by a number of senior lawyers that the majority of juniors who do read in their chambers display little interest in the seniors' work and do not show the zeal and industry which alone can make them effective juniors. On the other hand, there have been complaints by sections of the junior Bar in many places about the total lack of interest of the senior in the junior reading with him and a failure to see that the junior is paid a small fee even in cases where the junior has done work in Court for the senior. There is, it is said, a disposition in the senior to accept even small work which should go to a junior. It would thus appear that this most useful system—devilling with seniors—which gave rich training and experience and real opportunities to the juniors—has ceased to function in many parts of the country.

And in
chambers.

The over-crowding in the profession and the economic conditions of the new entrants to it have accentuated the evils of toutism and other undesirable and unprofessional practices which were largely prevalent even in 1925 when

the Rankin Committee made its report. Standards of professional honour and integrity have tended to be increasingly forgotten in the intense struggle for the earning of a bare living.

Measures
for arrest-
ing fall in
standards.

7. These, broadly speaking, are the factors which have resulted in the decline of efficiency and fall of standards at the Bar. Though it is not practicable to devise measures which would draw to the legal profession the flower of our youth as in former days, it is possible to bring to it, aspirants with a fair degree of intelligence and capacity by turning our law schools into real teaching institutions, subjecting the entrant to a proper practical training and a really stiff test, so as to ensure the recruitment of really trained and fit personnel and reducing the over-crowding of the profession by taking measures which would leave for the juniors certain classes of work. We have dealt, in detail, with the steps which need to be taken to bring about these results elsewhere in our report. Their importance cannot be exaggerated; for, it cannot be overlooked that it is the Bar which forms the main recruiting ground for the judiciary.

History of
the Bar in
India.

8. A detailed history of the legal profession in India has been set out by the All India Bar Committee in its report¹ and we do not propose to go into it here.

The demand
for an All-
India Bar.
The All
India Bar
Committee.
Failure to
implement
recommendations.

9. That Committee was appointed in response to a persistent and wide-spread demand for an all-India Bar. As far back as the 12th of April 1951, a comprehensive Bill was introduced in Parliament by a private member to implement the demand. As pointed out by the Committee, the demand for a unified all-India Bar which arose initially as a protest against the monopoly of the British barristers on the Original Sides of Calcutta and Bombay High Courts and the invidious distinctions between barristers and non-barristers, received a new orientation with the advent of independence and became "a claim for the fulfilment of a cherished ideal",² viz., an autonomous and unified all-India Bar. The Committee went carefully into the whole question and made detailed recommendations for the unification of the Bar providing for a common roll of advocates who would be entitled to practise in all courts in the country. It is a matter for regret that these proposals which were made as far back as March 1953 and which, in the words of the Committee, sprang from "The sense of unity fondly fostered amongst the members of the legal fraternity in India * * * * * brought about by our newly won independence and the establishment of the Supreme Court of India"² should not yet have been given legislative effect.

10. Notwithstanding the lapse of ten years since independence, the Bar still remains divided into different grades of practitioners and even practitioners of the lowest grade,

¹Report pp. 4—13, paras. 13—41.

²Report 20, para. 56.

namely mukhtars, are still being recruited in some of the States. Indeed, the number of mukhtars in the State of West Bengal appears to have increased since the report of the Committee, notwithstanding its recommendation that recruitment of mukhtars should cease. We annex a Table at the end of the chapter showing Statewise the existing classes of legal practitioners and their number.

11. The Committee recognized that the task of preparation of a common roll of advocates, who would be members of the unified all-India Bar, would be difficult but was not an impossible one. Its principal recommendations in that behalf were:

Recommendations of the Committee.

(i) Each State Council should maintain a register of all existing advocates entitled to practise in their respective High Courts.

(ii) All vakils and pleaders, entitled to practise in the district and other subordinate courts, who are law graduates, should be entitled to be included in the roll of advocates maintained by the State Bar Council on payment of certain fees.

(iii) Vakils and pleaders, who are not law graduates but who, under the existing rules, are entitled to be enrolled as advocates, should also be entitled to be placed on that register.

(iv) The State Bar Councils should then send copies of such registers to the All India Bar Council who are to compile a common roll of advocates in the order of seniority according to the date of the original enrolment of the advocates in their respective High Courts or the Supreme Court if they are not enrolled in any High Court.

(v) New entrants possessing the required minimum qualifications may also apply to a State Bar Council for enrolment and their names should be forwarded by the State Bar Council to the All India Bar Council for being entered on the common roll.

The Committee also recommended that there should be no further recruitment of non-graduate pleaders or mukhtars.

We entirely endorse these recommendations.

12. Under section 4 of the Legal Practitioners Act, 1879 an advocate or vakil on the roll of any High Court is entitled to practise in his own High Court and in all subordinate Courts in the territories to which the Act extends and also with the leave of any other High Court, in that High Court. We entirely agree with the Bar Committee that the essence of an all-India Bar is the capacity or the right of its members to practise in all the courts in the country from the highest to the lowest and that the requirement of leave for practising in any other High Court under

Right of Advocate on common roll to practise in all courts.

section 4 of the Act should not exist. An advocate, therefore, on the common roll of advocates to be maintained by the all-India Bar Council should be entitled to practise in all the Courts in the territory of India including the Supreme Court.

No restrictions on right to practise in the Supreme Court.

13. A majority of the Committee were of the opinion that the insistence on a certain number of years' practice in a High Court as a condition of eligibility for enrolment as an advocate of the Supreme Court had not yielded satisfactory results and that it was best to let an advocate have the freedom to practise in any court including the Supreme Court irrespective of his standing at the Bar. We entirely agree with this view. Indeed, the imposition of such a requirement of eligibility is inconsistent with the right which would arise in an advocate by reason of his being entered on the common roll of advocates to practise in all Courts in the country including the highest.

Existence of separate Bar associations inconsistent with a unified Bar.

14. We would like, at this stage, to make a reference to a practice which we consider to be somewhat inconsistent with the idea of an integrated Bar with a common roll for the whole country. We found in some places like Calcutta, Allahabad and Patna, the Bar practising in the High Court divided into different groups, each with its own separate association and exclusive rooms in the High Court buildings. In Calcutta, this division of the Bar into groups is to be found even in the Chief Presidency Magistrate's Court and the Small Causes Court. There appears to be some antagonism between these groups in Calcutta, so that members of the association of one group are precluded from being members of the association formed by the other group. We were told that members of one association may not even enter the rooms of the other association.

separate associations.

15. This division into groups seems to owe its origin to the division between advocates and vakils which prevailed in the Calcutta and some other Bars. The advocates who mainly practised on the Original Side were members of the English Bar—both Englishmen and Indians and they formed themselves into Bar Associations or Bar Library Clubs and segregated themselves from the vakils who had their own associations. These associations were probably started by members of the English Bar who, for a considerable number of years, had made the Original Sides of the High Courts their exclusive preserve. Indeed, it was for a considerable time believed by the litigating public that the barristers who formed these associations were a type of lawyers superior to the vakils who had Indian qualifications.

The myth of the superiority of men called to the Bar in England disappeared years ago; indeed, in some parts of the country like Madras and Bombay, the roles were

reversed. The litigating public came to believe that the advocates who had qualified for practice on the Original Side in India were far more capable than members of the Bar who had qualified in England.

16. We are living under a Constitution which enjoins equality before the law. The Bar throughout, it is hoped, is about to attain its ideal of unification. The profession, when united, can rise to even greater heights of distinction and service. It is certainly anomalous that in these circumstances the Bar should still remain split into different groups. Bar Associations should, in our view, be constituted only for each Court or groups of Courts and all members of the Bar practising in a Court should be able to enjoy equally the privileges and amenities of these associations.

Only one Bar Association for one Court.

17. A question may, however, be asked whether, in view of our recommendation that a unified bar and a common roll of advocates with a right to practise in all the Courts should be established, it is consistent or proper to permit the continuance of the dual system in certain Courts. We proceed therefore to examine this question. The High Courts of Calcutta and Bombay have maintained, ever since their creation, what has been called the dual system on their Original Sides. Till a few years ago, dual system also prevailed in the Supreme Court. It has been recently replaced by what may be called a modified dual system under which the advocate on record, who files an appearance in the Court on behalf of the client and is in the position of an instructing solicitor or agent, is also entitled to the right of audience.

The dual system in Calcutta and Bombay.

Two questions arise for consideration. First, whether the dual system on the Original Sides of the Calcutta and Bombay High Courts should be continued. Secondly, if its continuance is advisable, whether such a continuance would in any manner be inconsistent with the creation of an all-India Bar with a common roll of advocates and their right to practise in all Courts in the country.

18. The question of the continuance of the dual system in Calcutta and Bombay was considered by the Chamier Committee of 1923 and the All India Bar Committee of 1951. As the views of the members of the Chamier Committee were sharply divided, the Committee refrained from making any recommendation on this question. The Bar Committee by a majority took the view that no case had been made out for the abolition of the dual system in Calcutta and Bombay. Sub-section (4) of section 9 of the Indian Bar Councils Act (XXXVIII of 1926) was enacted specifically for the purpose of enabling the two High Courts to maintain the system in the manner and to the extent they wished. Since the passing of that Act, the system has been continued in these two Courts.

Its working.

The case for
the dual
system.

19. As pointed out by the All India Bar Committee, the dual system is, in its essence, a distribution of work or a division of labour between two classes of legal practitioners. Such a division of labour is a special feature of the British legal system and came to be introduced in India on the Original Sides of the High Courts as, initially, the practitioners and the Judges on the Original Sides, were British barristers.

The opinion of lawyers in India on the continuance of this system has been sharply divided. By and large, however, it has been conceded even by the critics of the system that it makes for greater efficiency. Some of these critics have admitted that, even where the system is not obligatory, as in appeals from the lower Courts heard by the High Courts on their appellate sides, there is, in fact and substance, in vogue, in all important matters, a division of labour like that enforced under the dual system. In these matters, usually more than one advocate is engaged and it is left to the junior advocate or advocates to do the preparatory work including that of gathering information from the clients, while the senior advocate is entrusted with the task of presenting the matter to the Court. The adoption of this practice, even when not required by the rules of the Court, indubitably establishes its utility and necessity in all important matters.

Critics.

20. At one time, objections were raised to its continuance on the ground that it cast on the losing litigant a heavy burden of costs. This was, however, controverted and figures were produced to show that in many matters decided on the Original Sides, the fees paid to both sets of practitioners working under the system amounted to much less than what would have been payable to an advocate remunerated by a percentage of the value of the claim. Moreover, it was conceded that, even on the appellate side where the rules prescribed a percentage on the amount of the claim as payable to advocates, very heavy daily or lump sum fees were, in fact, charged by the advocate or advocates engaged, thus increasing the costs to the clients. However, the criticism that the system entails excessive costs to the clients has lost its force, as the High Courts have framed rules prescribing varying scales of costs, fixing specified amounts as costs chargeable in a number of matters and providing for strict taxation. Two basic facts should not, however, be lost sight of while considering the question of the increased costs involved in the working of the dual system. The litigant in these commercial centres is by and large willing to bear them. He is so willing because he obtains a double service which yields efficient work.

A curious objection to the system has been that it is foreign in origin. Surely that cannot be a valid argument for its discontinuance, and it will be obviously unsound to

uproot the system regardless of its merits or demerits merely because of its foreign origin. One cannot forget that our system of administration of justice and our laws have their roots, in a great measure, in the British system and British Statutes and the Common law.

21. The single ground on which the opponents of this system are eventually driven to rest themselves is that a litigant should not be compelled, as in the dual system, to engage more than one advocate. This, however, appears to be an objection grounded merely on theory and has no regard to the practical aspect of the matter. Many aspects of a citizen's private life are in the modern state regulated by law and he cannot seek the assistance of a Court of justice even when deprived of his fundamental rights without having to pay substantial amounts as court fees. The compulsion involved in the maintenance of the dual system is in no way different from the various other forms of regulation enforced by society—and is more easily defensible than most of them as it promotes efficiency and is accepted by those on whom it operates. Compulsion.

22. A large body of opinion in Calcutta and Bombay where the system operates favours its continuance as is indicated by the Report of the West Bengal Judicial Reforms Committee of 1949 and the views expressed before the All-India Bar Committee by witnesses from Calcutta and Bombay. Surely it is strange to talk of the abolition of the system when the persons who are chiefly concerned and who are supposed to be its victims express their preference for it. Consensus of opinion in its favour.

It is a remarkable testimony to the popularity and efficiency of the system that, though the door has been open to the litigating public on the Original Sides of the High Courts in Calcutta and Bombay to employ advocates of the Supreme Court who are entitled to appear on the Original Side without being instructed by an attorney under the decision of the Supreme Court in *Aswini Kumar Ghose v. Arabinda Bose*,¹ it has not chosen to employ them to any noticeable extent and has continued to entrust its cases to attorneys and counsel under the dual system. It is difficult to appreciate the reasoning which calls for the abolition of a system proved and admitted to be efficient at a time when the public and those in authority are clamouring for an improved and more efficient system of administration of justice. It may, in this connection, be noted that a considerable section of public opinion in the United States where this system does not prevail has asked for its introduction.

23. Not only has the system been acknowledged to provide for more efficient work, but there is evidence that

¹A. I. R. 1952 Supreme Court, p. 364.

it provides "for a standard of conduct which the unitary system will not easily provide". Indeed, in order to eradicate the evil of touts, it has been advocated that the tout should be turned into a sort of an agent by giving him some training and bringing him under control by legislation as a recognized agent entitled to a prescribed scale of remuneration.¹ This indeed is the dual agency in another garb.

Views of
the All
India Bar
Committee.

24. The whole matter was exhaustively reviewed by the All India Bar Committee who reached the conclusion that there was no reason requiring the abolition of a system which had been in vogue in Calcutta and Bombay for about a hundred years. We cannot do better than quote the conclusion reached by the Committee:

"On a review of the entire situation and the improvements made by the rules since the days of the Chamier Committee and in view of the fact that the persons mostly affected by the dual system want its continuance the present Committee does not think that any case has been made out for the abolition of the dual system in Calcutta or Bombay and it sees no reason why that system should not continue in those two places. The Committee is satisfied that the continuance of the dual system will not in any way militate against the ideal of an All-India Bar just as a division of the Advocates into two categories of senior and junior, which also imposes the obligation on the senior Advocates not to act, would not do. The dual system is nothing more than a division of labour which of necessity enures for the better preparation of the case and enables the Advocate to effect a better and forceful presentation of the client's point of view before the Judge. If the views of the majority of the Committee in regard to the dual system be accepted, then it will be necessary for the Government of India to undertake legislation to exempt the Original Sides of Calcutta and Bombay from the operation of the Supreme Court Advocates (Practice in High Courts) Act, 1951, in so far as acting on those sides is concerned."²

25. The question whether the continuance of the system would in any manner be inconsistent with the creation of an All-India Bar with a common roll of advocates with a right to practise in all Courts has also been answered by the Bar Committee. The "right to practise in all Courts does not mean that the rules of the Courts where the Advocates go to practise may be ignored. What is meant is that there should be no rule of any Court preventing any advocate ordinarily practising in any other Court from exercising his profession in the first-mentioned Court in the manner in which an advocate ordinarily practising in that Court may do."³ We are in entire agreement with this view.

¹A. I. R. Journal 1945 p. 25 at 27.

²Report, pages 32-33, Para. 81.

³Reports, page 25, para. 65.

26. The question of the continuance of the dual system in the Supreme Court, was also considered by the All India Bar Committee. The Committee recommended its abolition in the special circumstances which prevailed in the Supreme Court and made recommendations for the introduction of a system under which there was to be a division of advocates into Acting Advocates on Record and Pleading Advocates in every case in the Supreme Court. There had to be engaged an acting Advocate in every case unless the party appeared in person and the acting Advocate could act as well as plead. However, a party could engage, in addition to the acting Advocate, an advocate entitled only to plead and who could appear only when instructed by an acting Advocate. The recommendations made by the Committee have, with some modifications, since been incorporated into the Rules of the Supreme Court.

Dual system
in
Supreme
Court

27. What has been introduced is in substance a truncated form of the dual system which entitles the advocate on record who corresponds to the Solicitor in Calcutta or Bombay both to act and plead. This altered system has not tended to improve the manner in which work is handled in the Supreme Court. It is no exaggeration to state that the litigant in the Supreme Court is, in the matter of legal assistance, at a considerable disadvantage as compared with the litigant in most of the High Courts. In a large majority of cases, very little work, in the matter of preparation of the cases, is done by the advocate on record; and in very many cases in which the advocate on record pleads before the Court, very little assistance is derived by the Court from the Bar. This state of affairs in the highest Court of the land must occasion grave concern.

Its unsatisfactory
nature.

28. It is for consideration whether the introduction of the dual system as it prevails on the Original Sides of the High Courts of Calcutta and Bombay will not lead to an improvement. It is true that the conditions of work in the Supreme Court differ from those on the Original Sides of the High Courts of Calcutta and Bombay. As observed by the All India Bar Committee, "the amount of acting involved in matters in the Supreme Court is very much less than what is done by the Attorneys on the Original Sides of the High Courts and is even less than the acting done by the Advocates on the Appellate Side."¹ It is also true that the difficulties be setting the introduction of a full-fledged dual system in that Court are great in as much as there are hardly any facilities for Attorneys or Agents being trained. It would be unfair to insist on persons desirous of qualifying to be Attorneys or Agents to go for a proper training to Calcutta or Bombay. At the same time, it has to be remembered that some firms of Attorneys from Calcutta and Bombay.

Changes
necessary.

¹Report—page 33, Para.—82.

have opened branches in Delhi and some advocates on record have combined into firms which are working in a manner as efficient as Attorneys in Calcutta or Bombay. In our view, therefore, there is no reason why a system closely analogous to a dual system, the regulations relating to which can only be worked out by the Court having regard to its conditions of work, should not be introduced in the Supreme Court.

A large number of matters in the Supreme Court are matters of prime importance and substantial value, and it is very necessary to the efficient working of the Court that it should be assisted by a Bar which has given thought and labour to the preparation of the case. Most of these matters can well bear the cost involved in the employment of two lawyers. In fact, two lawyers, an advocate on record and a pleading advocate, are instructed in a large number of cases before the Court. In any case, the condition of the Bar at the moment, in fact, involves the litigant in much heavier costs in as much as in most important cases the advocates who have been familiar with the matters in the High Court are brought to the Supreme Court either to plead or to instruct the advocate who pleads. Further, the question of cost is a matter which can always be regulated by the Court and if the introduction of such a system does involve costs which the Court considers excessive, steps can be taken to scale or quantify them as on the Original Sides of the High Courts of Calcutta and Bombay. In our view, it is imperative that measures should be adopted to ensure that the cases presented to the Supreme Court are adequately prepared and efficiently handled, so that the Court may have the assistance of the Bar in a full measure in the discharge of its onerous task.

Division of
the Bar into
Seniors
and Juniors.

29. We may next consider the question of the division of the Bar into senior and junior advocates. This question was also considered by the All India Bar Committee. The Committee were not, however, of one mind and refrained from making any recommendations.

Opinion
divided.

30. The opinion we were able to elicit, disclosed a wide diversity of views on this question. Some of the witnesses were opposed to the very idea of such a division, while others thought that the proposal would not be workable at any rate so far as the district and subordinate Court bars were concerned. Generally speaking, however, representatives of the legal profession in most of the States, particularly the junior section of the Bar expressed views supporting such a division. Broadly speaking the evidence before us favoured the acceptance of the principle of a voluntary division of the Bar into seniors and juniors, the seniors being, by reason of their status, precluded from accepting certain types of work and from appearing in cases unless briefed with a junior.

31. Such a division of the Bar has been in force for some years in the Supreme Court of India, and, on the Original Side of the Bombay High Court.

Until 1954, under Order IV Rule 7 of the Supreme Court Rules, an advocate of not less than ten years' standing in a High Court, qualified to be enrolled as an advocate of the Supreme Court could, at his option, automatically become enrolled as a senior advocate of the Supreme Court. Recently, the rule has been altered so that an advocate possessing the qualifications and standing above mentioned would be enrolled as an advocate of the Supreme Court on his application, only if in the opinion of the Full Court, he deserves the distinction by virtue of his ability, status and reputation at the Bar, subject to his giving an undertaking that he shall not draw pleadings, affidavits, advise on evidence or do any drafting work of an analogous kind.

Attempt at division in the Supreme Court.

On the Original Side of the Bombay High Court, a voluntary division of the Bar into seniors and juniors has been worked out by an amendment of the Rules of the Bombay Bar Association.¹ The Association maintains a special list of advocates styled senior advocates and the name of any member of the Association of at least ten years' standing is entered on that list, if he so desires and gives an undertaking in writing that on the Original Side he will not do certain types of work such as drafting pleadings, and appearing in notices of motion, chamber matters, short-causes and the like.

On the Original Side of the Bombay High Court.

A division of the Bar into seniors and juniors is recognised also by the Madras Bar Council Rules which provide that an advocate of fifteen years' standing must appear with a junior in a suit or appeal concerning a claim of the value of Rs. 5,000 or more.

In Madras.

In the Punjab High Court, the Bar Association Rules require that two counsel must be briefed in cases above a certain specified value, though there is no requirement that one of them should be a senior and the other a junior. In several High Courts, the Rules provide that in suits or appeals over a specified value, the fees of two advocates shall be allowed on taxation. The two advocates, however, are not required to be in the different categories of seniors and juniors.

In the Punjab and other States.

32. Even where the Rules of the Court or the Bar Association do not provide for a division of the Bar into seniors and juniors, there arises naturally in each Bar such a division so that certain members of the Bar are by reason of their ability, experience and standing regarded as

Division exists in practice.

¹The Association consists of Members of the Bar ordinarily practising on the Original Side of the High Court

seniors or leaders by the Bar as well as the litigant public. This was amply borne out by the evidence before us. Many of the members of the Bar, so recognised as seniors or leaders voluntarily, make it a practice not to accept work of a small nature, and in most important matters they appear with junior members of the Bar who, generally are juniors working in their chambers.

This practice also came to the notice of the All India Bar Committee which thus summarised the position:

"In the High Courts there is no statutory division of Advocates into two categories but the profession instinctively knows which of the Advocates is really a senior or leader and acknowledges him as such. By the sheer force of the opinion of the profession in some places the really senior or leading Advocates who have attained that status often voluntarily impose upon themselves some of the obligations which the rules of the Supreme Court now impose upon those who are enrolled as senior Advocates¹

The division of the Bar into seniors and juniors would not be an artificial one but will correspond to an already existing division in several Bars in many places.

Juniors
in favour
of division.

