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THIRTEENTH REPORT

CONTRACT ACT 1872

सत्यमेव जयते

LAW COMMISSION OF INDIA

GOVERNMENT OF INDIA
MINISTRY OF LAW

137 Law Comm—1

CONTENTS

REPORT

PART I

General

Paragraphs		Pages
1.	Developments in the law since 1872	1
2.	Scope of revision	1—2
3-4.	Need for codification of supplementary principles	2—4
5—12.	Doctrine of consideration	4—8
13—16.	Doctrine of privity.	8—11
17—19.	Quasi-contracts	11—13
20.	Examination of the provisions of the existing Act, indicating the changes proposed	13

PART II

Proposals relating to Sections

21—138.	Section 1 to 238	14—73

APPENDICES

APPENDIX I.	Proposals as shown in the form of draft amendments	75—94
APPENDIX II.	Suggestions in respect of other Acts	95

सत्यमेव जयते

CHAIRMAN,
LAW COMMISSION,
NEW DELHI,
September 26, 1958.

Shri A. K. Sen,
Minister of Law,
New Delhi.

My dear Minister,

I have great pleasure in forwarding herewith the Thirteenth Report of the Law Commission on the Indian Contract Act.

2. At its first meeting held on the 17th September, 1955, the Commission decided to take up the revision of the Indian Contract Act and entrusted the task to a Committee consisting of Shri G. S. Pathak and Shri G. N. Joshi.

3. The consideration of the subject was initiated by Shri Pathak who formulated a scheme for the revision of the Act. The principles underlying the scheme were discussed at meetings of the Statute Revision Section of the Commission held on the 11th March, the 14th April, the 12th May, and the 10th June, 1956. A draft Report prepared by Shri Pathak in the light of the discussions was circulated to all the Members of the Commission and their views invited thereon. The Report together with the views was discussed at a meeting of the Statute Revision Section held on the 24th August, 1958. Important suggestions made by Members at this meeting were accepted and it was left to the Chairman to finally settle the Report in the light of the discussion.

4. Shri Pathak being outside India is unable to sign the Report personally. But he concurs in the recommendations and has authorised the Chairman to sign the Report on his behalf. Dr. N. C. Sen Gupta and Shri D. Narasa Raju, who are unable to come down to Delhi to sign the Report but similarly concur in the recommendations and have authorised the Chairman to sign the Report on their behalf.

5. The Commission wishes to acknowledge the services rendered by its Joint Secretary, Shri D. Basu, in connection with the preparation of the Report.

Yours sincerely,

M. C. SETALVAD.

REPORT

OF

THE LAW COMMISSION

ON

THE INDIAN CONTRACT ACT, 1872

PART I

General

Developments in the law since 1872.

1. Since 1872 there have been new developments in the theory of the law of Contract. The common law of England, on which the Indian Contract Act is principally based, had its roots in the real property law, which has been described by Denning, L.J., as being "devoid of moral concepts like mathematics[1]." "Rights and wrongs", says Denning, L.J., "did not enter into it nor the redress of grievances; only words and rules and logical deductions from them. In those early days land was the most important kind of property; and the common law lawyers were so absorbed in the land problem that they approached other problems in the same frame of mind. They looked for certainty, and gave justice a second place. In their hands, the law of Contracts and Torts tended to become as technical and rigid as the law of Property[1]." In the nineteenth century, freedom of contract was the governing principle. As Prof. Keeton[2] points out, the emphasis, today, must be placed upon the problem "whether as a result of unceasing administrative encroachment, freedom of contract will survive at all to any noticeable degree." Modern developments in the law of Contract reflect the aspirations of society in rapid transition.

Scope of revision.

2. We have noted these modern trends and also studied the views advanced by jurists in various countries as well as the changes recommended by the Wright Committee in England and the New York Law Revision Commission in America. Besides, there have been numerous judicial pronouncements on the interpretation of the various sections of our Act. Sometimes conflicting views have been

[1] "The Need for a New Equity" in (1952) Current Legal Problems, 1 (8).

[2] Elementary Principles of Jurisprudence, 408.

expressed and on a few occasions legislative changes have been suggested. We have examined such decisions and sought to resolve the conflict. We have also taken into consideration the suggestions received from members of the Bar and the Bench and the general public. At the same time, our conclusions have all along been influenced by the consideration that it will not be advisable to introduce such radical changes as may unnecessarily upset the concepts which have become deep rooted in the jurisprudence of the country and which now form part of the accepted notions of the lawyer and the layman.

Need for codification of supplementary principles.

3. As its Preamble says, the Act of 1872 does not profess to be a complete Code dealing with the law relating to contracts. The legislature, while enacting this Act, did not intend to exhaustively codify the whole of the law of contract to be applied by the Courts in India[1] or even any particular sub-division thereof. Thus, it has been held[2] that sections 124 and 125 of the Act do not lay down the whole of the law of Indemnity. As a result, on all matters on which it is silent the courts have had to resort to the rules of English Common Law, as principles of 'justice, equity and good conscience[3]'. We are of the opinion that this reliance on the principles of English law to supply the deficiencies of an Indian enactment is not conducive to certainty or simplicity of the law. We think it is preferable to add to the Act the English common law principles which have been applied by our Courts for nearly a century, so that it may not be necessary to refer to the English law in many cases.

The formulation of these principles is thus one of the objects of the revision undertaken by us.

4. Another aspect of revision arises from the fact that the law of Contract in India is not contained in the Indian Contract Act alone and there are a number of statutes dealing with its various branches. Whitley Stokes was of the view that all these should be consolidated and incorporated into the Contract Act[4]. But the legislative trend since the enactment of the Contract Act has been in

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[1] *Irrawaddy Flotilla Co.* v. *Bugwanda*, 18 Cal. 621 (P. C.).
[2] *Gajanan* v. *Madan*, A. I. R. 1942 Bom. 302 (303).
[3] S. 37 of the Bengal, Agra and Assam Civil Courts Act 1887 ; S. 16 of the Madras Civil Court Act 1873 ; S. 26 of Bombay Regulation IV of 1829.
[4] Whitley Stokes : Anglo Indian Codes, Vol. I, p. 534.

the other direction. Not only have separate Acts been passed on special aspects of contractual transactions, such as the Negotiable Instruments Act, 1881, but parts of the Contract Act itself have been taken out to constitute independent enactments relating to particular contracts, such as the Sale of Goods Act, 1930, the Partnership Act, 1932. On this point, the observations of the Select Committee on the Partnership Bill are interesting—

> "When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not and could not pretend to be, a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to the several branches of law of contract which the Bill did not touch. This hope has never been fulfilled. In later years it was found more convenient to have separate enactments for the several branches of the law of contract *e.g.*, the Transfer of Property Act, the Negotiable Instruments Act, and the Merchant Shipping Act. In our opinion, in view of the complexity of modern conditions, the time has now come when this process should be accelerated by embodying the different branches of the law relating to contract in separate self-contained enactment[1]".

We agree with these observations in so far as they suggest that special aspects of the law of contract should be dealt with in separate enactments inasmuch as owing to the expansion of the law it is not possible to include all its branches in one statute without making it unwieldy or cumbrous. It is this consideration which has induced us to recommend in our previous Report on the Sale of Goods Act[2] that the law relating to hire-purchase should be codified in a separate enactment apart from the general law of sale of goods. On the same principle, we are of the opinion that laws relating to carriers should be codified and consolidated into one separate statute. The Contract Act should be left to deal with the general principles relating to contractual relationship.

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[1] Gazette of India, dated the 24th January, 1931, Part V, pp. 31, 32.

[2] Eighth Report of the Law Commission on the Sale of Goods Act, 1930, para. 12, page 4.

In this view, we do not see any existing Act which can expediently be consolidated with the Contract Act.

Doctrine of consideration.

5. We have devoted anxious thought to the modern attitude towards the doctrine of consideration and to the desirability of its abolition or, at any rate, modification. This doctrine was borrowed from English Common Law. According to some eminent English jurists, the law on the subject requires change. Professor Holdsworth has described the doctrine "as something of an anachronism[1]" and observed that "the requirements of consideration in its present shape prevent the enforcement of many contracts, which ought to be enforced, if the law really wishes to give effect to the lawful intentions of the parties to them; and it would prevent the enforcement of many others, if the judges had not used their ingenuity to invent considerations. But the invention of considerations, by reasoning which is both devious and technical adds to the difficulties of the doctrine[2]". Thus remedy, according to Prof. Holdsworth, is not to scrap the doctrine of consideration but to reduce it to a subordinate place in the English theory of contract. He suggested, *inter alia*, that the law should provide that all lawful agreements should be valid contracts if the parties intended by their agreement to affect their legal relations, and either consideration was present, or the agreement was put into writing and signed by all the parties thereto.

Lord Wright has remarked that the doctrine of consideration in its present form serves no practical purpose and ought to be abolished[3]. Sir Frederick Pollock has said that the application of the doctrine of consideration 'to various unusual but not unknown cases has been made subtle and obscured by excessive dialectic refinement[4]". Equally strong observations are to be found in judicial pronouncements. In the well-known case of the *Dunlop Pneumatic Tyre Co.*[5], Lord Dunedin observed:

> "I confess that this case is to my mind apt to nip any budding affection which one might have had

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[1] Holdswor History of English Law, Vol. VIII, 47.
[2] *Ibid.*, 46.
[3] The Article "Ought the doctrine of consideration to be abolished from the Common Law" published in (1936) 49 Harvard Law Review, 1225 (1253).
[4] Genius of Common Law, 91.
[5] *Dunlop Pneumatic Tyre Co.* v. *Selfridge and Co.*, (1915) A. C. 847 (855)

> for the doctrine of consideration. For the effect of that doctrine in the present case is to make it possible for a person to snap his fingers at a bargain deliberately made, a bargain not in itself unfair, and which the person seeking to enforce it has a legitimate interest to enforce."

6. In America too, the doctrine of consideration has received severe criticism at the hands of Dean Pound. He observes:

> "It is significant, although we have been theorising about consideration for four centuries, our texts have not agreed upon a formula of consideration much less our courts upon any consistent scheme of what is consideration and what is not. It means one thing in the law of simple contracts, another in the law of negotiable instruments, another in conveyancing under the Statute of Uses and still another thing no one knows exactly what in many cases in equity[1]."

According to him, promise as a social and economic institution becomes of the first importance in a commercial and industrial society. A man's word should be "as good as his bond" and his fellowmen must be able to rely on the one equally with the other if our economic order is to function efficiently. This is the expression of the moral sentiment of the civilised society[2].

7. The continental countries adopted the requirement of 'causa' (which literally means a 'reasonable cause[3]') from Roman Law. But the interpretation of that expression has given a very wide and elastic meaning to the requirement of an agreement enforceable at law. Thus, as the Privy Council has observed[4], according to Roman-Dutch Law, a promise deliberately made to discharge a moral duty, or to do an act of generosity or benevolence can be enforced at law. In other words, "the doctrine has become so broad that it is almost true to say that any agreement for a lawful object is valid if the parties seriously intend

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[1] Pound: An introduction to the Philosophy of Law (Revd. edn.), 155.

[2] *Ibid.*, 147.

[3] Paton, A Text Book of Jurisprudence (2nd Ed.), 354.

[4] *Jayawickrame* v. *Amar Suriya*, (1918) Ac 869 (875).

to enter into legal relations." Many French writers who support this view have openly discarded the doctrine of causa as confusing[1]. The German Civil Code, similarly makes no mention of causa and under that Code, every lawful agreement entered into with the serious intention of being legally binding would directly produce an obligatory effect.

8. In England, the problem of consideration was referred to the Law Revision Committee, whose sixth report appeared in 1937[2]. The Committee's general conclusion substantially accepted Professor Holdsworth's view, for it advocated that a contract should exist if there was an intention to create legal relations and if either the contract was reduced to writing or consideration was present. It may be noted, however, that the Parliament in England has not yet adopted the recommendation of the Law Revision Committee. In the United States of America, the New York Law Revision Commission which was constituted at about the same time as the English Law Revision Committee, reached conclusions which in many respects were similar to those of the English Committee.

9. Notwithstanding the foregoing considerations and the views of eminent jurists, however, we are unable to recommend an abolition of the doctrine. It has become so firmly rooted in our concept of contract, that a wholesale rejection of the doctrine would have the result of overturning the very structure on which our Law of Contract is based and would require a complete and thorough overhaul of the law. This, in our opinion, is hardly warranted by the circumstances. Nor do we feel it logically defensible to provide, while retaining the existing law, that where a promise is in writing, no consideration should be required. We have, accordingly, come to the conclusion that instead of abolishing the doctrine or introducing an alternative to it, we should make suitable changes in the existing law which will have the effect of preventing the inequitable and anomalous consequences resulting from a rigid adherence to the doctrine. We propose to achieve this end by adding some clauses to section 25 which now enumerates the exceptional cases where a contract without consideration is valid.

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[1] Paton, *ibid.*, 355.

[2] Sixth Interim Report of the Law Revision Committee, 1937, Cmd. 5449.

10. Great injustice is done sometimes where a promise is made which the promisor knows will be acted upon and which is in fact acted upon and then it is held that such promise is unenforceable on the ground of want of consideration. A common example of such a case is where a person agrees to pay a subscription to a charitable institution with the knowledge that a building will be constructed with the aid of the amount subscribed and the trustees of the charity incur expenditure on the faith of the fulfilment of the promise. The Law Revision Committee of England has cited a number of such instances and the American Restatement on Contract, under section 60 in the Volume on Contracts, also mentions them. In India, some Judges have upheld such promises on the ground that they were supported by consideration[1] inasmuch as the expenditure was incurred "at the desire of the promisor", while other Judges have held that the facts did not justify the finding that the expenditure was incurred "at the desire of the promisor" and thus the agreement being without consideration was void and unenforceable[2]. In our opinion, the former view puts considerable strain on the meaning of the expression "at the desire of the promisor". "A promise, which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance, is binding, if injustice can be avoided only by enforcement of the promise[3]". In order to set at rest the above-mentioned controversy and to prevent injustice, we recommend that an exception be added to section 25 on lines similar to those suggested in the Sixth Interim Report of the Law Revision Committee in England. According to that Committee, "a promise which the promisor knows or reasonably should know, will be relied upon by the promisee, shall be enforceable if the promisee has altered his position to his deteriment in relying on his promise[4]". We are further of the view that for purposes of this exception, a promise need not be an express promise but may be implied from conduct *i.e.*, from acts or omissions. The words "express or implied" should therefore be added

[1] *Kedarnath* v. *Gorie Mohammad*, 14 Cal. 745 ; *Perumal* v. *Sendanatha*, A. I. R. 1918 Mad. 311.
[2] *Doraswamy Iyer* v. *Arunachala*, A. I. R. 1936 Mad. 135.
[3] American Restatement on Contracts, 110 (s. 90).
[4] Sixth Interim Report, para. 50, Recommendation no. 8 (p. 31).

after the word "promise" in adopting the above recommendation of the Law Revision Committee.

11. According to the present law in India, which is the same as in England, an undertaking to keep the offer open for a certain time, is a promise without consideration, and as such unenforceable. In order to be binding, such a promise must be supported by a distinct consideration. This rule is a necessary implication from section 5 and sub-section (2) of section 6 of the Contract Act.

The Law Revision Committee recommended that an agreement to keep an offer open for a definite period of time or until the occurrence of some specific event should be enforceable even where there is no consideration to support it[1].

A similar recommendation has been made by the Law Revision Committee in respect of a promise to dispense with or remit the performance of a promise or to extend the time for its performance.

We recommend that exceptions should be added to section 25 of our Act in terms of the above recommendations of the Law Revision Committee.

12. It was suggested to us that it should be made clear that the performance of a pre-existing legal duty should not form good consideration. In our view no change is called for in this respect, for, the cases where such legal duty arose out of a pre-existing contract between the promisor and promisee are fully provided in section 62, as would appear from the Illustrations thereto; and the cases where it arose out of contract with a third party is governed by the existing provisions. We do not recommend any change in the law on this topic.

The doctrine of privity.

13. Closely connected with the doctrine of consideration is the rule that a third party cannot sue on a contract though made for his benefit.

In English Law the rule came to be established in the 19th century after the crystalization of the doctrine of consideration, the first important landmark being the case of *Twedle* v. *Atkinson*[2] decided in 1861. It has been cate-

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[1] *Ibid.*

[2] (1861) I. B. & S. 393.

gorically reaffirmed by the House of Lords in *Dunlop Pneumatic Tyre Co.* v. *Selfridge*[1]. The hardship of the rule, however, manifested itself early, particularly where a person was entitled to some benefit under a contract to which he was not a party. Courts of equity sought to mitigate the hardship by applying the doctrine of constructive trust[2]. But this device necessarily involved a fiction and in a number of cases the device has failed to work as the judges insisted upon a strict application of the fiction[3]. In quite a few cases, such as benefits under insurance policies, the Legislature has intervened to modify the operation of the rule[4].

14. The English Law Revision Committee which examined the rule in its sixth interim report[5], has been unable to support the doctrine as it stands. The Committee thus observed—

> "The common law of England stands alone among modern systems of Law in its rigid adherence to the view that a contract should not confer any rights on a stranger to the contract even though, the sole object may be to benefit him[5]",

and recommended legislation to the following effect—

> "Where a contract by its express terms purports to confer a benefit directly on a third party it shall be enforceable by the third party in his own name subject to any defences that would have been valid between the contracting parties. Unless the contract otherwise provides it may be cancelled by the mutual consent of the contracting parties at any time before the third party has adopted it expressly or by conduct[6]."

The English Legislature has yet to give effect to the recommendation. Meantime Denning L. J. (as he then was) has assailed the rule as to privity of contract as a comparatively recent innovation[7] replacing the more than

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[1] (1915) A. C. 847 (853).
[2] Cf. *Grandy* v. *Grandy*, (1885) 30 Ch. D. 57.
[3] Cf. *Vandepitte* v. *P. A. I. Corporation*, (1933) A. C. 70.
[4] E. g., s. 36 (4) of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c.43); s. 56 (1) of the Law of Property Act, 1925 (15 & 16 Geo. 5, c. 20).
[5] Sixth Interim Report, para. 41.
[6] *Ibid.*, para. 48.
[7] In *Drive Yourself Hire Co.* v. *Strutt*, (1954) 1 Q. B. 250, p. 272.

two centuries old settled law to the contrary. Though Denning L. J's reading of the history of this doctrine has not possed without criticism[1], even his critics seem to be in agreement with him as to the need for giving effect to the recommendations of the Law Revision Committee.

15. There has been a conflict of judicial opinion as to the applicability of this doctrine in India.

(a) In some cases[2] the view has been taken that the words 'any other person' in s. 2(d) which depart from the English rule that consideration must proceed from the promisee neccesarily implied a corresponding deviation from the English rule as to privity of contract.

(b) The preponderating view, however, is that the English rule of privity of contract applies to India[3], notwithstanding s.2(d). The rule was applied by the Privy Council in *Jamnadas* v. *Ram Autar*[4]. In *Krishna Lal* v. *Promila*[5], Rankin C. J. struck a decisive blow to the argument based on the language of s.2(d). While conceding that the clause might be construed as implying a departure from the corresponding English rule, he observed that the definitions of promisor and promisee in section 2 rigidly excluded the notion that a stranger to a contract can sue thereon.

(c) At the same time, following English Law, a number of exceptions have been engrafted upon the doctrine by our courts. Thus, it has been held that a person who is not a party to a contract may nevertheless sue upon it—

(a) Where the contract implies a trust in favour of the third party[6], whether any property is specifically charged or not[6].

(b) Where money to be paid under the contract is charged on some immovable property[7].

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[1] *Vide* E. J. P. : Privity of Contract, 70 Law Quarterly Review, p. 467

[2] *Kindersley* J. in *Chinnayya* v. *Ramayya*, 4 Mad. 137 ; *Kshirodbehar* v. *Mangobinda*, 61 Cal. 841 (860).

[3] *Krishna Lal* v. *Promila*, A. I. R. 1928 Cal. 518 ; *Subbu Chetti* v. *Annachalam*, A. I. R. 1930 Mad. 382 (F. B.) ; *National Petroleum Co.* v. *Popatlal*, 60 Bom. 954.

[4] I. L. R. (1912) 34 All. 63 P. C.

[5] *Khawaja Md.* v. *Hussaini Begum*, (1910) 32 All. 410 (P. C.) : *Mukherjea* v. *Kiran*, (1938) 42 C.W.N. 1212.

[6] *Dan Kuer* v. *Sarla*, A. I. R. 1947 P. C. 8.

[7] *Adhar* v. *Dol Gobinda*, (1935) 40 C. W. N. 1037 ; *Atikalla* v. *Mobarak*, A. I. R. 1949 Cal. 174 ; *Gulabchand* v. *Laxminarayan*, A.I.R. 1944 Nag.46

Several exceptions have also been introduced by s.23 of the specific Relief Act, 1887, *e.g.*, in favour of the beneficiaries under a marriage settlement or compromise of doubtful rights.

16. That a rigid adherence to the doctrine of privity is bound to cause hardship is obvious. The present state of law in India is not quite certain and the particular exceptions which have been acknowledged by case-law and statutes do not cover all cases of hardship and thus enhance the bewilderment of the layman. As we anticipated in our Report on the Specific Relief Act[1], the better course would be to adopt a general exception to cover all cases of contracts conferring benefits upon third parties and dispense with the particular instances where the rule of privity should not apply. We consider the recommendation of the Law Revision Committee best suited for the purpose, and recommend that a separate section be incorporated on the lines thereof[2].

Quasi-contracts.

17. Another major topic which has received our particular attention and which deserves to be mentioned at this stage is the subject of quasi-contract, as it is commonly known.

This subject is dealt with in Chapter V of our Act under the head—'certain relations resembling those created by contract'. We prefer to retain the present title of the chapter because it is more descriptive and comprehensive than some other expressions which are also used to indicate relations of this nature, for instance, 'Quasi-Contracts', 'Contracts implied in Law' and 'Constructive Contracts'. This chapter, however, makes an inadequate provision for the obligations resembling those created by contract. While referring to this subject, Lord Wright observed that the Indian Contract Act dealt with it in a very unsatisfactory manner[3]. With this observation we are in agreement and propose to make exhaustive

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[1] Ninth Report of the Law Commission, para. 53.
[2] *Vide* s. 37-A of App. I.
[3] Lord Wright, Legal Essays & Addresses, p. 53.

provisions for such obligations and suggest that the Chapter be made more comprehensive.

18. The best theoretical basis of Quasi-Contract is the principle of 'unjust enrichment' or as Professor Winfield would prefer to call it, 'unjust benefit'. This is derived from the old maxim of Roman Law: '*Nemo debet locupletari ex aliena jactura*'. No man should grow rich out of another person's loss. In *Fibrosa* v. *Fairbairn*[1], Lord Wright said:

> ".....any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generally different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution.