33. It is not surprising that large sections of the Junior Bar have expressed themselves in favour of the division. It has been stated earlier that the evidence disclosed that the plight of the junior lawyers in most places was deplorable. A large number of juniors experience considerable difficulty in making even a living. On the other hand, it appears that in many places a large volume of work is concentrated in the hands of a few senior lawyers. Not unusually their work is spread over a half a dozen Courts and they are able to cope with it only by frequently obtaining adjournments of cases to which they are unable to attend. These adjournments are a major cause of delaying proceedings of the subordinate Courts.

Division
desirable.

34. A division of the Bar such as we envisage should, therefore, result in achieving several objectives. To the seniors it will mean the recognition of a successful career at the Bar by the conferment of a privilege which will give them an honoured position among members of the profession and enable them to concentrate on important work yielding as large or perhaps a large income. It should result in putting work in the hands of the junior members of the Bar. This should hearten them and raise their morale, which in its turn should attract an abler class of men to the profession. As stated earlier, it is the long period of waiting at an over-crowded Bar that operates as the chief deterrent to many who are otherwise anxious to enter upon a legal career. The distribution of work among a larger number should also help to prevent delays caused by adjournments.

35. Should the division be made on the basis of a certain number of years' practice or should it be based on fitness and merit recognised by the High Court? The system of enrolling senior advocates on the basis of a standing of ten years as an advocate of a High Court prevailed, as we have seen, till recently, in the Supreme Court and the observations of the All-India Bar Committee on its working may be referred to. "Experience has shown that a mere standing of ten years is not by itself a correct test of the merit which a senior advocate is expected to possess. * * * * * This division of the Supreme Court Advocates based on a specified number of years' standing at the Bar has only resulted in the conferment of a title which is frequently reproduced ostentatiously on name plates and letter heads enabling some of the senior Advocates to demand a higher fee in the mofussil Courts. * * * * * The Committee considers that such a statutory division founded on merely a number of years' practice and not on real merits is neither necessary nor desirable and the Committee recommends that such artificial division and distinction in nomenclature should be abolished even in the Supreme Court."¹

Basis of
division.

The alternative method of an advocate of fitness, experience and merit being chosen and invited to be a senior advocate by the Judges of the High Court has also its drawbacks. It was felt by some members of the All-India Bar Committee that such a course "may lead to canvassing for recognition and may even encourage Advocates to strive to become the Judges' favourites and this, according to them, will be calculated to impair the independence of the Bar."²

Merit and
standing.

That appears to us to be too pessimistic a view. The formulation of all schemes must be based on the assumption of the existence of certain standards of integrity and character. In England the system of Queen's Counsel being chosen by the Lord Chancellor has prevailed for many years and appears to have worked satisfactorily. We do not see any reason why such a system should not be capable of being worked in India.

36. Instead, however, of leaving it to the members of the Bar to make an application for enrolment in the Senior List as is done in England for being enrolled as Queen's Counsel, we recommend that it should be left to the Chief Justice and the Judges of the High Court or the Supreme Court to invite a member of the Bar to put himself on the list of senior advocates. In making an offer to an advocate to be enrolled on the list of senior advocates, the Chief Justice and the Judges will doubtless be guided by the consideration that the advocate invited deserves the distinction by virtue of his ability, status and reputation at the Bar.

Enrolment
as senior
by invita-
tion.

¹R-ortp—pp. 25-26, para. 66.

²Ibid—page 26, para. 66.

Disabilities
of seniors.

37. The senior advocates will be subjected to certain restrictions in the matter of the work which they can accept, and in the manner of their appearance in Courts. These obligations will be that

(1) they should not draft notices, pleadings, affidavits, or other documents nor advise on evidence;

(2) they should not settle notices, pleadings, affidavits, or other documents unless they have been drawn by an advocate who is not on the list of senior advocates; and

(3) they should not appear in any matter whatsoever in any court unless briefed with an advocate not in the list of senior advocates.

Attention may, in this connection, be drawn to the restrictions imposed by the rules of the Bombay Bar Association on those who enter the senior list. A copy of these is annexed at the end of the chapter. These obligations of a senior advocate will attach to him in respect of all work done by him as an advocate in all courts. Formerly senior advocates of the Supreme Court were not under these obligations in respect of their work outside the Supreme Court. This led to what the All-India Bar Committee described as the none too ennobling "spectacle of a senior advocate being under the aforesaid disabilities when he is in the Supreme Court but throwing them off as soon as he gets out of the precincts of that Court and competing with Pleaders in drafting and other junior work in the mofussil courts¹." The recommendation of the Committee has led to an amendment of the rules of the Supreme Court so that these obligations or disabilities now attach to the Supreme Court advocates in respect of their work in all Courts. We consider it essential that these obligations or disabilities should attach to the senior advocate in respect of all work done by him in all courts. They become as it were, a part of his status as an advocate.

Designation
of seniors.

38. The question of the designation to be given to the senior advocates was canvassed before us in evidence. It was suggested that following the practice in England they may be designated 'President's Counsel' or 'Republic Counsel'. Our inclination is to adhere to the nomenclature which has been in vogue ever since the establishment of the Federal Court in 1937 and give them the designation of 'Senior Advocates'.

Division
not incon-
sistent with
a unified
Bar.

39. A further question which needs to be considered is how far such a division of the Bar into senior advocates and advocates will be consistent with the concept of a unified All-India Bar and a common roll of advocates entitled to practise in all Courts in the country. We do not see how

¹Report, p. 26, para.66.

the suggested division can militate against these concepts. The rights of all advocates on the common roll will remain the same. Only those of the advocates who voluntarily choose to be senior advocates will put themselves under certain obligations or disabilities in the manner of carrying on their work as advocates. The senior advocates will be shown in a supplementary roll of senior advocates attached to the common roll of advocates. The seniority of the senior advocates *inter se* will depend on the date of their being entered on the roll of senior advocates and all senior advocates will rank in seniority over all other advocates. The All-India Bar Committee considered the matter and took the view which we share, *viz.*, that the division of the Bar into senior advocates and advocates will not in any way militate against the ideal of an All-India Bar.

40. It would be advisable to incorporate the provisions necessary for implementing the division of the Bar into senior advocates and advocates, the conditions under which advocates may be invited to be senior advocates, the obligations and disabilities imposed upon them, and the institution of a roll of senior advocates in a statute.

Statutory
division
recom-
mended.

41. The questions whether a scheme such as we have suggested will evoke a sufficient response from the Bar, and whether advocates at various centres who are now in the position of senior advocates will be willing to be put on the roll of senior advocates if so invited, notwithstanding the proposed obligations and disabilities, have much exercised our minds and formed the subject of close enquiry during our visits to the principal centres of the High Courts. We have seen that in many places the leaders of the Bar do in practice voluntarily impose upon themselves similar obligations and disabilities. The exigencies of their practice leads them to do so. It is normally not possible for a busy senior lawyer to do drafting work or other miscellaneous work of a small nature. There is, therefore, no reason why these seniors and leaders of the Bar should not come forward voluntarily to put themselves on the roll of senior advocates. The status of a senior advocate will naturally have an attraction for men who have made their mark in the profession. They will be looked upon by the litigant public, by their brother lawyers and by the judiciary with respect. These factors should, in our view, act as an inducement to advocates to put themselves on the senior roll, notwithstanding the sacrifice of some kinds of work which it may involve. It may well be that by reason of being put on the senior roll, the advocate would be able to raise the standard of fees charged by him. These considerations were put by us to a number of lawyer witnesses, including some leading members of the District Bar and they were of the view that even at District centres men of standing and ability would come forward to put themselves on the senior roll.

Sufficient
response
likely.

Effect of
division on
the public.

42. A very important aspect of the question is the effect of the introduction of this change on the litigating public. Will it impose a heavier burden of costs on the losing side? The proposed scheme, however, does not oblige any litigant to engage a senior advocate or even two advocates in any particular matter. It only results in the litigant having to employ an advocate who is not a senior advocate, if he elects to have his case conducted by a senior advocate. Notwithstanding the institution of the roll of senior advocates, a fair number of competent advocates who are not on the senior roll will continue in practice and the litigant who does not desire to incur the costs of employing two advocates could well be content with the services of the experienced advocate who is not yet a senior.

It will be remembered that in certain High Courts the cost of two advocates is allowed on taxation against the losing side if two advocates are in fact engaged, the fees of the junior being assessed at one-third or one-half of those allowed to the senior advocate. The litigant is thus accustomed to employ more than one advocate in a number of matters and the losing side is being made to pay the costs of more than one advocate in these cases.

No increas-
ed cost to
the public.

We are, therefore, of the view that the proposed division of the Bar in the manner indicated above will not be a burden on the litigating public. It is not the costs incurred by the litigant who chooses to indulge in the luxury of engaging a senior advocate even when not needed or who chooses to employ several advocates that have to be considered. The incurring of such costs is entirely a matter for the party concerned. What matters is the cost to the ordinary litigant who is concerned only with the efficient conduct of his case, and does not want the luxury of briefing fashionable counsel. His costs will not be increased by the acceptance of our recommendations.

Relative fees
and taxa-
tion rules.

43. The question of the relative fees of the senior advocate and the advocate is a matter to be provided for by the rules of the Bar Associations or the Bar Council. The rules of the Court will also have to fix these relative fees, that is, the fees of the two advocates—a senior advocate and an advocate—which are allowable on taxation against the losing side.

Entrance
fees to the
professions
heavy.

44. Entrance to the profession of law is heavily taxed. A Court fee of Rs. 500 is prescribed by article 30 of the Indian Stamp Act for an entry as an advocate or vakil of a High Court. In the case of an attorney the prescribed fee is Rs. 250. In Bombay by a local amendment it has been raised to Rs. 750. The States have, however, pounced upon the entrants into this profession as a fruitful source of revenue, and have by local amendments of the Stamp Act largely enhanced this fee. The Table set out below

shows the enrolment fees chargeable under the Stamp Act in various States. They range from Rs. 625 in Madras, Orissa and Uttar Pradesh to Rs. 1,031.25 in the State of Bihar.

TABLE

Name of the State	Enrolment Fees	Authority
1	2	3
ASSAM	Rs. 750/-	Section 7 of the Assam Stamp (Amendment) Act 1950, which was to expire on 1-4-57.
BIHAR	Rs. 1031.25 under the Indian Stamp Act as amended by the State and Rs. 100/- to the Bar Council.	
BOMBAY	(i) Rs. 750/- for the Bombay. (ii) Rs. 500/- for the Nagpur Advocates. (iii) Rs. 500/- for the Hyderabad Advocates. (iv) Rs. 250/- for the Saurashtra Advocates. (v) Rs. 100/- for the Advocates of the J. C. Court, Kutch. (vi) Rs. 750/- for Attorneys.	C.P. & Berar Indian Stamp Amendment Act, 1933.
KERALA	Rs. 400/- under the Travancore-Cochin Stamp Act. Rs. 50/- to the Bar Council.	
MADHYA PRADESH	Rs. 625/- under the Stamp Act (M. P. Gazette Notification No. 110-VSR dated 16th July, 1957). Rs. 100/- to the Bar Council. Rs. 500/- for Advocates of Madhya Bharat and Bhopal. Rs. 400/- for advocates of Vindhya Pradesh.	
MADRAS	Rs. 625/- under the Indian Stamp Act. Rs. 50/- to the Bar Council; Rs. 20/- for Court motion under the Court Act.	Madras Stamp (Amendment) Act, 1922. 11 & 12
MYSORE	Rs. 300/-.	
ORISSA	Rs. 625/- under the Stamp Act.	The Indian Stamp (Orissa Amendment) Act, 1956 (Orissa Act 8 of 1956).

1	2	3
PUNJAB	Rs. 500/- under the Stamp Act ; Under the Bar Council Act Rs. 10/- if enrolled on or before 28-9-48 ; Rs. 50/- if enrolled after 28-9-48 but before 16-3-1956 ; Rs. 100/- if enrolled after 16-3-1956.	The Indian Stamp (East Punjab Amendment) Act, 1949.
RAJASTHAN	Rs. 500/- under the Stamp Act ; Rs. 100/- to the Bar Council.	
UTTAR PRADESH	Rs. 525/- under the Stamp Act ; Rs. 100/- to the Bar Council.	U. P. Stamp (Amendment) Act, 1948.
WEST BENGAL	Rs. 750/- under the Stamp Act ; Rs. 100/- to the Bar Council. Rs. 500/- for Attorneys.	Section 13 of Bengal Act III of 1922.
TRIPURA	Rs. 50/- annually.	
MANIPUR	Rs. 500/-.	
HIMACHAL PRADESH	Rs. 300/-.	

It will be noticed, however, that in some of the States which used to be Part B States and to which the Indian Stamp Act was not applicable, like the States of Mysore and Kerala the fees payable under the local Stamp Acts are lower. As the Table shows, in addition to the fees on enrolment payable under the Stamp Act, the entrants to the profession have to pay certain amounts to the Bar Council of the State pursuant to rules made by the Bar Councils under the Bar Councils Act. These fees range from Rs. 50 to Rs. 100. The total burden thus imposed on those entering the profession may truly be described as oppressive.

Bar Council
-fee.

Abolition
of Stamp
Duty recom-
mended.

We have been at some pains to find out how and on what principle entrance to this profession came to be taxed when no similar impost is levied on entry into other professions like the engineering and medical professions. We have not been able to discover any sound reason or principle for this levy. So far as we know, though payments have to be made to professional bodies like the Inns of Court or the Law Society, no fees are levied in England by the State for the issue of a licence to practise the profession. Nor are we aware of any such fees being levied in the United States.

In our view, this imposition is totally unjust and should be abolished.

The matter was considered by the All India Bar Committee who, after pointing out that no such fees were charged in the case of entrants to other professions, stated that "there is no reason why there should be a taxation by the State at the time of enrolment of Advocates only."¹

Recommendation of the All India Bar Committee.

45. It would be reasonable, however, to provide that the entrant to the profession should pay an enrolment fee to the Bar Council of his State, it being the professional body which will admit him to the profession, put him on the roll and protect his rights, and enforce his obligations while he remains on the roll of advocates. This enrolment fee will have to be proportioned to the expenditure incurred by the Bar Council in performing its various functions, including the function of conducting courses of professional training and holding examinations for entrance to the profession.

Payments to Bar Council necessary.

The All India Bar Committee suggested that an advocate at the time of his admission should pay a sum of Rs. 500 to the State Bar Council and that the amount may be paid in one sum or in annual instalments of Rs. 50 with an option to pay Rs. 500 at any time, amounts already paid not being deducted. The Committee recommended that each State Bar Council should for the first five years contribute forty per cent. of the enrolment fees received by it to the All India Bar Council. The proportion of the contribution may be reconsidered at the end of the first five years.

46. It appears to us that the amount of Rs. 500 proposed by the Committee is excessive. At present various State Bar Councils are receiving payments which range from Rs. 50 to Rs. 100 from each entrant to the profession and so far as we have been able to ascertain, not only are the amounts received sufficient to finance their activities but some of these Councils have accumulated out of these and other receipts substantial amounts which have been invested by them. The creation of the All India Bar Council envisaged by the Bar Committee will no doubt involve substantial additional expenditure. Considering all aspects of the matter, we suggest that an enrolment fee of Rs. 125 may be charged by the State Bar Council from each entrant out of which Rs. 25 may be paid by the State Bar Council to the All India Bar Council. It may be, that having regard to the suggestions made by us, that the Bar Councils should provide for a practical training in law to persons entering the profession, considerable increased expenditure may have to be incurred by the State Bar Councils. Such expenditure can be met by them by a levy of tuition fees on those taking the professional courses of teaching conducted by the Bar Councils.

¹Report, page 40, para. 92

Constitution
of Bar Coun-
cils.

Recom-
mendations
of the All
India Bar
Committee.

47. The All India Bar Committee considered exhaustively the questions of the constitution and powers of the State Bar Councils and the All India Bar Council and made detailed recommendations. In framing its recommendations the Committee accepted the principle that the Bar should be autonomous in matters relating to the profession. Its recommendations in regard to the constitution of the Bar Councils are based on the acceptance of this principle. While recommending that the State Bar Council and the All India Bar Council shall *inter alia* consist of two Judges of the High Court or two Judges of the Supreme Court nominated by the Chief Justice of the High Court or the Chief Justice of India respectively, care was taken to ensure that the two Judges so nominated would be persons who had been advocates, so that, notwithstanding Judges being members, the Councils still retained their domestic character and were composed exclusively of advocates.

Autonomy
of the Bar.
Non-Advo-
cate Judges
not be mem-
bers of
Council.

48. We wish to emphasize the principle of autonomy thus sought to be given effect to by the Committee. Our considered opinion is definitely against Judges who have never been advocates being brought into these autonomous bodies that should consist wholly of members of the profession. In this connection it may be noticed, that section 4 of the Bar Councils Act, which prescribes the composition of the Bar Council provides for four persons to be nominated by the High Court, of whom not more than two may be Judges of that Court. The recommendation of the Committee that the Judges nominated should have been persons who had been advocates was, it appears, made deliberately with a view to prevent Judges who had not been advocates from becoming members of the Council. It may be pointed out that, notwithstanding the provision in section 4(1)(b) of the Bar Councils Act, in some of the States, the High Court has not chosen to nominate Judges as members of the Bar Council. In spite of the absence of Judges on these Councils, so far as we are aware, there has been no complaint about the satisfactory functioning of these Bar Councils.

It would, therefore, appear that the time has arrived for making these professional bodies entirely autonomous. If, however, Judges have to form part of the composition of these bodies, they should be Advocate-Judges.

No ex-officio
Chairman.

49. As to the Chairman of these Bar Councils, the Committee has recommended that in the case of State Bar Councils, they should elect their own Chairmen. On the question of the Chairman of the All India Bar Council, the report of the Committee contains no recommendation. In our view, the State Bar Councils as well as the All India Bar Council, should be left to elect their own Chairmen and a provision that the Advocate General should be the *ex-officio* Chairman or that a Judge should be an *ex-officio* Chairman would be inappropriate.

50. The All India Bar Committee reached the conclusion that the establishment of a separate Bar Council for the Supreme Court was unnecessary. We agree with that view. Having regard to the scheme of a common roll of advocates for the whole country there will no longer exist the class of advocates now known as Supreme Court Advocates. The advocates ordinarily practising before the Supreme Court will have the opportunity of exercising their franchise as members of the profession in regard to the Bar Council of the State to which they belong. In addition to this, representation has been provided for them in the All India Bar Council in the scheme proposed by the Committee for the constitution of the All India Bar Council.

Separate
Supreme
Court Bar
Council un-
necessary.

51. We have thought it unnecessary to go into a detailed discussion of the composition and functions of the State and All India Bar Councils. These matters have been exhaustively examined by the All India Bar Committee and we entirely endorse the recommendations on these heads made by them. We have dealt above with only some aspects of these heads which we thought needed emphasis and clarification.

Views of the
Bar Com-
mittee en-
dorsed.

52. The existence of the evil of touting was recognised as early as 1879 when provision to combat the evil were made in the Legal Practitioners Act of that year. It was brought prominently to the notice of the Indian Bar Committee of 1923-24 who noted that it was rampant in the Punjab and that so great was the evil that under the conditions then existing in Lahore, a Bar Council at Lahore could not function at all, unless it were entirely controlled and guided by the Bench. The evidence received by them left no doubt that touting of various kinds prevailed in most parts of India. They observed¹ that "The plain fact is that unless the legal profession assists the courts to suppress touts little can be done by way of legislation." One of the principal causes, in their opinion, of the existence of the evil was the serious overcrowding in the legal profession. They hoped that with the qualifications of entrants to the profession being raised and the number admitted not being excessive, it may be possible to enforce a higher standard of discipline. They ended their observations by expressing the hope that the Bar Councils, the establishment of which they recommended, would regard the suppression of touting as one of their principal concerns.²

Touts.
Views of the
Chamier
Com-
mittee.

53. The Civil Justice Committee of 1924-25 referred to the existence of the evil which had been pointed out by the Indian Bar Committee and observed that "In the first instance it would seem to lie with the members of the Bar themselves to see that the law is put in motion. Moreover,

Recom-
mendations
of the Ran-
kin Com-
mittee.

¹Report—page 39.

²Report—pages 39-40.

it is open to them to make persistent and unanimous efforts to ensure that no member of the Bar appears, acts or pleads in cases brought to him by a tout. * * * * * Unfortunately, as matters stand their efforts in these directions are at best very occasional, spasmodic and unconvincing." ¹ The Committee suggested that a tout who continued to act after being proclaimed a tout should be guilty of a criminal offence and that the definition of 'tout' in section 3 of the Legal Practitioners Act should be enlarged so as to include persons who carried on the activity of touting in serais, railway stations and other places by intercepting prospective litigants. These suggestions were accepted and amendments were made in the Legal Practitioners Act giving effect to them.

Persistence
of the evil.

54. Notwithstanding the view expressed by the Bar Committee that the Bar Councils should take steps to eradicate the evil and their hope that the Bar Councils would make the eradication of this evil their principal concern, it does not appear that they have attempted to take any steps in this direction.

Rampant in
some areas.

The evidence given before us showed that the evil persists and has increased in certain areas. We were told that the evil was rampant in certain districts of Andhra Pradesh where the touts are known as village barristers and that in effect these touts are employed by the clients; the touts in their turn employing for a small proportion of the remuneration received by them, the lawyer to do the client's work in the Courts. Our attention was also drawn to the great dimensions which this evil has reached in the Punjab where a senior lawyer stated that the majority of the members of the Bar were guilty of the unprofessional conduct of employing touts and that in the circumstances, an honest member of the Bar would find himself in trouble if he tried to take steps to fight the evil.

Lawyers
responsible
for existence
of touts.

55. It is obvious that the root of the evil lies in the profession itself. It is the professional man accepting work from a tout and agreeing to share his remuneration with the tout who creates the evil and makes its continuance possible. The man who works as a tout is but an auxiliary, and in many cases an agent of the professional man who indulges in this practice. Enactments which provide for proclaiming persons as touts, excluding them from entering certain places and punishing them, are thus really measures directed not against the persons who are primarily responsible for the existence of the evil but only against persons who act merely as the tools or agents of those on whom the real responsibility rests. It is obvious that the real cure for this evil lies in the hands of the profession itself and that no amount of legislation directed against those who act as touts can succeed in eradicating or even mitigating the evil.

The overcrowding in the profession is undoubtedly one of the causes which has contributed to the growth of the evil. Persons entering the profession, whose economic conditions make it impossible for them to wait before they can start earning a living or who have waited without success, are driven to these practices in their struggle for existence. It not infrequently happens, however, that lawyers who have been driven to these practices in the earlier stages of their career in their need to earn a living continue these practices even after they have gathered considerable practice at the Bar and some of them even after they have attained seniority in the profession.

We have suggested earlier some measures which we hope will result in restricting the number of entrants into the profession. A full time academic law course ending with properly conducted tests, followed by a professional course at the conclusion of which there would be a very stiff examination, should result in limiting the number who go into the profession and bring into it only those who have the real and serious purpose of practising it. In suggesting that the professional course should end with a very stiff test, we have equally in mind the entry into the profession of really well equipped persons and the necessity of limiting the number of entrants into it so that correct professional standards may be maintained. The division of the Bar into senior advocates and advocates should also in some measure help to make the lot of the new entrants into the profession easier and thus tend to remove the temptation to indulge in these undesirable practices.

56. These, however, can only be palliatives as the root of the evil lies in the profession itself. Only a sustained effort by all professional bodies, like Bar Councils and Bar Associations, can result in effecting a real improvement. Every Bar Association can frame rules, entitling it after enquiry *suo motu* or on complaints received by it, to post persons known to be acting as touts as undesirable persons on their notice boards. The rules should provide that members of the association observed or known to be associated with the persons notified to be undesirable persons shall, after due enquiry, be excluded from the membership of the association. The mere making of such rules will, however, serve no purpose. Members of the association who happen to know about the contacts of their brother members with the persons notified to be undesirable must, in their own interest and that of the profession, courageously come forward when the occasion arises and state what they know about their brother members. If the honourable and honest members of the Bar make a sincere effort in this direction taking upon themselves the unpleasant task of exposing the evil practices of their brethren one can definitely hope for an improvement in the situation.

Bar Associations to expel members employing touts.

Members to report undesirables.

Employment of touts by Lawyers to be a criminal offence. 57. "Touting" is an evil which affects the due administration of justice. This view has been accepted by the law regarding it as a crime [section 36(6) of the Legal Practitioners Act]. There is no reason, therefore why both the persons participating in the commission of the crime viz., the proclaimed tout as well as the concerned legal practitioner should not be punishable under the law. Indeed, as has been pointed out above, the legal practitioner bears a greater responsibility in the matter than the tout.

Absence of touting in certain areas and reasons. 58. It was disclosed that in the State of Kerala the evil to touting existed, if at all, in a very small degree. We were at pains to enquire into the causes of this somewhat puzzling situation. It was said that as the vast majority of the people in the State were literate or educated, it was difficult for the touts to carry on their activities. The litigants knew or could find out for themselves the lawyers who would best help them. An alternative explanation of the absence of touts was that the people of the State were poor, the level of fees charged by lawyers was low and that there was, therefore, no scope for the sharing of fees with touts. The far greater decentralization of Courts which we found had been carried out in Kerala may also account for this situation. The lawyers would be near to the litigants and would probably be well known to them.

Spread of education-decentralization of Courts and low fees.

If the spread of education and the decentralization of the Courts are likely to be of help in mitigating this evil it may be hoped that in course of time with increasing education and greater decentralization of Courts, touting may be on the wane.

59. The unification of the Bar, which it is hoped will soon be accomplished, will bring into existence an influential brotherhood of highly educated persons associated together in a common profession with common interests and common ideals. It will furnish glorious opportunities to the lawyer not only in the professional field but in other and wider fields.

The functions of the lawyers. It was said by Chief Justice Vanderbilt¹ that a lawyer had five functions, "counselling, advocacy, improving his profession, the courts and the law, leadership in moulding public opinion and the unselfish holding of public office." He said:

"In a free society every lawyer has a responsibility, that of acting as an intelligent, unselfish leader of public opinion—I accent the qualities "intelligent" and unselfish—within his own particular sphere of influence. Finally, every great lawyer must be prepared, not necessarily to seek public office, but to answer the call for public service when it comes."

The lawyer's role in modern India. 60. The unified Bar of India can be a powerful influence for welding the country together and for combating all sectional, regional and communal trends. It can largely

¹"Five Functions of the Lawyer" by Chief Justice Arthur T. Vanderbilt—A. B. A. Journal, January, 1934.

mould public opinion in matters relating to law, legislation and the administration of justice. The impact of the lawyer on public affairs is waning. An all India Bar, organized and striving after true ideals, could restore, and even add to, the influence that lawyers used to exercise in public affairs. These tasks can, however, be achieved only if the lawyer lives up to the great ideal of his profession, and maintains proper professional standards not only of efficiency but of integrity.

Some of our eminent lawyers have helped to frame our great Constitution. It will be for the unified Bar of India to help achieve the lofty ideals embodied in its noble Preamble. The lawyer of the future will have to think less of advancing himself and his profession and more of service to the common man and his motherland.

61. Our conclusions regarding the legal profession can be summarised as follows— Summary of
Conclusions.

(1) The existence of proper standards in the Bar is essential for the efficient administration of justice.

(2) In recent years, there has been a fall in the efficiency of the Bar and in the quality of the new entrants to the profession.

(3) The recommendations of the All India Bar Committee for the creation of a unified All India Bar should be implemented.

(4) Further recruitment of non-graduate pleaders and mukhtars should cease.

(5) The requirement of a certain number of years' practice in the High Court for enrolment as a Supreme Court advocate should be dispensed with.

(6) An advocate on the Common Roll should have the right to practise in all Courts in India from the highest to the lowest.

(7) It should be made clear that this right to practise does not include the right to act on the Original Sides of the High Courts of Calcutta and Bombay so long as the dual system is maintained there.

(8) The dual system should continue on the Original Sides of the Calcutta and Bombay High Courts.

(9) A modified dual system should be introduced in the Supreme Court to improve the efficiency of its Bar.

(10) The Bar should be divided into senior advocates and advocates.

(11) The Chief Justice and the Judges of a High Court or the Supreme Court (the Full Court) should invite advocates of at least ten years' standing to place themselves on the list of seniors, after satisfying themselves that the advocate invited deserves the distinction by virtue of his ability, status and reputation at the Bar.

(12) Those who accept the invitation will be styled as senior advocates and will have preaudience over all other advocates.

(13) Senior advocates will be under an obligation not to do drafting work of any kind or advise on evidence. They may, however, settle pleadings and affidavits which have been drawn by an advocate who is not a senior.

(14) Further, senior advocates cannot appear in any Court or in any cause unless they are briefed with an advocate not in the list of seniors.

(15) Provisions should be made by statute for dividing the Bar into senior advocates and advocates and for imposing restrictions on the nature of work that can be done by a senior.

(16) Such a division will lessen adjournments caused by concentration of work in the hands of a few lawyers, and by bettering the lot of the juniors, serve to attract a better type of men into the profession.

(17) The rules of the Bar Associations or the Bar Councils should fix the relative fees to be paid to a senior advocate and the advocate who appears with him.

(18) The State should not charge any fee for the enrolment of advocates.

(19) An enrolment fee of Rs. 125 may, however, be charged by the State Bar Council from each entrant and out of this Rs. 25 should be paid by the State Bar Council to the All India Bar Council.

(20) The recommendations of the All India Bar Committee with regard to the establishment, composition and functions of the State and All India Bar Councils should be implemented.

(21) If Judges are nominated by the Supreme Court and the High Courts to the Bar Councils they should be Advocate-Judges.

(22) The Bar Councils should elect their own Chairman and provisions such as that the Advocate-General or a Judge should be the *ex-officio* Chairman are inappropriate.

(23) The establishment of a separate Bar Council for the Supreme Court is unnecessary.

(24) Wherever there are different Bar Associations in the same Court they should be merged into one.

(25) The evil of touting is widely prevalent in some parts of the country and steps should be taken to put an end to it.

(26) The legal profession is itself chiefly responsible for the existence of touts and the advocate who employs a tout should be deemed guilty of a crime and be punished. The law should be amended for that purpose.

(27) Bar Associations and Bar Councils should frame rules enabling them to post persons known to act as touts as undesirable persons on their notice boards.

(28) Any member of the Bar found associating with persons so posted should be excluded from the membership of the Association.

(29) Members of the Bar should not shirk from the unpleasant task of giving evidence against their fellow-members guilty of undesirable practices.

ANNEXURE I

Name of the State	Advocates	Pleaders Grade I	Pleaders Grade II	Pleaders Grade III	Vakils Class I	Vakils Class II	Mukhtars Class I	Mukhtars Class II	Attorneys
1	2	3	4	5	6	7	8	9	10
Andhra Pradesh	4184	907	164	28	N.A.	N.A.	N.A.	N.A.	N.A.
Assam	276	473(A)	Nil	Nil	Nil	Nil	171(B)	Nil	Nil
Bihar	801	3976	Nil	Nil	Nil	Nil	1409	Nil	Nil
Bombay	7253(C)	7338(C)	44	Nil	101	361	4	5	410
Kerala	3558	281	277	N.A.	60(D)	..	23(B)	..	..
Madhya Pradesh	1361	1853(E)	..	..	..	..	109(B)	..	..
Madras	4545	814	66	..	214(F)	..	..	..	40
Mysore	2759	1708	59	11	1(D)	Nil.	3(B)	Nil.	..
Orissa	258	685	34	97	1	..	126(B)	120	..
Punjab	1841	1657(A)	..	..	..	..	2	..	..
Rajasthan	1127	1183	136	..	..	..	..	..	..
Uttar Pradesh	1754	7187(A)	..	..	..	..	1613(B)	..	..
West Bengal	3119	3634(A)	..	..	..	..	1795(B)	..	650

Union territories

Tripura	39	68	78	..	..	..	..	..	..
Manipur	18	10	..	..	..	..	I	..	..
Himachal Pradesh	104	120	18	..	..	..	..	..	..
Supreme Court		Senior Advocates 342			Junior Advocates 1965			Advocates on Record 220	

NOTES

- (A) Details as to how many come under Grade I & how many under Grade II not shown.
- (B) Details as to how many come under Class I & how many under Class II not shown.
- (C) These figures show the strength after reorganisation of States.
- (D) Details as to how many come under Class I and how many under Class II not given.
- (E) This figure includes Vakils.
- (F) There are High Court Vakils entitled to be enrolled as Advocates on paying a fee of Rs. 10 to the Bar Council.

N.A. = Not available.

ANNEXURE II

BOMBAY BAR ASSOCIATION

Following are the rules applicable to members on the Senior list of the Bar Association:—

(i) They will not draft any pleading.

(ii) They will not settle any pleading, unless it is drawn by an advocate not on the list of Senior Advocates.

(iii) They will not ordinarily appear in chambers, except on a Summons for Judgment, or on motions. They will be, however, entitled to appear in chambers or on motions where a brief is offered to them by a Solicitor on the ground that the matter involved is of exceptional difficulty or considerable importance.

(iv) They will not appear in Short Causes where a short cause is *ex parte* or where an application has to be made or resisted for the transfer of the suit to the list of Long Causes, in undefended long causes, in undefended Commercial Causes and in matters placed on board for a Consent Decree except when minors are concerned.

(v) They will not appear in any Commercial Cause. Testamentary suit or Long Cause unless an advocate not on the list of Senior Advocates is briefed along with him.

(vi) That the Advocate who has drawn the pleading referred to in sub-rule (ii) and the Advocate required to be briefed along with him under sub-rule (v) shall be junior in standing to him in reference to the roll of advocates maintained under the Indian Bar Council's Act.

The above rules will not apply to any matter in any appeal from the Original Side of the High Court.

Equality before the law implies legal aid.

1. The preamble to the Constitution of India speaks of justice, social, economic and political and of equality of status and opportunity. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Equality in the administration of justice thus forms the basis of our Constitution. Such equality is the basis of all modern systems of jurisprudence and administration of justice. Equality before the law necessarily involves the concept that all the parties to a proceeding in which justice is sought must have an equal opportunity of access to the Court and of presenting their cases to the Court. But access to the Courts is by law made dependent upon the payment of court-fees, and the assistance of skilled lawyers is in most cases necessary for the proper presentation of a party's case in a court of law. In so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. Unless some provision is made for assisting the poor man for the payment of court-fees and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice. The rendering of legal aid to the poor litigant is, therefore, not a minor problem of procedural law but a question of a fundamental character.

The movement for legal aid in India—History.

2. The question of legal aid has been engaging the attention of the Government of India since 1945. The credit for drawing the attention of the Government of India to this important question goes to the Bombay Legal Aid Society which, as will be seen in Appendix IV has done pioneer work and rendered great service to the cause of legal aid in the State of Bombay. In 1945, that Society invited the attention of the Government of India to the Report of the Committee on legal aid and legal advice in England and Wales appointed in 1944 by the Lord Chancellor under the chairmanship of Lord Rushcliffe. That Committee was directed to enquire into the facilities existing in England and Wales for the grant of legal aid to poor persons and to make recommendations for making legal aid and legal advice available to such persons in the conduct of litigation, whether civil or criminal, in which they were concerned. In their letter to the Government of India, the Bombay Legal Aid Society suggested the appointment of a similar committee in India to examine the problem of legal aid. In 1946, the Government of India enquired from the Provincial Governments whether

they would be able to provide greater facilities for legal aid to poor persons in both civil and criminal cases. The Provincial Governments were then, in general, of the opinion that the existing provisions for legal aid in civil cases were sufficient but that the provisions for the grant of similar aid in criminal cases might be liberalised. On the ground of financial stringency, however, they were reluctant to undertake any scheme of free legal aid even to the limited extent of the further extension of such aid in criminal cases.

Previous enquiries.

3. Partly as a result of the correspondence that had taken place between the Government of India and the Provincial Governments in regard to the question of legal aid and as a result of certain resolutions moved in the Bombay Legislative Council and the Bombay Legislative Assembly the Government of Bombay appointed a Committee in March 1949 under the Chairmanship of Mr. Justice Bhagwati (then a Judge of the Bombay High Court) to consider the question of the grant of legal aid in civil and criminal proceedings to poor persons, persons of limited means and persons belonging to the backward classes and to make recommendations for making justice more easily accessible to these persons. This Committee went exhaustively into the question of legal aid and made a detailed report in October 1949. That Report is perhaps the most informed study that has been so far produced in India on this subject.

In 1949, the Government of West Bengal also set up a Committee under the Chairmanship of Sir Arthur Trevor Harries, then Chief Justice of the Calcutta High Court to make recommendations in regard to judicial reform in the State and this Committee considered among other subjects the question of granting State aid to indigent litigants and made certain recommendations.

The attitude of the Governments—Central and State.

4. It appears that the view of the Government of India at that time was that the provision of free legal aid to poor persons was primarily a State responsibility and that they would not take any action in the matter. In 1952, the Government of India again wrote to the State Governments requesting them to make further provision for legal aid in criminal cases in respect of offences punishable with not less than five years' rigorous imprisonment and appeals arising out of those cases. The reply from the States was that in view of their financial difficulties the State Governments were unable to grant further legal aid in criminal cases as suggested by the Government of India. Thereafter, the West Bengal Government again considered it necessary to have the question of giving legal aid to persons having no resources enquired into by a Committee under the Chairmanship of Sir Arthur Trevor Harries, retired Chief Justice of the Calcutta High Court. This Committee considered the question in detail and made valuable recommendations. These, however, do not appear to have

been given effect to by the State Government presumably for reason of financial considerations.

In January, 1956 the Government of India for the third time addressed the State Governments advising them of their tentative view that there was a case for increasing the scope of legal assistance to the poor and that while the question of including in the Five Year Plan schemes for granting legal aid to the poor was under consideration the State Governments might examine the matter again and, if possible, include in their budgets some token provision for legal aid. This appeal, as in the past, failed to evoke an encouraging response. Most State Governments were reluctant to embark on schemes involving financial obligations. Some of them replied stating that they had made token provisions ranging from Rs. 1,000 to Rs. 2,000 in their budgets in respect of legal aid.

What has been stated above shows that though legal aid has been the subject of correspondence between the Government of India and State Governments, it has so far failed to arouse more than a casual interest in the State Governments except perhaps very recently in Kerala.¹ The question of legal aid has unfortunately been regarded as of very minor importance compared with other projects and schemes under the Five Year Plans which have been given very high priority.

5. The need for legal aid has increased enormously with the growth of industrialism and urban conditions of life. The large mass of legislation in the modern state with the inevitable technicalities of the law has occasioned a considerable increase in litigation. In the United States, the question of legal aid has, during the present century, received considerable attention. In spite of the disturbing influences of the two world wars, the movement for legal aid has gained considerable momentum. The spread of the legal aid movement in the United States has been due largely to the intense efforts of private voluntary organisations. Government aid is looked upon with disfavour on the ground that it brings with it governmental control. Legal aid is given by various types of organisations such as the Legal Aid Societies, the Social Service Organisations, the Law School Clinics and the Bar Association Offices. In 1921, the American Bar Association took upon itself the duty of encouraging the establishment and maintenance of legal aid organisations. In course of time a partnership was formed between the legal aid organisations and the Bar and this combination provided effective national leadership to the legal aid movement. The undermentioned figures

Legal Aid in
foreign
countries:
in the
U.S.A.

¹The Kerala Government has recently framed rules for the grant of legal aid. They are called "Kerala Legal Aid (to the Scheduled Castes and Scheduled Tribes and to the poor), Rules 1957". Vide Appendix III.

showing the number of cases in which legal aid was granted in the United States are instructive.¹

Year	No. of cases	Cost of operation	Amounts collected for clients
1876	212	\$ 1,060	\$ 1,000
1886	3,462	3,820	19,357
1896	15,017	13,450	76,693
1906	37,603	53,347	99,049
1916	117,201	181,408	340,199
1926	152,214	369,264	645,991
1936	260,400	577,220	526,903
1946	301,628	1,033,812	751,706

In Canada
and
Australia.

"In Canada the term 'Legal Aid' embraces 'Legal Advice'. There is no unified Legal Aid in Canada. Each Bar Association has its own system. The Bar Association of Ontario has established a complete organisation. The Canadian Bar Association passed a resolution at its annual meeting held in 1950 advocating the establishment of a Legal Aid Organisation under the auspices of the Association. In ten provinces, Legal Aid is being given in one form or another. The community chests are not utilised, but lawyers individually or collectively bear the cost. Generally the courts appoint counsel to defend cases."²

"In South Australia, the members of the Bar voluntarily undertake the work of taking assignments under the scheme. The Council of the Law Society administers the scheme."³

In the
United
Kingdom.

6. Until the passing of the Legal Aid and Legal Advice Act of 1949 (12 & 13 Geo. 6 Ch. 51), the legal aid movement in England lagged far behind its counterpart in the United States. Realising that the task of acting gratuitously for poor persons imposed a heavy burden on the legal profession and that the position in regard to legal aid was unsatisfactory, in 1944 the Lord Chancellor appointed a Committee to report and make recommendations on the

¹"The American Lawyer", Albert P. Blaustein and Charles O. Porter, 1954, page 82. Fuller information about American Legal Aid Organisations is to be found in "Availability of Legal Service" Chapter III, page 64.

²"The Lawyer", May, 1957, pages 18 and 19, para. 6.

³"The Lawyer", May, 1957, page 19, para. 7.

question. The Committee submitted its report in May, 1945, making the following recommendations:—

(1) Legal aid should be available in all courts and in such manner as will enable persons in need to have the help they require;

(2) The provision for legal aid should not be limited only to those who are normally classed as poor but should include a wider income group;

(3) Those who cannot afford to pay anything for legal aid should receive it free of cost. For those who can pay something towards the cost, a scale of contributions should be prescribed;

(4) The cost of the scheme should be borne by the State but it should not be administered either by a department of the State or by local authorities;

(5) The legal profession should be responsible for the administration of the scheme except that part of it which was dealt with under the Poor Prisoners' Defence Act;

(6) Barristers and Solicitors should receive adequate remuneration for their services;

(7) The Law Society should be requested to frame a scheme for the establishment of legal centres in the country;

(8) The Law Society should be answerable to the Lord Chancellor for the administration of the scheme;

(9) The term "poor person" should be discarded and the term "assisted person" should be adopted.¹

These recommendations were implemented by the enactment of the Legal Aid and Advice Act, 1949.

Under the English Act provision has been made for the giving of legal aid in all courts, civil and criminal, for all types of proceedings except personal actions. Such aid includes representation by solicitors and counsel and is not given unless the applicant shows that he has reasonable grounds for instituting or defending or being a party to any proceeding. It may also be refused if it appears unreasonable that he should receive it in the particular circumstances of the case. The question whether a person's financial circumstances are such as to entitle him to legal aid under the Act and if so whether he should receive such aid free of all cost or should himself make a contribution towards the cost is determined by reference to his disposable income and his disposable capital. Legal aid is available to any person whose disposable income does not exceed £ 420 per annum. Persons with a disposable income over £ 156 or with a

¹Rushcliffe Committee Report, page 23. Report of the Committee on Legal Aid and Advice in England and Wales.

disposable capital exceeding £75 have to make contributions towards the costs. Disposable income and disposable capital are assessed after making deductions for maintenance of dependents, interests on loans, income-tax, rent and other matters for which a person may reasonably provide. Panels of solicitors and barristers willing to act for assisted persons are maintained. The act also contains provision for legal advice being given on payment of a small fee.¹ The lawyers representing the assisted persons are paid their fees and out-of-pocket costs out of the Legal Aid Fund. Counsel is paid eighty-five per cent. of the amount allowed on taxation of costs in the House of Lords and the Supreme Court and his full fee in proceedings in the County Court. A solicitor is paid eighty-five per cent. of the amount allowed on account of profit costs and the full amount allowed on taxation of the costs on account of disbursements in the Supreme Court and the full amounts of both profit and out-of-pocket costs in the County Courts. The responsibility for administering the scheme is laid upon the Law Society. The functions of the Society which are performed by its council include the establishment and administration of the Legal Aid Fund. This Fund is constituted by moneys provided by Parliament, the contributions made by the assisted persons, the fees recovered for legal advice and the costs awarded to the assisted persons and recovered. The Act has also liberalised the provisions relating to legal aid in criminal courts under certain statutes.

Upto the end of the year 1956 about 10,000 assisted persons had been enabled to recover by way of damages seven million pounds sterling and about 70,000 persons had, with assistance rendered under the Act, successfully petitioned for divorce or defended divorce proceedings. The Report of the Select Committee of the House of Commons on Estimates reviewing the working of the scheme of legal aid stated that the scheme's greatest contribution had been to enhance the equality of all men before the Law and hence the dignity and prestige of the Law.

The position in India.

7. In India, facilities for legal aid are very meagre. Apart from voluntary organisations in a few towns like Bombay, Calcutta and Bangalore there is not much organised effort either governmental² or private intended to give to the poor the benefit of the law. As we have already seen, the Governments of the States have not in general been very enthusiastic about proposals calculated to enlarge the scope of legal aid. Nor has the legal profession with some creditable exceptions regarded the rendering of legal aid to the poor litigant as its responsibility.

¹The provisions relating to the grant of legal advice have not yet been brought into force.

²Kerala is an exception.