Denning L. J. (as he then was), is another exponent of the doctrine. In *Brewer Street Investments Ltd.* v. *Barclays Woolen Co. Ltd.*[2], he said:

> "The proper way to formulate the claim is on a request implied in law or, as I would prefer to put it, on a claim for restitution."

Underlying the law of restitution is the conception that no one should unjustly enrich himself at the expense of his neighbour. "The conception of restitution is the prevention of unjust enrichment[3]".

It may be noted, however, that as to the precise position of this doctrine in England there does not seem to be so

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[1] (1943) A.C. 32 (61).
[2] (1954) 1 Q.B. 428 (436).
[3] Sir Alfred Denning, Changing Law, p. 655.

far a general agreement. Lord Porter, for example, observed:

> "The exact status of the law of unjust enrichment is not yet assured[1]."

According to Professor Glanville Williams this branch of the law in England is defective[2]. In the U.S.A., the law of restitution has received more adequate treatment as is apparent from the fact that the American Restatement of the Law has devoted more than two hundred sections to the discussion of the principles relating to the subject. In India, whenever a case arose which was not directly covered by any specific provision of the Contract Act, assistance was freely derived by our Judges from the English and American decisions.

19. Situation which attract the application of the law of restitution are so numerous that the categories of quasi-contracts cannot be said to be yet closed. The difficulty of an exhaustive statement of principles and of reducing them to formulas which can be incorporated in a legislative enactment is obvious. To enumerate the various principles which create obligations of this type, as has been done in the American Restatement of the law, is not the work of a legislator. To compress what is contained therein is an impossible task. We recommend that the doctrine of unjust enrichment should be accepted and after making specific provision for well-known cases of unjust enrichment a separate residuary section[3] should be enacted which will cover cases not specifically provided for.

20. The other changes proposed by us will appear from our comments on the provisions of the existing Act, which we now proceed to examine in their serial order.

Examination of the provisions of the existing Act, indicating the changes proposed.

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[1] *Reading* v. *Att. General*, (1951) A.C. 507 (513).

[2] Law Reform and Law Making, p. 71.

[3] *Vide* s. 72B, App. I.

PART II

Proposals relating to sections.

Preamble.

21. As stated earlier[1], we have sought to make the provisions of the Act as exhaustive as possible[2]. But we are afraid that there may still remain cases not provided for. Such cases will have to be decided on principles of 'justice, equity and good conscience.' But this expression ought no longer be construed in the narrower sense of the rules of English law. It should be given the widest significance. This, however, is a matter which concerns the revision of the various State Acts relating to the civil courts[3], which now provide the statutory sanction of resorting to these principles.

Be that as it may, since the revised Act cannot claim to be an exhaustive code, we do not propose to make any change in the wording of the Preamble.

Sec. 1.

22. In section 1, we suggest that the word "Indian" be dropped from the title of the Act.

In conformity with the recommendation in our previous Report, we have omitted all the Illustrations from the Act.

23. Both the expressions 'usage of trade' and 'custom of trade' have been used in the Act. There being a vital difference between the two expressions, it is necessary to retain both. Usage is habitual practice which is not a source of law, although it has some legal effects. Custom, provided that it fulfils the necessary conditions, is a source of law. The effect of usage, however, is to add a term to the contract, which either expressly or impliedly was entered into with that usage in view. The usage, thus, can be excluded by a provision in the contract to the contrary[4].

24. Another difference between usage and custom is that usage need not be immemorial[5]. Usage cannot change a rule of law, but usage may so affect the meaning of a

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[1]Para. 3, *ante*.

[2]E.g., Our recommendations as to Bailments, Agency and Quasi-Contracts.

[3]S. 37 of the Bengal, Agra and Assam Civil Courts Act, 1887; S. 16 of the Madras Civil Court Act, 1873; S. 26 of Bombay Regulation IV of 1829.

[4]Keeton : Elementary Principles of Jurisprudence, 81.

[5]*Dalby* v. *Hirst*, 21 R. R. 577 (580).

contract that a rule of law which would be applicable in the absence of the usage becomes inapplicable. Long continued usage may develop a rule of law in accordance with the usage[1]. Neither usage nor particular custom can be incompatible with the statute law[2]. We, therefore, think that in the last clause of section 1, the comma was rightly put by the legislature between the expressions 'nor any incident of any contract' and 'not inconsistent with the provisions of this Act'. The latter expression also governs 'nor any usage or custom of trade' also. The view of the Privy Council in *Irrawaddy Flotilla Co.* v. *Bugwandas*[3] does not appear to us to be correct. The section which was read by the Privy Council did not contain the comma between the aforesaid two expressions. Furher, Counsel conceded in argument that the words 'not inconsistent with the provisions of this Act' were not connected with the clause 'nor any usage or custom of trade'. Usage or custom, whether particular or general, must yield, wherever in conflict with statute, unless expressly saved thereby. "It is a self-evident contradiction to my mind to say that the general law does not allow the deduction and that there is a universally established usage to allow it. A universal usage which is not according to law cannot be set-up to control the law[4]". We are of the view that usage and custom are operative only if not inconsistent with provisions of the Act and this should be made clear by a suitable amendment of section 1.

25. Our views relating to consideration have already been explained. The Director of Legal Studies, Law College, Madras, has suggested that it should be expressly provided that consideration must be real and of some value in the eye of law. We think that this quality of consideration is implicit in the term itself and there being no doubt on this question, further clarification does not seem to be necessary. Sec. 2. Cl. (d).

26. The Director of Legal Studies has also made the suggestion that it should be provided in section 2(g) that agreements of imperfect obligations are not void, but only Cl. (g).

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[1]Restatement of the Law on Contract, S. 249 (*a*), p. 355.
[2]Keeton : op. cit., p. 81.
[3]18 Cal. 620 (627).
[4]Earl C. J. in *Meyer* v. *Dresser*, 143 E. R. 1280 (1286).

unenforceable. He has mentioned an unstamped agreement as an instance of such a case. Such an instrument, which is a record of an agreement, is neither receivable in evidence nor can be acted upon (Sec. 35, Stamp Act). Since the decision of the Privy Council in *Mahanth Singh* v. *U Ba Yi*[1], the law is well established that the expression "unenforceable by law" does not mean unenforceable by reason of some procedural regulation, *e.g.*, the law of limitation, but unenforceable by reason of substantive law. In view of this, it is unnecessary to introduce the suggested change.

Sec. 3.

27. The Bihar Lawyers' Association has suggested that 'and' should be substituted for 'or' before 'which has the effect of communicating it'. We have also given due consideration to the comment of Pollock and Mulla[2] on the matter. The learned commentators observed that to get the sense that an act intended to communicate a proposal etc., but failing to do so, is not a communication at all, we should have to read 'and' for 'or' in the last clause. We, however, feel that no change need be recommended inasmuch as the existing language has not so far caused any difficulty in the courts.

Section 4.

28. The Director of Legal Studies, Madras, has expressed the opinion that section 4 needs clarification and has suggested that for the case where a letter of acceptance is posted and thereafter the acceptor revokes it by a telegram or another letter and both reach the proposer, it would be better to lay down that there is a presumption that the revocation is valid. In our view, this suggestion does not pay adequate regard to the language of section 5 according to which the acceptance may be revoked at any time before or at the moment when the letter communicating it reaches the party concerned but not afterwards. We, therefore, find ourselves unable to accept the above suggestion.

Sec. 5.

29. No change is necessary in section 5.

Sec. 6.

30. A suggestion has been made by the Director of Legal Studies, Madras, that it should be provided that the knowledge of the offeror's intention to revoke, from

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[1]A. I. R. 1939 P. C. 110 (113).
[2]Pollock & Mulla : op. cit., 35.

whatever source it reaches, is good notice of revocation. This question was posed and answered by Anson thus:

> "Suppose a merchant to receive an offer of a consignment of goods from a distant correspondent, with liberty to reserve his answer for some days. Mean time an unauthorized person tells him that the offeror has sold or promised the goods to another. What is he to do? His informant may be right, and then, if he accepts, his acceptance would be worthless. Or his informant may be a gossip or mischief-maker, and if on such authority he refrains from accepting he may lose a good bargain[1]".

We are not prepared to accept the suggestion as we feel that this innovation in Indian Law may lead not only to inconvenience but may also open the door to perjury.

31. The Director of Legal Studies, Madras has invited us to examine section 7(2). In his view, there is no justification in the case contemplated by the latter part of the sub-section for laying down that the proposer must again write back to the acceptor. We have given due consideration to this matter and we see no good reason to recommend any alteration of the law on this point. Sec. 7.

32. It is not clear whether the expression "performance of the conditions of a proposal" means a complete performance, or, even partial performance is sufficient. If the former view is correct the law may work serious injustice in some cases. A case of such injustice, generally cited, is that of a person to whom an offer has been made of payment of a certain sum in consideration of his completing a piece of work. He nearly completes the work and then the offer is revoked. The English Law Revision Committee[2] has recommended the introduction of the following rule: "A promise made in consideration of the promisee performing an act shall constitute a contract as soon as the promisee has entered upon the performance of the act, unless the promise includes expressly or by necessary implication a term that it can be revoked before Sec. 8

[1]Anson : Principles of the English Law of Contract (19th edn.), 48.
[2]Sixth Interim Report, p. 31.

the act has been completed.[1]" In order to prevent such cases of injustice and to clear up the ambiguity in the language of the section, we suggest that the aforesaid recommendation be adopted and introduced in section 8.

Sec. 9. 33. Both proposal and acceptance may take place without express words. Hence the rule that a promise may be express or implied. The section assumes the existence of the rule, but does not lay it down. As it stands at present, it is merely a defining section. We suggest that it should categorically state the rule.

Sec. 10. 34. No change is necessary in section 10.

Sec. 11. 35. There is conflict of authority upon the question as to how far in the case of a minor's agreement procured by him by fraudulent concealment of his age, the Court will relieve the other party to the agreement from the effects of the fraud. One view is represented by the Full Bench case in *Khan Gul* v. *Lakha Singh*[2]. In that case two questions were referred to for decision:

(i) Whether a minor who, by falsely representing himself to be a major, has induced a person to enter into a contract, is estopped from pleading his minority to avoid the contract?

(ii) Whether a party who, when a minor has entered into a contract by means of a false representation as to his age, whether he be defendant or plaintiff, in a subsequent litigation, refuse to perform the contract and at the same time retain the benefit he may have derived therefrom?

Shadi Lal, C. J., delivering the majority judgment held that—

(i) Where an infant has induced a person to contract with him by means of a false misrepresentation that he was of full age, he is not estopped from pleading his infancy in voidance of the contract and that section 115 of the Evidence Act should be read subject to section 11 of the Contract Act;

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[1]Sixth Interim Report, para. 50, Recommendation no. 7.
[2]A. I. R. 1928 Lah. 609.

(ii) a false representation by an infant that he was of full age, gives rise to an equitable liability. The Court while relieving him from the consequences of the contract, may in the exercise of its equitable jurisdiction, restore the parties to the position which they occupied before the date of the contract; and

(iii) the doctrine of restitution which finds expression in section 41 of the Specific Relief Act is not confined to the cases covered by that section and rests upon the principle that an infant cannot be allowed to take advantage of his own fraud. This doctrine is applicable whether the minor is the plaintiff or the defendant.

In arriving at the above conclusions, the learned Chief Justice emphasised that the Court in granting the above relief does so, not because there is a contract which should be enforced but because the transaction being void, does not exist and the parties should revert to the condition in which they were before the transaction. This is not the performance of the contract but the negation of it.

36. The opposite view is represented by the case of *Ajudhia Prasad* v. *Chandanlal*[1] in which Sulaiman, C. J., delivering the judgment of the Full Bench, while holding that the minor is not estopped from pleading that the contract is void on the ground of his minority, held that—

(i) Where a contract had been induced by a false representation made by an infant as to his age. he is liable neither on the contract nor in tort:

(ii) Where a contract of transfer of property is void and such property can be traced, the property belongs to the promisee and can be followed; but where the property is not traceable, the grant of compensation would be tantamount to enforcing a void contract under the cloak of an equitable doctrine.

In both the above cases reference was made to the case of *Mohori Bibi* v. *Dharmodas Ghose*[2], where the Judicial Committee, in a suit by a minor through his next friend

[1] A.I.R. 1937 All. 610..
[2] 30 Cal. 539.

for a declaration that a mortgage deed executed by him was void and for its cancellation, had arrived at the following conclusions:—

(i) The question whether a contract is void or voidable presupposes the existence of a contract and cannot arise in the case of an infant;

(ii) sections 64 and 65 start from the basis of there being an agreement between competent parties; and

(iii) section 41 of the Specific Relief Act applies to the case of instruments executed by minors.

37. Pollock and Mulla[1] have expressed the view that that judgment of Shadi Lal, C. J., in the Lahore case is correct and we share this view. Indeed, we have already expressed our preference in favour of the judgment of Shadi Lal C. J., in our report on the Specific Relief Act[2]. We agree with the proposition that in ordering compensation, the Court is not giving effect to a contract but is doing its best to put the parties, so far as possible, in the position which they occupied before the void transaction took place and from which one of them was induced to depart by reason of the minor's fraud. This view appears to be more in consonance with the principles of equity and justice. It appears to us incongruous that while sections 38 and 41 of the Specific Relief Act apply to cases of minors, the principles underlying those sections should not be applicable to cases under the Contract Act. We feel that the Judicial Committee had not correctly interpreted section 65 and we are of the opinion that an agreement is 'void' or 'is discovered to be void' even though the invalidity arises by reason of the incompetency of a party to a contract. We recommend that an Explanation be added to section 65 to indicate that that section should be applicable where a minor enters into an agreement on the false representation that he is a major.

Sec. 12. 38. The case of a person who is so drunk that he cannot understand the terms of a contract and form a rational judgment as to its effect on his interest would be covered by the definition contained in this section, and so will be the case of a sane man who suffers from the above defects,

[1]Pollock & Mulla, op. cit. 77.
[2]Report on Specific Relief Act, para. 90.

on account of delirium and fever. We think that the section is clear and we do not propose any change therein.

39. No change is considered necessary in sections 13-14. Sec. 13-14.

40. The proper function of the Indian Penal Code is to create offences and not merely to forbid. A penal code forbids only what it declares punishable. There are laws other than the Indian Penal Code performing the same function. We suggest that the words "Any act forbidden by the Indian Penal Code" should be deleted and a wider expression be substituted therefor so that penal laws other than the Indian Penal Code may also be included. Sec. 15.

The Explanation should also be amended to the same effect.

41. There are some cases in which on principles of equity, relief has been given against a hard and unconscionable bargain, even though there was no question of undue influence involved[1]. We favour the view taken in *Kesavulu* v. *Arithulai Ammal*[2] that unless undue influence is proved, no relief can be given on the ground of unconscionableness of a contract. Sec. 16.

This section needs no change. Sec. 17.

42. No change appears to be necessary in section 17. Sec. 18.

43. Pollock and Mulla[3] have offered strong criticism of the language of this section and have described it as one of the least satisfactory in point of form. They have observed that in sub-section (1) the use of the word 'warranted' in a sense (whatever that sense may precisely be) unknown to the law and in a subject-matter where the words 'warranted' and 'condition' have already caused quite enough trouble, is elementary fault. The learned authors think that sub-section (2) is obscure and apparently useless and that sub-section (3) seems to involve confusion between contracts voidable because consent was obtained by misrepresentation and transactions which could have no legal effect, except possibly by way of estoppel because there was no real consent at all. For the reasons set out hereunder we do not think that the language of the section should be changed.

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[1]E.g., *Kirparam* v. *Sami-ud-din*, 25 All. 284.
[2]36 Mad. 533.
[3]Pollock & Mulla, op. cit., 127.

As an illustration of the use of the word 'warranted', Pollock and Mulla[1] cited the decision of Maclean, C. J., in *Mohan Lall* v. *Sri Gungaji Cotton Mills Co.*[2]. They illustrated the meaning of the expression 'positive assertion' by reference to a Punjab case[3]. They have also quoted cases arising under sub-sections (2) and (3). It is clear that no difficulty has arisen in the application of the section so far. The grammatical meaning of the word 'warranted', *viz.*, 'justified', seems to be fairly clear and we do not think that in the context this word is likely to be interpreted in the sense of 'guaranteed'. Reference to English authorities on the subject of innocent misrepresentation entitling the party whose consent was obtained by such misrepresentation is not helpful. Anson[4] has remarked that the reports contained few instances of contract held to be voidable for innocent misrepresentation.

We do not, accordingly, recommend any change in this section.

Sec. 19.

44. The second paragraph of the section merely states what is involved in the conception of a contract being voidable. Pollock and Mulla[5] opine that the thought underlying this paragraph is not really clear and point out cases in which restitution is not literally possible, for example, if the owner of an estate, subject to a lease for an unexpired term, contracts to sell it to a purchaser who requires immediate possession and conceals the existence of the lease, the purchaser cannot be put in the same position as if the representation that there was no lease, had been true, or where A sells a house to B and by some blunder of A's agent, the annual value is represented as being Rs. 2,000 when it is in truth only Rs. 1,000. According to the letter of the present paragraph, so say the learned authors, we may insist on completing the contract and on having the difference between the actual and the stated value paid to him by A and A's successor-in-title for all time. Obviously, such could not be the intention of the Legislature. In order to clarify the intention, we suggest that a qualification be added so that the power of restitution be limited to the extent considered reasonable by the Court. In the consideration of this question the Court, of

[1] Pollock & Mulla: op. cit., 129-130.
[2] 4 C.W.N. 369 (388-389).
[3] *Currie v. Remick*, 1836 P. R. No. 41.
[4] Anson: op. cit., 187.
[5] Pollock & Mulla: op. cit., 135-136.

course, will examine, *inter alia*, whether it is in the power of the party against whom the contract is voidable to perform it fully.

It should also be provided that if the fraud or misrepresentation is proved but the Court refuses to enforce the contract at the option of the party aggrieved for some reason, it would be open to the Court to award compensation for the injury caused by the fraud or misrepresentation.

45. The Exception does not apply to active fraud as distinguished from fraudulent silence and innocent misrepresentation. The 'comma' after the word 'silence' in the Exception creates the impression that the word 'fraudulent' qualifies both 'misrepresentation' and 'silence'. The correct interpretation, however, is that the word 'fraudulent' qualifies only 'silence'. This is also the judicial opinion[1]. Therefore, the 'comma' after the word 'silence' may be deleted.

46. No change is necessary in sections 19A to 22. Sec. 19A-22

47. Pollock and Mulla[2] point out that the correct expression is the 'consideration for a promise' and not 'the consideration of an agreement'. Strictly speaking this criticism is correct. Even the existing language, however, can possibly be justified on the ground that an agreement consists of a promise or promises. Be that as it may, we do not think it necessary to alter the language of the section in this respect, particularly when we are not aware of any case in which the existing language has created any difficulty. Sec 23.

48. In considering the validity of a contract in relation to marriage, the Hindu Marriage Act, 1955 and the modern trends in society have to be borne in mind. Under that Act the bridegroom must complete the age of eighteen and the bride fifteen years to qualify for marriage. Where the bride has not completed the age of eighteen, the consent of her guardian in marriage, if any, has to be obtained for the marriage. Thus, the cases where consent of guardian in marriage of a bride would now be necessary, are bound to be comparatively few. No question can arise of any person acting as guardian of a bridegroom among Hindus. Before the Hindu Marriage Act, the question

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[1] See *Niaz Ahmad* v. *Parshotam Chandra*, 53 All. 314.
[2] Pollock & Mulla: op. cit., 154.

arose a number of times whether an agreement to pay money to a parent or guardian of a bride or bridegroom in consideration of their consent to the betrothal is immoral or opposed to public policy. The decisions have varied in result. One view[1] was that every agreement to pay money to the father or guardian of a girl in consideration of his consent to her marriage is not necessarily unlawful and each case should be judged by its own circumstances. According to this view, such an agreement would be opposed to public policy only if the parents or the guardians are not seeking the welfare of the girl but are giving her an ineligible husband. According to the other view, an agreement to pay money to the parent or guardian of the minor in consideration of his consent to give the minor in marriage is *per se* opposed to public policy[2]. The consequence of this view is that in case of breach of agreement to give the daughter in marriage, a suit for damages does not lie and the money payable to the bridegroom's father cannot be recovered. Nor can the amount be recovered by the parent or guardian after the marriage is performed. But, where the agreed sum has been paid in advance, the same is recoverable if the marriage is not performed. We are of the view that such an agreement should be treated as immoral and opposed to public policy, and we suggest that in order to resolve this conflict in judicial decisions, a section should be added declaring that a marriage brocage agreement, *i.e.*, an agreement to procure marriage for reward and an agreement for payment of money in consideration of a parent or guardian's consent to the marriage of the child, whether major or minor is unlawful and void.

49. There is also a conflict of authority on the question whether past co-habitation is lawful consideration. One view[3] is that an agreement to pay the allowance by reason of past co-habitation is really an agreement to compensate the woman for past services voluntarily rendered to him for which no consideration is necessary. Another view[4] is that past co-habitation is not a good consideration for the promise to pay for it, and that a consideration

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[1] *Baldeo Sahai* v. *Jumna Kunwar*, 23 All. 495.
[2] *Kalavgunta Venkata Kristnayya* v. *Kalavgunta* 32 Mad. 185 (F. B.)
[3] *Dhiraj Kaur* v. *Bikramajit Singh*, 3 All. 787.
[4] *Hussain Ali* v. *Dinbai*. A. I. R. 1942, Bom. 135.

which is immoral at a time, and, therefore, would not support an immediate promise to pay, does not become innocent by being past. The Patna High Court[1] took the view that a contract to enter into the relation of a protector and mistress was immoral and unenforceable in law; but the case of a contract to compensate for what she had lost on account of past association with the promisor was not immoral. The Allahabad High Court[2] has taken the view that, adultery, in India, being an offence against the criminal law, co-habitation, past or future, if adulterous, is not merely an immoral but an unlawful consideration. In England, such an agreement is void on the ground that past co-habitation is no consideration. In the American Restatement, the law is thus stated:

> "A bargain, in whole or in part, for or in consideration of illicit sexual intercourse or a promise thereof, is illegal but subject to this exception such intercourse between parties to a bargain previously or subsequently formed, does not invalidate it"[3].

We are, however, of the opinion that in view of the fact that such cases rarely come to the Courts, no specific legislation on the subject is necessary.

50. The rule laid down in this section presupposes that the agreement is indivisible. Sec. 24.

In order to make the provision comprehensive, it should also deal with the case of distinct promises based on distinct considerations. It is settled in England[4] as well as in India[5] that where there are such promises and some of the promises or considerations are unlawful and they can be separated from the lawful promises or considerations (as the case may be), the agreement shall be void only to the extent of the promises which are unlawful or are based on unlawful consideration.

51. In paragraphs 10-11, *ante*, we have explained the changes proposed by us in section 25. Sec. 25.

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[1] *L. B. Godfrey* v. *Mt. Parbati*, A. I. R. 1938 Pat. 502.

[2] *Alice Mary Hill* v. *William Clarke*, 27 All. 266. Cf. *Mt. Mahtab-unnissa* v. *Ria Faqat Ali*, A. I. R. 1925 All. 474.

[3] American Restatement on Contract, Vol. 2, s. 589, p. 1095.

[4] Chitty: Contracts, (21st edn.) Vol. 1, 60.

[5] *Dharamchand* v *Jamsa*, A. I. R. 1931 Nag. 6.

Sec. 26.

52. The English Law[1] on the subject may be stated thus: A contract which is in general restraint of marriage, *i.e.*, the object or effect of which is to restrain or prevent a party from marrying any person or which is deterrent to marriage in so far as it makes any person uncertain whether he may marry or not, is void. A contract not to marry any person other than the party to it was held to be void on the ground that if that party had chosen not to marry him he was restrained from marrying at all. A contract that the plaintiff would not marry within six years was held to be void, there being no circumstance showing that the restraint was prudent or proper. Prohibition against marrying from among domestic servants has been held to be valid as the person restrained was free to marry any other woman. Thus, the prohibition against marrying a particular person, or persons identified by names or as belonging to a specified class is good. Prohibition against second marriage is sometimes held to be valid[2]. Whether an agreement in partial restraint of marriage is void would depend on the circumstances of each case. There may be circumstances, *e.g.*, ill-health of one of the spouses, which may justify a contract that a person shall not marry within a certain number of years.

In *Rao Rani* v. *Bulab Rani*[3], the Allahabad High Court has expressed doubt on the question whether partial or indirect restraint of marriage was within the scope of section 26. This doubt must be resolved and it should be provided that an agreement in partial restraint is void only if the Court regards it as unreasonable in the circumstances of the case.

Sec. 27

55. Pollock and Mulla[4] have remarked that this section follows the New York Draft Code and have described that Code as the evil genius of the Contract Act. The Allahabad High Court also observed that "it is unfortunate that section 27 has been moulded upon the New York Civil Code and seriously trenches upon the liberty of the individual in contractual matters affecting trade[5]". The present section does not reproduce the English Common Law and

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[1]Halsbury: Laws of England (3rd edn.), Vol. 8, 135.
[2]*Allen* v. *Jackson*, (1875) 1 Ch. D. 399.
A.I.R. 1942 All. 351 (353).
[4]Pollock & Mulla : op. cit., p. 224.
[5]*Bholanath* v. *Lachmi Das*, 53 All. 316 (322).

invalidates many agreements which are allowed by that law. The section was enacted at a time when trade was yet undeveloped and the object underlying the section was to protect the trade from restraints. As Kindersley, J. observed in *Oakes & Co.* v. *Jackson*[1]. "Trade in India is in its infancy and the legislature may have wished to make the smallest number of exceptions to the rule against contracts whereby trade may be restrained[1]."

But today, trade in India does not lag far behind that in England or the United States and there is no reason why a more liberal attitude should not be adopted by acknowledging such restraints as are reasonable not only as between the parties to the agreement but also as regards the general public. We recommend that section 27 be suitably amended to permit such reasonable restraint.

56. The Government of Bihar has suggested that it should be enacted that an agreement in restraint of trade when entered into with the State or the Central Government, should not be void. Consistently with the object underlying the section, we cannot make a recommendation in favour of such an exception.

57. Decided cases reveal[2] a divergence of opinion in relation to certain classes of insurance policies with reference to the applicability of this section. On examination, it would appear that these cases do not really turn on the interpretation of the section but hinge on the construction of the insurance policies in question. The principle itself is well recognized that an agreement providing for the relinquishment of rights and remedies is valid but an agreement for relinquishment of remedies only falls within the mischief of section 28. Thus, in our opinion, no change is called for by reason of the aforesaid conflict of judicial authority. Sec. 28

58. The Government of Bihar has suggested that Exception 1 be widened by substituting the words 'the parties will be bound by the award' in place of 'only the amount awarded in such arbitration shall be recoverable'. We

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[1] 11 Mad. 134 (145).

[2] *Hirabhai Narotama Das* v. *The Manufacturer's Life Insurance Co.*, 16 I. C. 1001. Cf. *Baroda Spinning and Weaving Co., Ltd.* v. *Satyanarayana*. 38 Bom. 344 (348-349).

feel that there is good reason in support of this suggestion and we recommend accordingly.

Sec. 29. 59. No change is necessary in section 29.

Sec. 30. 60. The question has frequently arisen in Courts as regards the validity of the agreements collateral to wagering contracts. It has been uniformly decided by all the High Courts, other than the Bombay High Court, that though an agreement by way of wager is void, a contract collateral to it, or in respect of a wagering agreement is not void and suits brought by brokers or agents against their principals to recover brokerage or commission in respect of transactions entered into by such brokers or agents or for indemnity for loss incurred by them in such transactions on behalf of their principal have been decreed, even though contracts in respect of which the claims were made were contracts by way of wager. Similarly, it has been held that an agent who has received money on account of a wagering contract is bound to pay the same to his principal. In the State of Bombay, however, the law is different. There contracts collateral to or in respect of wagering transactions are governed by the Act for Avoiding Wagers (Amendment) Act, 1865[1]. That Act was passed to supply the defects discovered judicially in the Act for Avoiding Wagers Act, 1848[2]. Act XXI of 1848 which excluded suits on wagering transactions has been repealed, but Bombay Act III of 1865 is still in force. Sections 1 and 2 of that Act run as follows:

> "1. All contracts, whether by speaking, writing or otherwise knowingly made to further or assist the entering into, effecting or carrying out agreements by way of gaming or wagering, and all contracts by way of security or guarantee for the performance of such agreements or contracts, shall be null and void; and no suit shall be allowed in any Court of Justice for recovering any sum of money paid or payable in respect of any such contract or contracts, or any such agreement or agreements as aforesaid.
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> 2. No suit shall be allowed in any Court of Justice for recovering any commission, brokerage, fee

[1] Bombay Act III of 1865.
[2] Act XXI of 1848.

or reward in respect of the knowingly effecting or carrying out, or of the knowingly aiding in effecting or in carrying out, or otherwise claimed or claimable in respect of, any such agreements by way of gaming or wagering or any such contract as aforesaid, whether the plaintiff in such suit be or be not a party to such last-mentioned agreement or contract, or for recovering any sum of money knowingly paid or payable on account of any persons by way of commission, brokerage, fee, or reward in respect of any such agreement by way of gaming or wagering or contract as aforesaid".

The result is that a contract collateral to or in respect of a wagering agreement is void in the Bombay State.

61. In England, the Gaming Act, 1892[1] was passed in order to render agreements collateral to wagering contracts void. Before this Act was passed such agreements were not void. This Act was passed in consequence of the decision in *Read* v. *Anderson*[2]. In that case a betting agent had made bets on behalf of his principal. After the bets were made and lost, the principal revoked the authority to pay which had been conferred upon the betting agent. The betting agent, however, paid the bets and sued the defendants to recover the amounts so paid. It was held that the agent was entitled to recover. Section 1 of the aforesaid Gaming Act of 1892 runs thus:

"1. Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Act of the eight and ninth Victoria, Chapter one hundred and nine, or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract, or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any sum of money".

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[1] 55 & 56 Vict, c. 9.
[2] 13 Q.B.D. 779.

62. Pollock and Mulla[1] have expressed the hope that in the revision of the Contract Act, the provision of the Bombay Act will be incorporated in section 30. We share the view that in the interest of uniformity of law on this subject, the salutary provisions of the Bombay Act should be incorporated in section 30 and we recommend accordingly.

Secs. 31-36. 63. No change is recommended in sections 31 to 36.

Sec. 37. 64. The case of assignment of contracts properly belongs to the law of transfer and the Chapter on Actionable claims in the Transfer of Property Act is the suitable place for dealing with that subject. No provision need be made on this point in the Contract Act.

Sec. 38. 65. There has been a divergence of opinion as to the true meaning of the last paragraph of this section, namely, 'An offer to one or several joint promisees, has the same legal consequences as an offer to all of them'. This divergence has arisen in connection with the question whether payment by a debtor to one of a number of joint creditors, operates as a discharge of the debt. One view, whose chief exponent was White C.J., of the Madras High Court, is that all the joint promisees get the benefit of the legal consequences, whatever those consequences may be, of an offer, or a tender, to one of them. But the legislature in enacting this part of section 38 was not contemplating the legal consequences of an offer which has been accepted but the legal consequences of an offer which has been refused. Consequently, it does not follow from the section that the acceptance of payment by one of several promisees operates as a discharge of the claims of the others[2]. This opinion was adopted by a Full Bench in the Punjab High Court[3], and by the High Courts of Calcutta[4], Allahabad[5], Nagpur[6], Patna[7] and Mysore[8]. The opposite view is represented by the majority opinion in *Annapurnamma* v.

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[1]Pollock & Mulla: op. cit., 157-258.

[2]In *Ramasami* v. *Muniyandi*, (1910) 20 M. L. J. 709 and in the dissenting opinion of the learned C.J. in *Annapurnamma* v. *Akkayya*, 36 Mad. 544.

[3]*Mathra Das* v. *Nizam Din*, 41 I. C. 921.

[4]*Abdul Hakim* v. *Adwaita Chandra*, 22 Cal. W.N. 1021.

[5]*Shyam Lal* v. *Jagannath*, A. I. R. 1937 All. 527.

[6]*Madheo Singh* v. *Balmukund*, A. I. R. 1948 Nag. 279.

[7]*Syed Abbas* v. *Misrilal*, A.I.R. 1921 Pat. 27.

[8]*Venkata Setty* v. *Rangasetty*, A.I.R. 1952 Mys. 68

Akkayya[1], in which Sankaran Nair, J. said that it was difficult to impute an intention to the legislature that the promisor was entitled to make the offer, though the promisee was not entitled to accept it. According to this view, if the promisor was entitled to offer payment to one of the promisees which the latter was entitled to accept, the promisor cannot be held liable to pay over again to the other promisees, and, thus one of several payees can give a valid discharge of the entire debt without the concurrence of other payees.

Pollock and Mulla[2] have expressed agreement with the above mentioned judgment of White, C. J. That is also, as shown above, the preponderating opinion in the High Courts. The English Law is thus stated in Halsbury's Laws of England—

> "In the case of a debt owing to two or more persons jointly, a tender made to one of the joint creditors on behalf of all, operates as a tender to the all"[3].

In our opinion, the apparent ambiguity in the last paragraph of section 38 should be clarified by adding a qualification to the word "offer" and stating—

> "An offer to one of several joint promisees, which has not been accepted, has the same legal consequences as an offer to all of them".

We think that section 38 is not concerned with the question whether an offer when accepted by one of the promisees operates as a discharge binding on all the promisees. In order to achieve that result, all the promisees must concur in the acceptance of the offer.

66. In our report on the Limitation Act[4] we stated that the correct view was that one of several creditors could not give a valid discharge so as to bind the others and had suggested that the Contract Act might be suitably amended accordingly. In consonance with that recommendation we suggest that a separate section[5] be added after section 38.

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[1]36 Mad. 544.
[2]Op. cit. 292.
[3]Halsbury, 3rd Ed., Vol. 8, 172.
[4]Third Report of the Law Commission, para. 27.
[5]*Vide* s. 38A, App. I.

Secs. 39-40. 67. No change is recommended in sections 39-40.

Sec. 41. 68. It has been suggested that the Indian Law should adopt the principle that the discharge of a debt by a third person is effectual only if authorised or ratified by the debtor. Pollock and Mulla[1] say that it is not clear that the better opinion is not the other way. We do not recommend any change by reason of the conflict of views on this point. The section, as it stands, has not worked any injustice and we propose to leave it unaltered.

Sec. 42. 69. No change is necessary in section 42.

Sec. 43. 70. The Contract Act treats all contracts as joint and several. The necessary consequence is that it is not open to one promisor who is sued to compel the promisee to sue others. There has, however, been considerable divergence of opinion on the effect of a judgment obtained by the promisee against one out of a number of promisors. In the words of the Federal Court[2], unlike English Law, the Indian Law makes a general liability joint and several, in the absence of an agreement to the contrary. It is, therefore, open to the promisee to sue any one or some of the joint promisors and it is no defence to such a suit that all the promisors should have been made parties. We think that Strachey, C.J., correctly stated the law in *Muhammad Askari* v. *Radhe Ram*[3] when he said: "The doctrine now rests not so much on *King* v. *Hoare*[4] as on the judgment of the Law Lords in *Kendall* v. *Hamilton*[5]. As explained in these judgments the doctrine that there is in the case of a joint contract a single cause of action which can only be once sued on is essentially based on the right of joint debtors in England to have all their contractors joined as defendants in any suit to enforce the joint obligation. The right was in England enforceable before the Judicature Act by means of a plea in abatement, and since the Judicature Acts by an application for joinder which is determined on the same principles as those on which the plea in abatement would formerly have been dealt with. In India that right of joint debtors

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[1]Pollock & Mulla : Op. cit. 307.
[2]*Jainarain* v. *Surajmull*, (1949) 12 Fed. L. J. 216 (225).
[3]22 All. 307.
[4]153 E. R. 206.
[5](1879) 4 A. C. 504.

has been expressly excluded by section 43 of the Contract Act, and, therefore, the basis of the doctrine being absent, the doctrine itself is inapplicable. *Cessante ratione legis, cessat ipsa lex*"[1]. The result is that a decree obtained against some of several joint promisors remaining unsatisfied ought not to be held as a bar to a subsequent action against the other promisors. We recommend that this result may be incorporated in the Act by inserting a new section[2].

In this connection, we suggest that while revising the Code of Civil Procedure it should be considered if it is necessary to introduce a specific provision making it clear whether a joint promisor can, when sued for contribution by his co-promisor, resist the suit on the ground that in the creditor's suit (to which the joint primisor was not a party) the co-promisor (suing for contribution) did not negligently or otherwise, set up defences which could have been legitimately raised to defeat the claim.

71. No change is considered necessary in sections 45 to 48. Secs. 45-48

72. In the case of a contract of loan where the borrower fails to apply to the creditor to appoint a reasonable place for repayment he must make the repayment at the place of the creditor. The Judges in India have, on a number of occasions, applied the principles of the English Common Law that the debtor must seek out the creditor. It appears to us that the section applies to a contract of loan also and the English Common Law doctrine applies only where the debtor failed to apply to the creditor to appoint a reasonable place for repayment. This is in consonance with the decision of the Bombay High Court in *Bharumal* v. *Sakhawatmal*[3]. An Explanation may be added to section 49 incorporating the rule of the English Common Law. Sec. 49.

73. No change is recommeded in sections 50—55. Secs. 50-55.

74. This section marks a departure from the English Common Law to a considerable extent and it is neither Sec. 56.

[1] 22 All. 307 (311, 312).
[2] *Vide* s. 44A, App. I.
[3] A.I.R. 1956 Bom. 111.

profitable nor necessary to examine which of the various theories underlying the doctrine of Frustration in English Law are applicable to cases arising under this section. The Supreme Court of India in the case of *Satyabrata* v. *Mugneeram*[1] has repelled the suggestion that section 56 is not exhaustive. The word 'impossible' is to be construed in its practical rather than in its literal sense. It is worthy of note that the impossibility referred to in the section was never understood to include what is known as commercial impossibility. We are not aware of any occasion when in practice the application of the section, as it stands, has involved any inconvenience or difficulty of interpretation and, therefore, we are in favour of leaving the section intact.

Secs. 57-58. 75. It has been suggested that sections 57 and 58 are superfluous and their subject matter is already covered by S. 24. Sections 57 and 58 deal with reciprocal and alternative promises. We do not favour deletion of these two sections.

Secs. 57-61. 76. No change is necessary in sections 57 to 61.

Sec. 62. 77. A controversy has arisen on the question whether section 62 will apply to a case where the fresh agreement contemplated by the section is entered into after the breach of the original contract. The Calcutta High Court has taken the view that such an agreement can take place only when the original contract is still capable of performance and that the section is a mere legislative expression in India of the English Common Law[2]. Later decisions[3] in that Court have followed this view. In the Madras High Court[4], which has taken the opposite view, the opinion of Kumaraswami Sastri, J. has prevailed[5]. He pointed out that the observations of the learned editors of Smith's Leading Cases[6] and the view of Lord Balckburn in *Foakes* v. *Beer*[7] show that the rules of English Law as to consideration for variation are not founded on any sound principle.

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[1]A.I.R. 1954 S.C. 44.
[2]*Manohur Koyal*, v. *Thakurdas*, 15 Cal. 319.
[3]*New Standard Bank* v. *Prabodh Chandra*, A. I. R. 1942 Cal. 87.
[4]*Ramiah* v. *Somasi*, (1915) 29 M.L.J. 125.
[5]*N.M. Firm* v. *Theperumal Chetty*, 45 Mad. 180.
[6]Smith's Leading Cases (13th edn.), 338.
[7]9. A. C. 605.

The Indian legislature did not adopt the principles laid down in *Foakes* v. *Beer,* when it enacted section 62 of the Contract Act. He also pointed out that it was very common in this country for mediators to interfere after a breach of contract takes place and effect a compromise between the parties. We prefer the Madras view and accordingly recommend that it should be made clear that the new agreement may take place either before or after the breach of the original contract.

78. There is no express provision in the Contract Act on the subject of unauthorised alteration of documents. Sections 87, 88 and 89 of the Negotiable Instruments Act, which have, however, adopted the English Common Law to its full extent, have made ample provision for such alterations. Naturally, the Indian Courts have followed the English rule. That rule may be stated thus:

> "If a material alteration is made in any instrument containing words of contract without the consent of the party contracting, this will discharge him from all liability thereon, whether such alterations were made by a party to the contract or by a stranger".[1]

We recommend that this rule be incorporated in a separate section[2].

79. What is a material alteration has been the subject of judicial exposition. "The effect of material alteration will be the same although the original words of that instrument be still legible, or although it be not made in respect of the breach of contract on which the plaintiff is suing"[3]. According to decided cases in England, an alteration is material which affects either the substance of a contract expressed in the document or the identification of the document itself. Alterations are immaterial if they merely express what is already implied in the document or add particulars consistent with the document, as it stands, though superfluous, or, are innocent attempts to correct clerical errors. It has also been established[4]

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[1]Chitty, op. cit., Vol. I, 302.
[2]*Vide* s. 67A, App. I.
[3]Chitty, op. cit., Vol. I, 304.
[4]*Hong Kong and Shanghai Banking Corpn.* v. *Lo Lee Shi,* (1928) A.C. 181.

that alteration by a stranger should not alter the liability of a party to the contract, where no fraud, negligence or assent of such party is involved.

These principles should be embodied in the new section suggested by us.

80. The Government of Bihar suggest that a new sub-section should be added to the following effect: "If there be a breach of any contract, parties thereto may choose to revive the terms of the original contract". As we have accepted the position that a novation can take place even after the breach of the original contract, it does not seem to be necessary to introduce the suggested sub-section.

Sec. 63.

81. This section deals with cases of actual dispensing with, or remission of, performance or extension of time. These acts need not be supported by any consideration. The section does not apply to agreements to dispense with or remit performance or extend time. We have already made a recommendation in respect of such agreements while dealing with section 25.

Sec. 64.

82. No change is recommended in section 64.

Sec. 65.

83. Conflicting views have been taken as to the meaning of the expression 'discovered to be void'. One class of cases in which this conflict has arisen is that of contracts with municipalities and with Government which do not comply with the requirements of the law prescribing the form in which they have to be executed. The question has been, whether in such cases when contracts were partly or fully executed a claim for restitution under section 65 lay. Courts in India took conflicting views. One line of cases followed the House of Lords decision in *Young & Co.* v. *The Mayor and Corporation of Royal Leamington Spa*[1]. That case arose under the Public Health Act which required the contract to be in writing and sealed. The contract had been fully executed by the plaintiff. The corporation had paid certain sums from time to time but refused to pay other large sums which were the balance claimed by the plaintiff. The House of Lords decided that the want of seal prevented the plaintiffs from recovering the sum claimed. The main ground was that the grant of relief to the

[1](1883) 8 A.C. 517.

plaintiff would have the effect of repealing the Act of Parliament and depriving the rate payers of that protection which Parliament intended to secure for them. The hardship of the decision was recognized by Lord Blackburn. This case was followed in India and the case of *Mohori Bibi* v. *Dharmodas Ghose*[1] was applied in which the Privy Council had refused to apply section 65 to a minor's agreement.

In the other line of cases, section 65 and sometimes section 70 was held to be applicable. The hardship in England was removed by the repeal of the provisions of the Public Health Act, 1875 and by the enactment of section 266 of the Local Government Act, 1933[2]. Messrs. Pollock and Mulla[3] found it difficult to appreciate the application of section 65 and section 70 where there was an express statutory prohibition governing the corporation. They realised, however, that 'the above result is not wholly satisfactory; though it may be an accurate statement of the law and a certain sense of incongruity remains'. The recent decisions in India incline in favour of the applicability of section 65 to such cases. The view which has prevailed in the Calcutta High Court is represented by the decision of Sinha J. in *Ram Nagina* v. *G. G. in Council*[4] and by the decision[5] of a Bench of that court which upheld the view taken by Sinha, J. Sinha, J's decision was followed in Assam in *Dharmeshwar* v. *Union of India*[6]. In Madras there has been a current of decisions in favour of this view[7]. The Patna High Court has also followed the view of Sinha J[8].

A contrary view, it may be noted, has been taken by Mukherjee J. of the Calcutta High Court in the case of *Anantha Bandhu* v. *Dominion of India*[9].

> "I cannot persuade myself to believe that an agreement at its very inception in outright disregard of express statute or constitutional provision

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[1]30 Cal. 539.
[2]Chitty : op. cit., Vol. 1, 625.
[3]Pollock & Mulla : op. cit., 399.
[4]A. I. R. 1952 Cal. 306.
[5]*Ranendranath* v. *Dhuliyan Municipality*, A.I.R. 1956 Cal. 203.
[6]A.I.R. 1956 Assam 86.
[7]See the cases mentioned in *Madras Corporation* v. *Kothandaponi*, A. I. R. 1955 Mad. 82. As regards the view of the Allahabad High Court see the judgement of Aggarwala J. in *Gonda Municipality* v. *Baichchu*, A. I. R. 1951 All. 736 F. B. (741).
[8]*Dominion of India* v. *Priti Kumar Ghosh*, A. I. R. 1958.
[9]A.I.R. 1955 Cal. 626 (629).

which renders the agreement unenforceable can be said to be discovered to be void within the meaning of S.65, Contract Act. If that was the intention all that S.65, Contract Act, need have said is "whenever an agreement is void", and not "discovered to be void".