In Bombay, the High Court has made certain rules which provide for the assistance of a lawyer to a person allowed to sue or defend in *forma pauperis*. These rules have been made for the Original and Appellate Side of the High Court as well as for the City Civil Court. Rules have also been made on the Original Side of the Calcutta High Court which provide that in fit cases attorneys and counsel can be assigned to a pauper for the conduct of his case or appeal. Rules recently made by the Kerala Government provide for legal aid, in the main, to persons of the Scheduled Castes and Scheduled Tribes and to poor persons whose average monthly income is not more than Rs. 100. These rules make a distinction between the members of the Scheduled Castes and the Scheduled Tribes on the one hand and other poor persons as defined therein on the other as regards the extent of the legal aid to be given in both civil and criminal cases. A budget provision of Rs. 35,000 has been made for this purpose.

In so far as the criminal courts are concerned provision has been made in all the States for the employment of a lawyer in the courts of session and the High Court for the defence of persons accused of offences punishable with death. Provision has also been made in some States for the employment of counsel for poor persons in references from the verdict of the Jury and appeals from acquittals.

So far as civil courts are concerned, speaking generally, in most of the States there are no statutory facilities for the grant of legal aid in civil courts other than those provided by Orders XXXIII and XLIV of the Civil Procedure Code.

The existing facilities for legal aid in the several States are set out in Appendix III.

Apart from the official agencies referred to above there exist in the States a few voluntary organisations like the Bombay Legal Aid Society and the Legal Aid and Advice Society of West Bengal. These organisations have not been able to make substantial progress for lack of funds.

8. It must be emphasised that private legal aid cannot make public legal aid superfluous and can never be an argument against the latter. The general principle that legal aid is a service which the modern welfare State owes to its citizens can no longer be disputed. "It is part of that protection of the citizen's individuality which, in our modern conception of the relation between the citizen and the State can be claimed by those citizens who are too weak to protect themselves. Just as the modern State tries to protect the poorer classes against the common dangers of life, such as unemployment, disease, old-age, social oppression etc., so it should protect them

The need
for State
assistance.

when legal difficulties arise. Indeed, the case for such protection is stronger than the case for any other form of protection. The State is not responsible for the outbreak of epidemics, for old-age, or economic crisis. But the State is responsible for the law. That law again is made for the protection of all citizens, poor and rich alike. It is therefore the duty of the State to make its machinery work alike for the rich and the poor."¹ The Bhagwati Committee took the same view holding that the problem of legal aid is under the modern conception of the obligations of the State to be treated on a par with other social insurance schemes like old-age pensions, free education and free medical relief and that, therefore, the State must take upon itself the responsibility of providing legal aid to poor persons and persons of limited means.²

The case
against
State aid.

9. Several arguments have been advanced by critics against the acceptance of the principle that it is the obligation of the State to provide legal aid. It is contended that legal aid to the poor might make people more litigious and increase litigation, that the scheme would be liable to abuse by dishonest and unscrupulous people and that a scheme of legal aid would impose a disproportionately heavy financial burden on the State. The fears of the abuse of the scheme and increase in litigation do not appear to be well-founded and seem to proceed upon a misconception of the practical working of legal aid organisations. The Bhagwati Committee has pointed out that these apprehensions proceed from a want of faith in the proper working of legal aid schemes. With proper safeguards for scrutinising the financial position of the applicant and for determining the fitness of the causes for which aid is given there would appear to be no room for apprehension of a possible misuse of the scheme. Undoubtedly schemes of legal aid would impose heavy financial liabilities on the State. This consideration would, however, be irrelevant once the principle is accepted that the rendering of legal aid is a State obligation to be treated on a par with other schemes of social security in a welfare State.

It is true that legal aid schemes are being worked by voluntary organisations in countries like the United States, Canada and Australia as noticed above. There is nothing, however, to indicate that legal aid rendered in these countries is commensurate with the needs of the citizens requiring assistance. In our view the method adopted in England of State aid is definitely to be preferred, the more so when our aim is to render our State a social welfare State.

¹Legal Aid for the Poor by E. J. Cohn, Law Quarterly Review, Volume LIX, p. 250 at p. 256.

²Report of the Committee on Legal Aid and Legal Advice in the State of Bombay, page 8, para. 19.

10. While it should be the duty of the State to provide funds for legal aid schemes in the largest possible measure, it must be the task of the legal profession to shoulder the main, if not the entire, responsibility for the working of the scheme. The training and equipment of the lawyer, his close association with the machinery for administration of justice and his knowledge of its procedures tend to make him the fittest instrument for administering a scheme of legal aid. Therefore though the State may provide funds for the purpose the day-to-day administration of the scheme will have to be looked after by bodies which are wholly or preponderatingly composed of lawyers.

The role of
lawyers in
Legal Aid.

11. To what extent should the profession be called upon to play its part in rendering legal aid on a voluntary basis and without any payment of fees? An argument which is freely used to justify the putting of the responsibility on the legal profession of rendering this service to the community gratuitously is that the legal profession having been granted important privileges in regard to the administration of the law it is its obligation to look after the needy litigant, without charging fees. The very basis of this argument appears to us to be unsound. The profession of the law like any other profession can be adopted and practised by persons who have obtained the necessary qualifications and a license permitting its practice. It would thus appear to be no different from any other profession and it would be incorrect to assume that the profession has been granted any privileges in regard to the administration of law.

Further though the insistence on the universal conscription of the legal profession in this social service may at first sight appear to be attractive it has great drawbacks. Legal assistance to the poor litigant may be rendered effectively by a member of the legal profession voluntarily undertaking such work. But such assistance given by an unwilling lawyer on whom this duty is compulsorily imposed may not be satisfactory. It may well be therefore that a system of conscripting lawyers for this work even if it could be based on some principle may fail of its true purpose. It is probably for this reason that we do not find in any of the Anglo-American and Continental States where provision for legal aid exists, a system of legal aid which throws the responsibility for it on the legal profession by making it obligatory on them to render free legal aid.

12. The Bhagwati Committee while rejecting the suggestion that the profession should be compelled to do all legal aid work gratuitously recommended a certain amount of compulsion. It proposed that a maximum of six free cases every year should be done by every lawyer without payment of fees.¹ An element of compulsion is also to be found in the rules of the Bombay High Court on its Original

Conscription of
lawyers or
compulsion
unfeasible.

¹Report of the Committee on Legal Aid and Legal Advice in the State of Bombay, p. 87.

Side which provide for the assignment of an advocate or an attorney or both to assist a person who is permitted to sue or defend as a pauper and that the advocate or attorney so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or Judge that he has good reason for refusing. We are on principle opposed to the imposition of any measure of compulsion in the matter of legal aid. A lawyer is in the same position as a qualified doctor or engineer permitted to practise his profession. If members of these latter professions or other professions may not be compelled to do professional work without payment for poor persons, there appears to be no reason why a discriminatory compulsion of any kind should be imposed on the legal profession.

Duty of
Lawyers.

13. But it by no means follows that the legal profession does not owe a moral and social obligation to poor members of society. In our view, every member of the profession including the busy senior members at its top should make it a rigid rule to do a certain number of cases of poor persons every year. This obligation is owed in a greater degree by the senior members of the Bar who can better afford the sacrifice involved and whose example in assisting poor persons is likely to be followed by the junior members. In this connection we might refer to the observations of Viscount Buckmaster, then Lord Chancellor:

“What steps are we to take to remove from our profession the reproach that the poor man cannot get the same even-handed justice as the rich? It does not mean that he does not get justice before the Bench. That I never heard said . . . That the scales of justice are heavily weighed against the poor litigant is not an accurate statement, but nobody can deny that the rich litigant by being able to get help of the best man has an advantage. How are we going to meet that? It is something that needs to be met. I believe myself it could be met both here and at home, if everybody engaged in law—either where the branches are divided into counsel and solicitors or where they are one, just simply as lawyers—if every person took a certain number of worthy poor person's cases in the course of a year and dealt with them exactly as he would with the case of a rich client and that we should have thus gone a long way to remove the reproach.”¹

Lawyers in India would not be worthy of the great traditions of the profession if they failed to render this social service which can be so usefully and appropriately rendered by them. A true welfare State can function only if every citizen renders some service at a sacrifice and the lawyer working in his professional capacity is not an exception.

¹Address delivered to the Canadian Bar Association on the 27th August, 1925.

14. It will be realised, however, that even if all lawyers performed this social duty and did a number of cases every year without charging fees there will yet remain a large mass of litigation of persons without adequate means for which advice and representation in court will be needed. Such cases will have to be distributed amongst the members of the profession who have volunteered to lend their services for legal aid and agreed to their names being put on panels maintained by legal organisations. These lawyers will have to be remunerated for the work done by them on certain fixed scales which may be two-thirds or half of the fees payable on taxation in civil cases and the fees prescribed by the appropriate authority in criminal cases. We have no doubt that a large number of members of the profession will readily come forward to be put on these panels and thus help to relieve the burden on the State of rendering legal aid to deserving poor persons.

Voluntary aid insufficient. Payment of reduced rates.

15. The comprehensive study made by the Bhagwati Committee of the problem of legal aid was undoubtedly made with special reference to the conditions prevailing in the State of Bombay. However in our view with certain modifications arising out of what has been said above and in regard to the suggested deductions in arriving at the disposable income and the disposable capital (paras 68 and 69 of the Report) the scheme laid down by the Committee can well serve as a working model which can be adapted to the local needs and conditions of each State. A summary of the recommendations of the Committee is annexed as Appendix I to this chapter. We may also advert to the Report of the Trevor Harries Committee on legal aid in West Bengal which consists of concise recommendations under various heads. The scheme embodied in these recommendations though less comprehensive than the Bombay scheme is simple and capable of being quickly put into execution. We annex these recommendations as Appendix II to this chapter.

Adoption of Bombay & West Bengal Schemes recommended.

16. While fully emphasising the great importance of a system of legal aid as a necessary complement to the efficient and equal administration of justice, we are conscious that the full implementation of a scheme such, for example, as has been recommended by the Bhagwati Committee will involve heavy financial burdens upon the States. We have not been able to assess even approximately the cost of working a fully comprehensive legal aid scheme on a countrywide scale, but it is obvious that it must be very substantial. We are also conscious that as in other matters we must in the matter of legal aid proceed by gradual stages and lay down priorities. Legal aid will have first to be extended to persons accused of crime, particularly crimes of serious nature. Members of Scheduled Castes and Scheduled Tribes who generally are without means will also have to receive preferential consideration. Legal aid

Financial aspects.

will have next to be extended to really poor persons; and then gradually made available to persons of moderate means who are unable to bear the cost of litigation.

Immediate steps to be taken.

17. Certain measures of legal aid are however capable of being implemented forthwith without the need of setting up elaborate Legal Aid Organizations by amending the law or the rules of the courts. The additional financial burden involved in giving effect to these measures will be very small and in our view these measures should be given effect to immediately. We therefore recommend that:

(1) Representation by a lawyer should be made available at Government expense to accused persons without means in all cases tried by a court of session;

(2) Representation by a lawyer should be made available at Government expense to applicants without means in proceedings under section 488 of the Criminal Procedure Code;

(3) Representation by a lawyer should be made available at Government expense to an accused person without means at the time of the final hearing of a jail appeal which has been admitted;

(4) The explanation to Rule 1, Order XXXIII of the Civil Procedure Code should be amended so as to entitle a person who is not entitled to property worth Rs. 1,000 to sue as a pauper or alternatively so as to define a pauper as a person who is not possessed of sufficient means, other than the subject-matter of the suit, to enable him to pay the fee prescribed by law;

(5) Order XXXIII of the Civil Procedure Code should be amended so as to enable a person not only to sue as a pauper but to defend a suit or other proceeding as a pauper;

(6) The expression "pauper" used in Order XXXIII should be replaced by the expression "poor person" or "assisted person";

(7) Rules of the High Courts should give power to the High Courts and subordinate courts to provide, in proper cases, counsel to the pauper litigant, such counsel being chosen out of a panel of counsel who have expressed their willingness to be on the panel.

The recommendations made above can all be given effect to by appropriate changes made by the High Courts in their rules; in fact, some High Courts have already made changes in their rules in the direction indicated.

Formation of legal aid committee by Bar Associations.

18. Apart from State and Governmental action it is essential that the members of the profession should also forthwith take steps to adopt such measures of legal aid as can be achieved by their voluntary effort. Each Bar Association in the country may for this purpose form a Legal Aid

Committee. The Committee will enlist such members of the Association as are agreeable to lend their assistance in rendering legal aid to persons without means. The Committee will have to frame rules for determining the type of cases in which such legal aid should be rendered and also the manner of rendering such legal aid. Members of the panel of lawyers may devote in turn an hour or two every week at the offices of the Association in looking into the cases of applicants for aid in order to decide whether their means are such as to entitle them to legal aid and whether their cases are such as to merit assistance. If a person is considered to be eligible for legal aid, legal advice may be tendered to him either in the matter of prosecuting or defending a claim and assistance may be rendered to the person from time to time in the matter of proceedings to be taken in court and ultimately at the hearing of the cause or matter. We have no doubt that in every Bar Association there will be a substantial number of persons willing to render assistance to indigent litigants and work such voluntary schemes of legal aid.

19. Members of the Bar in Bhagalpur in Bihar and in Bangalore in South India have associated themselves together for rendering legal aid and there probably are other bodies of lawyers who have been working in the same direction. There is no reason why an activity of this character should not be considered a duty to be performed by every Bar Association in the country. Indeed, members of the Bar may go further and register themselves in association with other interested persons into societies pledged to the rendering of legal aid, obtaining public and private funds for the purpose as has been done in West Bengal by the foundation in 1952 of the Legal Aid and Advice Society of West Bengal which has been doing useful work. The details of its working and of similar societies in other States may be found in Appendix IV.

20. We summarise our recommendations on legal aid as follows:—

Existing Associations.
Summary of Recommendations.

(1) Free legal aid to poor persons and persons of limited means is a service which the modern State and in particular a Welfare State owes to its citizens. The State must, therefore, accept this obligation and make available funds for providing such legal aid to poor persons and persons of limited means;

(2) The legal profession must in the main, if not entirely, accept the responsibility for the administration and working of schemes of legal aid. This responsibility should be discharged by the profession by organising and by serving on bodies which will render legal aid, and representing in courts poor persons or persons of limited means on the payment of only a proportion of the fees payable on taxation;

(3) The legal profession owes a moral and social obligation to poor members of society which it must discharge by every member of the profession doing a certain amount of legal work free for poor persons;

(4) The scheme for legal aid to poor persons and persons of limited means outlined by the Committee on Legal Aid and Advice appointed by the Government of Bombay in 1949 and the scheme outlined by the West Bengal Committee should, with suitable modifications made in the light of local needs and conditions, be adopted by all States as soon as financial conditions permit;

(5) The States should, pending the implementation of such schemes, make provision for legal aid in gradual stages bearing in mind the priorities mentioned in paragraph 16 above;

(6) Measures in furtherance of legal aid mentioned in paragraph 17 above should be adopted immediately;

(7) Bar Associations should take immediate measures to render legal aid on a voluntary basis in the manner mentioned in paragraph 18 above.

APPENDIX 1

An outline of scheme of Legal Aid as proposed by the Committee on Legal Aid and Legal Advice in the State of Bombay.

I. ADMINISTRATIVE MACHINERY

The administration of the scheme of legal aid should be in the hands of legal aid committees formed for specified areas all over the States. These Committees will be of the following orders:—

(1) A Taluka (or Tehsil) Legal Aid Committee having its office at the headquarters of the Taluka Civil and Criminal courts.

(2) A District Legal Aid Committee at the headquarters of the District Court.

(3) Legal Aid Committees for the appellate and original side of the High Court, the City Civil Court, the Court of Small Causes in Presidency Towns and for the Courts of the Presidency Magistrates;

(4) The State Legal Aid Committees having its office at the headquarters of the State High Court.

Constitution of Committees

The Taluka Legal Aid Committee should consist of the following members:—

(1) A Sub Government Pleader;

(2) A retired judicial officer, if available;

(3) A social worker, if available;

(4) & (5) Two members of the Local Bar Association.

The retired judicial officer, the social worker and the lawyer should all be nominated by the District Judge in consultation with the President of the Taluka Bar Association. The members would work in an honorary capacity and would normally hold office for a period of three years.

The retired judicial officer, if available, would be the *ex-officio* Chairman of the Committee, otherwise the sub-Government pleader would be the Chairman. The Nazir or other ministerial officer of the Taluka Court as may be appointed by the Civil Judge should act as Secretary of the Committee on such extra remuneration as may be fixed by the Committee in consultation with the Judge.

The functions of this committee would be—

(a) to receive and investigate applications for legal aid in all matters in the area within the territorial jurisdiction of the Court;

(b) to provide for legal advice to the applicants in the area;

(c) to maintain panels of lawyers for giving legal aid and advice;

(d) to decide all questions as to the grant or withdrawal of legal aid;

(e) to issue legal aid certificates and to assign lawyers;

(f) to assess costs and permit payment of the amounts assessed by instalments in the case of partially assisted persons;

(g) to make payments to assigned lawyers on account of disbursements and generally to provide for costs for legal aid out of the funds placed at its disposal by the State Legal Aid Committee and to take proceedings for recovery of costs awarded to the assisted persons.

The District Legal Aid Committee would be similarly constituted of—

(1) the Government Pleader,

(2) a retired judicial officer, if available,

(3) a social worker, if available,

(4) (5) (6) & (7) four lawyers who are members of the Bar Association.

All members except the Government Pleader would be nominated by the District Judge in consultation with the President of the Bar Association. The functions of the District Committee are similar to those of the Taluka Committee. The District Court Nazir or such other officer of the Court as may be appointed by the District Judge should act as Secretary of the Committee on such remuneration as may be fixed by the District Committee in consultation with the District Judge.

The composition of the committees for the High Court and other Courts located at the headquarters of the State High Court are also on similar lines.

At the apex stands the State Legal Aid Committee which is to be a corporation and may sue or be sued in its corporate name. It should consist of the following members:—

(1) A Judge of the High Court nominated by the Chief Justice,

(2) The Advocate-General or a member of the Original Side of the Bar (if any) nominated by the High Court,

(3) The Government Pleader or a member of the appellate side of the Bar nominated by the High Court,

(4) A representative of the Legal Department of the Government,

(5) A representative of the Finance Department of the Government,

(6) A representative of the Bar Council,

(7) & (8) Two members of the High Court Bar,

(9, 10 & 11) Three members of the Moffusil Bar,

(12, 13 & 14) Three social workers, one of whom may be a lady social worker, nominated by the State Government.

The functions of the Committee would be—

(a) to supervise, direct and control the work of the legal aid committees all over the State and the operation and administration of the scheme throughout the State;

(b) to dissolve any local legal aid committee or to remove any member thereof from membership;

(c) to submit to Government a statement of accounts for the financial years and statements of budget or supplementary budget for each year;

(d) to be in charge of and administer the legal aid scheme and;

(e) to sanction expenditure for the administration of legal aid;

(f) to allocate the grant for legal aid amongst the local committees and to make disbursements out of the funds placed at its disposal by Government;

(g) to take proceedings for recovery and recover costs awarded to assisted persons;

(h) to receive donations for legal aid;

(i) to call for periodical reports from the committees;

(j) to submit recommendations to Government regarding the working of the scheme and improvements in the practice and procedure of the courts so as to reduce the costs and delays in litigation;

(k) to give general or special directions to the local legal aid committees for the proper discharge of their duties and functions;

(l) to make regulations for carrying out of the scheme;

(m) to prescribe the forms in which accounts should be kept and the reports and returns to be made by the local committees;

(n) to submit to government an annual report of its work and the work of the local committees.

The local legal aid committees should be invested with the sole discretion to judge the sufficiency or otherwise of the material placed before them by the applicants for legal aid.

There should be no appeal from the decision of the local committee granting or refusing legal aid.

II. SCOPE AND EXTENT OF LEGAL AID

The costs which a litigant has to incur in the Civil Court, in the first instance, comprise of the following main items which are allowable on taxation.

(1) Court fees;

(2) Process fees;

(3) Taxable out-of-pocket costs such as diet money to witnesses, costs of obtaining certified copies etc; and

(4) Pleader's fees.

In the Appellate Court provision has again to be made for—

(1) Court fees,

(2) Costs of obtaining certified copies of judgments and decrees,

(3) Costs of preparation of appeal paper-books,

(4) Where the appeal is before the High Court, costs of printing and translation of documents, and

(5) Pleader's fees.

In all such cases, Court fees and process fees must be remitted by the State, either in full or in part, in the case of all persons who are certified by the legal aid committee as deserving of full legal aid or partial legal aid.

Similarly, taxable out-of-pocket costs such as diet money for the witnesses examined before the Court and costs of certified copies of documents in the registry or of Government records which are necessarily to be filed must also be provided. Similar provision must be made in respect of the costs incurred in appeal for supplying certified copies of judgments and decrees and appeal paper-books etc.

The question of court fees, process fees etc., as may be required in Criminal Courts must be treated on the same footing as similar costs in the Civil Courts. Similarly the assisted persons must be supplied, free of costs, with certified copies of the relevant documents, notes of evidence etc.

III. CLASSES OF PERSONS TO BE AIDED—BACKWARD CLASSES AND SCHEDULED TRIBES

In the extended scheme of legal aid, persons belonging to the Backward and other Scheduled Tribes should not be subjected to the usual 'means test' but should be presumed to be *prima facie* entitled to legal aid at State's costs. The presumption may, however, be rebutted by tangible evidence, in which case the legal aid should be refused. In either case so far as the means test is concerned, a certificate from the local executive officer of the rank of a Deputy Collector or other Backward Class Officer should be a sufficient proof of his eligibility to the grant of legal aid.

IV. PARTIES TO WHOM LEGAL AID SHOULD BE GRANTED

Legal aid should be given not only to the plaintiffs or petitioners or complainants but also to the defendants, respondents and accused in all courts.

V. TEST TO BE APPLIED BEFORE GRANT OF LEGAL AID

(i) Means test

The eligibility of an applicant for the grant of legal aid must be determined with reference to his disposable income and disposable capital. In ascertaining his disposable income the following items should be excluded:

(1) Interest on debts;

(2) Premia on life insurance policies, if any;

(3) Compulsory contribution made by him to any provident fund or other schemes of social security:

provided, however, that the help which the applicant would reasonably receive from any organisation of which he is a member towards meeting of his expenses of litigation should be added to his disposable income.

Similarly, in determining the disposable capital, the following items may be excluded:—

(1) residential house,

(2) the necessary wearing apparel,

(3) cooking utensils and household furniture,

(4) tools of trade and implements of agriculture,

(5) compulsory deposit not liable to attachment under the Provident Fund Act of 1945,

- (6) agricultural lands,
- (7) running business and stock-in-trade,
- (8) outstandings written off as bad debts,
- (9) ornaments of women folk,
- (10) the subject-matter of the claim:

Provided that the value of any property which he has disposed of within two months of the application in order to enable him to apply for legal aid shall be added to his disposable capital and no aid should be given to him who has entered into champertous claim in regard to the subject-matter.