In consonance with the preponderance of opinion we recommend that it should be made clear that S.65 applies to cases where an agreement is void by reason of non-compliance with statutory requirements.

84. Divergent views have been taken on the question whether the expression "discovered to be void" covers an agreement void for an unlawful consideration[1]. On a consideration of the whole matter, we have reached the conclusion that section 65 does not apply to agreements which are void under section 24 by reason of an unlawful consideration or object. To such agreements the English rule as embodied in the maxim *in pari delicto potior est conditio possidentis* and its exceptions should apply. That principle has received statutory recognition in section 84 of the Indian Trusts Act and we have adverted to the rule and its exception later in this report.

85. The expression 'discovered to be void' came for interpretation before the Judicial Committee a number of times. In the case of *Harnath Kuar* v. *Inder Bahadur Singh*[2], the Committee observed: "An agreement, therefore, discovered to be void is one discovered to be not enforceable by law, and, on the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void". In the particular case before them, their Lordships held that the discovery as to the void character of the agreement took place only after the misapprehension as to the 'private rights' of the transferor was realised. Later in the case of *Anand Mohan* v. *Gour Mohan*[3], their Lordships laid down that in the absence of special circumstances to the contrary the "discovery" of the agreement must be held to have been made at the time of the agreement itself. This was reiterated in *Hans Raj* v. *Dehra Dun M.T.Co.*,[4].

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[1]Cf. *Jijibai* v. *Nagji*, 11 Bom. 693 and *Nathu Khan* v. *Sewak Koeri*, 15 C.W. N. 408 (409).
[2]A I. R. 1922 P. C. 403 (405).
[3]A I. R. 1923 P. C. 189 (191).
[4]A I. R. 1933 P. C. 63 (66).

In *Nisar Ahmad* v. *Mohan Manucha*[1] the Judicial Committee applied section 65 to the case of a mortgage which failed by reason of the absence of permission of the Collector under para. 11 of Schedule III of the Civil Procedure Code. It was held that the case was one which fell within the words "discovered to be void" occurring in section 65. Again in 1943 on the same facts the Privy Council[2] reiterated the applicability of Section 65 and pointed out that in the case of a minor's agreement there is a general incapacity to contract, while para. 11 Schedule III of the Civil Procedure Code imposes on a judgment-debtor only incapacity to transfer property.

Though we are anxious to remove expressions which give rise to a conflict of judicial opinion, we do not consider it advisable to do away with the expression "discovered to be void" inasmuch as in particular circumstances, it may be relevant for the purposes of limitation[3].

86. While dealing with section 11 we have already recommended[4] that a provision may be made in section 65 to the effect that where an agreement is entered into by a minor falsely representing that he is a major, the agreement will be one within the purview of section 65. At the same time we want to make it clear that section 65 should not have any application to cases of agreements entered into with persons incompetent to contract with full knowledge of their incompetency.

87. In our Report on the Specific Relief Act[5] while referring to Privy Council case of *Satgur Prasad* v. *Har Narain*[6] we have suggested by way of abundant caution that the principle underlying section 65 of the Contract Act should be expressly made applicable to voidable contracts where a party relies on the voidability of the contract and avoids it. This should be made clear by suitable changes in the section.

88. No change appears to be necessary in sections 66-67. Secs. 66-67.

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[1]A. I. R. 1940 P. C. 204.
[2]*Mohan Manucha* v. *Manjur Ahmad*, A. I. R. 1943 P. C. 29 (33).
[3]*Harnath Kaur* v. *Inder Bahadur*, A. I. R. 1922 P. C. 403 (405).
[4]*Supra*, para. 37.
[5]Ninth Report of the Law Commission, para. 89.
[6]A. I. R. 1932 P. C. 89 (91).

Sec. 68.

89. The Director of Legal Studies, Madras, has suggested that the word 'necessaries' should be defined. But the word has been judicially interpreted on a number of occasions and it is not necessary to give a statutory definition thereof. The word 'necessaries' has been held to include money urgently needed for the requirements of minors and lunatics and is not restricted to what is necessary for elementary requirements, such as, food and clothing. It is now well established that payments or charges connected with legal matters in which minors are concerned would, under certain circumstances, come under the head of 'necessaries'. We think this term should remain elastic and we are unable to accept the suggestion.

Sec. 69.

90. This section has been held to apply only to cases where the plaintiff is not only interested in the payment but is also actuated by the motive of protecting his own interest. We think that this idea is sufficiently expressed by the word 'therefore' and it is not necessary to alter the the language of this section on that account.

There is a conflict of authority upon the question whether this section covers a case of contribution. One view[1] is that it deals with reimbursement, which is different from contribution, and the person who is interested in the payment which another is bound by law to pay must be a person who is himself not bound to pay the whole or any portion of the money. In other words, 'being interested in the payment of money' connotes an idea different from 'being bound by law to pay'. The other view[2] is that a person may be interested in making the payment notwithstanding that he is also liable to pay. In our opinion the former is the better view, and alterations should be made in the section to make this clear.

The principle of contribution is not founded on a contract but is the result of general equity on the ground of equality of burden and obligations. According to Winfield this principle is a head of quasi-contractual liability[3]. There are express provisions for contribution in the Act.

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[1]See *Jagapathi Raju* v. *Sadrusanamma Arad*, 39 Mad. 795 ; and *Biraj Krishna* v. *Purna Chandra*, A. I. R. 1939 Cal. 645.

[2]*Ram Lal* v. *Khirlda Mohini*, 18 C.W.N. 113; *Bepat Singh* v. *Shamlal*, A. I. R. 1931 Pat. 234 ; *Vishnu Ram* v. *Seth Pannalal*, A. I. R. 1937 Nag. 152.

[3]Winfield ; Province of the Law of Tort, 163.

Section 43 provides for contribution in the case of joint-promisors while sections 146 and 147 deal with contribution in case of co-sureties. Many cases of contribution would be covered by section 70, but there may still be cases not covered by that section or other Statutes. Some cases of contribution have been decided on general principles without reference to section 70[1]. We think that it should be made clear that section 69 deals with cases of reimbursement and not those of contribution, and effect should be given to the view which we have accepted as correct by some suitable change in the language. It is, however, not necessary to devote a separate section to cases of contribution not already covered by the express provisions of this or of other Acts, as such cases will be covered by the residuary section proposed by us[2].

91. We are of the opinion, however, that there should be a separate provision for contribution between joint-tort feasors on the lines of section 6 of the Law Reform (Married Women and Tort-feasors) Act, 1953[3]. The relevant part of that section may be quoted hereunder:

> "6.—(1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—
>
> (a) .....
>
> (b) .....
>
> (c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability of which the contribution is sought.
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> (2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall

[1] E. g., *Nihal Singh* v. *The Collector of Bulandshahar*, 38 All. 237.
[2] S. 72B, App. I.
[3] 25-26 Geo. 5, c. 30.

have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity".

Since our law of Torts is not yet codified, our Courts have to rely on English Common law, but the rules of common law on the present subject are unsatisfactory and have, accordingly, been replaced by statute. The provisions of the English Act being consonant with the principles of justice, equity and good conscience, we should adopt similar rules by enacting a similar specific provision[1] in our Contract Act, so long as we do not have a separate Code on the law of Torts.

Sec. 70.

92. This section is much wider than the English Law and cases not covered by the Common Law in England would be covered by it. There is a conflict of authority on the question whether the expression 'does anything' in the section includes payment of money. A Full Bench of the Allahabad High Court in *Sheonath* v. *Sarju*[2], agreeing with Varadachariar, J.'s view in *Perumal Chettiar* v. *Kamakshi Ammal*[3], answered the question in the negative, while the Allahabad High Court in an earlier decision[4] and the Calcutta High Court[5] have answered it in the affirmative. We think that the former view is too narrow and the latter one should be accepted. This will necessitate a change in the language of the section.

93. The words "such other person enjoys the benefit thereof" have given rise to controversy and there are conflicting decisions as to their meaning in various Courts, particularly in the Madras High Court. It has been noted that the statement of the law contained in Section 70 is derived from the notes to *Lampleigh* v. *Braithwaite* and resembles the right of the *negotiorum gestor* under Roman Law[6]. The view contained in one line of cases has been forcibly expressed by Sankaran Nair J. in *Yogambal* v. *Naina Pillai*[7]. Basing himself upon English decisions, he laid down that for the application of section 70 it is necessary that the party sought to be charged must not only have benefited by the payment but also have had the

[1] *Vide* s. 69A, App. I.
[2] A. I. R. 1943 All. 220 (232).
[3] A I. R. 1938 Mad. 785.
[4] *Nath Prasad* v. *Baijnath*, 3 All. 66.
[5] *Smith* v. *Dinonath Mookerjee*, 12 Cal. 213.
[6] Stokes : Anglo Indian Codes, 533.
[7] 33 Mad. 15(18).

opportunity of accepting or rejecting such benefit. Where no such option is left to him and the circumstances do not show that he intended to take such benefit, he cannot be said to have "enjoyed such benefit" within the meaning of the section. He illustrates his view in this manner:

> "Where A is himself interested in the doing of the work there is nothing to show to B that the work is done for him or that A expects any payment from him. The Courts will not, therefore presume that A did the work for B. Similarly where B has no choice in the matter but he has perforce to take the benefit, it cannot be said that B adopts the act or accepts any benefit. Therefore the Courts will not hold B liable".

The learned Judge adopted the note in 'Smith's Leading Cases' where one of the instances of the application of the rule in *Lampleigh's case*[1] was described as: "Where the defendants had adopted and 'enjoyed the benefit' of the consideration." The result was that Sankaran Nair, J. took the view that the requirements of section 70 were identical with the conditions imposed by English Law.

The other view has been stated by Sadasiva Ayyar J. in *Srichandra Deo* v. *Srinivasa Charlu*[2] in which he dissented from the judgment of Sankaran Nair J. He observed:

> "The words of Section 70 of the Indian Contract Act do not oblige us to import all the restrictions imposed by the English decisions, upon the equitable right of a person who honestly does something for another without an intent to do so gratuitously, to recover compensation from that other for the benefit so conferred upon and enjoyed by that other person[3]".

The learned judge followed the decision of the Calcutta High Court in *Jognarain* v. *Badri Das*[4]. It may be noted that a similar view was taken by the Allahabad High Court in *Dorilal* v. *Patti Ram*[5]. In the Madras High Court itself,

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[1] 1 Sm. L.C. (13th Edn.), 148.
[2] 38 Mad. 235.
[3] 38 Mad. 235 (245).
[4] 12 I. C. 144.
[5] 8 All. L. J. 622.

in two subsequent cases[1] the decision in *Srichandra* v. *Srinivasa*[2] was dissented from and the view of Sankaran Nair J. was followed. Pollock and Mulla[3] have expressed the view, that Sankaran Nair J. laid down the law correctly. In our opinion, the word 'enjoyed' imports the idea of conscious acceptance of the benefit. If the person to be charged is unwilling to accept the benefit which is thus forced upon him, he cannot be said to have 'enjoyed' it. The restrictions imposed by English Law are the necessary consequence of the requirement that the circumstances must be such that the request necessary to constitute a cause of action in the case of an executed consideration may be implied. In India we are not fettered by any such requirement. In a case, for example, where a co-sharer makes repairs to an embankment with the result that there is an increase in water, the other co-sharer may or may not use the excess of water or he may not be conscious of the increase. In such a case section 70 would not apply but if he was conscious of the increase and had used the water, he should be held to have 'enjoyed the benefit'. The position can be clarified by substituting the word 'enjoys' by the words 'accepts and enjoys'.

Sec. 71. 94. No change is necessary in section 71.

Sec. 72. 95. This section is restricted to cases of payment or delivery by mistake or under coercion. It should be extended to cover cases where payment or delivery has been made, as a result of the exercise of fraud, misrepresentation or undue influence, or where money or delivery has been obtained by taking undue advantage of the situation of a person entitled under the law to protection under the circumstances. This extension of the section will bring it in line with the English Law[4].

96. The word 'coercion' has not been used in this section in the sense in which it has been defined in section 15. It has been used, in the words of the Privy Council, "in its general and ordinary sense as an English word and its meaning is not controlled by the definition in section 15[5]". The contrary view held by some Courts in India has thus been superseded. In order to remove any possibility of

[1] *Sampath* v. *Rajah of Venkatagiri*, A. I. R. 1931 Mad. 51 and *Lakshmanan* v. *Arunachalam*, A. I. R. 1932 Mad. 92.
[2] 38 Mad. 235.
[3] Pollock & Mulla; Op. cit. 432.
[4] Chitty ; Op. cit., Vol. I, 96.
[5] *Kanhayalal* v. *National Bank of India*, 40 I.A. 56 (65).

doubt, an Explanation should be added in a suitable to state that the definition in section 15 is only for the purposes of the Chapter in which that section is contained.

97. To give effect to the Privy Council decision in *Shiba Prasad* v. *Srish Chandra*[1] which set at rest the controversy whether 'mistake' in section 72 was confined to mistakes of fact or covered mistakes of law also, the words, "whether of fact or law" may be added after the word 'mistake'.

98. There is a conflict of authority on the question whether section 72 will apply to a case where a third party had acquired interest in the property prior to the attachment, deposited the purchase money under 0·21, r. 89 C.P.C. to set aside the sale in execution and subsequently succeeded in his suit for declaration of his right to the property, and such person would be entitled to a refund of the deposit so made by him. The High Courts of Bombay[2], Patna[3] and Madras[4] took the view that section 72 did not apply and the money was not recoverable. The High Court of Madras in later cases[5], however, held that it was recoverable. The decision in *Raman* v. *Kannan*[6] is by Patanjali Sastri, J. (as he then was), and we think that the law is laid down correctly therein. This conflict, however, does not call for any clarification by way of change in the language of the section, because even if the former view be correct the case would be covered by the residuary section[7] proposed by us, as obviously the case would be one of unjust enrichment or unjust benefit.

99. Some writers treat actions on judgments as falling within the area of quasi-contracts. We do not consider it necessary to make any provision for such cases in Chapter V. By reason of procedural provisions suits on judgments passed by Indian Courts are not necessary. Suits on foreign judgments belong to the subject of Conflict of Laws, and we have already got certain provisions on this

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[1]A. I. R. 1949 P. C. 297 (301).
[2]*Narayan* v. *Amaguda*, 45 Bom. 1094; *Shanker Rao* v. *Vadhilal*, 57 Bom. 601.
[3]*Raguram Pande*, v. *Deokali*, 7 Pat. 30.
[4]*Kummakutty* v. *Neelakandan*, 53 Mad. 943.
[5]*Satyam* v. *Perraju*, A. I. R. 1931 Mad. 753; *Raman* v. *Kannan*. A. I. R. 1940 Mad. 725.
A. I. R. 1940 Mad. 725.
[7]S. 72B App. I.

subject in sections 13-14 of the Code of Civil Procedure. Hence, it would be advisable to leave this matter outside the Contract Act.

100. The rule in *pari delicto potior est conditio possidentis*, with its exceptions, has been followed in Indian cases and it has also received statutory recognition in section 84 of the Indian Trusts Act. To quote one of such cases[1] a plaintiff's predecessor-in-title had in 1895 successfully executed a benami sale deed of certain property to the defendants' predecessor in order to defeat the claim of a prior equitable mortgagee. This mortgagee at once sued the parties to the benami sale deed and obtained satisfaction of his claim with costs. The result was that the purpose of the sale was defeated. Holding that the plaintiff was entitled to a decree for recovery of land, the Privy Council made the following observations:

> "If, however, he has not defrauded any one, there can be no reason why the Court should punish his intention by giving his estate away to B, whose roguery is even more complicated than his own. This appears to be the principle of the English decisions. For instance, persons have been allowed to recover property which they had assigned away . . . .where they had intended to defraud creditors, who, in fact, were never injured .... But where the fraudulent or illegal purpose has actually been effected by means of the colourable grant, then the maxim applies, 'in pari delicto potior est conditio possidentis'. The Court will help neither party. 'Let the estate lie where it falls."[2]

It was further observed that the purpose of the fraud having not only not been effected, but absolutely defeated, there was nothing to prevent the plaintiff from repudiating the entire transaction, revoking all authority of his confederate to carry out the fraudulent scheme, and recovering possession of his property.

S.84 of the Trusts Act is, however, confined to transfers of property and may not cover cases of payment of money or delivery of property for illegal purposes. We are of the view that it would be better to have a specific provision relating to such cases.

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[1] *Petherperumal* v. *Muniai*, 35 I. A. 98.
[2] *Ibid.*, 102.

The question is whether the provision should be introduced into the Contract Act or the existing provision in the Trusts Act should be widened to include cases arising out of contracts other than those of transfer of property. In England and in the United States, the principle is regarded as a part of the law of contract.

In England, the rule was formulated by Lord Mansfield in 1775 in the case of *Holman* v. *Johnson*[1] and the Court of Appeal has in the case of *Bowmakers Ltd.* v. *Barnet Instruments Ltd.*,[2] remarked that the principle has even been extended since Lord Mansfield's day. Chitty states the rule thus:—

> "If the illegal purpose has not been carried out, the law allows a *locus poenitentiae* to the party who demands the return of money paid before this happens. So either party to an illegal contract may rescind it while it remains executory, and may recover from the other party any money which he may have paid to him thereunder, although, to enable him to do so, he must prove the making of the illegal contract as part of his case. But if the illegal purpose has been wholly or substantially effected or frustrated the law allows no *locus poenitentiae*".[3]

In the American Restatement of the Law, the rule has been thus stated in the Volume on Contract (section 598):

> "A party to an illegal bargain can neither recover damages for breach thereof, nor by rescinding bargain, recovery the performance that he has rendered thereunder or its value".

The doctrine underlying section 84 of the Trusts Act is obviously different. But the conditions for the application of the rule are the same in the Trusts Act as under the principle of quasi-contract and the result is similar. The extension of the provision in section 84 to include the contractual aspect would result in the advantage of having a comprehensive provision relating to the subject of frustration of an illegal purpose instead of having two parallel

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[1]98 E. R. 1120, 1121.
[2][1944] 2 All. E. R. 579 (582).
[3]Chitty, Op. cit., Vol. 1, 473.

provisions in two separate enactments. The title of the Chapter of the Trusts Act in which section 84 is included is also wide enough to admit of the extension, inasmuch as it does not deal with cases of trusts proper but of 'Certain obligations in the nature of trusts'.

We have, accordingly, come to the conclusion that in our future Report on the law of trusts, a recommendation should be made for amending section 84 to include the following proposition:

> "Where a person makes payment or delivery of property for any illegal purpose and such purpose is not carried into execution, or the person making the payment or delivering the property is not as guilty as the person receiving the payment or the property or the effect of permitting him to retain the money or property might be to defeat the provisions of, any law, he must restore the benefit to the person making the payment or delivery of the property".

Secs. 73-4. 101. No change is recommended in sections 73-74.

Sec. 124. 102. The definition of a contract of indemnity given in this section is not exhaustive. It deals with only one class of indemnity and defines only some of the rights belonging to an indemnity-holder of that particular class. The result has been that the Courts had to draw upon "the common law of India, which in this respect, is identical with that of England"[1]. In English Law, the word 'indemnity' is used in a sense wider than that indicated by the definition in section 124. It includes a promise to save the promisee from loss caused by events or accidents which do not or may not depend on the conduct of any person, or from liability arising from something done by the promisee at the request of the promiser. A right to indemnity may be created by express contract or by implied contract. In the latter case, the intention to create the right is based upon the true inference to be drawn from the facts. There is another class of cases where the law attaches a legal or equitable duty to indemnify in the particular set of circumstances. In such cases, the general principle of law is that 'when an act is done by one person

[1]Per Lord Wright in *Secretary of State* v. *The Bank of India*, A. I. R. 1938 P.C. 191 (192).

at the request of another, which act is not in itself manifestly tortious to the knowledge of the person doing it and such act turns out to be injurious to the rights of a third party, the person doing it is entitled to an indemnity from him who requested that it should be done[1]. This statement in *Dugdale* v. *Lovering*[1] which was approved by ment in *Dugdale* v. *Lovering*[1] which was approved by Lord Halsbury, L.C., in the case of *Sheffield Corporation* v. *Barclay*[2]. In that case Lord Davey observed:

> ".....Where a person invested with a statutory or common law duty of a ministerial character, is called upon to exercise that duty on the request, direction or demand of another, (it does not seem to me to matter which word you use), and without any default on his part acts in a manner which is apparently legal but is, in fact illegal and a breach of the duty, and thereby incurs liability to third parties, there is implied by law a contract by the person making the request to keep indemnified the person having the duty against any liability which may result from such exercise of the supposed duty. And it makes no difference that the person making the request is not aware of the invalidity in his title to make the request, or could not with reasonable diligence, have discovered it"[3].

In the same case, Lord Davey also said, "in some cases it is a question of fact whether the circumstances are such as to raise the implication of a contract for indemnity; but in cases like the one before your Lordships, when a person is requested to exercise a statutory duty for the person making the request, I think the contract ought to be implied"[4].

We think that this class of cases should be classified as quasi-contractual. With reference to the surety's claim in equity, Prof. Winefield remarked that 'that redress was given not only upon express promise of indemnity by the debtor, but also upon an implied obligation which would

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[1](1875) L. R. C. P. 196.
[2](1905) A. C. 392.
[3]*Ibid.*, 399.
[4]*Ibid.*, 401.

nowadays be classified as quasi-contractual"[1]. The liability in such cases is based upon an assumed and fictitious request. In *Secretary of State* v. *The Bank of India Ltd.*[2], Lord Wright, in reference to the aforesaid statement of the law by Lord Davey, remarked, "It (the principle) is often, as in the statement by Lord Davey ....., said to be based on a contract implied by law, the request importing a promise to indemnify the other party against the consequences to him of acting upon the request. But in the words adopted by Lord Halsbury, it is said that the person is entitled merely to an indemnity. The fiction of a contract implied by law adds nothing, though it may seem to justify the Court in holding as a matter of law that the party is entitled to the indemnity on the basis that the assertion by the applicant of his request is the offer of a promise to indemnify if the other party acts upon that request to his damage".[2]

103. We recommend that the definition of the "Contract of indemnity" in section 124 be expanded to include cases of loss caused by events which may or may not depend upon the conduct of any person. It should also provide clearly that the promise may also be implied.

Further, a section[3] should be added in the Chapter on Quasi-Contracts covering cases where an obligation to indemnity may be implied in law.

Sec. 125.