The disposable income and disposable capital should be the aggregate income or capital of a family unit, namely, the applicant, his wife and two children.

In fixing the limits of disposable income and disposable capital the difference in the price levels and standards of living between large metropolitan areas like Bombay and industrial centres like Ahmedabad on the one hand and the rural areas should be borne in mind. With reference to the State of Bombay, the following limits of disposable income and disposable capital were recommended as entitling the applicant either to full or partial legal aid. It was not suggested that these figures should be rigidly adhered to. Considerable discretion and latitude was to be given to the legal aid committees in determining the applicant's claim.

Disposable Income

	Greater Bombay	Industrial towns— Ahmedabad, Poona and Sholapur	Moffusil areas
	Rs.	Rs.	Rs.
Full legal aid	90	75	60
	Per mensem	per mensem	per mensem
Partial legal aid 3/4ths	115	95	80
	per mensem	per mensem	per mensem
Partial legal aid 1/2	135	115	95
	per mensem	per mensem	per mensem
Partial legal aid 1/4th	155	135	110
	per mensem	per mensem	per mensem
No legal aid	175	150	125
	per mensem and above	per mensem and above	per mensem and above

Disposable Capital

	Greater Bombay	Industrial towns— Ahmedabad, Poona and Sholapur	Moffusil areas
	Rs.	Rs.	Rs.
Full legal aid	750	600	500
Partial legal aid 3/4ths	1,250	1,100	800
Partial legal aid 1/2	1,700	1,350	1,050
Partial legal aid 1/4ths	2,150	1,600	1,300
No legal aid	2,500	1,800	1,500

Those who are given full aid would not be required to make any contribution towards the cost of the litigation, while those to whom partial aid is given would be called upon to contribute to the extent of the excess over the partial aid given to them.

(ii) The test of *prima facie* case

In civil cases, before granting legal aid, whether full or partial, the legal aid committee must be satisfied that the applicant has a *prima facie* case for the prosecution or defence of the proceedings to which he is a party.

In first appeals the applicant must show from the judgment and decree appealed from that there is an arguable case for him. In second appeals all the requirements of section 100 of the Civil Procedure Code must be satisfied before sanctioning legal aid.

In civil revision applications and other miscellaneous proceedings legal aid should not be granted unless the committee considers it necessary in the interests of justice.

In criminal cases, in the case of complaints in non-cognizable cases and the accused in all other cases, the only test to be satisfied should be whether it is desirable in the interest of justice that legal aid should be granted. It is neither feasible nor necessary that the applicant, and more particularly the accused in a cognizable case, should make out a *prima facie* defence. It should be left to the discretion of the legal aid committee to decide whether in such cases the grant of legal aid is desirable in the interests of justice. These recommendations are without prejudice to the existing provision for grant of legal aid to persons accused of offences punishable with death. In cases where a doubt exists as to the applicant's means, the benefit of the doubt should be given to him.

(iii) *Other tests and safeguards*

Besides the means test and *prima facie* test, the following further safeguards were suggested against abuse of the scheme:—

(1) Legal Aid should be refused in cases where the subject-matter of the dispute is trivial or trifling and which no prudent and reasonable man would bring in a court of law or where the chances of obtaining satisfaction from the judgment-debtor are meagre or remote or where the defendant is admittedly in impecunious circumstances or on the verge of insolvency;

(2) A declaration of oath or solemn affirmation of the applicant at the foot of his application showing the extent of his disposable income and disposable capital;

(3) A certificate from a respectable citizen or responsible officer of the State regarding his means;

(4) A bond from him that he would diligently pursue the legal remedy and not enter into any champertous agreement regarding the property in dispute, nor compromise it except with the consent of the legal aid committee or the permission of the court; and

(5) Cancellation of the legal aid certificate in appropriate cases.

The committee also suggested that—

(1) In criminal cases if the accused is charged with petty offences not involving moral turpitude or offences which are punishable with a more fine, legal aid should be refused. Only those cases where the accused is charged with offences punishable with a substantial sentence of imprisonment should be within the purview of the scheme of legal aid;

(2) In cases triable exclusively by a court of session legal aid need not be granted in the committal court. In the case of complaints in non-cognizable cases, legal aid committee will have discretion to grant the aid in proper cases in the interests of justice. It further recommended that in civil cases, the aid should be refused in actions of a personal nature such as defamation, malicious prosecution etc.

The committee has also made recommendations for:—

Assignment of lawyers

All members of the Bar seniors as well as juniors practising in any of the courts should be called upon to accept a minimum of six briefs per year of poor litigants without any remuneration. The remaining cases of persons who have been granted legal aid certificates should be distributed amongst the members of

the legal profession whose names are enrolled on the panels maintained by the legal aid committees. These panels will be composed of lawyers who have volunteered their services for the purpose of legal aid to assist the litigants on payment of taxed costs in civil cases and such reasonable fees as may be prescribed by the legal aid committee in criminal cases.

No lawyer to whom such a case is assigned will be at liberty to refuse the same except for a sufficient cause, for example, having given advice to the opposite party or some other personal reason.

A lawyer enrolled on a panel aforesaid should ordinarily have experience of at least five years at the Bar. These panels will be framed by the respective Bar Association and furnished to the legal aid committee in the respective areas and will be revised every three years.

Remuneration of the lawyers

On the original and appellate side of the High Court the number of cases in excess of the minimum of six cases to be done by each attorney and advocate, should be distributed amongst the panel in rotation on payment of the full taxed costs. The same principle should apply in all other courts.

In criminal cases, the lawyers assigned by the legal aid committee should be paid at the same rate as the Government Pleader or the Assistant Government Pleader or the Public Prosecutor.

Costs

If the assisted litigant is unsuccessful an order for payment by him of the costs of the successful party should be limited to such amount as the court may in its discretion consider reasonable having regard to all the circumstances including financial means of the assisted litigant.

Where the assisted litigant is successful and the opposite party against whom the order of costs has been made is an unassisted litigant the amount of costs awarded should be recovered from the latter and credited to the legal aid fund.

Legal advice

Legal advice will be given by individual lawyers whose names are enrolled on the panels maintained by the legal aid committee. Drafting of documents will be excluded from the scope of legal advice.

Applicant for legal advice need not be required to satisfy the means test with the same strictness and rigidity as the applicant for grant of legal aid. A small fee of one or two rupees should be charged for each attendance to the applicant for legal advice. This fee would be exclusive of postage charges. The fee realised for giving legal advice should be credited to the legal aid fund.

Legal aid fund

A legal aid fund should be created out of—

- (1) monies provided by the State and Central Governments,
- (2) contributions and donations from local bodies, trade associations and public charitable trusts and organisations,
- (3) costs recovered from unsuccessful opponents,
- (4) contributions made by partially assisted persons, and
- (5) fees received from the applicants for legal advice.

The fund should be under the control of the State Legal Aid Committee and its accounts annually audited.

Private institutions engaged in the work of legal aid

Increased financial aid should be given by the State to private legal aid societies until such time as the legal aid scheme suggested in the Report comes into operation. The financial assistance should be commensurate with the needs of the society.

Publicity

In civil litigation, a slip containing information regarding the legal aid committee should be attached to the summons and notices which should be seen by the court. In criminal cases also such slips should be attached to the summons and notices. Information regarding the existence of the legal aid committee should be made available at every Police Station and every Civil and Criminal Courts.

APPENDIX II

RECOMMENDATION OF THE TREVOR HARRIES COMMITTEE ON LEGAL AID IN WEST BENGAL

1. Classes of persons who may be given legal aid.

(a) *Civil Cases.*—The following classes of persons whether figuring as plaintiffs, defendants, appellants or respondents, may be given legal aid;

(i) *In cases where a fee is prescribed by law for the plaint or the memorandum of appeal.*—Plaintiffs or appellants who are not possessed of sufficient means to enable them to pay such fee.

(ii) *In all other cases.*—Persons who are not entitled to property worth more than Rs. 250/- other than their necessary wearing apparel and the subject-matter of the suit or appeal. In considering the question of means the committee shall take into consideration the total resources of the family.

(b) *Criminal cases.*—The following classes of persons may be given legal aid:—

(i) Persons charged with an offence punishable with death, or imprisonment for 5 years or more, or persons sentenced to death, or imprisonment for 5 years or more, when such persons have no means to defend themselves, whether in a court of a Magistrate, a Tribunal, a Sessions Court or a Court of Appeal.

(ii) Persons who appear to have acted *bona fide* in the exercise of the right of private defence of person or property when such persons have no means to defend themselves.

(iii) Persons who figure as informants in cognizable cases when such persons fail to get the help of the police or when the cases are not sent up by the police for trial. In such cases, the Committee may call for the police papers and if it is satisfied that there is a *prima facie* case, it may refer the case to the Director of Public Prosecutions or the local Public Prosecutor with its recommendation for initiating proceedings in court. In cases so recommended, no legal aid should be given unless the Director of Public Prosecutions or the Public Prosecutor, as the case may be refuses to take action.

2. *Classes of cases, civil and criminal, in which legal aid may be given:*

(a) *Civil Cases.*—All suits and cases except those relating to elections or defamation, provided that if there are special circumstances to justify it, the Committee may give aid to a woman plaintiff in a suit for damages for defamation when there is an imputation of unchastity to her.

(b) *Criminal cases.*—Legal aid will be admissible in the cases mentioned in paragraph 1(b).

3. *The authorities to be constituted to decide the questions whether a person is eligible for aid and whether he has a proper case to be taken up:*

(a) *For the High Court, Calcutta, Original Side and Appellate Side.*—In Calcutta, the Legal Aid Society may be reconstituted with representatives of the Bar Association and the Society so reconstituted may be entrusted with the work of deciding the questions in respect of all classes of cases, civil and criminal.

(b) *For the City Courts.*—A committee may be constituted with the following members:—

1. The Chief Judge of the Court or a Judge nominated by him.

2. Three members of the Bar to be nominated by the Chief Judge.

3. Three members of the Bar to be nominated by the Bar Association or Associations provided that until such Association or Associations are formed, these three members will also be nominated by the Chief Judge.

When the Chief Judge or a Judge nominated by him presides over a committee to decide the question whether legal aid may be given in a particular case, he should not try or hear the case at any stage.

(c) *For the district.*—Each district should have a committee presided over by a judicial officer of the rank of a Subordinate Judge exercising sessions power and consisting of six members of the Bar, three of whom would be nominated by the District Judge and three by the members of the Bar. The committee should deal with both civil and criminal cases provided that when civil cases are under consideration, the Government Pleader should be co-opted as a member and when criminal cases are under consideration, the Public Prosecutor should be co-opted as a member. The judicial officer who presides over the committee should not try or hear the case at any stage. If there be only one Subordinate Judge exercising the powers of an

Assistant Sessions Judge in a district, he should not preside over the committee and in such a case, the Government Pleader or the Public Prosecutor, as the case may be, should preside over the committee.

When after considering a case, the committee decides that a person has a proper case to be taken up and is eligible for legal aid, no aid will be admissible to the opposite party in the case.

4. *Selection of lawyers for conducting cases:*

(a) *High Court.*—Lawyers should be selected by the Legal Aid Society.

(b) *City Courts.*—The Judge presiding over the committee for deciding the question of legal aid in a case will select a lawyer for the case from a panel of lawyers drawn up by the Chief Judge in consultation with the Bar Association or Associations.

(c) *District Court.*—The President of the Committee deciding the question of legal aid in a case, will select a lawyer for the case from a panel of lawyers drawn up by the District Judge in consultation with the President of the Bar Association.

5. *Payment of costs of litigation and incidental and out-of-pocket expenses:*

In all cases where aid is given to a person, no court fees, process fees and other fees should be payable by him and legislation should be undertaken to exempt such person from payment of all fees. Expenses of witnesses on account of diet and travelling allowance should be paid by the courts out of an allotment to be made by the Government for the purpose.

For cases in the High Court, lawyers' fees will be settled and paid by the Legal Aid Society. Such fees should not exceed 5 gms. per day provided that when the duration of the work does not exceed 3 hours, a fee of not more than 3 gms. will be payable.

In the City Courts and in the districts, lawyers' fees will be paid by the Committee on certification of such fees by the trying courts and President of the committee. Such fees should not exceed Rs. 25/- per day according to the nature of the case provided that a fee not exceeding Rs. 12/- will be payable when the duration of the work does not exceed 3 hours.

The Legal Aid Society and the committee should have their own fund to be called the Legal Aid Fund

The State Government may make such grants to the fund as it may deem fit. Costs awarded in favour of a person who receives legal aid, shall be realised and credited to the State Revenues and an equivalent amount shall be contributed by the State Government to the Legal aid fund concerned.

A lawyer appearing in a case may, in the discretion of the committee, be paid the fees awarded by the court in the decree less any amount he may have already received from the Legal Aid Fund.

APPENDIX III

EXISTING FACILITIES FOR LEGAL AID

1. For criminal courts provisions exist in all States for the assignment of a lawyer for the defence of persons accused of offences punishable with death in all cases committed for trial to the High Court or a court of session. Similar provisions exist for the defence of accused in cases of confirmation of a sentence of death, references from the verdict of juries, appeals from acquittals and enhancement proceedings in revision in which any person is liable to be sentenced to death.

2. The statutory provisions for legal aid in civil matters are contained in Orders XXXIII and XLIV of the Code of Civil Procedure. Under Order XXXIII, provision is made for filing suits by paupers. A pauper is defined as a person who has not sufficient means to enable him to pay the fee prescribed by law or where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his wearing apparel and the subject-matter of the suit.

3. If the application to sue as a pauper is granted the plaintiff is exempted from the payment of any court fee (other than fees payable for service of process) in respect of the plaint, appointment of the pleader or other proceedings connected with the suit. If the pauper plaintiff succeeds, the amount of court fees which could have been otherwise paid by him is recoverable by the State Government from any party ordered by the decree to pay the same and is a first charge on the subject-matter of the suit. If he fails in the suit or is dispaupered or his suit is withdrawn or dismissed for default the court may order him to pay the court fees which would have been otherwise payable by him. Order XLIV deals with appeals by paupers. Any person entitled to prefer an appeal who is unable to pay the fees prescribed for the memorandum of appeal may be allowed to appeal as a pauper subject to the provisions relating to suits by paupers. The court has, however, the power to reject the application unless upon a perusal thereof and of the judgment and decree appealed from it sees reason to think that the decree is contrary to law or to some other usage having the force of law or is otherwise erroneous or unjust. If the applicant had already been allowed to sue or appeal as a pauper in the court from whose decree the appeal is preferred no further enquiry as to his pauperism is necessary unless the appellate court orders an enquiry.

4. In addition to these statutory and general provisions for legal aid, certain State Governments have made rules for further extension of grant of legal aid in Civil and Criminal proceedings. The following is a summary of such provisions:

BIHAR

The Government of Bihar have issued executive instructions to all district officers in Bihar that all cases in which the Harijans file applications under the Bihar Privileged Persons Homestead Tenancy Act of 1947 for the restoration of their house and lands, the Assistant Public Prosecutors should be directed to give to such applicants free legal advice and legal assistance.

BOMBAY

In the State of Bombay, the scope of legal aid in criminal cases was further extended by certain resolutions of the Home Department to jail appeals. These provisions were first made on the 15th of August, 1945, and were continued from time to time upto 1948. It was provided that when an appeal preferred by a convict from jail is admitted by the High Court, the Registrar shall engage an advocate for him at Government's expense if no lawyer is engaged by the appellant himself and if he is not in a position to engage a lawyer. These orders were to remain in force for a period of three years with effect from the date of issue.

The Government of Bombay has also made three separate schemes for granting free legal assistance in civil and criminal proceedings to the members of the Scheduled Tribes in that State and also to the members of the ex-criminal tribes (Vimochit Jatis). Provisions of Rs. 2,000/- Rs. 13,000/- and Rs. 13,000/- respectively were proposed for these schemes for the year 1956-57. It is also learnt that the Government of India have been sanctioning grants-in-aid on 50 per cent basis for the first two schemes and on an entire basis for the third scheme. As a matter of fact, the Government of India have not sanctioned any grants-in-aid to the State Government for legal aid as such. The State Governments get grants-in-aid from the Centre in respect of the schemes for the welfare of the Scheduled Castes and Tribes and it appears that in these schemes the Government of Bombay have also made provisions for granting legal aid to these classes.

For civil cases High Court of Bombay has enacted its own rules for grant of legal aid to poor persons in Civil matters. That High Court has added some rules (Rules 17 and 18) to Order XXXIII which enable any person to defend a suit as a pauper either before or after he has entered appearance and all the rules in Order XXXIII relating to suits by plaintiffs in *forma pauperis* apply to

him *mutatis mutandis* as if he was a plaintiff. On the Original Side of the High Court, the limit of Rs. 100/- laid down in Order XXXIII Rule 1 has been raised to Rs. 500/-. Rules have also been made by that High Court for the assignment of an advocate or a pleader to any person who has been allowed to sue or defend as a pauper. The rules are to the following effect:—

(1) "When a person is admitted to sue or defend as a pauper, the Court may, if necessary, assign an advocate or pleader to assist him; an advocate or pleader so assigned shall not be at liberty to refuse his assistance, unless he satisfies the Court that he has good reason for refusing".

(2) "It shall be the duty of the Advocate or Pleader who may be assigned to a person admitted to sue or defend as a pauper, to take care that no notice is served, summonses issued, or petition presented without good cause, and to report to the Court every six months the progress of the suit or matter."

(3) "Whilst a person sues or defends as a pauper, no person shall take or agree to take, or seek to obtain from him, any fee, profit or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take or seeks to obtain any such fee, profit or reward, shall be guilty of a contempt of Court:

Provided that, notwithstanding anything herein contained, the Court shall have power to award costs against the adverse party or out of the property recovered in the suit and to direct the payment thereof to the Advocate or Pleader representing the pauper."

Such rules have been framed on the Original and Appellate Side of the High Court.

Statutory provision for legal aid is also found in section 26 of the Bombay Industrial Relations Act of 1946. It provides for legal aid to approved unions at Government's expense in certain important proceedings. Approved unions have been defined as unions on the approved list and section 26 enacts that any approved union entitled to appear (a) before a Labour Court in a proceeding for determining whether a strike, lock-out, closure, stoppage or change is illegal, or (b) before the Industrial Court in a proceeding involving, in the opinion of the Court, an important question of law or fact may apply to the Court for the grant of legal aid at the expense of the State Government. The Court after instituting the enquiry may either grant or refuse the application. For the purpose of this section, legal aid is inclusive of advice to the union and the appearance before a court, of a legal practitioner on behalf of the union.

KERALA

The following is the scheme made by the Government of Kerala under the Kerala Legal Aid (to the Scheduled Castes and Scheduled Tribes and to the poor) Rules, 1957.

Legal aid has been defined as the aid given by the State to a person by meeting the fees of counsel as may be presented from time to time and includes any other aid given in connection with the litigation for which counsel is engaged which Government may decide from time to time. A person whose average monthly income is not more than Rs. 100/- is considered to be a poor person for the purposes of these rules.

A poor person is given legal aid in the High Court, Courts of session and Courts of District Magistrates in all criminal trials, appeals and revisions and if a wife or a child in maintenance proceedings under section 488 of the Criminal Procedure Code. The Court is given the power to decide the question of the poverty of the applicant for legal aid on the basis of the report of a Tahsildar or other officer.

Members of the Scheduled Castes and Scheduled Tribes in the State are entitled to legal aid in all criminal courts in all types of cases. They are similarly entitled to legal aid in all civil cases, appeals and revisions either for prosecuting or for defending a proceeding.

In addition persons who are allowed to sue in *forma pauperis* (under the Civil Procedure Code) are also given legal aid as defined by these rules.

The rules further provide for legal aid in special cases. In suits, appeals, and revisions arising out of legislation intended to safeguard the interests of or confer benefits upon a section or class of people like workers, tenants etc., Government may, if they are satisfied on the representation of a Kisan or a Trade Union organisation, or in exceptional cases by the party himself that there is an important legal issue to be decided which may have far reaching consequences in a way opposed to the intention of the legislation and that the party is unable to engage eminent counsel to conduct his case efficiently, direct the Government Pleader or the Advocate General to appear on behalf of such person in such suits, appeals or revisions.

Provision is also made for the preparation for each court of panels of legal practitioners who are willing to act for the assisted parties, and the rules prescribe a scale of fees to be paid to those lawyers in Civil and Criminal cases. The lawyers receiving fees under these rules are forbidden to receive any fee from the party direct.

MADRAS

By an order issued by the Harijan Welfare department of the Government of Madras it has been directed that whenever a criminal case is launched against Harijans by caste Hindus or *vice versa* legal aid to the Harijans at Government cost may be given in specially deserving cases in the interests of justice.

PUNJAB

The State Government provides legal aid at its own cost to members of the Scheduled Castes in cases arising out of the denial of right conferred on them by the Constitution of India.

APPENDIX IV

VOLUNTARY ORGANISATIONS FOR FREE LEGAL AID TO POOR PERSONS

In the States of Assam, Kerala, Madhya Pradesh, Punjab, Rajasthan and Uttar Pradesh no voluntary legal aid organisations exist for grant of free legal aid. The position in the other States is set out below :

BOMBAY

The non-official agencies for rendering legal aid and service in the State of Bombay are the Bombay Legal Aid Society and similar legal aid societies in Poona, Ahmednagar and Nasik.

The Bombay Legal Aid Society deserves particular mention for its pioneering work in this field. It was registered under the Societies Registration Act of 1869 in the year 1924 with the following objects:—

(a) to undertake, promote and develop legal aid work, to encourage the formation of new legal aid organisations and to co-operate with the judiciary, the Bar and all organisations interested in the administration of justice so as to make justice accessible to the poor and to reduce the costs of litigation; to render legal aid gratuitously, if necessary, to all who may appear worthy thereof and who are unable to procure assistance elsewhere;

(b) to provide lawyers to the poor in cases where lawyers are necessary and procure proper representation of their cases before the court or other authority;

(c) to make provision for payment of court fees and other charges on behalf of poor litigants to whom aid is granted;

(d) to do all such other things as are incidental or conducive to the attainment of the above objects or any of them.

The membership of the Society for which there is a nominal fee of Rs. 2 per name is open to lawyers and laymen. The society has on its rolls several advocates of the Original Side, Attorneys-at-law and lawyers practising in the Presidency Small Cause Courts and Magistrates

Courts in the Bombay City as also several laymen. The Society has been rendering legal aid service to poor citizens without making any charge for legal aid or advice. The tests applied for eligibility of legal aid are—(1) whether the applicant has a *bona fide* case or defence, and (2) whether the applicant is too poor to pay the fee of the lawyer. If the applicant is too poor to pay the court fee, he is assisted in making a petition to the court to be allowed to sue or defend in *forma pauperis*.

The Society has handled all types of cases in all the courts in Bombay. Since its registration, it has received more than 2000 applications from poor persons requiring legal aid and has been consulted by and given free legal advice to a very large number of applicants from all parts of the State. It also maintains contact with other social service organizations in Bombay. All persons requiring legal aid and advice are referred to the Society by Government, the High Court, other courts and the municipal and port trust authorities and social service agencies. If the matter in which a poor litigant in Bombay is concerned is in a court outside Bombay, the Society endeavours to put the applicant in touch with a local practising lawyer who is willing to act for the applicant without charging any fees.

The Society has published a pamphlet styled "Justice and Poor" which is a factual study of the incidence of costs of litigation in the State of Bombay. Under its auspices a provincial legal aid conference was held in Bombay in 1949 and presided over by the Hon'ble Mr. Justice J. C. Shah of the Bombay High Court. The proceedings of the conference have been published in a book form by the Society and in this way it has strived to keep alive the interest of the legal profession and the public in the legal aid movement in Bombay.

In August 1955 the Society held a legal aid week in Bombay and in the legal aid conference held during the week resolutions were adopted calling upon the Bar and the general public to lend their full support to the movement.

In addition to providing free legal aid and advice to poor litigants the Society has from time to time moved both the courts and the Government for making amendments in the practice and the procedure of the courts, and amending such provisions as tend to cause hardship to poor litigants. The Society receives an annual grant-in-aid of Rs. 12,000 only from Government of Bombay and donations from some of the Presidency Magistrates from the poor-boxes maintained in their courts and an annual grant of Rs. 300 made by Sir Ness Wadia.

In the mofussil, legal aid organisations with more or less similar aims and objects exist in Poona, Ahmednagar and Nasik. Their work has, however, not been as extensive as the work of the Bombay Society.

MADRAS

Pursuant to a resolution passed at the ninth session of the Madras State Lawyers' conference held under the auspices of the Madras State Bar Federation in December 1954, a Legal Aid Committee was constituted at Madras and a number of lawyers expressed their willingness to serve gratuitously in cases entrusted to them. The assistance of counsel was also made available in respect of a few cases in courts and legal advice was given in some others. But due to several difficulties experienced in the working of the scheme it was felt that unless there was a regular organisation with the necessary staff the scheme could not properly function.

WEST BENGAL

In 1952, a legal aid and advice society of West Bengal was formed and registered under the Societies Registration Act in May 1953. It was established for making legal aid and advice readily available to persons of small and moderate means. Under its scheme it has given legal aid and advice to all persons irrespective of their nationality and in all courts and tribunals in the State and in all jurisdictions. It gives such aid in all deserving cases without making any charges. If a litigant is able to make any financial contributions to the Society's funds it is accepted for meeting the actual cost of the litigation. The scope of the legal aid consists in drawing up pleadings or petitions and replies, appearance in court by competent lawyers at all stages of litigation including appeals and also the securing of expert evidence or the reports or opinions of experts in medical and technical matters. If any costs are recovered from the opposite party, the society retains such costs to replenish its funds and for payment to lawyers upto 75 per cent of the actual fees or provides costs taxed by the court. In such a case, all contributions made by the poor party are refunded to him. The Society has on its panel Barristers, Solicitors and Pleaders of the lower courts who ungrudgingly render their services in the cause of free legal aid. The tests which an applicant must satisfy are:—

- (1) His financial incapacity;
- (2) Justice of the case;
- (3) Legal merits of the case.

No help is given to cases of speculative litigation. Before starting litigation on behalf of the poor litigant, the

Society sends out a letter of request to the other party for negotiation and amicable settlement and sometimes a dispute is settled by this process, even though it means long correspondence and interviews. The Society also takes up cases which are recommended to it by the High Court Judges and other distinguished persons.

The Society has received help and support from distinguished persons. It receives the free gift of a law library from Sri Sambunath Bannerji Ex-Judge of the Calcutta High Court and office accommodation from Dr. B. C. Roy, Chief Minister of West Bengal. The West Bengal Government has also contributed more than ten thousand rupees to the Society for carrying on its work but in view of the over-growing demand for its services the Society stands in need of more funds.

In 1956, the Society gave legal advice to 131 parties who sought legal advice from the Society. The Society conducted more than forty suits and proceedings in different courts of law. More than half a dozen legal disputes were settled during the year through the intervention of the Society without recourse to litigation. The Society helped about a dozen parties in realising their dues from the Government or other public bodies.

UTTAR PRADESH

There is a legal aid society in Uttar Pradesh functioning since 1952. It is trying to give legal aid to deserving persons but finds great difficulty in its work without the co-operation of Government. The Society requested Government for a vacant building for its office but it was not granted. In short, for lack of proper co-operation from the High Court, the Government and the Bar, the Society has been able to do very little work since its inception. Its aims and objects are to give legal aid and advice to the poor and to secure representation in courts on their behalf, to set up boards of conciliation for amicable settlement, to help junior lawyers become useful members of their profession and to enlist their services for the Society etc.

ANDHRA PRADESH

It was learnt from the Bar Association of Guntur that the members of the local cultural association styled the Jyotsana Samiti have resolved to arrange for free legal aid to poor litigants through the lawyer members.

MYSORE

The Bangalore Legal Aid Society provides assistance to poor persons in criminal appeals in the High Court. There are also legal aid societies in Dharwar and Bijapur on the

same lines as those found in the moffusil of Bombay like Poona and Nasik.

BIHAR

There is a Legal Aid Society in Bhagalpur which is a voluntary organisation of lawyers who render assistance gratis to accused persons in criminal cases.

ORISSA

There is a Legal Aid and Advice Society in Balasore.

1. "The enormous quantity and the uncertain quality of Indian Law Reports" was the subject matter of comment by Sir Frederick Pollock as far back as 1931. He stated that "If things continue in this present disastrous course, the Indian Reports will in a few years really be what a great poet in his haste called the English ones (even as they were a century ago) a wilderness". Sir Maurice Gwyer, the first Chief Justice of India expressed¹ his "cordial agreement" with the critics of the multiplying law reports in India in 1944. Recently the present Chief Justice of India has in June 1956 quoted with approval Sir Frederick Pollock's observation and said²:—

Critics of the existing system.

"A period of 25 years has elapsed since then, but every lawyer in India will have to admit that no improvement has occurred in law reporting in India, but on the other hand one is near wilderness, if not actually in it".

In its answer to the Questionnaire issued by the Commission the Madras Bar Council stated as follows:—

"The Council strongly feels that the law reports are too many (official and non-official), that it makes the task of the legal practitioners difficult and confusing. There must be only one authorised law report from which only citations may be made and it may be made the statutory report".

A suggested remedy.

The views expressed by the Council can be said to be fairly representative of the views expressed by associations of lawyers generally and by individual lawyers in the answers given to our Questionnaire and in the course of the evidence recorded by us.

The importance of the issue raised and the almost unanimous view expressed against the multiplicity of law reports and their prejudicial effect on the administration of justice necessitate a detailed examination of the whole question.

2. It has been said with reference to England that "It is a commonplace to lawyers at least that the law of this country consists substantially of legislative enactments and judicial decisions. The former are made known to the public in the most solemn form, printed at the public expense and preserved under conditions which ensure that they shall be permanently and authentically recorded.

Judicial decisions a source of law.

¹Preface to Pollock & Mulla, Indian Contract Act, 7th Edition.

²Preface to Mulla's Transfer of Property Act, 4th Edition.

With the latter it always has been and still is far otherwise. Yet the importance of accurate and permanent reports of judicial decisions is and always has been obvious..... Today whatever the reasons may be, the theory of the binding force of precedent is firmly established, if not unreservedly, at least only with some such reservation as that a decision need not be followed if it appears to have been given *per incuriam* e.g., by reason of a relevant statute not having been called to the attention of the Court. It is to-day the accepted duty of a Judge, whatever his own opinion may be, to follow the decision of any Court recognised as competent to bind him. It is his duty to administer the law which that Court has declared."¹

The position in India, Article 141 of the Constitution. Supreme Court decisions binding.

3. The position in India is not very different.

So far as judgments of the Supreme Court are concerned article 141 of the Constitution provides that "the law declared by the Supreme Court shall be binding on all courts within the territory of India." Article 141 re-enunciates the principle contained in section 212 of the Government of India Act, 1935, which laid down that the decisions of the Privy Council and the Federal Court shall be binding upon Indian courts.

Article 141 of the Constitution and section 212 of the Government of India Act merely gave legislative sanction to what had long been the recognised practice of the British Indian Courts. The position had been well established by the decisions of the Judicial Committee of the Privy Council. It decided that "It is not open to the courts in India to question any principle enunciated by this Board, although they have a right of examining the facts of any case before them to see whether and how far the principle on which stress is laid applies to the facts of the particular case. Nor is it open to them, whether on account of 'judicial dignity' or otherwise, to question its decision on any particular issue of fact."²

Authority of High Court decisions.

4. The decisions of the High Courts have not been invested with the authority of law by any enactment. But it is well settled that the courts subordinate to a High Court are bound by its decisions and it is not open to them to refuse to follow the law as interpreted by that High Court. The High Courts have made this clear in a number of decisions³ and have gone so far as to characterise refusal on the part of subordinate courts to follow their decisions as being tantamount to insubordination.

¹Report of the Lord Chancellor's Committee on Law Reporting, 1949, para. 4.

²Mata Prasad v. Nageshar Sahai, 52 I. A. 398 at page 417.

aswamy v. Chandra Potayya, A. I. R. 1925 Madras 261 at 262; Bankey Lal v. Batra and others, A. I. R. 1943 Allahabad 747.

It is also well settled that a single Judge of a High Court is bound by the decisions of a Division Bench of that Court and a Division Bench by the decision of a Full Bench or of a former Division Bench, except that the latter Division Bench has the right to refer the case to a Full Bench for reconsideration of the earlier decision in the event of its disagreeing with the view of the former Division Bench.¹

However, the decision of a High Court has only persuasive authority outside the territory subject to its jurisdiction.

5. Thus the binding force of precedents has been firmly established in Indian jurisprudence. Judgments delivered by the superior courts are as much the law of the country as legislative enactments. Precedents Binding.

6. We desired to give careful consideration to the question whether the present system of relying on decided cases as precedents laying down the law could at this stage of our judicial history be departed from. Accordingly we endeavoured to elicit suggestions as to the introduction of an alternative system. Alternative System.

7. Critics of the present system of relying upon decided cases as precedents have drawn our attention to the system obtaining on the Continent of Europe, in France and some other countries. The position in France has been set out by a French academic lawyer of distribution in the following words:— Position on the Continent.

"In France, the judicial precedent does not, *ipso facto* bind either the tribunals which established it nor the lower courts; and the Court of Cassation itself retains the right to go back on its own decisions. The courts of appeal may oppose a doctrine proclaimed by the Court of Cassation, and this opposition has sometimes led to a change of opinion on the part of the higher court. The practice of the courts does not become a source of the law until it is definitely fixed by the repetition of precedents which are in agreement on a single point."²

Every judgment of the superior courts in France is rendered in writing and after being signed by the Judges is entered in a Register. The judgments so recorded and registered are accessible to all the members of the legal profession and also the public and it is open to anyone to make from the register a selection of decisions for publication. Many well-known collections of decisions have been prepared by individual lawyers and published. But there are no official publications.

¹Chandulal v. Babulal, A. I. R. 1952 Madhya Bharat 171. M. Subbarayudu & others v. the State, A. I. R. 1955 Andhra 87. Dr. K. C. Nambiar v. State of Madras, A. I. R. 1953, Madras 351.

²Professor Lambert of the University of Lyons in the Yale Law Journal 1929, Vol. XXXIX, pp. 1 and 14.

A similar practice in regard to the recording of judgments and publishing selections from them is followed in some other European countries.

The selections so published are used by lawyers and courts for their information.

It would thus appear that even in the Continental systems precedents are used and referred to and though decided cases may not themselves lay down the law or be a source of law, the practice of the court may be definitely fixed by a repetition of precedents which are in agreement on a single point.

Precedents
in a codi-
fied system
of law.

8. It has been suggested that the position in India is different from that in England and that of the United States, as a large portion of our law has been codified and that in a system of codified laws judicial precedents should not have the force of law or be capable of adding to the provisions of a statute. In this connection it may be recalled that the first Law Commission of 1834 decided on a codification of laws in the hope that illustrations to the sections in a codified law would serve the purpose of decided cases and do away with the necessity of citing any precedents.

Notwithstanding their codes, the countries on the Continent have found it necessary and useful to compile digest of decided cases. The hope entertained by the first Law Commission that the use of precedents may be unnecessary in India has not been fulfilled. For over a century Indian courts have functioned like the British and the American courts relying on precedents and treating them as authoritative.

Value of
Precedents

9. It is undeniable that the system of regarding decided cases as binding authorities and a source of law has undoubted advantages.

It makes for uniformity and certainty in the administration of law. It also tends to convenience and the avoidance of delays. If earlier decisions of courts were not recognised as binding every court would have to decide the same question over and over again on principle causing prolonged arguments and consequent delay. As has been pointed out by Justice Cardozo "The labour of Judges would be increased to the breaking point if every past decision could be reopened in every case".¹

Certainty is most important in the realm of law and it can be obtained only if courts consistently decide the same points in the same manner. If decisions of superior courts or even of the same court are not to be regarded as binding on the Judges it will be impossible for individuals to regulate their future conduct relying on any particular view of the law. The law will cease to be certain and men will not

¹Nature of the Judicial Process, page 144.

know where they stand as regards their legal rights and obligations. In the words of Lord Eldon: "It is better that the law should be certain than that every judge should speculate upon improvements in it."¹

One can easily picture the confusion and conflict which would arise if we departed from the system of relying on precedents as binding. A Tenancy Act or a Debt Relief Act would be interpreted differently in different districts of the same State. Similarly a statute may be declared constitutional in one State and void in another. An act might be a crime in one State and not be punishable on a different interpretation of the same law in another. Such would be the inevitable consequences of permitting each court to interpret the law according to its own lights without reference to precedents.

10. The answers to the Questionnaire received by us and the evidence given before us have almost unanimously been in favour of the maintenance of the present system of treating precedents as binding. Even if it were possible to go back upon this system at the present stage of our judicial development we would on principle emphatically disapprove of any such change.

Present system of precedents should continue.

11. If the system of precedents being regarded as binding is to prevail it must inevitably follow that no suggestions as to the restriction on the publication of reports or the conferring of the right of exclusive citation on an authorised series of reports can arise. These suggestions ignore the fundamental fact that the law in a particular matter is what it is not because it has been so reported to be but because it has been so laid down in the decision of a Judge. In England it is "the privilege, if not the duty of a member of the Bar to inform the court whether as Counsel engaged in the case or as *amicus curiae*, of a relevant decision whether it has been reported or not. So it is the duty of a Judge to follow the decision of a competent court whether reported or not: it may well be that there has not been time to report it."² The same is the position in India.

Restrictions on publication and citation not possible.

One might take the case of a decision of the Supreme Court which has not been reported in any series. Under article 141 of the Constitution the moment the decision is pronounced, the law declared in that decision becomes binding on all courts in the territory of India. The fact whether the judgment is reported or not would make no difference to its binding nature. The publication of that judgment in the reports of a few months later does not in any manner alter its character or attach any sanctity to it.

The Constitutional position.

¹Sheldon v Goodrick; 8 Vix. p. 497.

²Report of the Lord Chancellor's Committee on Law Reporting para. 15.

It is the fact that a judge of a superior court has decided the law as laid down in the decision which gives it its binding nature and its being reported or not is a mere accident which cannot alter its character.

The same considerations apply to such judgments of the High Court as are binding.

Fact of reporting irrelevant.

12. It necessarily follows that if in the course of an argument a certified copy of a judgment of the Supreme Court or the High Court is produced it would have to be treated as a binding decision notwithstanding the fact that it has not been reported.

Could counsel say to a litigant seeking his advice "This is the law according to a judgment delivered by the Supreme Court. But as it has not been reported and your case comes up for hearing tomorrow it may be possible that the High Court may decide against you. If, however, your case is heard after a few months when the decision is reported it is possible that the case may be decided in your favour"?

Thus, if the fact of a judgment being reported or not is irrelevant to its authority how could it be urged that judgments reported in a particular series, say, the authorised series should alone have binding authority and not others? Is a text book writer to ignore decisions which have not been reported in the authorised series and state the law only in accordance with what is to be found in that series?

In this connection we may recall a passage in a judgment delivered by Justice Niyogi of the Nagpur High Court:

Report only evidence of decision.

"I agree with Bose J. that a single judge of the High Court is bound by the decision of the Division Bench, even though the decision is not reported... From the point of view of the judgment becoming a judicial precedent what is material is the decision in the case; it is the decision and not the opinion of the Court nor the report of it that makes the precedent. Hence an unreported case may be cited as an authority if the actual decision can be shown from the original sources..... It is the decision which establishes the precedent and the report but serves as evidence of it."¹

Reliance by Supreme Court on unreported decisions.

13. The Supreme Court has itself on more than one occasion referred to its unreported judgments or those of the Privy Council. A recent example is to be found in a case decided on the 13th of February 1957 in which the court refers to an unreported judgment of its own decided in 1952 as being exactly in point and covering the question at issue in the case.²

¹Vinayak Shamrao v. Morashwar, A. I. R. 1944, Nagpur p. 44 at p. 46.

²Bajjnath Tripathi v. State of Bhopal, A. I. R. 1957 Supreme Court 494 at 496.

14. If it is inconsistent with the doctrine of precedents being binding to ban the citation of a report, by the production of a certified copy of a judgment, there would be no justification for preventing a law report even though unauthorised being read out in court. The only difference between the two is that the correctness of the certified copy is authenticated whereas that of the other is not officially vouched for. It, therefore, follows that the only reason for refusing to treat a decision reported in an unauthorised publication as an authority can be that the report is not authenticated and may not be correct. If, however, there is no reason to doubt the correctness of the report the court would be bound in principle to allow the judgment in an unauthorised report to be cited for the same reason that it permits a certified copy to be cited.

Unauthorised reports evidence decisions.

Turning now to decisions which do not have a binding authority on the courts in which they are referred to but only persuasive authority the position is no different. The value of such decisions lies solely in their reasoning and that reasoning is no way affected by the fact that the report of the decision is an authorised one or otherwise provided the report is an accurate report.

15. Section 38 of the Indian Evidence Act provides *inter alia* that when the court has to form an opinion as to a law of any country, any report of a ruling of the court of such a country contained in a book purporting to be a report of such rulings is relevant. It is clear that this provision would enable unofficial reports of foreign rulings to be cited where the court has to form an opinion as to a question of foreign law. It would, indeed, be curious if while permitting foreign unofficial reports to be cited, the courts were compelled to refuse to look at unofficial Indian reports.

Section Evidence Act—Unofficial foreign reports relevant.

16. Our courts have always permitted the citation of cases decided in Britain, Australia, Canada and the United States. These decisions have in our courts only persuasive authority. If we are not to deny the assistance of this persuasive authority to our courts would it be right to prevent our courts from having the benefit of the decisions of Indian High Courts merely because they do not happen to be reported in an official series?

Foreign reports necessary

17. Nor would such a prohibition even if imposed be workable in practice. It would be open to counsel to read parts of a decision in an unofficial report as a part of his argument.

Prohibition of citation impracticable

18. The suggestion of creating by legislative interference a monopoly in law reporting in order to counteract the evils supposed to arise from a multiplicity of law reports is not a new one. In England a proposal was made in 1864 by the late Joshua Williams "that the right of exclusive citation in the courts should be given either to the Law Reports as at present established or to some single

Suggestion for a monopoly.

series of reports established under some sort of official control."¹ Writing some years after the incorporation of the Council of Law Reporting in England in 1885, Lord Lindley expressed the view that "Until we have one publication of judicial decisions which, and which alone, shall be received and acted upon as authoritative by our numerous tribunals, all reforms in Law Reporting must be regarded as transitional and incomplete."² He stated further that "A multiplicity of law reports is a great evil. The evil was once intolerable; it may become so again; whether it will or will not depend on the profession and on the Council" (the Council of Law Reporting). "Let us hope it never will. If it does, a great effort will have failed and its failure will prove the necessity for legislative interference and for a monopoly of law reporting."³

the Indian
Law
Reports
Act.

19. The first attempt in India to restrict the citation of unofficial reports would appear to have been made by the Law Reports Act, 1875 (Act XVIII of 1875) which provides that no court shall be bound to hear cited or shall receive or treat as an authority binding on it the report of any case other than a report published under the authority of the Government. The enactment of this Act which can be described as an attempt at creating a partial monopoly in favour of official reports was strongly opposed. Sir George Campbell, the then Lt. Governor of Bengal expressed his opposition in these words: "If you put into the hands of any one authority the power of deciding which of these decisions should be treated as authoritative, and which are to be rejected and snuffed out, you give that authority an enormous power over the superior Courts of the country: you make him, in fact, Judge over the Judges."⁴ Notwithstanding the Act, unofficial reports published in India have for many years been cited before the Judicial Committee of the Privy Council and the Indian High Courts and the Supreme Court and have been referred to and relied on in their judgments. The Act has indeed been a dead letter.

Private
Members
of 1927.

20. In 1927 a non-official Bill was introduced in the Central Legislative Assembly containing a proposal to ban the citation of non-official law reports in the Indian courts. The proposal met with strong opposition from distinguished lawyers like Dr. M. R. Jayakar and Sir Hari Singh Gour in the Assembly.⁵ The Bill never became law.

¹Report of the Lord Chancellor's Committee on Law Reporting para. 15.

²Law Quarterly Review, Vol. I, p. 137.

³Law Quarterly Review, Vol. I, p. 149.

⁴Abstract of the Proceedings of the Council of the Governor-General, of India assembled for the purpose of making Laws and Regulations, 1874: Vol. XIII, page 80.

⁵'The Use of Judicial Precedents,' by P. Ramanatha Aiyar, pp. 276—281.

21. The conclusion is thus irresistible that to permit a system which would restrict citation to a particular series of law reports and exclude others would be destructive of the entire doctrine of precedent as we understand it. In such a system, a decision would derive its authority not by reason of its being a decision of a particular tribunal but from the fact of its having been chosen by the reporter for inclusion in the authorised series. We repeat and express our concurrence with the conclusions reached by the Lord Chancellor's Committee on this question. "To such a proposal or anything like it we are unanimously opposed. It ignores, as we think the fundamental fact that the law of England is what it is not because it has been so reported but because it has been so decided."¹

Monopoly
of reporting
undesirable.