104. This section deals only with the rights of the indemnified in the event of his being sued. The indemnified has other rights besides those mentioned in section 125. There is a sharp cleavage of opinion in the various High Courts as regards the remedies available to an indemnity-holder. While some High Courts, *e.g.*, Calcutta,[4] Madras,[5] Allahabad[6] and Patna[7] held that the indemnity-holder can compel the indemnifier to place him in a position to meet a liability without waiting until the indemnity-holder has actually discharged it or has suffered actual

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[1] Winfield Law of Quasi-Contracts, 116, 117.
[2] A. I. R. 1938 P. C. 191 (193).
[3] *Vide* s. 72A, App. I.
[4] *Prafulla Kumar Basu* v. *Gopee Ballabh Sen*, I. L. R. [1944] 2 Cal. 318.
[5] *Ramaligna* v. *Unnamalai Achi*, 38 Mad. 791.
[6] *Abdul Majeed* v. *Abdul Rashid*, A. I. R. 1936 All. 598.
[7] *Chuni Bai Patel* v. *Nathu Bai Patel*, 22 Pat. 655.

loss, the Lahore High Court[1], the Judicial Commissioner of Nagpur[2] and the Bombay High Court[3] (in earlier cases) took the view that no right belongs to the indemnified until the loss occurs. So far as the Bombay High Court is concerned, Chagla J. (as he then was), clarified the position[4] and since then the Bombay High Court has also fallen in line with the Allahabad and Patna High Courts. We are of the opinion that the view expressed by Chagla J. is correct and should be adopted by the legislature. Under the English Common Law no action can be maintained until actual loss has been incurred. But in equity, if liability to pay has become absolute, the indemnified is entitled to maintain an action, even though actual loss has not yet resulted. It has been judicially recognised that adherence to English Common Law results in hardships and injustice and, indeed, the Courts of Equity in England have introduced the above mentioned rule to mitigate the rigour of the Common Law.

The decisions of the Court of Equity in England proceeded upon the principle that to indemnify does not merely mean to reimburse in respect of money paid, but, 'in accordance with its derivation', to save from loss in respect of the liability against which the indemnity has been given. These decisions have been followed in India by Judges who have taken a view consistent with the position in English Law described above.

The rights and remedies of the indemnity-holder in equity, have been thus described in Halsbury's Laws of England:

> ..in equity, the rules of which now prevail in all Courts, even in the absence of such a special agreement, the person entitled to the indemnity may enforce his right as soon as his liability to the third party has arisen, and, therefore, he may obtain relief before he has actually suffered loss. He may, therefore, in an appropriate case, obtain an order compelling the promisor to set aside a fund out of which the liability may be met or to pay the amount due directly to the third party,

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[1] *Sham Sundar* v. *Chandu Lal*, A.I.R. 1935 Lah. 974.
[2] *Ranganath* v. *Pachusao*, A. I. R. 1935 Nag. 117.
[3] *Shankar* v. *Laxman*, A.I.R. 1940 Bom. 302.
[4] *Gajanan Moreshwar* v. *Moreshwar Madan*, A.I.R. 1942 Bom. 302.

or even, when the promisor is under no liability to the third party, as is the case in contracts of mere indemnity, to the promisee himself. Nor is the party indemnified precluded from obtaining relief by the fact that his liability to the third party cannot be effectively enforced against him"[1].

We recommend that on the basis of the position in English Law, as set out above, the rights of the indemnity-holder should be more fully defined[2] and the remedies of an indemnity-holder should be indicated even in cases where he has not been sued.

Secs. 126-129.

105. No change is considered necessary in sections 126 to 129.

Sec. 130.

106. There is divergence of opinion between some High Courts as to the right of the sureties to revoke surety bonds given to Courts. In *Bai Somi* v. *Chokshi*[3], which was a case of security for the guardian of a minor's estate, it was held that section 130 was inapplicable and that such a surety could not be discharged, as the very object of requiring security was to guarantee the minor's estate against the misconduct or mismanagement on the part of the guardian. In *Raj Narain* v. *Ful Kumari*,[4] a case under the Probate and Administration Act, the surety had made an application for his discharge on the ground that the Administrator had been guilty of waste which the surety could not prevent. It was held that it was open to the Court to grant the application. In *Subroya Chetti* v. *Ragammall*,[5] an application by the surety for an administrator for his discharge, was dismissed on the ground that no such maladministration had been proved. Thereupon the surety instituted a suit praying that the Court should discharge the plaintiff from his guarantees as a surety in regard to future transactions. The suit was dismissed upon the grounds that

(1) The making of an order for discharge might defeat the object for which an Administrator is required to find sureties to his administration bonds;

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[1] Halsbury : Laws of England (2nd edn.), Vol. 16, 15.
[2] *Vide* s. 125A, App. I.
[3] 19 Bom. 245.
[4] 29 Cal. 68.
[5] 28 Mad. 161.

(2) Section 130 does not apply to a special contract of suretyship; and

(3) If the section applies to an administration bond, the surety could, without any action or any legal proceeding put an end to his liability by giving notice to the Registrar or to the Court.

In *Kandhya Lal* v. *Manki*[1] the view of the Madras High Court was followed and it was held that where a person guarantees that an administrator will duly get in and administer the estate of a deceased person, there is a continuing guarantee within the meaning of section 129.

In our opinion the law has been correctly stated by Sulaiman, A.C.J., in *In goods of Dr. Abinash Chandra.*[2] It was held in that case that although it was true that the surety cannot claim as of right to be relieved of all liability by merely expressing his intention to do so either by notice or by a proper application to the Court and, although it is also true that the case of a surety whose security has been accepted by a Court, cannot be treated as one falling under sections 129 and 130 of the Contract Act so as to entitle him to put an end to the guarantee at his will, yet that is quite a different thing from saying that the High Court itself to which the guarantee is given has no power to exonerate the surety from all liability for future transactions. This view is in consonance with that of the Privy Council in *Mahomed Ali* v. *Howeson Bros.*[3] We recommend that an Exception be added to the section providing that a guarantee given to the Court cannot be revoked without the permission of the Court.

107. No change is considered necessary in sections 131 to 133. Secs. 131—133.

108. There was a conflict of authority upon the question whether a surety is discharged when a creditor allows his remedy against the principal-debtor to become barred by limitation. The Bombay, Calcutta and Madras High Courts took the view that the surety is not discharged; while the Allahabad High Court had taken a different view. In Sec. 134.

[1] 31 All. 56.
A. I. R. 1932 All. 262.
[3] A. I. R. 1926 P. C. 110.

Mahanth Singh v. *U Ba Yi*,[1] the view of the majority of the High Courts was preferred. It was held that not every unenforceable contract was declared void, but only those 'unenforceable by law', and that those words meant not unenforceable by reason of some procedural regulation, but unenforceable by substantive law. A mere failure to sue within the time specified by the statute of limitation or an inability to sue by reason of the provisions of one of the Orders under Civil Procedure Code would not cause a contract to become void. It was observed that sections 134 and 139 were merely declaratory of the law in England.

We recommend that an Explanation be added to clarify this position and the view of the Privy Council be adopted.

109. There has been a difference of opinion between the Madras and the Nagpur High Courts as to the effect of Debt Relief Acts upon the liability of the surety. In cases where the creditor proves his debt but the debt is scaled down by the Board, the Madras High Court[2] has taken the view that the surety is liable only for the reduced amount, while the Nagpur High Court[3] has held that the surety remains liable for the whole of the original debt. In agreement with Pollock and Mulla[4], we prefer the opinion of the Madras High Court, which appears to be more in consonance with justice. This conflict, however, does not necessitate any change in the language of the section.

Secs. 135—40.

110. No change is considered necessary in sections 135 to 140.

Sec. 141.

111. This section limits the surety's right to the securities held by the creditor at the date of his becoming surety. According to the current English law "a surety has on payment and not before, a right to the benefit of all the securities, whether known to him or not at the time when he became surety, which the creditor has received from the principal-debtor, before, contemporaneously with, or after, the creation of the suretyship, and whether or not they existed at the time when the guarantee was given[5]".

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[1]A. I. R. 1939 P. C. 110. The Allahabad High Court expressly overuled its earlier decisions to the contrary in *Aziz Ahmed* v. *Sher Ali*, A. I. R. 1956 All. 8 (F.B.)

[2]*Subramania* v. *Narayanaswami*, A. I. R. 1951 Mad. 48.

[3]*Balkrishna* v. *Atmaram*, A.I.R. 1944 Nag. 277.

[4]Pollock & Mulla : op. cit., 536.

Halsbury : Laws of England (2nd edn.), Vol. 16, 92-93.

We think that the law upon this point should be brought in line with the English law.

112. The section does not lay down at what point of time the surety is entitled to have the creditor's securities made over to him wholly or in part, whether at the time when the debt of the creditor is paid off or when the surety pays the amount of his guarantee. There is a difference between the Bombay and Madras High Courts on this point. In *Goverdhandas* v. *The Bank of Bengal*[1], a surety had guaranteed an aliquotor a defined portion of past debt secured by mortgage. On payment by him of the portion of the debt guaranteed by him, he claimed to be entitled to share in the mortgage in proportion to the amount of the debt which he had guaranteed and paid before the mortgagee had been paid the full amount of his mortgage debt. This claim was rejected. In *Parvatanem Bhushayya* v. *Suryanarayana*[2], the Madras High Court doubted the correctness of this view. That Court decided that the surety was entitled to a proportionate share in a security held by the creditor at the time the surety discharged his liability even though the creditor was not fully paid. Pollock and Mulla[3] opined that the view taken by the Madras High Court is inequitable and that the creditor's right to hold securities until the whole debt has been paid is paramount to any claim of the surety whether based upon section 140 or section 141. We agree with the opinion of the learned Commentators and recommend that it should be made clear that the surety is entitled to have the creditor's securities made over to him only when the creditor is fully paid off.

113. We think that a comma should be inserted after the word 'misrepresentation', and the existing comma after the word 'creditor' removed, in order clearly to bring out that the section deals with the case of a guarantee obtained by means of misrepresentation whether the same is brought by the creditor or by some one else, with his knowledge and assent. Sec. 142.

114. It has been held[4] that this section provides for the case of a guarantee obtained by wilful silence as distinguished from mere non-disclosure. The language of the Sec. 143.

[1] 15 Bom. 48.
[2] A. I. R. 1944 Mad. 195.
[3] Pollock & Mulla : op. cit., 551.
[4] *Balkrishna* v. *Bank of Bengal*, 15 Bom. 585 (591).

section should be brought into conformity with the judicial opinion.

Sec. 144. 115. No change is necessary in section 144.

Sec. 145. 116. Pollock and Mulla[1] suggest that the words 'rightfully' and 'wrongfully' are not felicitous and that they should be substituted by the words 'reasonably' and 'unreasonably'. We do not agree. 'Rightfully' was intended to convey that the sums paid were such as the creditor was legally entitled to recover and, therefore, the surety had the right to pay, and, likewise, the expression 'wrongfully' was intended to convey that the sums paid were such as the creditor was legally not entitled to recover, and, therefore, the surety was wrong in paying the same. We feel that the expressions used by the legislature more fully convey the intended idea than the suggested expression.

117. Controversy has arisen on the question whether a surety paying a debt which is barred by limitation as against the debtor can be said to have paid it 'rightfully' within the meaning of this section. We think the affirmative is the correct answer as the rights of the surety arise not from the liability of the debtor but from the discharge of his own liability. An Explanation should be added to the section to make this clear.

118. In appropriate cases the surety is entitled to recover special damages beyond the sum he has actually been compelled to pay. It has been observed[2] that his right is not merely a right to stand in the shoes of the creditor but is founded upon an independent equity.

An Explanation should be added to the section to clearly preserve this right.

Secs. 146-7. 119. No change is recommended in sections 146 to 147.

Sec. 148. **120. A contract of bailment may be implied in fact or in law.**

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[1]Pollock & Mulla : op. cit., 556.

[2]*Per* Stirling J. in *Bedeley* v. *Consolidated Bank*, (1886) 34 Ch. D. 556 (566).

In *Queen* v. *McDonald*[1], Lord Coleridge, C.J. observed:

> "It is not correct as it appears to me, to use the expression "contract of bailment" in a sense which implies that every bailment must necessarily in itself be a contract. I do not so understand the definition of the term "bailment". It is perfectly true that in almost all cases a contract either express or implied by low accompanies a bailment, but it seems to me that there may be a complete bailment without the contract. According to all the definitions, as for instance, those given in Sir William Jones, Blackstone & Kent's Commentaries, it would appear that a bailment consists in the delivery of an article upon a condition or trust. It is true, I know, that the authors of those various definitions go on to say that there is a promise or contract to restore the goods, but this is not, as it seems to me, the bailment itself, but "a contract that arises out of it".

The American Law also recognises a contract of bailment by implication of law. The law is thus stated in American Jurisprudence: "It has previouslv been observed that an actual contract or one implied in fact is not always necessary to create a bailment; that such a contract may be implied in law as well as in fact. Where, otherwise than by a mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, for example, where possession has been acquired accidentally, fortuitously, through mistake, by an agreement since terminated, or for some other purpose, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, for such relationship. Such quasi-contracts of bailment include what are known as constructive and involuntary bailments".[2]

[1] 13 Q. B. 323 (326-327).
[2] 6 Am. Jur. (Rev. ed.), Bailments, S. 86.

In our opinion, the present definition of bailment should not be altered. But the case of what has been described as quasi-contract of bailment should be provided for in a separate section stating that the bailor and bailee in such cases must, so far as may be, perform the same duties, and be subject to the same liabilities and disabilities as if they were bailors and bailees under a contract express or implied as provided in section 148.[1]

Sec. 149. 121. The Reserve Bank of India has recommended that the following words be added to section 149: "And the delivery of 'documents of title' to goods by the owner or with consent of the owner shall be deemed to have such effect." We have discussed the relation of section 149 to 'documents of title' in our note on section 178, infra. The suggestion is an obvious corollary to the true nature of 'documents of title'. We accept the suggestion and recommend that an Explanation be added to section 149 to give effect to the suggested addition.

Sec. 150. 122. No change is necessary in section 150.

Sec. 151. 123. This section embodies the common law rule as to the liability of bailees other than common carries and innkeepers. Common carriers and innkeepers were liable as insurers of goods; i.e., they were responsible for every injury to the goods occasioned by any means, except only the act of God and of the King's enemies. The English Common Law with regard to common carriers was partly incorporated in the Carriers Act, 1865. According to the Privy Council[2] the responsibility of a common carrier is not within the Contract Act and is governed by the Carriers Act, 1865, and the common law of England.

Carriers by sea for hire are not common carriers within the meaning of the Carriers Act. There is a conflict of authority as to the responsibility of such carriers being governed by the Common Law of England or by sections 151 and 152. The Calcutta High Court, in *Mac Killican* v. *The Compagnie Des Messageris Maritimes des France*,[3] held that a foreign carrier is not a commercial carrier and that if the contract of affreightment is made in India, the liability would be governed by the provisions of sections

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[1] *Vide* s. 181A, App. I.
[2] *Irrawaddy Flotilla Co.* v. *Bugwandass*, 18 I.A. 121 (129).
[3] I.L.R 6 Cal. 227.

150 and 151. The Madras High Court[1] has held that the liability was that of common carriers according to the Common Law of England. The correct view would appear to be that the proper law of Contract of affreightment is the law by which the parties intended that their contract should be governed.

We do not, however, make any recommendation with regard to the law of carriers in this part of our report, as we propose to deal with that subject separately.

124. The liability of an innkeeper should be governed by sections 151 and 152. The view of the Allahabad High Court in *Jain & Son* v. *Cameron*[2] should, in our opinion, be preferred to the view of the Bombay High Court in *Whateley* v. *Palanji*.[3] We do not think that it is necessary to make any change in the sections on this account, as we feel that the Courts are not likely to take a view contrary to the decision of the Allahabad High Court on this point.

125. Whether a bailee can contract himself out of the liability imposed by section 151 has been the subject of controversy in Courts. *In Sheikh Mahamad Ravuther* v. *The British India Steam Navigation Co. Ltd.*[4], Sankaran Nair, J. held (contrary to the views of the other two judges—White C. J., and Wallace J.) that a contract by a bailee purporting to exempt himself wholly from liability for negligence was not valid. This view was founded on the fact that while there are express provisions for contracting out in a number of other sections e.g., Ss. 152, 163, 165, 170, 171 and 174 there is no such provision in S. 151. This view did not find favour even in later cases in the Madras High Court[5] nor was it ever followed in Bombay[6]. Indeed Beaumont C. J. of the Bombay High Court thought that it would be a startling thing that persons *sui juris* are not at liberty to enter into such a contract of bailment as they may think fit. He relied on the absence of an express provision in the Act

[1]See *Hajee Ismail Sait* v. *The Company of the Messageries Maritimes of France*, 28 Mad. 400; *Kumber v. British India Steam Navigation Co. Ltd.*, 38 Mad. 941.
[2]I.L.R. 44 All. 735.
[3](1866) 3 B.H.C. (O.C.) 137.
[4]I.L.R. 32 Mad. 95.
[5]*Home Insurance Co.* v. *Ramnath Co.*, A.I.R. 1955 Mad. 602.
[6]*The Bombay Steam Navigation Co. Ltd.* v. *Vasudev*, 52 Bom. 37; *Lakhaji Dollaji* v. *Boorugu*, A I. R. 1939 Bom. 101.

prohibiting a party from contracting out of section 151. We accept the majority view as correct. In order to resolve this controversy we recommend that the words 'in the absence of any special contract' be added in section 151.

Secs. 152-8. 126. No change is necessary in sections 152 to 158.

Sec. 159. 127. Pollock and Mulla[1] put the query whether an express contract not to recall a thing gratuitously lent before the expiration of a certain time would not be valid. We think that section 159 is no bar to such a contract. It is not necessary to alter the language of this section.

Sec. 160. 128. This section does not provide for the bailor's remedies if the goods are not forthcoming. He has the remedy for damages against the bailee and also the equitable remedy to follow the proceeds of a sale by the bailee where they can be distinguished either being actually kept separate or being mixed up with other moneys[2].

We consider that a provision should be made for the remedies of the bailor apart from his rights under the existing section by adding a new sub-section.

Secs. 161-170. 129. No change is recommended in sections 161 to 170.

Sec. 171. 130. It has been suggested that share and stock-brokers should be included in the list of lien-holders. But the suggestion is not warranted by commercial usage and no inconvenience seems to have been caused by the absence of share and stock-brokers from the list of lien-holders given in this section. Moreover, there is a saving provision by which a lien might be created by an express contract. We cannot accept the suggestion.

Sec. 172-7. 131. No change is recommended in sections 172 to 177.

Sec. 178. 132. In relation to this section the Law Ministry has posed the question whether an owner of goods who is in possession of documents of title to goods can create a valid pledge by delivery of the said documents.

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[1] Pollock & Mulla : op. cit., 585.
[2] *Per* Jessel M.R. in Re *Hallett's Estate*, (1879) 13 Ch. D. 696 (710).

The difficulty has been created by reason of the amendment of this section in 1930. Before the amendment, "a person who is in possession of any goods or of any document of title to goods" could validly effect a pledge by pledging such documents. This was the view taken of the section by the Judicial Committee in *Official Assignee of Madras* v. *Mercantile Bank of India*[1]. The words quoted above were omitted in 1930 and the section as it now stands seems to confer only on a mercantile agent the right to effect a pledge by mere delivery of documents of title. It has been pointed out by Pollock and Mulla[2] that this is a lacuna in the Act and it leads to the situation that what a mercantile agent could do, the owner cannot. Referring to this amended section, the Judicial Committee in the aforesaid case, also observed that the legislature when it made the amendment in 1930 did not appreciate fully the effect of the actual words of the amended section.

It may be possible to argue that notwithstanding the amendment of the section 1930 the owner's rights to effect a pledge of the goods by mere delivery of documents of title is not taken away. We think it is necessary to remove any uncertainty that may exist on the point. We have, therefore, recommended the addition of the Explanation to section 149, to the effect that the delivery of documents of title to any goods by the owner or by a person in possession of the documents with his consent, should be treated as delivery of possession with the meaning of section 149. We have further added a sub-section in section 178, restoring the law as it stood before 1930 and also retaining the existing section.

We further recommend that the definitions of 'documents of title' and 'mercantile agent' be put in section 2 and be not limited to the purposes of section 178.

133. No change is necessary in sections 179 and 180. Secs. 179-180.

134. The words 'such suit' in section 181 are somewhat vague. It should be made clear that they refer to such suit as is referred to in section 180. Sec. 181.

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[1] I.L.R. 58 Mad. 181 (P.C.)

[2] Pollock & Mulla, Op. cit., 606.

Sec. 182. 135. The definition in section 182 is not exhaustive. It has to be read with section 186 which says that the authority of an agent may be express or implied.

136. In *Sukumari Gupta* v. *Dhirendranath*,[1] Pal, J. took the view that the definition in section 182 seemed to be somewhat wider than that of English Law, inasmuch as the definition does not require that the employment should be by the principal himself. The soundness of this view has been doubted by Pollock and Mulla[2].

The questions raised in this and the preceding paragraphs would be solved if we combine sections 182 and 186, and we recommend accordingly.

Sec. 183. 137. Section 183 appears to be too narrow. It is confined to natural persons and would exclude corporations. Further, like section 182, it contemplates only an express appointment by the principal. We propose that the marginal note to section 183 be altered to read: 'Capacity to act as principal' and the section be amended to provide that the capacity to contract or do any other act by means of an agent is co-extensive with the capacity of the principal to make the contract or do the act which he is authorised to make or do. It would then be clear that in the case of a corporation an act beyond the scope of its memorandum of association will be beyond its capacity.

Sec. 184. 138. Section 184 permits a minor (as well as a person of unsound mind) to become an agent as between the principal and third persons without being responsible to his principal. There may be cases where an agent may incur a personal liability upon the contract towards third persons. But in our opinion an agent who is a minor or a person of unsound mind should be exonerated from such liability. According to Bowstead,[3] the personal liability of the agent upon the contract of agency and upon any contract entered into by him with any third person is dependent on his capacity to contract on his own behalf. We agree with this view and recommend that section 184 should be modified accordingly.

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[1] A. I. R. 1941 Cal. 643.

[2] Pollock & Mulla: Op. cit., 619.

[3] Bowstead : Op. cit. (11th Edn.), 15.

139. No change is necessary in section 185. Sec. 185.

140. Section 186 becomes superfluous in view of the change proposed by us in section 182. Sec. 186.

Section 186 should, therefore, be omitted.

141. Section 187 not only defines 'implied authority' but also attempts to lay down what would be the nature of the circumstances from which an authority may be implied. The statement as regards the nature of circumstances is not and does not purport to be exhaustive. It omits to specify equally important cases in which authority may be implied and does not fully make provision for the circumstances which can lead to an inference in favour of 'authority'. For example, this section does not convey the idea of agency of necessity. Bowstead's observation namely, that 'agency can be implied from the conduct or situation of the parties or from the necessity of the case', is more comprehensive. We are of the opinion that this section needs alteration so that 'situation of the parties and the necessity of the case[1]', may also be specified as circumstances from which an authority may be implied, making it clear that some antecedent relationship must exist between the parties to justify an implication of agency. Sec. 187.