22. Having expressed our views on this important question it would be convenient to pass to a historical review of law reporting as it has developed in India.

History of
Law re-
porting in
India.

There appears to have been no system of reliance upon judicial precedents in Hindu jurisprudence except in so far as they serve as evidence of custom. Nor do collections of cases appear to have been used under Mohammedan rule although the Fatwah Alamgiri prepared in the reign of Emperor Aurangzeb contains opinions of the law officers on points of law.

Law reporting seems to have made its appearance in India with the establishment of courts under British authority. When the Supreme Courts were first constituted in the three Presidency Towns, the judges and barristers of those courts having been trained in the English tradition started using and relying on the decisions of the English courts. Subsequently when the Sadar Courts started delivering their judgments in English they began to issue as early as 1845 copies of some of their judgments monthly for the benefit of the public. For some time the courts also used to publish monthly abstracts of their judgments. The judgments of which copies were furnished were only some of the judgments delivered by these courts.²

Meanwhile private reports also came into existence. Barristers attached to the Sadar Courts and some of the Judges of these courts began to publish the reports of their decisions. The reports of Belasis, Borrodail, Marshall and Hyde to name only a few of them came into existence due to the initiative of individual judges and counsel.

Regular law reporting may be said, however, to have commenced with the establishment of the High Courts in the three Presidency Towns. From that time semi-official and private law reports came to be published regularly.

¹Report of the Lord Chancellor's Committee on Law Reporting para. 15.

²A. I. R. 1945 Journal, page 4. Proceedings of the Legislative Department of July 1919 Nos. 22—23 : Appendix I.

After the establishment of the High Courts Sir James Stephen, the then Law Member recorded a minute to the effect that reporting should be regarded as a branch of legislation and accepted the principle that it was hardly a less important duty of the Government to publish that part of the law which is enunciated by its tribunals in their judgments than to promulgate its legislation. A circular letter was issued on the subject to various local Governments and the High Courts.

A subsequent Law Member Mr. (Later Lord) Hobhouse also interested himself in the subject and took the initiative in the passing of the Indian Law Reports Act (Act XVIII of 1875) which as stated above sought to regulate the indiscriminate citation of cases in the courts.

After the passing of the Act Councils of Law Reporting were set up in the several High Courts and reports began to be published under the authority of the Government.

23. Private reports also continued to be published and today we have in India a large number of official and unofficial law reports as appears in the Table set out below:—

Number of
Law Re-
ports in the
country.

ALL INDIA JOURNALS

1. *All India Reporter*

2. *Criminal Law Journal*

(A) *List of Official Law Journals*

1. I.L.R. Allahabad.
2. I.L.R. Andhra Pradesh.
3. I.L.R. Assam.
4. I.L.R. Bombay.
5. I.L.R. Calcutta.
6. I.L.R. Cuttack.
7. Jammu and Kashmir Law Reports.
8. I.L.R. Kerala.
9. I.L.R. Madhya Pradesh (which takes the place of I.L.R. Nagpur and I.L.R. Madhya Bharat).
10. I.L.R. Madras.
11. I.L.R. Mysore.
12. I.L.R. Patna.
13. I.L.R. Punjab.
14. I.L.R. Rajasthan.
15. Supreme Court Reports.

(B) *List of Non-Official Law Journals.*

1. Allahabad Law Journal.
2. Allahabad Weekly Reporter.
3. Andhra Law Times.
4. Andhra Weekly Reporter.
5. Bihar Law Journal.
6. Bombay Law Reporter.
7. Calcutta Law Journal.
8. Calcutta Weekly Notes.
9. Cuttack Law Times.
10. Jabalpure Law Journal (Gwalior) (Previously, M.B. Law Journal).
11. Jabalpur Law Journal (Jabalpur).
12. Karnatak Law Journal.
13. Kerala Law Journal.
14. Kerala Law Times.
15. Madhya Pradesh Cases.
16. Madhya Pradesh Law Journal.
17. Madras Law Journal (Civil).
18. Madras Law Journal (Criminal).
19. Madras Law Weekly.
20. Madras Weekly Notes.
21. Mysore Law Journal.
22. Nagpur Law Journal.
23. Patna Law Reports.
24. Punjab Law Reports.
25. Rajasthan Law Weekly.
26. Supreme Court Appeals.
27. Supreme Court Cases (in Hindi).
28. Supreme Court Journal.

(C) *List of Special Law Journals.*

1. Company Cases.
2. Company Cases Supplement.
3. Factories Journal Reports.
4. Income Tax Reports.
5. Labour Appeal Cases.
6. Labour Law Journal.
7. Sales Tax Cases.

These reports include special law reports and number fifty-two in all.¹

¹This is based on a list furnished to the Commission by the A.I.R. Ltd., Nagpur at the Commission's request.

Number of Reports and cases not excessive.

24. The representatives or the publishers of certain private law journals gave evidence before us and challenged the correctness of the statement that the law reports published in India were too many or that too many cases were being reported. It was pointed out that in England taking the figures for 1940 the number of cases reported annually were about 1250 and that about half a dozen private law reports existed in England in addition to the law reports published by the Incorporated Council of Law Reporting. In India the total number of cases published in all the law reports was stated to be about 2500 each year. Having regard to the vast area of the country, its very large population and the number of superior courts, it was urged that far from being excessive the number of cases reported was very moderate. The attention of the Commission was also drawn to the position in the United States of America which being a federated Union composed of a large number of States was, it was stated, more nearly comparable to India. It was stated that each State in the United States had its own reports both official and unofficial and that the total number of reports including specialised law reports amounted to some hundreds. The total number of cases published annually in the reports was as many as 40,000. It is difficult and in any event unnecessary to express any definite opinion on this question. But it certainly does appear that the view that too many decisions are being reported is overstated. Probably what really requires consideration and remedy is the quality of the reports which are being published and the manner in which they are often cited in courts irrespective of their relevance. These are matters to which we shall advert later.

Essentials of good Law Reporting.

25. The doctrine of precedents, which we have explained and accepted above, requires that the law reports should be accurate and full, so that the true principle laid down by the decision may be deduced. The report should contain all essential information like the parties, the nature of the pleadings, the essential facts, the arguments of counsel, the decision and the grounds of the judgment. Not the least important part of the report is its head-note which should be accurate and concise and yet in a sense comprehensive.

Cases chosen for reporting.

It is obvious that a law report can serve its true purpose if it reports only cases "which introduce or appear to introduce a new principle or new rule; or which materially modify an existing principle or rule; or which settle or tend to settle a question on which the law is doubtful; or which for any other reasons are peculiarly instructive".¹

Time and from of publication.

Equally important is the time and form of the publication of the reports. It is desirable that the publication should take place as soon as possible after the judgment

¹Lord Lindley, *Law Quarterly Review*, Vol. I, pp. 143-144.

but speed should not result in a sacrifice of the accuracy of the judgments reported. In order to ensure the accuracy of the judgments and their being checked by the judges who deliver them, a certain amount of time must elapse before the publication of the report. In the meanwhile the profession and the public should be kept informed from week to week of decisions of importance by the publication of notes of cases.

26. The essentials above mentioned need modification in their application to specialised reports. Lawyers and judges are apt to regard law reports from their own professional angle. They, however, sometimes serve a much wider public. This is particularly so in the case of specialised reports like those which publish decisions on labour and tax laws. These specialised reports will naturally, having regard to the larger public they serve, have to make a wider selection of the decisions they publish so that many decisions which may not be considered fit for publication in a series of general law reports may aptly and well find a place in the special reports. It must be admitted that most of the series of law reports now being published in India, whether official or unofficial, do not contain the essentials of a good law report stated above.

Specialised reports.

Law Reports in India defective.

27. Apart from their other defects the official series have from their very start suffered very serious delays in publication. We find Sir Richard Garth, the then Chief Justice of Calcutta complaining in 1880 of the serious delay in the publication of the I.L.R. Calcutta series. These delays led to a series of complaints with the result that the Government of India felt constrained to examine the question in 1918. To-day the situation in some States is no better. We append herewith a table showing the issues of the different Indian law reports series which had been received on or before the 15th August 1957 by the Law Ministry Library in New Delhi, which subscribes to these series with the dates of their receipt.

Delays in the publication of the I.L.R. series.

TABLE

Serial No.	Name of High Court	Latest Part	Date of receipt in Library	Remarks
1	2	3	4	5
1.	Allahabad	1956—Vol. I, Pt. 5 (May)	21-5-57	
2.	Andhra Pradesh	1957—Pts. I—4 (Jan. to April).	8-8-57	In one issue.

1	2	3	4	5
3.	Assam	1956—Vol. 8, Pt. 3 (March).	21-5-57	
4.	Bombay	1957—Pt. 5 (May)	15-7-57	
5.	Calcutta	1954—Vol. 2, July-Dec.	28-4-56	Annual index for 1954 await- ed.]
6.	Cuttack	1957—Pts. 6—7 (June-July).	20-7-57]	
7.	Kerala	1957—July	20-8-57	Upto Part 10 of the I.L.R. 1956 Travancore-Cochin series (which is continued as Kerala series) have been received in Library. The remaining parts of 1956 and the annual index are still awaited.
8.	Madhya Bharat	1956—Vol. 5 completed.	7-1-56	Index also receiv- ed.
9.	Madras	1957—July	1-8-57	
10.	Mysore	1957—Jan.-March	28-8-57	In one issue.
11.	Nagpur	1956—July-August	13-8-57	Do.]
12.	Patiala	1955—December	6-10-56	Annual index awaited.
13.	Patna	1956—Vol. 35 December.	3-7-57	Do.
14.	Punjab	1956—Vol. 35 Nov.-Dec.	3-5-57	Do.
15.	Rajasthan	1955—Vol. 5 Pts. 11—12 (Nov.-Dec.)	3-5-57	Do.
16.	Supreme Court Reports.	1957 (January) Pt. I	Not available.	

If the publication of this series under Government auspices is based on the duty of Government to make the law appearing in the decisions of the courts available as soon after the decisions as possible, to the courts, the profession and the members of the public, the gross delays in the publication of the series indicates a grievous neglect of that duty. But for the existence of non-official law reports the judges and the lawyers practising in the courts would have been for months without any guidance as to the law laid down by the courts. The Indian law reports series as now run and published may well cease to exist without any detriment to anybody except perhaps to those employed in its publication.

28. The unofficial series have generally been prompt in publication. Many of them cannot, however, be regarded as accurate reports because of their very unsatisfactory head-notes. Unfortunately it has become the practice in some courts to base themselves on what appears in the head-note of a report rather than in the body of the judgments and misleading or inaccurate head-notes have been frequently the cause of wrong decisions.

Defects in the Unofficial series mis-leading Head-notes.

But perhaps the greatest sin of some of the unofficial reports is that the principles on which a selection should be based as mentioned by Lord Lindley are completely ignored, there being a competition between some series as to the number of cases they report. A large number of cases laying down no legal principle but deciding questions of fact and others reporting well accepted and trite law find a place in these reports. In the result what happens is, that by the citation of such cases "the hearing of suits is protracted and the time of the court wasted by the citation of authorities of doubtful relevance, and that, if counsel is not darkened, at least first principles are apt to be obscured by the introduction of exceptions and refinements which had better be forgotten."¹ Very frequently presiding judicial officers are confronted with a large number of irrelevant authorities and in the result they tend to lose the habit of thinking for themselves and deciding cases on first principles. There develops a judicial habit of requiring the most obvious legal propositions to be supported by the authority of decided cases and not infrequently the words of a statute are themselves overlooked in the multiplicity of precedents cited before the tribunal. Indiscriminate selection of cases for reporting has perhaps been the largest single cause in making arguments of counsel lengthy and protracted.

Faulty selection of cases.

Excessive citation.

29. It appears to us that the remedy lies in taking measures to bring about the publication of a series of law reports which would embody all the essentials of a good law report and indeed serve as a model for unofficial publications of reports. As the decisions of the judges are the expositions of the law *ex non scripto* it is as much the duty of the State to promulgate them as to publish the *lex ex scripto*, the statutes. We have seen, however, how the State has for various reasons been unable to discharge this duty. A number of editors of the I.L.R. series were examined by us and in most cases the delays in the publication of the series were said to be due to the delays which arose in the printing of the series in the Government presses. It is clear therefore that if law reports are to be efficient and speedily published the task must be entrusted to a body independent of Government.

Importance of good reporting.

¹ Report of the Lord Chancellor's Committee on Law Reporting, para. 14.

Role of the
legal pro-
fession.

30. W. T. S. Daniels, Q.C. later a County Court Judge, who took a leading part in the establishment of the Incorporated Council of Law Reporting for England and Wales set out the need for such a body in 1863 in the following words:—

“I recognise and base my suggestions upon the principle, that the proper preparation and publication of those judicial decisions, which are expositions of the law *ex non scripto* is a public duty, and that the public have a right to expect that it will be discharged by a recognised body in the State qualified for the purpose. The qualifications of such a body should be—Independence of the Government, Co-operation with, but not Dependence upon, the Judicature, Adequate knowledge of the law and Experience in the practice of the Courts, combined with special skill and experience in the art of reporting. These several qualifications are possessed in the highest degree by the Bar, and by no other body of men—and the Bar form a recognised body in the State—Why should they not combine and undertake the duty?”¹

The Coun-
cil of Law
Reporting
in Eng-
land—
Composi-
tion and
objects.

31. In England the law reports are being published by a Council consisting of fifteen members. It has three *ex-officio* members, namely, the Attorney-General, the Solicitor-General and the President of the Law Society for the time being. The four Inns of Court and the Law Society nominate two members each and the persons so chosen in their turn co-opt two additional members. One representative of each of these bodies and one of the co-opted members retire biennially and are eligible for re-nomination. The members of the Council work in an honorary capacity. The executive functions of the Council are discharged by a Secretary. The Council, originally a private association, was incorporated in 1870 as a company limited by guarantee. Its principal object is stated to be “the preparation and publication, in a convenient form, at a moderate price and under gratuitous professional control, of Reports of Judicial Decisions of the Superior and Appellate courts in England”. Article 4 provides that no part of the income or the property of the Association shall be applied to the benefit of any of its members.

Method of
working.

The Council has a staff consisting of an editor and an assistant editor and about twenty reporters. All of them have to be Barristers and the appointment of a reporter to a particular court is subject to the approval of the senior presiding judge of that court and this approval is not a formality. Generally only Barristers experienced in law reporting are appointed reporters. The reporters have to be present in the court throughout the working hours and to hear every case which they report.

¹The History and the Origin of the Law Reports, By W. T. S. Daniels, page 24

They are also allowed access to the shorthand notes of the Judges' stenographers and they write up their reports outside court hours.

The Council having been established to render a service to the profession the publication of the reports is carried on, on a no profit no loss basis. The annual subscription of the law reports which has varied from time to time from 4 Guineas to £12-0-0 is annually adjusted to ensure that financially the reports make neither a profit nor a loss. The approximate number of subscribers to the Council's law reports is estimated at present to be 7,000.

Financial Aspects

32. We see no reason why a Council or Councils of Law Reporting established on a similar basis in India should not work satisfactorily and achieve the purpose we have in view.

Need for such a Council in India.

The idea of having an All India Council for this purpose is clearly impracticable. It would be an unwieldy body and would probably cause delays. Further the High Courts frequently give decisions on the construction of State enactments which though of great local importance are of no value outside a particular State. It would, therefore, be best to establish a separate Law Reporting Council for each State.

All India Council impossible.

State Councils necessary.

33. Each Council should consist wholly of the members of the legal profession and the law reports should as in England be under 'gratuitous professional control'. The Council may consist of the Advocate-General as an *ex-officio* member, an academic lawyer, a representative of the Bar Council, and two or three lawyers of eminence representing the Bar Association of the High Court and the *mofussil* Bar. The Council thus formed might be empowered to co-opt two members. The members of the Council should serve in an honorary capacity. A similar Council consisting among others of representatives of the proposed All India Bar Council and if necessary some representative of the State Law Reporting Councils may be established for the publication of the reports of the decisions of the Supreme Court.

Composition of Councils.

34. Subject to the supervision and control of the Council an editorial board consisting of an editor and such number of reporters, as may be necessary, all being members of the legal profession, should be set up. The selection of judgments to be reported would be a matter exclusively within the competence of the editorial board.

Editorial staff and its functions.

As in India every judgment of a High Court or the Supreme Court is transcribed by a shorthand writer and signed by the Judge, it should be possible for the courts to supply the Council with a copy of the judgment as

revised by the judge immediately after it is signed. The reporter would study the judgment and if he is of the view that it is worth reporting he would submit it together with the proposed head-note to the editor who would then make the final decision whether it should be reported. The reporter may also while recommending a case for being reported indicate his reasons for so recommending. If any inconsistency is found in the judgment or it appears to have been given *per incuriam* the editor might be authorised to refer it to the judge concerned.

Judges
not to decide
on report-
ability.

35. In our view the judges should have no voice in deciding whether a case should or should not be reported. In several States there is in vogue the practice of judges marking their judgments "A.F.R." i.e., approved for reporting. This is a very unwholesome practice and should be stopped. A judge is too often inclined to a generous view of the importance of his own judgments and rarely hesitant to decide that it should be reported. Not infrequently judgments tend to become lengthy and somewhat pedantic because the judges think of the judgments finding a place in the law reports. A number of witnesses with experience of law reporting have told us that it is a habit with some judges to send for reporters and ask them to include their judgments in those selected for being reported. The practice is also apt to cause delays. As far back as 1894 the Chief Reporter of the I.L.R. Calcutta series complained that delays in the reporting of cases were sometimes occasioned by the interference of judges with the discretion of reporters. Sometimes this practice enables the judge to decide that a judgment delivered by him should not be reported. This is manifestly undesirable and was strongly commented upon by important witnesses who gave evidence before us. It was emphasised that the possibility that the judgment might be published in a professional journal will tend to make judges more careful, prevent them from basing their decisions on doubtful propositions of law and generally act as a check against caprice or prejudice affecting their judgments. As has been observed by the Committee on Law Reporting in England: "The decisions of the Court must be open for publication, discussion and criticism. * * * Nor can a judge by any means deny the right to publish as law that which he has decided to be law."¹

The practice of leaving the selection of judgments to be reported entirely to an editorial board without reference to the judges seems to have worked satisfactorily in England and there is no reason why in India the selection of cases to be reported should not be left exclusively to a properly constituted editorial board. It should equally be the function of the editor to prepare proper head-notes of the cases to be reported.

¹Report of the Lord Chancellor's Committee on Law Reporting, para 16.

36. There has been a tendency recently in the Indian law reports to omit arguments advanced by counsel. This appears to us to deprive the report of a great deal of its value. It is not easy to appreciate or to evaluate a judgment as an authority unless one is made aware of the points that were urged before the court and the authorities cited before it. In fact so experienced an editor of law reports as Sir Frederick Pollock has said that no report of a case is worth while unless it contains the arguments advanced in the case.

Need for reporting arguments.

37. We have already noticed above the delays in printing arising out of the reports being printed in the Government presses. The Council will therefore have to arrange for the printing of the reports in private presses. The appearance of the report within a very reasonable time after the delivery of the judgment is as stated earlier an essential of a good law report. Mr. G. W. Hemming, a former editor of the Law Reports in England gave the following estimate¹ of the time necessary for preparing and hearing out a good report:—

Expedition in printing.

Reporters and editor	..	5 weeks.
Printers, nearly	..	3 weeks.
Judicial revision, fully	..	3 weeks.

It makes a normal average interval of 11 weeks between the delivery of the judgment and the publication of the report. With us all judgments are reduced to writing and revised before a reporter can get copies for the purpose of reporting. That would shorten the period by three weeks and with the increased and modern printing facilities now available it should be possible for reports to be published within a period of two months from the date of the delivery of the judgment. In fact some private journals are at present able to publish the reports in a time shorter than two months.

Time necessary for publication.

38. The figures furnished to us by the State Governments indicate that year by year most of these Governments make substantial losses in the publication of the official series. On the contrary we have evidence to show that substantial gains are being made by some publishers of the private series of reports and that others are being run so that the revenue equals the expenditure. It may be that in the initial stages the Councils of Law Reporting may have to be subsidised by the States. This will mean no additional expenditure to the State Governments as the losses now being incurred in the official series will cease by the closing down of the official series and these

R series running at a loss.

Finance of Law Reporting Councils.

¹Law Quarterly Review, Vol. I, p. 492.

amounts may be paid to the Councils by way of subsidy. However, such assistance should not have to continue for more than a few years within which the Councils should be able to run the law reports as in England on a no profit and no loss basis without being assisted by Government. As in England the subscription could be adjusted from time to time so as to correspond with the cost of publication. It may be pointed out that the Councils should apart from the revenue arising from the subscriptions be able to secure a certain amount of advertising revenue.

Specialised reports.

39. We do not think that the Councils should undertake the publication of specialised reports, at any rate in the early stages of their existence. Perhaps the publication of specialised reports could best be left to private agencies as in England.

Reports of Councils to serve as models.

40. The law reports published by the Councils all over the country containing a proper selection of cases with adequate statements of facts and arguments of counsel and published quickly will serve as models for private publications. If they are reasonably priced as they should be they will probably cut out some reports now published by private agencies. One may notice in this connection that in England the number of general private law reports has recently tended to decrease. Though we were at the commencement inclined to favour the suggestion that restrictions should be imposed on the publication of private reports or that citation in courts should be restricted to a particular series, we feel bound to reject it. We trust, however, that the publication of a proper series of law reports by a body like the Council of Law Reporting will go a considerable way in mitigating the existing evil. Once such law reports are published the courts may well insist on the observance of a rule that the case to be cited should only be from the reports published by the Councils of Law Reporting if it is reported in that series.

Solution :
Better trained Bar and Judiciary.

41. The real solution to the problem of indiscriminate reporting lies in our view in a better trained Bar and a robust judiciary capable of dealing with matters on principle and dispensing with artificial aids in reaching a decision. Not infrequently when counsel is arguing a question of principle or the construction of a section, judges even in superior courts ask whether counsel is in a position to support his argument by the authority of decided cases. The judgments of some superior courts are full of citations of cases sometimes a large number supporting the same proposition and sometimes one notices very little discussion of the principle involved. One may compare with these judgments the judgments of the Judicial Committee of the Privy Council which were not only brief but referred to decided cases sparingly and only on appropriate occasions. Thus in a great measure the

evil of irrelevant and multitudinous citation is a matter which can be controlled by proper judicial personnel.

42. In view of the recommendations made by us the Indian Law Reports Act (XVIII of 1875) will have to be repealed. As pointed out above by reason perhaps of the delays in the publication of the Indian Law Reports series the provisions of section 3 have not been observed by the courts. Indeed the judgments of all courts including those of the Judicial Committee of the Privy Council and the Supreme Court have referred to decisions published in private series as authoritative and binding. Further our recommendations involve the cessation of the publication of the Indian Law Report series itself.