142. Section 189 provides for a case where there is an already existing relationship of principal and agent and the authority of the agent is implied from the existence of a necessity. The section is not concerned with the case where relationship of principal and agent is itself created by reason of the existence of necessity. The English Law on the subject may be stated as follows:

> "Agency of necessity arises wherever a duty is imposed upon a person to act on behalf of another apart from contract, and in circumstances of emergency, in order to prevent irreparable injury. It may also arise where a person carries out the legal or moral duties of another in the absence or default of that other, or acts in his interest to preserve his property from destruction. The doctrine of agency of necessity has a limited application and, apart from cases where a person carries out the legal or moral

[1] Bowstead : Op. cit. (11th edn.), 5.

duty of another, is probably confined to circumstances in which there is a contractual relationship of some kind, express or implied, in existence already".[1]

An example of such contractual relationship is that of a carrier. The result of the modification we have suggested will be that apart from the case where there is an existing relationship of principal and agent, the law will specifically provide for the creation of such agency from the very existence of emergency or necessity.

143. A new section may be added after section 187 providing for 'acts which may be done by means of an agent'. In English law, an agent may be appointed for the purpose of entering into any contract for doing any act on behalf of the principal which the principal might himself make or do, except for the purpose of exercising a power or authority or performing a duty imposed on the principal personally, the exercise or performance of which requires discretion or skill or for the purpose of doing an act which the principal is required to do by or pursuant to a statute in his own person. We think that the omission in our Contract Act of a provision as to the acts which may be done by means of an agent should be supplied.[2]

Sec. 188.

144. Section 188 is divided into two parts. The first deals with 'authority to do an act', that is, acts in general, and the other deals with the authority to carry on business—an activity consisting of particular kinds of acts. The first part omits to say that the authority of an agent includes the authority to do things which are ordinarily incidental to the performance of the act expressly authorised. In other words, the extent of the authority is confined to doing things necessary for the performance of the act expressly authorised. In our opinion, the first part of the section should be simplified and the omission mentioned above should be supplied.

145. In our opinion, the second part of the section may be modified[3] to the following effect: Every agent has implied authority to act, in the execution of his express authority, according to the usage and custom prevailing in the market or in the business in which he is employed.

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[1] Halsbury, 3rd Ed., Vol. I, 157.
[2] *Vide* s. 187A, App. I.
[3] *Vide* s. 188(2), App. I.

146. No change is necessary in section 189. Sec. 189.

147. The law on the subject of delegation may be stated as follows: Sec. 190.

An agent cannot delegate his powers or duties without the express or implied authority of the principal. Nor can there be any delegation where personal confidence is reposed or personal skill required in the execution of the work so that it can be said that the agent has expressly or impliedly undertaken to perform the acts personally.

Briefly stated, the exceptions to the above rule are:

(i) Where the employment of a sub-agent is justified by usage of the particular trade or business in which the agent is employed, provided such a usage is neither unreasonable, nor inconsistent with the express terms of the agent's authority;

(ii) Where in the course of the agent's employment unforeseen emergencies arise which render it necessary to delegate his authority;

(iii) Where the authority conferred is of such a nature as to necessitate its execution wholly or in part by means of a sub-agent;

(iv) Where the act done is purely ministerial and does not involve confidence or discretion.[1]

Exception No. (ii) as stated above, is already covered by section 189. The remaining exceptions should be incorporated in the section.

148. No change is considered necessary in sections 191-193. Secs. 191-3.

149. Section 194 deals with the case of a 'substitute' as distinguished from the case of a sub-agent. Pollock and Mulla[2] think that the language of the section is perhaps not the most appropriate. We agree and recommend that the word 'name' may be changed to 'appoint'. Sec. 194.

150. No change is recommended in section 195. Sec. 195.

151. As regards the provision relating to ratification in section 196, we think that the proposition laid down by Sec. 196.

[1] See Halsbury : Op. cit., (3rd edn.), Vol. I, 169-170; Bowstead : Op. cit., (11th edn.), 69.

[2] Pollock & Mulla : Op. cit., 641.

Bowstead[1] should be added to the section, namely, that for the purpose of ratification it is immaterial whether the person doing the act was an agent exceeding his authority, or was a person having no authority at all.

Sec. 197. 152. No change is necessary in section 197.

Sec. 198. 153. Section 198 should be subjected to an exception, namely, 'unless he intends to ratify the act, and take the risk, whatever the circumstances may have been'.[2]

154. For the purpose of ratification it is not necessary that the principal should have knowledge of the legal effect of the act or of collateral circumstances affecting the nature thereof.[3] In order to make the position clear this principle may be embodied in section 198 by way of an Explanation or otherwise.

Sec. 199. 155. No change is necesary in section 199.

Sec. 200. 156. The ratification of a contract does not give the person who ratifies it a right of action in respect of any breach thereof committed before the time of the ratification.[4] This proposition may be incorporated in a separate section.[5]

Sec. 201. 157. There is a conflict of authority on the question as to when the business of the agency of a sale of goods is completed, *i.e.*, whether on payment to the principal of the price realised by the agent or on completion of the sale and receipt of price by the agent. The Allahabad[6] and Calcutta[7] High Courts take the former view while the Madras High Court[8] has taken the latter view. We are of the opinion that the view taken by the Madras High Court represents the law correctly and we consider that agency is determined when the agent ceases to represent the principal, though his liability in respect of acts done by him or by his agents continues. Under the English Law, the agent becomes *functus officio*[9] on the completion of the contract

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[1] Bowstead on Agency, 1951 Ed., p. 33.
[2] Bowstead : Op. cit., (11th edn.), 39.
[3] *Ibid.*
[4] *Ibid.* 43.
[5] *Vide* s. 200A of App. I.
[6] *Babu Ram* v. *Ram Dayal*, 12 All. 541 (545).
[7] *Fink* v. *Buldeodas*, 26 Cal. 715 (725).
[8] *Venkatachalam* v. *Narayanan*, 39 Mad. 376 (378-379).
[9] *Blackburn* v. *Sholes*, 11 R.R. 723, cited in Bowstead : Op. cit. (11th edn.), 286

of sale. That this was the intention of the legislature appears to us to be clear from the heading of the sub-chapter in which the section occurs, which is 'revocation of authority'. We do not, accordingly, consider any legislative change to be necessary.

158. This section is not, however, exhaustive of the cases when the authority of an agent is determined and agency is terminated. The following should also be included in the section as circumstances in which the authority of an agent is determined:[1]

(1) Destruction of the subject-matter of the agency;[2]

(2) The happening of any event rendering the agency unlawful or upon the happening of which it is agreed between the principal and agent that the authority shall determine;

(3) Insolvency of agent;

(4) Dissolution of the firm, corporation or company where the principal is a firm, corporation or registered company.

There are good reasons for providing for termination of agency on the agent becoming an insolvent. The credit in the market of a person who is adjudicated insolvent is affected and in many cases such an agent is not in a position to fulfill the object of the contract of agency. Under the Insolvency law where a commission agent has sold the goods and realised the money, such money, on his adjudication as insolvent, is not treated as trust money and it goes to the Official Assignee or Receiver.[3]

159. No change is necessary in sections 202-3. Secs. 202-3.

160. In section 204, the language 'such acts and obligations as arise from acts already done in the agency' is not happy. The illustrations point to the conclusion that the intention of the legislature was to protect acts already done and obligations arising from such acts. We suggest that the language of the section should be made more explicit. Sec. 204.

161. No change is necessary in section 205. Sec. 205.

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[1] Bowstead : Op. cit. (11th Ed.), 286-7.

[2] *Rhodes* v. *Forwood*, (1876) 1 App. Cas. 256.

[3] Mulla : The Law of Insolvency in India (2nd edn.), 465.

162. The language of section 206 has been commented upon by Rankin C.J. in *In re Shaw Wallace & Co.*[1] in the following words:

> "If the phrase 'such revocation or renunciation' is to be taken as referring back to section 205 I confess that I find no meaning in the section; and it is at least arguable that what the draftsman meant to say is that when there is no express or implied contract that the agency should continue for any fixed period reasonable notice must be given of the revocation or renunciation of the agency."

We think that this criticism should be obviated by making it clear that the section is applicable only where the period of the agency is not fixed by contract, express or implied.

Secs. 207—210.

163. No change is considered necessary in sections 207 to 210.

Sec. 211.

164. It is not the duty of an agent to adhere to instructions which are not lawful. This should be made clear in section 211.

165. According to this section the agent is liable to account for profits when they accrue during the breach of the duty enjoined by this section. There is no provision for accounting of profits in cases where without the breach of such duty the agent make profits. A section[2] should be added providing that if an agent, without the knowledge of the principal, acquires any profit or benefit from his agency other than that contemplated by the principal at the time of making the contract of agency, he must pay such profits and the value of such benefits to the principal. In case such benefits consist of a bribe or a secret commission the agent is liable to summary dismissal and to pay to the principal loss actually sustained in consequence of any breach of duty on the agent's part induced by the bribe or secret commission, in addition to the forfeiture of the commission or remuneration to which he may have been otherwise entitled. It is desirable to make the necessary additions.[4]

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[1] A. I. R. 1931 Cal. 676 (678).
[2] S. 218A, App. I.
[3] Bowstead, 11th Ed 75.
[4] S. 216A, and Expl. to s. 220, App. I.

166. This section demands a higher standard of skill than the English or American law. According to the section an agent, whether gratuitous or for reward, is bound to possess skill generally possessed by persons engaged in similar business and is bound to use such skill as he possesses. In England, a distinction is drawn between the gratuitous agent and an agent for reward. The former is bound to use only such skill as he has, while a higher standard is exacted in the case of the latter. In the case of an agent for reward the skill required is not merely that which he in fact possesses, but such as is reasonably necessary for the due performance of his undertaking or such as is usual for the ordinary or proper conduct of the business in which he is employed.[1] In America, the law has been stated as follows: Sec. 212.

'(1) Unless otherwise agreed, a paid agent is subject to a duty to the principal to act with standard care and with the skill which is standard in the locality for the kind of work which he is employed to perform and, in addition, to exercise, any special skill that he has.

(2) Unless otherwise agreed, a gratuitous agent is under a duty to the principal to act with the care and skill which is required of persons not agents performing similar gratuitous undertakings for others.'

No injustice, however, appears to have been experienced by maintaining the higher standard in India and we propose to leave the section unaltered.

167. No change is recommended in sections 213-214. Secs. 213-14.

168. Two conditions—in the alternative—are annexed to the right of the principal to repudiate the transaction where the circumstances mentioned in the section exist. They are (1) dishonest concealment of a material fact; and (2) dealing being disadvantageous to the principal. The English rule does not recognise these conditions. We are of the view that the logical conclusion of the fiduciary character of the relationship of the principal and agent, is that for the exercise of the right of repudiation it should Sec. 215.

[1] Halsbury : Op. cit. (3rd edn.), Vol. 1, 185

be sufficient for the principal to prove that his consent had not been obtained and that the agent had not acquainted him with all material circumstances. It should not be further necessary to establish that there was a dishonest concealment on the part of the agent or that the dealings were disadvantageous to the principal. The English rule is founded upon the principle that the agent will not be allowed to put his duty in conflict with his interest and, therefore, he must not enter into any transaction which is likely to produce that result, unless he has first made the fullest disclosure of the exact nature of his interest to his principal and the principal has assented. If there is no disclosure, the fairness of the transaction is immaterial and it is avoidable at the principal's option[1]. In the *Bank of Upper Canada* v. *Bradshaw*[2], Lord Cairns observed: "Their Lordships are desirous in no way to qualify or to abridge the doctrine of law prevailing in almost all systems of jurisprudence, that any one standing in the position of an agent cannot be allowed to put his duty in conflict with his interests, and they are certainly not prepared to rest the application of the doctrine on the amount of the interest, adverse to that of his employer, which the agent may be supposed to have."

In America the law is stated substantially in the following terms:

> 'An agent, in dealing with the principal on his own account in regard to a subject-matter as to which he is employed, is subject to a duty to deal fairly with the principal and to communicate to him all material facts in connection with the transaction of which he has notice, unless the principal has manifested that he knows such facts or that he does not care to know of them[3].'

The removal of the two conditions mentioned above from section 215 will be in consonance with the provisions of section 88 of the Trusts Act. We recommend accordingly.

Secs. 216-9. 169. No change is recommended in sections 216—219.

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[1] Halsbury: Op. cit. (3rd edn.), Vol. 1, 190, 191.

[2] (1867) L. R. 1 P.C. 479 (489).

[3] American Restatement of the Law of Agency, sec. 390.

170. An agent is not entitled to any remuneration in respect of any transaction which is obviously, or to his knowledge, unlawful nor is he entitled to remuneration in respect of any transaction entered into by him in violation of the duties arising from the fiduciary character of the relationship between him and the principal, even if the transaction be adopted by the principal. Bowstead appends an illustration: 'An agent, who is employed to sell certain land sells it to a company in which he is a director and a large shareholder. He is not entitled to commission upon the sale, even if it be adopted and confirmed by the principal[1]'. Sec. 220.

We think that the Act should have specific provision[2] with regard to the non-liability of the principal to pay the remuneration in the cases stated above.

171. No change is considered necessary in sections 221 to 228. Sec. 221-8.

172. The rule embodied in section 229 does not apply where the agent has taken part in the commission of a fraud on the principal, unless the fraud is committed not against the principal, but against a third person[3]. This exception should be made a part of the section. Sec. 229.

173. It is well established that when an agent has made a contract in the subject-matter of which he has a special property, he may, even though he contracted for an avowed principal, sue in his own name. The exception may be added[4]. Sec. 230.

174. It is also established[5] that an agent may in his own name sue for the recovery of money paid on his principal's behalf under a mistake of fact, or in respect of a consideration which fails or in consequence of the fraud or other wrongful act of the employee, or otherwise under circumstances rendering the payee liable to repay the money. This rule should also be added[6].

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[1] Bowstead: Op. cit. (11th edn.), 137 [Art. 68(b), *Ill.* 4.]
[2] *Vide* Expl. to s. 220, App. I.
[3] Bowstead : Op. cit. (11th Edn.), 232.
[4] 2 Sm. L. C. 378, cited in Pollock & Mulla, Op. cit., 700.
[5] Pollock & Mulla : Op. cit., 700, 701.
[6] *Vide* s. 230A, App. I.

Secs. 231-2. 175. Sections 231 and 232 overlap. Marriot, J., in the case of *Premji Trikamdas* v. *Madhowji Munji*[1] took the view that section 232 was not a repetition of the first part of section 231 and that it was a qualification of the first portion of paragraph 1 of section 231, which gives a principal a general right to enforce a contract entered into by his agent. According to the learned Judge, section 232 qualifies that general right by making it subject to the rights and obligations subsisting between the agent and the other contracting party. Pollock and Mulla[2] express their inability to discover any difference between the first paragraph of section 231 and section 232. According to them the case is one of inadverence. We agree with the learned commentators, and recommend that section 232, being covered by the provision in section 231, be omitted.

Sec. 233. 176. According to English Law, in cases contemplated by section 233, the liability of the principal and agent would be alternative and not joint[3]. There is a difference of opinion as to whether the section marks a departure from English Law. Coutts Trotter, C. J. in *Kutti Krishna Nair* v. *Appa Nair*[4], held that the English law was intended to be reproduced in the section and that the third party may sue both the agent and the principal alternatively or he can sue any one of them but he cannot sue both of them jointly. On the other hand, the Bombay[5] High Court and, in a later case, the Madras High Court[6] took the contrary view that the section created a joint liability. We think that the section deals with substantive rights and not procedural remedies, and that the latter view is correct. Further, we recommend that a provision be made that a judgment against the principal or the agent, although unsatisfied is, so long as it subsists, a bar to any proceedings against the agent or the principal, as the case may be.

177. We recommend that the English rule that where inquiry or loss is caused to a third person by the wrongful act or omission of an agent who is acting within the scope

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[1] 4. Bom. 447.
[2] Poollock & Mulla: Op. cit. 708.
[3] Bowstead: op. cit. (11th edn.), 202.
[4] 49 Mad. 900.
[5] *Shiv Lal* v. *Birdichand*, 19 Bom. L.R. 39.
[6] *Shamsuddin* v. *Shaw Wallace & Co.*, A.I.R. 1939 Mad. 520(523).

of his authority, the principal is liable jointly and severally with the agent, should be expressly provided for[1].

178. It is well established that in cases where the property of the principal is disposed of by an agent in a manner not expressly or ostensibly authorised, the principal is entitled, as against the agent and third persons, subject to any enactment to the contrary, to recover the property wheresoever it may be found[2]. This rule should be adopted, together with its exceptions[3].

179. No change is recommended in sections 234—237. Secs. 234-7.

180. The rule that agency can be created by estoppel should be incorporated in a new section[4]. That rule may be stated thus: Where any person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of such other person with respect to any one dealing with him as an agent on the faith of such representation, to the same extent as if such other person had the authority which he was so represented to have.

181. No change is considered necessary in section 238. Sec. 238.

182. With a view to presenting a clear picture of the recommendations made by us in this Report we have made alterations giving effect to them in the text of the existing Act, as shown in Appendix I.

Appendix II contains the suggestions made by us in respect of other Acts.

183. While in Appendix I the changes proposed are shown in the form of draft amendments to the existing sections, we would like to make it clear that it should not be treated as a draft Amendment Bill. It will

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[1] *Vide* s. 238A, App. I.
[2] Halsbury, 3rd Ed., Vol. I, 211; Vol. 14, 628-9.
[3] *Vide* s. 238B, App. I.
[4] *Vide* s. 237A, App. I.

be for the official draftsman to draw up such a bill after renumbering the Chapters and the sections of the Act as has become necessary by reason of the changes which have taken place in the text of the Act since 1872.

M. C. SETALVAD

(Chairman).

M. C. CHAGLA,
K. N. WANCHOO,
P. SATYANARAYANA RAO,
N. C. SEN GUPTA,
V. K. T. CHARI,
D. NARASA RAJU,
S. M. SIKRI,
G. S. PATHAK,
G. N. JOSHI,
N. A. PALKHIVALA.

सत्यमेव जयते

K. SRINIVASAN,
DURGA DAS BASU,

Joint Secretaries.

NEW DELHI:

The 26th September, 1958.

APPENDIX I

Proposals as shown in the form of draft amendments.

[This is not, however, to be treated as a draft Bill.]

Changes in the text of the existing Act have been shown in italics, wherever possible.

1872. In section 1 of the Indian Contract Act, 1872 (hereinafter referred to as the principal Act),— Section 1.

(a) the word "Indian" shall be omitted;

(b) after the words "any incident of any contract", the words "*if such usage, custom or incident of contract is*" shall be inserted.

In section 2 of the principal Act, after clause (j), the following clause shall be added, namely:— Section 2.

"(*k*) *The expressions "documents of title" and "mercantile agent" have the meanings respectively assigned to them in the Indian Sale of* 1930. *Goods Act, 1930*".

Section 8 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely.— Section 8.

"(2) *In the case of a promise made in consideration of the promisee's performing an act, the promisee's entering upon the performance of the act is an acceptance of the proposal, unless the promise contains an express or implied term that it can be revoked before the act has been completed*".

Section 9 of the principal Act shall be renumbered as sub-section (2) of that section, and the following sub-section shall be inserted as sub-section (1) thereof, namely:— Section 9.

"(1) *A promise may be express or implied*".

For section 15 of the principal Act, the following section shall be substituted, namely:— Section 15.

"15. *Coercion defined.*

Coercion is the committing, or threatening to commit, any act, *when the committing, or threatening to commit, such act is punishable by any*

law for the time being in force, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—Where the coercion is employed in a place situated outside the territories to which this Act extends, it is immaterial whether *the law* is or is not in force in that place."

Section 19 For section 19 of the principal Act, the following section shall be substituted, namely:—

"**19.** *Voidability of agreements without free consent.*

(1) When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

(2) A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, *claim* that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true. *Where such a claim is made, the court shall, in deciding thereon, have due regard to the following considerations—*

(a) *whether, and if so, how far, the claim is reasonable; and*

(b) *whether it is in the power of the party against whom the contract is voidable to perform it fully.*

(3) *Where such a claim is disallowed, the court may award compensation in money for the injury caused by the fraud or misrepresentation.*

Exception.—If such consent was caused by misrepresentation, or by silence fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom

such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable."

After section 23 of the principal Act, the following section shall be inserted, namely:— Section 23A (New).

"23A. *Agreements to procure marriage or pay money in consideration thereof.*

The following agreements are unlawful within the meaning of section 23—

(a) *an agreement to procure the marriage of any person for reward;*

(b) *an agreement to pay money or deliver anything whose value can be expressed in terms of money to a parent or other guardian-in-marriage of any person in consideration of his consenting to the marriage of that person.*"

To section 24 of the principal Act, the following Explanation shall be added, namely:— Section 24.

"Explanation.—Where—

(a) *there are distinct promises based on distinct considerations, and*

(b) *some of the promises are unlawful and can be separated from the promises that are lawful, or some of the considerations are unlawful and can be separated from the considerations that are lawful,*

the agreement is void to the extent of the promises which are unlawful or are based on unlawful consideration."

In section 25 of the principal Act,— Section 25.

(a) in clause (3), the words "*or unless*" shall be inserted at the end;

(b) after clause (3), the following clauses shall be inserted, namely:—

"(4) *it is a promise, express or implied, which the promisor knew or should reasonably have known, would be relied upon by the promisee, where the promisee has altered his position to his detriment in reliance on the promise; or unless*

(5) *it is a promise to keep a proposal open for a definite period of time or until the occurrence of a specified event; or unless*

(6) *it is a promise to dispense with or remit the performance of a promise or to extend the time for its performance.*"

Section 6. For section 26 of the principal Act, the following section shall be substituted, namely:—

"26. *Agreement in restraint of marriage void in certain cases.*

(i) Every agreement in *total restraint of the marriage of any person, other than a minor, is void.*

(ii) *An agreement in partial restraint of the marriage of any person, other than a minor, is void if the court regards it as unreasonable in the circumstances of the case.*"

Section 27. In section 27 of the principal Act, for the words "is to that extent void" the words "is to that extent void, *except in so far as the restraint is reasonable having regard to the interests of the parties to the agreement and of the public*" shall be substituted.

Section 28. In Exception 1 to section 28 of the principal Act, for the words "only the amount awarded in such arbitration shall be recoverable" the words "*the parties will be bound by the award*" shall be substituted.

Section 30. For section 30 of the principal Act, the following section shall be substiuted, namely:—

"30. *Agreements by way of wager, or collateral thereto, void.*

(1) *The following agreements are void:—*

(a) agreements by way of wager (*hereinafter in this section referred to as "wagering agreements*");

(b) *agreements knowingly made to further or assist the entering into or carrying out of wagering agreements;*

(c) *agreements by way of security or guarantee for the performance of agreements referred to in clause* (a) *or* (b) *of this sub-section;*

and no suit shall be brought for recovering any sum of money paid or payable in respect of any agreement which is void under this sub-section.

(2) *No suit shall be brought for recovering—*

(a) *any commission, brokerage, fee, or reward in respect of the knowingly entering into, effecting or carrying out, or of the knowingly aiding in effecting or in carrying out, or otherwise claimed or claimable in respect of, any agreement which is void under sub-section* (1), *whether the plaintiff in such suit be or be not a party to such agreement; or*

(b) *any sum of money knowingly paid or payable on account of any person by way of commission, brokerage, fee or reward in respect of such agreement; or*

(c) .....anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception.—This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or towards any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Explanation.—Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply." 45 of 1860.

After section 37 of the principal Act, the following section shall be inserted, namely:— Section 37A (New)

"37A. *Benefits conferred on third parties.*

(1) *Where a contract expressly confers a benefit directly on a third party, then, unless the contract otherwise provides, it shall be enforceable by the third party in his own name, subject to any defences that would have been valid between the contracting parties.*

(2) *Where a contract expressly conferring a benefit directly upon a third party has been adopted, expressly or impliedly, by the third party, the parties to the contract cannot substitute a new contract for it or rescind or alter it so as to affect the rights of the third party.*"

Section 38. For the last paragraph of section 38 of the principal Act, the following shall be substituted, namely:—

"An offer to one of several joint promisees, *which has not been accepted,* has the same legal consequences as an offer to all of them."

Section 38A. (New) After section 38 of the principal Act, the following section shall be inserted, namely:—

"38A. *Acceptance of performance by one of several joint promisees.*

One of several joint promisees cannot accept an offer of performance, without the concurrence of the others."

Section 44A. (New) After section 44 of the principal Act, the following section shall be inserted, namely:—

"44A. *Effect of decree obtained against one promisor.*

A decree against any one or more of a number of joint promisors does not, if it has remained unsatisfied, and in the absence of express agreement to the contrary, bar a subsequent suit against any one or more of the other promisors."

Section 49. To section 49 of the principal Act, the following Explanation shall be added, namely:—

"*Explanation.—In the case of a contract of loan, where the creditor has not appointed a place for repayment of the loan and the borrower has made no application for such appointment, it is the duty of the borrower to make the repayment at the place where the creditor carries on business, or, if there is no such place, at the place where the creditor resides*".

Section 62. To section 62 of the principal Act, the following Explanation shall be added, namely:—

"*Explanation.—An agreement may be made under this section notwithstanding that there has been*

a breach of the original contract by any party thereto".

For section 65 of the principal Act, the following section shall be substituted, namely:— Section 65.

"65. *Obligation of person who has received advantage under void agreement or contract that becomes void or is avoided.*

Where an agreement *between parties competent to contract* is discovered to be void, or when a contract becomes void *or is avoided by a party entitled to do so,* any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he has received it.

Explanation 1.—*An agreement which is void by reason of the minority of any party thereto is governed by the provisions of this section, if the agreement is entered into by the minor falsely representing that he is major.*

Explanation 2.—*An agreement which is void by reason of non-compliance with any requirement relating to form or sanction of any authority, prescribed by or under any law, is governed by the provisions of this section".*

After section 67 of the principal Act, the following section shall be inserted, namely:— Section 67A (New).

"67A. *Material alterations in an instrument containing the contract.*

(1) *Any material alteration of any instrument in which a contract is expressed renders the contract void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the parties to the contract.*

(2) *A party to a contract expressed in an instrument, who asserts his rights thereunder, is bound by the instrument, notwithstanding any previous alteration of the instrument known to him.*

(3) *For the purposes of this section, a material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the instrument in its original state, or otherwise affects the substance of the contract expressed in the instrument or prejudices any party bound by the contract.*

(4) *An alteration which merely expresses what was already implied in the instrument, or adds particulars which, though superfluous, are consistent with the instrument as it stands, is not a material alteration within the meaning of this section.*

(5) *The provisions of this section shall not apply where the alteration was made by a stranger without the consent of, or any negligence or fraud on the part of, a party to the contract.*"

Section 69. In section 69 of the principal Act, for the words "who is interested in the payment of money" the words "who, *though not bound by law to pay,* is interested in the payment of, money" shall be substituted.

Section 69A (New). After section 69 of the principal Act, the following section shall be inserted, namely:—

"69A. *Contribution between joint tort-feasors.*

(1) *Where damage is suffered by any person as a result of a tort (whether a crime or not), any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.*

(2) *In any proceedings for contribution under this section, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court*

shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity."

In section 70 of the principal Act,—

Section 70.

For section 70 of the principal Act, the following section shall be substituted, namely:—

"70. *Obligation of person enjoying benefit of non-gratuitous act.*

Where a person lawfully does anything for another person, or delivers anything *or pays any money to him,* not intending to do so gratuitously, and such other person *accepts and* enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered *or the money* so paid."

Section 72.

For section 72 of the principal Act, the following section shall be substituted, namely:—

"72. *Liability of person to whom money is paid or thing delivered by mistake or under coercion or as a result of fraud, etc.*

A person to whom money has been paid, or any thing delivered, by mistake *(whether of fact or law)* or under coercion, *or who obtains such payment or delivery by fraud or misrepresentation or by the exercise of undue influence,* must repay or return it.

Explanation.—An act may amount to coercion within the meaning of this section though it does not constitute coercion as defined in section 15".

After section 72 of the principal Act, the following sections shall be inserted, namely:—

Sections 72A—B. (New).

"72A. *When contract of indemnity may be implied.*

When an act is done by one person at the request of another, and the act, not being in itself manifestly tortious to the knowledge of the person doing it, turns out to be injurious to the rights of a third party, then, in the absence of express agreement to the contrary, the person

doing it is entitled to be indemnified by the person at whose request it is done.

72B. *Restitution by person unjustly benefited in cases not expressly provided for.*

In any case not coming within the scope of sections 68 to 72A, where there is no contract, but a person is unjustly benefited at the expense of another person, the former is bound to restore the benefit to the latter or to make compensation therefor."

Section 124. For section 124 of the principal Act, the following section shall be substituted, namely:—

"124. *"Contract of indemnity" defined.*

A contract by which one party promises, *expressly or impliedly,* to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person *or by any event not depending on such conduct,* is called a "contract of indemnity."

Section 125A (New). After section 125 of the principal Act, the following section shall be inserted, namely:—

"125A. *Rights of indemnity-holder.*

(1) *The promisee in a contract of indemnity acting within the scope of his authority may, where a liability has arisen against him in favour of a third party, obtain against the promisor, in an appropriate case, a decree compelling the promisor to set apart a fund out of which the promisee may meet such liability or directing the promisor to discharge such liability himself.*

(1) *The promisee in a contract of indemnity acting section even where no such suit as is referred to in section 125 has been instituted, and irrespective of whether any actual loss has been sustained by the promisee or not.*

Explanation.—The promisee is not precluded from obtaining relief under this section merely on the ground that the promisee's liability to the third party cannot be effectively enforced against him".

To section 130 of the principal Act, the following Exception shall be added, namely:— Section 130.

"*Exception.—A continuing guarantee given to a court cannot be revoked by the surety as to future transactions, without the permission of the court.*"

In section 134 of the principal Act, the following Explanation shall be inserted at the end, namely:— Section 134

"*Explanation.—For the purposes of this section, the following do not amount to acts or omissions the legal consequence of which is discharge of the principal debtor:—*

(i) *mere failure to sue the principal debtor within the time specified by any law relating to limitation for the time being in force;*

(ii) *inability to sue the principal debtor, arising by reason of any provision contained in any of the Orders in the First Schedule to the Code of Civil Procedure, 1908.*" 5 of 1908.

For section 141 of the principal Act, the following section shall be substituted, namely:— Section 141

"141. *Surety's right to benefit of creditor's securities.*

If the debt or liability owed by the principal debtor to the creditor has been paid or discharged in full, the surety is entitled to the benefit of every security which the creditor has against the principal debtor, *whether such security was or was not in existence at the time when the contract of suretyship was entered into, and whether such security was received by the creditor before, contemporaneously with or after the contract of suretyship was entered into,* and whether the surety knows of the existence of such security or not; and if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

In section 142 of the principal Act,— Section 142.

(a) a comma shall be inserted after the word "misrepresentation;"

(b) the comma appearing after the word "creditor" shall be omitted.

Section 143. In section 143 of the principal Act, for the words "by means of keeping silence" the words "by *wilful* silence" shall be substituted.

Section 145. To section 145 of the principal Act, the following Explanations shall be added, namely:—

"*Explanation* 1.—*The right of the surety to indemnity under this section shall not be deemed to prejudice his right to recover damages in appropriate cases.*

Explanation 2.—*Payment by a surety of a debt barred as against the principal debtor by limitation, is a payment made "rightfully" within the meaning of this section.*"

Section 149. To section 149 of the principal Act, the following Explanation shall be added, namely:—

"*Explanation.—Delivery of the documents of title to any goods by, or with the consent of, the owner has, for the purposes of this section, the same effect as delivery of the goods*".

Section 151. In section 151 of the principal Act, for the words "the bailee is bound" the words "the bailee is, *in the absence of any special contract*, bound" shall be substituted.

Section 160. Section 160 of the principal Act shall renumbered as sub-section (1) thereof, and to sub-section (1) as so renumbered, the following sub-section shall be added, namely:—

"(2) *In the case of a breach of the said duty, the bailor is entitled to claim damages and, in the case of disposal of the goods by the bailee, the bailor is also entitled to follow the proceeds wherever they can be distinguished.*"

Section 178. (a) Section 178 of the principal Act shall be renumbered as sub-section (2) of that section, and the following sub-section shall be inserted as sub-section (1) of that section, namely:—

"(1) *Where the owner of any goods is in possession of the documents of title to the goods, any*

pledge made by him by delivery of the documents of title shall be as valid as a pledge by him by delivery of the goods."

(b) For the marginal note to section 178 of the principal Act, the following shall be substituted, namely:—

"Pledge *by owner in possession* of *documents of title,* or by mercantile agent."

In section 181 of the principal Act, after the words "any such suit" the words "*as is referred to in section* 180" shall be inserted. Section 181.

After section 181 of the principal Act, the following section shall be inserted, namely:— Section 181A (New).

"181*A. Constructive bailment.*

Where, otherwise than by a mutual contract of bailment, one person lawfully comes into possession of goods belonging to another and holds them under circumstances whereby he ought, upon principles of justice, to keep them safely and restore them or deliver them to the owner, then such person and the owner have the same mutual rights and liabilities as if they were bailee and bailor respectively under a contract of bailment".

For section 182 of the principal Act, the following section shall be substituted, namely:— Section 182.

"182. *Agent and principal defined.*

An "agent" is a person having express or implied authority to represent or act on behalf of another person, who is called the "principal"."

For section 183 of the principal Act, the following section shall be substituted, namely:— Section 183.

"183. *Capacity to act as principal.*

Capacity of any person to enter into any contract or do any other act by means of an agent is, subject to the provisions of section 187A, co-extensive with his capacity to enter into that contract or do that act himself".

Section 184. For section 184 of the principal Act, the following section shall be substituted, namely:—

"184. *Who may be an agent.*

As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent—

(a) so as to be responsible to his principal, or

(b) *so as to be personally bound to third persons in respect of contracts entered into by him on behalf of his principal,*

according to the provisions in that behalf herein contained".

Section 186. Section 186 of the principal Act shall be omitted.

Section 187. For section 187 of the principal Act, the following section shall be substituted, namely:—

"187. *Definition of express and implied authority.*

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written or the ordinary course of dealing, *or the relationship in which the parties stand to each other and the necessities of the case,* may be accounted *such* circumstances...."

Section 187A (New). After section 187 of the principal Act, the following section shall be inserted, namely:—

"187A. *Acts which may be done by means of an agent.*

An agent may be appointed for the purpose of entering into any contract or doing any other act on behalf of the principal which the principal might himself enter into or do, not being a contract or other act,—

(a) *which is to be entered into or done for the purpose of exercising a power or authority conferred or performing a duty imposed on the principal personally, the exercise or performance of which requires discretion or skill. or*

(b) *which the principal is by or under any law required to enter into or do himself".*

For section 188 of the principal Act, the following section shall be substituted, namely:— Section 188.

"188. *Extent of an agent's authority.*

(1) An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act or *ordinarily incidental to doing it in* the usual way.

(2) *An agent has implied authority to act, in the execution of his express authority, according to the custom or usage prevailing in the market, trade or business in which he is employed.*

(3) An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of *conducting such business.*"

For section 190 of the principal Act, the following section shall be substituted, namely:— Section 190

"190. *Delegation by agent.*

An agent cannot lawfully employ any other person to perform acts which he has expressly or impliedly undertaken to perform, ... *except in the following cases:*—

(i) *where, by the usage of the market, trade or business in which the agent is employed,* a sub-agent may be employed;

(ii) where, from the nature of the agency, a sub-agent must be employed;

(iii) *where the agent has express or implied authority to delegate his powers or duties;*

(iv) *where the act to be done is purely ministerial and does not involve any confidence or discretion or require any skill.*"

In section 194 of the principal Act— Section 194

(a) for the word "name" the word "*appoint*" shall be substituted;

(b) for the word "named" the word "*appointed*" shall be substituted.

To section 196 of the principal Act, the following Explanation shall be added, namely:—

"*Explanation.—For the purpose of ratification it is immaterial whether the person by whom the act is done is an agent exceeding his authority, or a person having no authority to act for the person ratifying it; but an act which is in its inception void cannot be ratified*".

Section 198. For section 198 of the principal Act, the following section shall be substituted, namely:—

"198. *Knowledge requisite for valid ratification.*

No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective, *except where such person intends to ratify the act and take the risk whatever the facts of the case may be.*

Explanation.—It is not necessary that the person ratifying should have knowledge of the legal effect of the act, or of collateral circumstances affecting the nature thereof".

Section 200A (New). After section 200 of the principal Act, the following section shall be inserted, namely:—

"200A. *Effect of ratification of contract in respect of past breaches.*

The ratification of a contract does not give the person who ratifies it a right of action in respect of any breach thereof committed before its ratification".

Section 201. For section 201 of the principal Act, the following shall be substituted, namely:—

"201. *Termination of agency.*

An agency is terminated—

(a) by the principal revoking his authority;

(b) by the agent renouncing the business of the agency;.....

(c) by the business of the agency being completed;.....

(d) by either the principal or agent dying or becoming of unsound mind;....

(e) by *either* the principal *or agent* being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors;

(f) *by expiry of the period of agency, if any;*

(g) *by the destruction of a material part of the subject-matter of the agency;*

(h) *by the happening of any event which renders the agency unlawful or upon the happening of which it is agreed between the principal and the agent that the authority shall determine; or*

(i) *by dissolution of the principal, where the principal is a firm or a company or other corporation".*

In section 204 of the principal Act, for the words "such acts and obligations as arise from acts already done in the agency" the words "*acts already done in the agency and obligations arising from such acts*" shall be substituted. Section 204

For section 206 of the principal Act, the following section shall be substituted, namely:— Section 206.

"206. *Notice of revocation or renunciation where there is no fixed period of agency.*

Where there is no express or implied contract that the agency should be continued for any period of time, resonable notice must be given of any revocation or renunciation of *the agency by the principal or the agent, as the case may be;* otherwise the damage thereby resulting to *the agent or the principal,* as the case may be, must be made good to the one by the other."

In section 211 of the principal Act, for the words "according to the directions", the words "according to the *lawful* directions" shall be substituted. Section 211

In section 215 of the principal Act, the words "if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him" shall be omitted. Section 215

After section 216 of the principal Act, the following section shall be inserted, namely:— Section (New)

"216A *Agent's liability in respect of bribes etc.,*

If an agent, without the knowledge of his principal, accepts or agrees to accept any bribe or secret commission from a third person, then, without prejudice to the provisions of section 218A,—

(a) *the agent is bound to make compensation to his principal in respect of any loss caused to the principal by such act of the agent;*

(b) *the principal may, notwithstanding anything contained in sections 202, 205 and 206, summarily revoke the authority of the agent".*

Section 218A (New). After section 218 of the principal Act, the following section shall be inserted, namely:—

"218A. *Agent's duty to pay profits not contemplated.*

If an agent, without the knowledge of his principal, makes any profits or acquires any benefit from his agency, other than a profit or benefit contemplated by the principal at the time of making the contract of agency, he is bound to pay the principal all such profits and the value of all such benefits".

Section 220. To section 220 of the principal Act, the following Explanation shall be added, namely:—

"Explanation.—"Misconduct", in this section, included the following acts of the agent, namely:—

(i) *entering into any transaction which is unlawful on the face of it or by reason of facts known to the agent;*

(ii) *entering into a transaction in violation of the duties arising from the fiduciary character of the relationship between the principal and the agent, even if the transaction is adopted by the principal;*

(iii) *acceptance of, or agreement to accept, a bribe or secret commission from a third person".*

Section 229. *In section* 229 of the principal Act, the words "*except where the agent, being a party to the commission of a fraud on the principal, omits to communicate any such notice or information to the principal*" shall be inserted at the end.

To section 230 of the principal Act, the following paragraph shall be added, namely:— Section 230.

"An agent may personally enforce a contract, if he has a special property in the subject-matter thereof".

After section 230 of the principal Act, the following section shall be inserted, namely:— Section 230A (New).

"230A. *Rights of agent where relation resembling a contractual relation has been created against a third person.*

Where, in any of the circumstances dealt with in sections 68 to 72B, a person becomes entitled to any relief, he may personally claim such relief from a third person, although he was acting as an agent of any other person in the act or transaction which gives rise to such relief".

Section 232 of the principal Act shall be omitted. Section 232.

In section 233 of the principal Act, the following words shall be added at the end, namely:— Section 233.

"but a decree obtained in respect of any liability against a principal or an agent, whether the decree is satisfied or not, is, so long as it subsists, a bar to any proceeding in respect of the same liability against the agent or the principal, as the case may be".

After section 237 of the principal Act, the following section shall be inserted, namely:— Section 237A. (New).

"237A. *Agency by estoppel.*

Where any person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of such other person with respect to any one dealing with him as an agent on the faith of such representation, to the same extent as if such other person had the authority which he was so represented to have".

After section 238 of the principal Act, the following sections shall be inserted, namely:— Sections 238A and 238B (New).

"238A. *Right of person injured by wrongful act of an agent.*

Where an act or omission of an agent acting within the scope of his authority causes an injury to the rights of a third person, the third person may hold either him or his principal or both of them, liable.

238B. *Right of principal to follow property in the hands of third person.*

(1) *Where any property of the principal is disposed of by an agent in favour of a third person in excess of his authority, then, except as otherwise provided by any other provision of law for the time being in force, the principal has the right to recover the property in the hands of any person.*

(2) *Nothing in this section entitles the principal to any right in respect of property in the hands of—*

(a) *a transferee in good faith for consideration without having notice of the agent's excess of authority, either when the purchase-money was paid, or when the conveyance was executed, or*

(b) *a transferee for consideration from such a transferee.*

Explanation.—A judgment-creditor of the agent attaching and purchasing the principal's property is not a transferee for consideration within the meaning of this sub-section.

(3) *Nothing in this section applies to money, currency notes, and negotiable instruments in the hands of a* bona-fide *holder to whom they have passed in circulation, or shall be deemed to affect the liability of a person to whom a debt or charge is transferred."*

Omission of illustrations.

All illustrations appearing below any section of the principal Act shall be omitted.

Repeal (New)

The Act for Avoiding Wagers Amendment Act, 1865 *(Bombay Act 3 of 1865) is hereby repealed.*

APPENDIX II

Suggestions in respect of other acts

Trusts Act, 1882.

Sec. 84.—The section should be amended so as to include the case of payment of money or delivery of property, as suggested [Paragraph 100].

Code of Civil Procedure, 1908.

Order VIII (or some other suitable place).—The advisability of a specific provision relating to the defence open to a defendant in a suit for contribution by a co-promisor, where the defendant was not a party to the creditor's suit, to be considered [Paragraph 70].



GMGIPND—M—137 Law Com.—27-1-59—1,000.


सत्यमेव जयते

LAW COMMISSION OF INDIA

FOURTEENTH REPORT

(REFORM OF JUDICIAL ADMINISTRATION)

[VOL. II—CHAPTERS 30—57]

MINISTRY OF LAW
GOVERNMENT OF INDIA


सत्यमेव जयते

CONTENTS

VOL. II

CHAPTERS		PAGE NO.
1—29 (Vol. I)		
30.	Writs	657—670
31.	Administrative Bodies	671—698
32.	Law Reform and Legislation	699—713
33.	Organization of Criminal Courts	714—732
34.	Investigation by the Police	733—764
35.	Prosecuting Agency—Director of Public Prosecutions	765—775
36.	Delays in Criminal Trials and Inquiries	776—788
37.	Committal Proceedings	789—797
38.	Criminal Appeals	798—819
39.	Criminal Revisions and Inherent Powers	820—830
40.	Administration of Criminal Justice—General	831—849
41.	Separation of Judicial and Executive Functions	850—863
42.	Trial by Jury	864—873
43.	Panchayats	874—925
44.	Andhra Pradesh	926—947
45.	Assam	948—964
46.	Bihar	965—989
47.	Bombay	990—1016
48.	Kerala	1017—1034
49.	Madhya Pradesh	1035—1052
50.	Madras	1053—1069
51.	Mysore	1070—1083
52.	Orissa	1084—1109
53.	Punjab	1110—1127
54	Rajasthan	1128—1152
55.	Uttar Pradesh	1153—1184
56	West Bengal	1185—1221
57.	Ministry of Justice and Implementation of Recommendations	1222—1226
	Note by Shri V. K. T. Chari	1227—1229
	Note by Dr. N. C. Sen Gupta	1230—1241

APPENDICES

PAGE No.

APPENDIX I

Questionnaire . . . . . 1242—1264

APPENDIX II

List of witnesses examined by the Law Commission . . 1265—1282



30.—WRITS

Jurisdiction under article 226.

1. The jurisdiction conferred by the Constitution on all the High Courts by article 226 is a notable advance upon the position that existed in regard to the issue of prerogative writs before the advent of the Constitution. Almost in identical words, the Constitution conferred similar jurisdiction on the Supreme Court restricting it to cases of the infringement of Fundamental Rights.

Pre-Constitutional position.

2. Prior to the commencement of the Constitution, the jurisdiction to issue prerogative writs existed only in the three High Courts of Calcutta, Madras and Bombay in the exercise of their original jurisdiction. These High Courts were held to have derived this jurisdiction by reason of their having inherited it from the Charter establishing the Supreme Courts in the three Presidency Towns. Not only was the power exercised by the three High Courts confined to the local limits of their original jurisdiction but it was restricted to the authority to issue writs vested in the Courts of the King's Bench Division of the High Court in England at the time of the establishment of the Supreme Courts in these towns.