Repeal of
Act XVIII
of 1875.

43. It has been suggested that steps should be taken for the preparation and publication of indexes of all judgments of the High Courts and of the Supreme Court whether reported or not and that such indexes should be made available freely to the public at a moderate cost. It has further been suggested that individuals should be enabled to get copies of all judgments which they can trace through the index for publication or for any other purpose. Professor Goodhard in a dissentient report to the Report of the Lord Chancellor's Committee on Law Reporting made a similar suggestion.¹ Professor Goodhard's view has the support of no less an authority than Professor Holdsworth.² The main objections which weighed with the majority of Professor Goodhart's colleagues in rejecting his recommendation was that its acceptance would involve extra expenditure to the Government in appointing official stenographers for taking down and transcribing judgments and that the consideration and revision of such judgments by the judge would be incompatible with speedy publication and would also impose an additional burden on the judges. These considerations have no application to India where unlike in England every judgment of the High Courts and of the Supreme Court is reduced into writing by official shorthand writers and is finally revised and signed by the judge concerned. We understand that in some of the High Courts in India the suggested system prevails in a modified form and judgments of these High Courts are indexed by law graduates on the staff of the court whenever they decide any question of law and that these indexes are sometimes used by the reporters of the several law journals for the purpose of selecting cases suitable for reporting. We, therefore, recommend that such an index be maintained by all the High Courts and the Supreme Court so that lawyers and private persons could have access to these indexes and be able to apply for certified copies of such judgments as they may need for the purposes of the cases they are interested in.

Preparation
of indexes
of judgments.

¹Report of the Lord Chancellor's Committee on Law Reporting.

²Law Reporting in the 19th and 20th Centuries Anglo-American Legal History, Series No. 3, 1947. Cited by C. F. Allen, Law in the making, 1 Ed. p 352

Conclusions. 44. We now set out our conclusions under this head as follows:—

(1) The present system of treating judicial precedents as binding and citing them in Court serves a very valuable purpose and should be continued.

(2) It is neither feasible nor desirable to restrict the publication of reports or to confer the monopoly of citation on one set of reports.

(3) The proper selection and reporting of judicial decisions which are the exposition of the law *ex non scripto* is a public duty.

(4) The State has failed to discharge this duty properly.

(5) This responsibility should, therefore, be undertaken by the legal profession and a Law Reporting Council should be established for this purpose in each State and also for the Supreme Court.

(6) The composition of the Council should be as indicated in paragraph 33 *ante*.

(7) The Council should bring out reports which conform to the essentials of a good report set out in paragraph 25 *ante* and serve as models of good reporting. Short notes of cases may be made available before the regular reports are published.

(8) The reports published by the Council should also contain the argument of Counsel.

(9) These reports should be printed at private presses and so priced that the Councils function on a no loss and no profit basis.

(10) If necessary the State should undertake to subsidise the reports of the Law Reporting Councils for the first few years.

(11) The Councils should not undertake the publication of specialised reports at least in the early stages.

(12) The courts should make a rule that cases reported in the Law Reports published by the Councils of Law Reporting should be cited only from that series.

(13) The Judges should have no say in deciding whether a case should or should not be reported.

29.—LANGUAGE

1. The questions of the official language of the Union and the time for the change-over from English to Hindi envisaged by the Constitution, have been the subject of acute and even acrimonious controversy. Happily, our task in this regard is confined to making recommendations in regard to the language of the laws of the country, the language to be used in the superior and the subordinate courts and the language of the Law Reports. This task has, in a measure, been made easier by the fact, that these questions have been examined by the Language Commission who have made recommendations¹ on them and whose report is now under the consideration of a Parliamentary Committee appointed under article 344 of the Constitution.

The scope of our enquiry.

2. It will be useful to examine at the start the existing constitutional position and the statutory provisions with regard to these questions.

Constitutional provisions.

Article 343 lays down in unequivocal terms that Hindi is to be the official language of the Union. It however provides for the continuance of English as the official language for a period of fifteen years. It envisages the possibility of both, English and Hindi, being the official languages of the Union side by side, even during this period of fifteen years. It also contemplates the possibility of the continuance of English as the official language for specified purpose, after the period of fifteen years. Thus, having regard to the far-reaching change to be accomplished—the replacement of an official language which has been in use for nearly a hundred years by Hindi—the Constitution rightly leaves a wide latitude to the Union executive and legislature in the matter. Article 345 provides, that the official language of a State may be one or more of the languages used in the State, or Hindi, at the option of the State Legislature. Article 346 provides, that the official language of the Union is to be the language of communication between the Union and the States and between one State and another.

3. Article 348 aims at achieving uniformity in the language of the Union and State laws and of the superior courts. It lays down that until Parliament by law otherwise provides, which means, until Parliament enacts legislation bringing into use Hindi in certain spheres,

Language of Bills, Acts, the Supreme Court and the High Court.

¹Chapters IX, X, XI of the Report of the Official Language Commission.

the authoritative texts of all Bills in Parliament or the State legislatures and of all Acts of Parliament and of all the State Legislatures and of all Orders, Rules, Regulations and Bye-laws, issued either under the Constitution or under any law made by Parliament or a State Legislature shall be in the English language. It also provides, that all proceedings in the Supreme Court and in the High Courts, shall be in English. In regard to Bills in and Acts of the State Legislatures, the rule is relaxed to the extent that a State Legislature may prescribe any language other than the English language for use, in Bills in, or Acts of, the State Legislature. In cases, however, it decides to do so, a translation of these has to be published in the English language and it is the translation so published which is deemed to be the authoritative text of the Bill or the Act. In regard to proceedings in the High Court also, the rule laid down in the opening part of article 348 is modified to the extent that the Governor of a State may, with the previous consent of the President, authorise the use of Hindi or any other language in proceedings in the State High Court. This, however, does not apply to judgments, decrees or orders made by the High Court which will still have to continue in English.

Statutory provisions for subordinate civil courts.

4. Section 137 of the Civil Procedure Code deals with the language of subordinate Civil Courts. While permitting the continuance of the existing court languages until a different provision is made, it empowers a State Government to declare what shall be the language of any civil court. It also permits the use of English for all purposes for which the language of the court can be used except in the recording of evidence. Order XVIII, Rule 5, prescribes that evidence shall be taken down in writing in the language of the court. The High Court has, however, power under section 138, to direct with respect to a judge or class of judges, that evidence in cases in which an appeal lies shall be recorded in English.

Subordinate criminal courts.

5. Similarly, in regard to criminal courts, section 558 of the Criminal Procedure Code empowers the State Government to decide for the purposes of that Code, the language of each subordinate court within its territory. The Code also regulates the language of the court as regards the framing of the charge, recording of evidence and the delivery of judgments. Section 221 of the Code provides that the charge in a presidency town shall be written in English and elsewhere either in English or in the language of the court. Section 356 of the Code provides, that in all trials before the courts of session and trials or inquiries before Magistrates, the evidence of each witness is to be recorded in writing in the language of the court. Where the evidence is given in a language other than the language of the court, the magistrate judge may record in English the evidence of a witn

who deposes in that language and unless the accused is familiar with English, an authenticated translation of such evidence in the language of the court has to form part of the record. In other cases also evidence may be recorded in the language in which it is given but a translation of the deposition in English or in the court language has to form part of the record. The examination of the accused under section 342 has, however, to be recorded in full in the language in which he is examined, and English or the language of the Court may be used only if that course is not practicable (section 364). The judgment of the court may be delivered in English or in the language of the court (section 367).

6. The factual position as to the languages used in the High Courts and in subordinate courts in the various States appears in a statement¹ annexed to the Report of the Official Language Commission. It has been thus summarised by the Official Language Commission²:—

Regional languages in subordinate courts.

“Broadly speaking, it would appear that at the lowest rungs of the system, viz., village panchayats and trial courts, civil and criminal, at the taluka level, the linguistic medium is the regional language. As we go up the judicial system, English comes to occupy a larger place, although the exact constituents of the linguistic ‘mixture’ at this stage seem to differ quite considerably from State to State, and it would seem that even within one State there are sometimes differences as between different districts. Generally speaking, excepting the Hindi-speaking areas in which it is the regional language, Hindi does not find a place at this level in the judicial system in non-Hindi-speaking areas. It appears that there has been a progressive trend towards displacement of English, particularly in Hindi-speaking regions at this middle level of the judiciary. Even where judgments, decrees and orders are still delivered in English, it would appear that in practice arguments by counsel are frequently allowed to be conducted in the language best understood by all parties, viz., the regional language. This is, however, no fresh departure but only an enlargement of a practice which obtained in a greater or less degree even previous to 1947”.

As regards the High Courts, it appears that in some States advantage has been taken of clause (2) of article 348 to permit the use of the regional languages in their proceedings other than judgments, decrees or orders. To quote the Official Language Commission:—

Regional Languages in the High Courts.

“Thus in Madhya Bharat and Rajasthan States the respective Rajpramukhs have authorised under

¹Official Language Commission Report—Appendix VII—p. 447.

²*Ibid*—page 160, para. 3.

this clause the use of Hindi in the proceedings of High Courts; in Hyderabad and Travancore-Cochin, Urdu and Malayalam respectively have been authorised; and in PEPSU, both Hindi and Punjabi have been authorised. Hindi is similarly allowed for proceedings in the Judicial Commissioner's Court in Vindhya Pradesh.⁷¹

Distribution of legislative power and the language of the laws.

7. We have seen how the Constitution has endeavoured by enacting the provisions in article 348 to maintain a uniform language for all laws in the country. A federal system such as we have, cannot function satisfactorily unless laws all over the country are in one language; at the moment in English and later, when the time is ripe for it, in Hindi. The Union would promulgate its laws in its Official Language which is to be Hindi and these laws will be applicable all over the country. The legislative power of the Union and the States is concurrent in many fields, and there would, therefore be what may be described as an interlacing of Central and State Laws. A Central law may by its provisions impliedly repeal a State law. The Centre may legislate in its official language even in the State field under article 242 of the Constitution and other provisions. The State may by its legislation in certain fields affect Central legislation enacted in the Union official language. With legislative powers so distributed, it is inevitable that all legislation, whether by the Centre or the States, should be in one language, that is, eventually in Hindi. It would be impossible, if it were otherwise, for the lawyer, the citizen and the courts to understand the laws and their mutual reaction, and the administration of justice would be at a standstill.

Integrated court structure and need for uniformity of language.

8. Our Constitution has also established what has been called a unified or integrated system of law courts. There is no division of courts into State Courts and Federal Courts, as in the United States. The Centre and the States have a single hierarchy of courts administering both the Central and the State laws. Under our system, a decision of a subordinate court in a State may, in appropriate cases, come for disposal to the High Court or the Supreme Court. Apart from the regular law courts, we have spread over the various States tribunals administering Central taxation, labour and other laws, which must necessarily conduct their proceedings in the Union official language. It would be well-nigh impossible to work this integrated system of courts efficiently, if there were not in use a uniform language, at any rate in the superior courts.

Unified Bar and judiciary implies linguistic unity.

9. Members of the Bar all over the country have demanded for years a unified Indian Bar and it appears likely that this may shortly be accomplished by Parliamentary legislation. Is it conceivable that a unified Bar can function with any usefulness, unless our laws are

⁷¹Ibid, page 161—Para 4.

cted and our law courts function in a uniform language? Frequently, suggestions have been made for the establishment of an All-India cadre of High Court Judges and an All-India Judicial Service manning the subordinate judiciary. All these ideas will be incapable of fruition unless we have one language in which all our laws—Union and State—are enacted and in which our courts are run.

10. Some enthusiasts have in their zeal for promoting the use of regional languages in the judicial sphere, gone to the length of suggesting that all these difficulties could be overcome by establishing a system under which all laws and all proceedings of courts and all law Reports are translated from Hindi into all the regional languages and from the regional languages into Hindi. One admires the imaginative boldness of this proposal. The Union and State Secretariats and the Supreme Court and the State High Courts will then have huge offices manned by armies of translators. One of the witnesses before us dealing with this suggestion truly remarked: "We should soon turn ourselves into a nation of translators". It is obvious, that even if we could afford to do this at a time, when our whole effort should be directed to nation-building and other essential activities, it would be inadvisable to fritter away our energies and resources on such a scheme. Even if we did embark on such a scheme, it could never achieve the purposes aimed at by our Constitution.

Multi-lingual translation of laws and law reports impossible.

11. By the use of the English language as the language of our laws and our superior law courts, we have been able to establish and work a countrywide system of laws and judicial administration. If the official language of the Union is to be Hindi, as provided by the Constitution, it is essential, in view of what we have stated above, that Hindi should in the future be the language of all our laws, Union or State, and the medium of proceedings in the Supreme Court and the High Courts.

Benefits of English—need for unity of language.

12. In other words, what we recommend is that at some convenient date in the future, Hindi should be substituted for and take the place of English as the language in which our laws will be framed and in which the proceedings of the superior courts will be conducted. It will also be necessary—as contemplated by the Constitution for both Hindi and English to be used as the language of our laws and law courts for a time till Hindi has grown sufficiently and developed an adequate legal vocabulary and phraseology.

Hindi to take the place of English, but after development.

13. The evidence of the witnesses before us, broadly speaking, agrees with the view which we have expressed above and emphasized, very rightly, that the change-over to Hindi will have to be gradual and have to wait till the knowledge of Hindi has spread and the language itself has sufficiently developed.

General agreement gradual change necessary.

Extreme
views
favoured
regional
languages.

11. However, in some of the non-Hindi-speaking States like West-Bengal, Madras and Kerala we had some witnesses who took up the extreme position that all State laws should be enacted in the regional languages and the proceedings in all the State courts including the High Courts should be conducted in the regional languages. This view seemed to derive partly from a zeal for the development of the regional languages and partly from a feeling that if the regional languages were denied, what they thought was their rightful place in the law and the law courts, they would not develop legal concepts and a legal phraseology.

Opposition
to Hindi—
English
preferred.

There appeared also to be a feeling of antagonism to Hindi arising from the idea that a language which was the regional language of some other States was being sought to be imposed on States in preference to and in supersession of, the regional languages of these States. A small section of opinion went to the length of advocating the continuance of English as the language of our laws and law courts for an indefinite time in preference to the substitution of Hindi thus preferring the perpetuation of a foreign language to the introduction of a language spoken by over forty per cent of the Indian people. It was surprising that a few members of the legal profession which by its training and practice is accustomed to take balanced views should have supported this extreme position.

Consider-
able pre-
paratory
work es-
sential for
introducing
Hindi.

12. Before we can substitute Hindi for English in the manner we have indicated above, at some future date, an enormous amount of preparatory work will be necessary. Our law students, our law professors and later our lawyers and judges will have to be trained to be able to understand and use Hindi with proficiency and exactitude, so as to be able to expound the law and legal concepts in that language. The foundation of such proficiency and exactitude must be a well developed vocabulary, which can be used for the purpose of laws and law courts and a law lexicon which would as far as possible convey in Hindi legal concepts and legal phrases.

Hindi Law
Lexicon.

We understand that such a lexicon is now under preparation. We trust that the work has not been left to Hindi enthusiasts who in other spheres have tried to draw largely on Sanskrit in framing Hindi words and phrases and have evolved what has been called *shudha* or Sanskritised Hindi. There is no reason why in preparing a legal lexicon in Hindi, English and Latin phrases and words which are in current use in legal phraseology and which have acquired a definite and well accepted legal connotation understood all over the Anglo-Saxon world should not be largely adopted. Similarly there have been in use in the erstwhile States of Hyderabad and Baroda where Urdu and Gujarati were used for a large

number of years, in the law courts, certain legal terms which can well be adopted into the Hindi legal vocabulary. If we are to make use, as we must for many many years, of text books in English and reports of cases decided in the United Kingdom and the United States, it will be a definite advantage to adopt as many English legal terms and phrases as possible in Hindi.

Terms from English, Latin etc. to be adopted.

16. The preparation of a lexicon will however be only a small step towards the accomplishment of the huge tasks necessary to be accomplished before we can change over to Hindi. Hindi can only be introduced in the manner we have indicated when we have produced a generation of lawyers who have from the primary and secondary courses of education been taught Hindi and to whom instruction in law has been imparted in Hindi in the law colleges with the aid of legal text books compiled in Hindi. A beginning has therefore to be made by making the teaching of Hindi compulsory at the secondary stage of education and making it the medium of instruction in the teaching of law.

Widespread proficiency in Hindi necessary.

17. We may now turn to the relevant recommendations made by the Language Commission which we set out briefly below—

Recommendations of the Language Commission.

(1) The authoritative enactment ought to be eventually in Hindi both in respect of parliamentary and State Legislation; but there may be need to publish translations in all the important regional languages current in the country. Chapter IX, paragraph 4.

(2) When the time comes for this change-over, the entire statute book of the country including rules and statutory orders issued under any law should be in one language, which cannot of course be other than Hindi. This applies both to the Centre and the States. Chapter IX, paragraphs 5 and 6.

(3) Hindi alone can be the language of the Supreme Court in respect of the entire court proceedings, records, judgments and orders. Authoritative texts of reported judgments will also be published in Hindi. Chapter X, paragraph 8.

(4) Separate regional language series of reports of Supreme Court decisions should be made available. Chapter X, paragraph 8.

(5) In courts up to District level, the regional language should be the court language; but the States should consider the making of a provision permitting

parties at their option the use of Hindi at any rate at the district level. Chapter X, paragraphs 9 and 16.

(6) The multiple linguistic pattern should be broken and integrated at the High Court level. In the High Courts, the judgments, decrees and orders must be in Hindi. Chapter X, paragraphs 10 and 13.

(7) Reportable High Court judgments should be translated into the respective regional languages. A "translation unit" may be established in every High Court for this purpose. Chapter X, paragraph 11.

(8) For a long time after a general change-over, it may be necessary to permit individual Judges to deliver judgments in English (in the Supreme Court and the High Courts). There may be an option to High Court Judges to deliver judgments in their regional languages provided English or Hindi translation of such judgments are authenticated by them. Similarly, individual Counsel may be permitted to argue in English or Hindi in the Supreme Court and in English or the regional language in the High Courts. Chapter X, paragraphs 8, 14 and 15.

(9) The change-over should not be made until the ground work has been fully prepared by the—

(a) Preparation of a standard legal lexicon.

(b) re-enactment of the Statute Book in Hindi in respect of both Central and State legislation. Chapter XI, paragraphs 1 and 3.

(10) Legal terms and expressions should be used in the same significance in all parts of the country. The evolution of the necessary terminology should be accelerated. Chapter XI, paragraphs 4 and 6.

(11) (a) As part of the ground work, there have to be corresponding changes in the educational system.

(b) Instruction in Hindi should be compulsory in the Secondary School stage and also for a minimum of three or four years during the later part of the earlier school course.

(c) In the case of technical educational institutions, where students of different linguistic regions receive education, Hindi should be the common medium to be adopted; the regional language may be used if the students are almost wholly drawn from a single linguistic group. Chapter X, paragraph 18 and Chapter VI, paragraphs 5, 12 and 22.

Our views
on the re-
commenda-
tions.

18. Though we agree with a large number of these recommendations, we disagree with some of them as in our view they are inconsistent with the scheme which we have recommended, namely, the substitution of Hindi for

English in the superior and subordinate courts as and when the Hindi language has developed.

The Language Commission seems to have envisaged the regional language as the language of the courts up to the district level. As pointed out above, English is used even in the subordinate courts at present for judgments, decrees and orders and in a considerable measure in arguments by the lawyers. As our lawyers get trained in Hindi and in Hindi legal phraseology they will be able to use Hindi instead of English in these subordinate courts. Instead of arguments being addressed as now mainly in English with the use now and again of the regional language, arguments will then be addressed mainly in Hindi with the occasional use of the regional language. The change-over from English to Hindi in the framing of judgments, decrees and orders should not present any difficulty at that stage. There would seem therefore to be no reason why the courts up to the district level should mainly, and as a rule, function in the regional language.

Language
of su-
ordinate
courts.

19. In regard to the High Courts, the Language Commission seemed to contemplate proceedings being conducted in the regional language. There appears to us to be no reason why this should be so. With the gradual development of Hindi and law and legal phraseology in Hindi, it is necessary that proceedings in these courts should be conducted in Hindi instead of English as at present.

High
Courts.

20. We also consider it essential that the medium of instruction in all legal educational institutions should be Hindi. It is not possible to envisage the possibility of our being able to compile the necessary legal text books in all the regional languages. It would be a Herculean task to render the different series of law reports into the various regional languages. Even if it could be satisfactorily accomplished, reports in different regional languages are bound to lead to the imperfect understanding of and a sense of uncertainty in the law laid down by these decisions. The authoritative texts of all laws, Union and State, and the decisions of the Supreme Court and the High Courts will be in the Hindi language. It would thus be difficult to impart instruction in the regional language when these laws and decisions are in the Hindi language. In regard to foreign decisions, the position will be still more difficult. Excerpts from these decisions could, if at all, be made available to the law student only in one Indian language, viz., Hindi and not in the different regional languages.

Medium
of legal
education.

21. It may be pointed out that though instruction will be imparted at the legal educational institutions in Hindi, the student eligible to enter these institutions will have to possess, as a student taking up any other technical subject, like medicine or engineering, a sufficient knowledge of English to be able to read and grasp legal text books and law reports in that language.

Knowledge
of English
necessary.

ity
tual
ge-
r to
Hindi
possible

22. The ultimate change-over from English into Hindi will have to wait not only till the ground has been prepared by the compilation of a standard legal lexicon and by the re-enactment of the Statute Book in Hindi; but till large groups of lawyers and Judges proficient in Hindi and Hindi legal phraseology are available.

23. For the reasons mentioned, we express our disagreement to the extent indicated above with the recommendations of the Language Commission numbered 4, 5, 6, 7, 8 and 11(c) in paragraph 17.

Time
necessary
for
change-
over at
least
25 years.

24. It may be asked what period of time is to elapse before the change-over from English to Hindi can take place. We have endeavoured above to indicate the preparatory work which will have to be done before the change-over can be made. We may repeat, that only when we have large numbers of lawyers and Judges able to conduct proceedings in Hindi, that a change-over can be effectively made. These conditions can be produced within a reasonable time, only if we start immediately and in earnest, imparting to our children education in Hindi at the primary and secondary stages and subjecting students knowing Hindi to legal training through the medium of Hindi in our legal educational institutions. It is difficult to estimate the time needed for bringing about the conditions we have envisaged. They are obviously not capable of being achieved in a period of less than 25 or 30 years.

In view of the fact that we have set out our views in detail in the body of the Chapter we have considered it unnecessary to annex a summary of recommendations.