Present position.

3. Under the Constitution, every High Court has now been vested with this jurisdiction. The jurisdiction extends throughout the territories in relation to which the High Court exercises jurisdiction so that its ambit has been greatly enlarged and includes the territory over which the High Court exercises not only original but also appellate jurisdiction. The nature of the jurisdiction itself has been amplified by the use of the expression "directions, orders or writs" including the specified writs mentioned in the article. Further, these directions, orders or writs can be issued not only for the enforcement of Fundamental Rights but also "for any other purpose".

The need for it.

4. The conferment of such a wide jurisdiction concurrently, in the case of Fundamental Rights, on the High Courts and the Supreme Court was, perhaps, inevitable. The constitution-makers, having included a bill of rights in the Constitution, had necessarily to provide for remedies for their enforcement. They also envisaged a Welfare State with its necessary mass of parliamentary and subordinate legislation which would involve constant interference with the normal life of the citizen. Such intense legislative activity and the enforcement of the regulations made under statutes by administrative agencies made it essential to formulate procedures which would enable the citizen to approach the courts to obtain speedy and effective redress

against an unconstitutional enactment or unwarranted executive action. Articles 32 and 226 would, therefore, seem to be an indispensable part of the structure erected by our Constitution.

5. It is not surprising that full advantage of the expeditious and effective remedy provided by article 226 of the Constitution has been taken. It is effective not only in that it confers wide powers on the courts to issue directions, orders or writs; it is effective also because of its small cost. Generally, the court fee on applications under article 226 has been rightly fixed at a very low figure. The charging of higher court fees on applications for vindication, among others, of Fundamental Rights would in most cases amount to a denial of these rights. The remedy has been expeditious because the High Courts have justifiably given the disposal of writ petitions precedence over other work by reason of the urgency of the questions involved. No doubt, in some High Courts, applications under article 226 have impeded the other work of the Courts. That, however, can be no ground for the abolition or curtailment of the scope of this provision. The constitution-makers intended the High Courts to shoulder this additional burden and if the grant of this jurisdiction requires additional strength in the High Courts, provision for such strength should not be grudged.

Need to strengthen the High Courts.

Beneficial effects.

6. The beneficial effects of this new jurisdiction cannot be over-estimated. Its existence has made the citizen conscious that the State exists primarily for his good and that, under its laws, he has rights of which he can obtain quick enforcement by the highest court in the State at a very reasonable cost. The knowledge that a citizen can bring a matter in a summary manner before the courts in a few days' time after the promulgation of the law or order has made our Government departments wary in their actions. The very large number of statutes and orders which have been struck down by the High Courts in the exercise of their jurisdiction under article 226 is a powerful testimony to the effective nature and the essential utility of the remedy. Our endeavour, therefore, must be to preserve this wide and effective jurisdiction and help to make the remedy function with expedition so that it may truly serve its purpose.

No case for curtailment of jurisdiction.

Writ Petitions : institutions and disposals-

7. The statement below gives the figures of the institution, disposal and pendency of writ applications in the various High Courts during the years 1954—56.

Comparative Statement showing the number of writ petitions (excluding writ appeals) instituted, disposed of and pending in the various High Courts for the year 1954, 1955 and 1956

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	1956	1954	1955	1956	1954	1955	1956	1954	1955	1956	1954	1955	1956	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Andhra Pradesh .	661 (A)	808	957	228	792	1177	889	1600	2084	81	643	497	808	957	1637	(A) This figure indicates the pendency as on 5-7-1957.
Assam . .	16	70	31	118	85	121	134	155	152	64	124	72	70	31	80	(D) 711 writ petitions were disposed of by transfer to the Andhra High Court.
Bihar . .	335	343	373	413	418	616	748	761	989	405	388	468	343	373	521	(E) 125 writ petitions were disposed of by transfer to the Mysore and Kerala High Court.
Bombay . .	127	313	285	878	1032	1616	1005	1345	1901	692	1060	1439	313	285	462	(F) 105 writ petitions were received by transfer from PEPSU.
Kerala . .	142	100	301	219	460	679 (G)	361	560	980	261	259	445 (H)	100	301	535	(G) 106 writ petitions were received by transfer from Madras.
Madhya Pradesh .	177	238	408	534	577	535	711	815	943	473	407	460	238	408	483	(H) 13 writ petitions were disposed of by transfer to Madras.
Madras . .	1601	616	835	827	1011	1557 (M)	2428	1627	2392	1812 (D)	792	1392 (E)	616	835	1000	(M) 14 writ petitions were received by transfer from Kerala High Court.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Mysore* . .	72	131	N.A.	173	257	N.A.	245	388	N.A.	114	169	N.A.	131	219	N.A.	(*) The figures shown against the State of Mysore relate to the official years 1954-1955 and 1955-1956.
Orissa . .	61	367	594	406	400	472	467	767	1066	100	173	582	367	594	484	
Punjab . .	260	307	399	852	740	992 (F)	1112	1047	1391	805	648	660	307	399	731	The abbreviation "N. A." stands for "not available".
Rajasthan . .	977	412	301	692	365	471	1669	777	772	1257	476	423	412	301	349	
Uttar Pradesh .	1474	1561	546	1564	1461	5025	3038	3022	5571	1477	2476	2227	1561	546	3294	
West Bengal .	353	595	657	701	647	1067	1054	1242	1724	459	585	513	595	657	1211	

8. It appears from the figures which we have been able to collect that a number of High Courts have just managed to keep pace with the writ applications which have been filed before them from year to year. But some of them have undoubtedly lagged far behind. It is of the essence of the relief contemplated by article 226 that it should be very speedily granted. The delays in dealing with these applications not only inconvenience the citizen whose rights are threatened or infringed but they also hamper the State in the discharge of its manifold administrative functions. We notice that, in some of the High Courts, there were pending on the 1st January, 1957, writ applications filed in the years 1954 and 1955. Some have been pending for an even longer period, though this may be due to special reasons. The statement below shows the years of the institution of writ applications pending in the various High Courts on 1st January, 1957. Extent delays.



Comparative statement showing the pendency of writ petitions (excluding writ appeals) in the various High Courts according to the year of institutions of the proceeding as on 1-1-1957

Name of the State	1950	1951	1952	1953	1954	1955	1956	TOTAL	Remarks
1	2	3	4	5	6	7	8	9	10
Andhra . . .	7	25	14	23	33	541	994	1637	
Assam . . .	..	..	..	..	5	31	44	80	
Bihar A) . .	..	1	10	14	33	150	533	741	(A) The figures shown against the State of Bihar include the miscellaneous judicial cases also.
Bombay (B) . .	..	?	3	4	65	146	N.A.	221	(B) The figures shown against the State of Bombay indicate the position as on 1-1-1956.
Kerala . .	..	1	3	8	10	79	434	535	
Madhya Pradesh .	..	..	6	..	12	76	299	393*	(*) It appears that the total pendency was 483. All the pending writ petitions do not seem to have been accounted for on account of reorganisation of Madhya Pradesh High Court.
Madras . .	..	3	54	4	22	92	825	1000	
Mysore . .	..	..	..	..	7	41	134	182	
Orissa . .	..	..	6	..	98	151	229	484	

Punjab (C)				19	43	337	NA	399	(C) The figures shown against the State of the Punjab indicate the position as on 1-1-1956.
Rajasthan			2	3	15	53	276	349	
Uttar Pradesh . ..		1	..	1	28	143	3121	3294	
West Bengal (D)			1	2	11	132	NA	146	(D) The figures shown against the State of West Bengal indicate the position as on 1-1-1956 on the Original Side of the High Court.

The letters "NA" stand for "Not available".

Target time for disposal.

9. We have already indicated elsewhere that, as far as possible, these applications should be disposed of within a period of six months from the date of their institution. We have also dealt elsewhere with measures which can be usefully adopted for scrutinising these applications at the admission stage so that the files of the Courts may not be clogged by applications which *prima facie* have no merit and which are bound eventually to fail.

Need for close scrutiny.

Hearing by bench or single judge.

10. It is necessary to briefly discuss the manner of disposal of applications under article 226 followed by the different High Courts, in view of the delays which have arisen in their disposal by some of the High Courts. All High Courts examine these applications before admitting them. In some of the courts, this examination is made by a Bench, while in others a single Judge deals with them at the admission stage. The advantage of a Bench dealing with the matter initially is that, if admission is refused, no question arises of a Letters Patent Appeal being filed against the order of refusal. The practice of admissions being dealt with by a bench is followed on the appellate side in Bombay where we are told that a large number of applications are rejected at this stage after a fairly full hearing of the applicant's counsel. We should have thought that multiplicity of proceedings could be avoided, if initially a bench dealt with the matter. In Madras, however, the practice is different. There, a single judge deals with admissions. Thereafter, if the application is admitted, there is a hearing on the merits also by a single judge. A Letters Patent Appeal lies from the decision of the single judge, but the appeal is not a matter of course. A Bench of Judges decides whether the appeal should be admitted. If the appeal is admitted, it is eventually heard on the merits by the Bench. At first sight, this procedure seems to be cumbrous and dilatory but the figures made available to us of the number of applications filed, the number admitted and eventually the number in which an appeal is filed and admitted indicate that the Madras method is not unsatisfactory in the results it yields. In Allahabad also, a practice somewhat similar to that in Madras is followed in the matter of dealing with applications under article 226.

To be left to the High Courts.

11. In view of the conflicting opinions expressed, it is difficult for us to make a definite recommendation on the subject. What is to be aimed at is very expeditious disposal of these applications and within the time indicated by us above, *viz.*, six months. It may be that conditions in different States differ and that what one High Court may have found satisfactory may not work equally well in other High Courts. We would, therefore, leave it to each High Court to devise its own procedure in these matters.

We may, at this stage, deal with two matters which have been brought to our notice in regard to the procedure adopted in writ applications.

Taking of evidence in writ proceedings.

12. In our Report on the Specific Relief Act, we recommended the repeal of section 45 of that Act as we have now, in article 226 of the Constitution, a provision which is of a far more comprehensive nature. We have, in that report, recommended that in order that the court may, whenever it deems it necessary, determine controverted questions of fact in disposing of writ applications, it should frame rules enabling such evidence to be led either on affidavits or *viva voce*. A number of High Courts have already made such rules. We invite attention in this connection to para. 97 of the report referred to above.

Grant of stays.

13. We also invite attention to a view, widely expressed to us on behalf of State Governments, that courts grant interim stays in writ applications too readily so that a number of administrative measures of importance are held up for considerable periods. Such stays have, it is said, been granted in a number of matters which, having dragged on for a considerable time, have eventually been dismissed. The figures collected by us do indicate that, in some High Courts, an interim stay is granted in a large number of cases and, sometimes, almost as a matter of course. This is obviously very undesirable. An application for a stay in any matter is required to be supported by special circumstances. That should be so in a greater degree in the case of an extraordinary remedy in the nature of an application under article 226.

Need for circumspection.

14. We are emphatically of the view that the courts should be very circumspect in dealing with applications for interim stay. We have been informed that, in some of the High Courts at any rate, it is almost an accepted rule that a stay will not be granted before the respondent is heard. There may be cases in which an immediate order of stay is unavoidable. Such cases may be dealt with by granting an immediate stay for a very short time within which the respondent could be served with a notice and be heard. In dealing with applications under article 226, courts are bound to see, while safeguarding the rights of the citizen, that the machinery of administration is not unnecessarily impeded.

Stays in taxation matters.

15. It has been suggested that the remedy provided by article 226 has been availed of by assessees in taxation matters and that in many cases this has resulted in holding up of assessment and collection proceedings by orders of interim stay. Indeed, the evil was said to be so great that at one time it was suggested that article 226 should not apply to taxation matters.

The statement set out below shows the number of writ petitions relating to Central and State taxation laws in the various High Courts during the years 1954, 1955 and 1956 and the number of petitions in which stay orders were made.

Statement showing the number of writ petitions relating to Central and State Taxation Laws in various High Courts during the years 1954, 1955 and 1956

Name of the States	Number of writ petitions instituted during the year	Number of writs relating to Central Taxation Laws Instituted during the year	Number of writs relating to State Taxation Laws instituted during the year	Total of columns 3 & 4	Number in which Stay Order granted (Central Taxation Laws)	Number in which Stay Order granted (State Taxation Laws)	Total of columns 6 & 7
			1954				
1	2	3	4	5	6	7	8
Andhra	228	3	4	7	2	1	3
Assam	118	2	21	23	..	32*	32
Bihar	413	4	6	10	1	..	1
Bombay	878	157	537	694	1	110	111
Kerala	219	2	33	35	13	29	42
Madhya Pradesh	534	7	34	41	NA	11	11
Madras	827	91	32	123	31	4	35
Mysore	173	23	44	67	NA	NA	NA
Orissa	406	8	71	79	7	70	77
Punjab	852	10	30	40	6	5	11
Rajasthan	692	2	..	2	..	..	..
Uttar Pradesh	1564	2	135	137	2	102	104
West Bengal	Not supplied.						

*This figure includes the cases pending from the previous year in which Stay was granted.

Name of the States	1955						
	Number of writ petitions instituted during the year	Number of writs relating to Central Taxation Laws instituted during the year	Number of writs relating to State Taxation Laws instituted during the year	Total of columns 10 & 11	Number in which Stay Order granted (Central Taxation Laws)	Number in which Stay Order granted (State Taxation Laws)	Total of columns 13 & 14
	9	10	11	12	13	14	15
Andhra	792	102	78	180	61	43	104
Assam	85	5	14	19	..	3	3
Bihar	418	6	5	11	1	..	1
Bombay	1032	240	631	871	3	77	80
Kerala	460	55	84	139	32	76	108
Madhya Pradesh	577	4	23	27	1	8	9
Madras	1011	82	77	159	20	21	41
Mysore	257	28	77	105	NA	NA	NA
Orissa	400	2	94	96	2	85	87
Punjab	740	13	11	24	7	4	11
Rajasthan	365	..	2	2	..	..	..
Uttar Pradesh	1461	27	101	128	23	77	100
West Bengal	Not supplied.						

1956

Name of the States	Number of writ petitions instituted during the year	Number of writs relating to Central Taxation Laws Instituted during the year	Number of writs relating to State Taxation Laws Instituted during the year	Total of columns 17 & 18	Number in which Stay Order granted (Central Taxation Laws)	Number in which Stay Order granted (State Taxation Laws)	Total of columns 20 & 21
	16	17	18	19	20	21	22
Andhra	1177	116	98	214	65	58	123
Assam	121	6	4	10	1	..	1
Bihar	616	1	6	7	..	1	1
Bombay	1616	341	1095	1436	4	91	95
Kerala	679	39	93	132	26	81	107
Madhya Pradesh	535	7	22	29	1	3	4
Madras	1557	173	179	352	37	83	120
Mysore	254	33	85	118	NA	NA	NA
Orissa	472	8	48	56	5	44	49
Punjab	992	7	6	13	2	3	5
Rajasthan	471	..	35	35	..	30	30
Uttar Pradesh	5025	73	173	246	56	125	181
West Bengal	Not supplied.						

16. We do not think that the figures collected bear out the very sweeping statements which have been made from time to time, in this connection. No doubt interim stay applications have been granted too readily by some of the High Courts in taxation matters as in other cases. The matter is, however, capable of being easily corrected and needs no such drastic remedy as has been advocated. If greater care is to be exercised in granting interim stays in writ applications generally, even greater care is needed in dealing with applications which concern the assessment and collection of Central or State taxes. If such care is exercised, there need be no apprehension of any interference in any substantial degree in the assessment and collection of taxes. One may not forget, in this connection, that several reported cases indicate that the grant of an order of stay even in taxation matters was fully justified in as much as the orders made were manifestly unjust and oppressive. It may be that some cases, particularly cases involving questions as to the jurisdiction of the officer conducting the assessment or of the vires of the substantive or the procedural laws, must involve a stay of proceedings. The remedy, in such cases, is to expedite the hearing of these matters, giving them precedence in the list of article 226 matters posted for hearing. Indeed a general rule may be made by the High Courts giving precedence, in the matter of hearing, to all applications concerning the assessment and collection of Central and State taxes.

No case for abolition of jurisdiction.

17. The decision of the Supreme Court in the case of the Election Commission *v.* Saka Venkata[1] Rao has greatly restricted the utility of the jurisdiction conferred on the High Courts by article 226. The court has held that, in order to enable the High Court to exercise jurisdiction under that article, the authority against whom the order or direction is sought must be located within the jurisdiction of the High Court. The Government of India and several statutory authorities and Tribunals, the operations of which extend throughout the country, have their headquarters in Delhi. As a result of that decision, High Courts other than the High Court of the Punjab have found themselves unable to exercise jurisdiction under article 226, when the statutory authority or official concerned has headquarters in Delhi. This tends to defeat the very purpose of the jurisdiction conferred by article 226 which is to enable a person to seek a remedy under that article in respect of acts done in violation of his rights within the State by an application to the High Court of his own State.

Territorial jurisdiction of High Courts under article 226.

A later decision of the Supreme Court[2] seems to have modified the earlier view but the matter is by no means clear.

In our view, this hardship imposed upon a person seeking relief needs removal.

Need for modification.

[1]A. I. R. 1953 S. C. p. 210.

[2]A. Thangal Kunju Mudaliar *v.* M. Venkatachalam Potti, A. I. R. 1956 S. C. p. 246.

Summary of recommendations.

19. Our recommendations regarding the writ jurisdiction of the High Courts under article 226 may be summarised as follows:—

(1) The writ jurisdiction of the High Courts has served a very useful purpose and should under no circumstances be restricted.

(2) The strength of the High Courts should be increased wherever necessary to enable them to deal with this extra work expeditiously.

(3) Writ petitions should be disposed of within a period of six months from the date of their institution. The present duration of these petitions in some of the High Courts is too long.

(4) These petitions should be carefully scrutinised at the admission stage and a rule *nisi* issued only in proper cases.

(5) It should be for the individual High Courts to decide, having regard to the local circumstances, whether writ petitions should be heard by a single judge or by a bench in the first instance.

(6) Rules should be framed by the High Courts on the lines indicated in our Report on the Specific Relief Act to enable them to record evidence and to determine, if necessary, disputed questions of fact in proper cases in proceedings under article 226.

(7) The courts should be circumspect in granting stays in writ petitions and normally stay should be ordered only after giving notice to the respondent and hearing him.

(8) In emergent cases, when an *ex parte* stay is ordered, it should be operative only for a very short time within which the respondent should be served with notice and heard.

(9) Care should be particularly exercised in granting stays in revenue matters in which it is proposed to stay the assessment or collection of taxes.

(10) Steps should be taken to remove the hardship on the citizen created by the decision in Election Commission *v.* Saka Venkata Rao.

31.—ADMINISTRATIVE BODIES

1. Our Constitution cannot function and no nation can march along the true democratic way of life without a true and continuous realisation of the importance of the rule of law and of judicial review of legislative and executive action. Our Constitution in its preamble aspires to build a sovereign democratic republic dedicated to the ideals of justice, liberty, equality and fraternity. With these ends in view its provisions embody in express terms the power of judicial review in the courts of the land, a power which was recognised in the United States only after a long struggle. The courts in the Constitution.

The Constitution has further taken care to provide us with the bulwark of an integrated and irremovable judiciary so that our new born democracy may be assured of proper growth under the wings of a watchful and vigilant group of judges.

2. Yet, it has become usual among politicians at the Centre and in the States while paying lip service to the majesty and dignity of the law to decry the Judges as sitting in an "ivory tower"[1] and failing to keep pace with what the politicians think are progressive ideas of the times. They have not hesitated out of their wisdom to admonish the judges and tender officious advice that their job did not consist in "sitting wearing 'wig and gown' for a number of hours a day and look very learned". Ill-informed criticism.

3. Legislation has also been frequently passed placing executive action above the courts of law and thus imperilling the very authority of the rule of the law in our infant democracy. Referring to certain legislation passed by the State of Bihar, a Chief Justice of India was constrained to observe: "Legislation such as we have now before us is calculated to drain the vitality from the Rule of Law which our Constitution so unmistakably proclaims, and it is to be hoped that the democratic process in this country will not function along these lines[2]". It has therefore become necessary to emphasise the importance of the rule of law and the role of the judiciary as essential to the orderly development of democracy in India. Importance of the rule of law.

One of our Constitution-makers, a distinguished lawyer stated: "The proper functioning of democracy to which this country is committed depends on the rule of law being

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[1]Prime Minister Nehru at the State Law Ministers' Conference held in Delhi in 1957.

[2]Ram Prasad Narayan Sahi *vs.* The State of Bihar and others A. I. R. 1953 S. C. p. 215 at p. 217.

the basis of our institutions and that in its turn depends upon the position accorded to the Supreme Court and the High Courts in the constitutional structure and their relations with other organs of Government".[1]

The same idea was expressed in more forceful language by a Judge of the Calcutta High Court in the following words: "A nation that does not know how to respect the rule of law and the judiciary as its final interpreter is a nation that is not fit for the democratic way of life".[2] Ordered society and democratic progress are inseparable from them.

As was said by Viscount Sankey, "Amid the cross-currents and shifting of sands of public life, the Law is like a great rock upon which a man may set his feet and be safe, while the inevitable inequalities of private life are not so dangerous in a country where every citizen knows that in the Law courts, at any rate, he can get justice".[3]

The rule of law and judicial review in a welfare State.

4. The rule of law and judicial review acquire greater significance in a welfare State. The maintenance of law and order and the prevention of external aggression are but a part of the functions of such a State. It has a variety of other activities which bring it into constant touch with the life of the citizen. Elsewhere, we have given figures of the vast amount of legislation which has been enacted during the last three years by the Union and the States, a great deal of which impinges in a variety of ways on our lives and occupations. Much of it also confers large powers on the executive. The greater therefore is the need for ceaseless enforcement of the rule of law, so that the executive may not, in a belief in its monopoly of wisdom and in its zeal for administrative efficiency, overstep the bounds of its power and spread its tentacles into the domains where the citizen should be free to enjoy the liberty guaranteed to him by the Constitution.

Its special importance in India.

5. While what has been said above is true of any welfare State, it is of far greater importance in a democracy like ours. In our exuberance to establish a welfare State we are apt to be impatient and ride roughshod over individuals' rights as matters of little consequence. This is not to be encouraged. Respect for such rights is the very essence of democracy. As a socialistic Prime Minister of the United Kingdom has stated "Democracy is the rule of the majority with respect for the right of minorities".

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[1]Address delivered by Sir Alladi Krishnaswamy Iyer at the Diamond Jubilee Celebration of the Madras Advocates' Association on 17-4-1949 A. I. R. 1949 Journal, 35.

[2]Mr. Justice P. B. Mukherjee's speech at the inauguration of the Lega Study Circle of the Calcutta Small Cause Court Club on 10-3-51 (A. I. R 1951 Journal p. 38).

[3]Cited by the Committee on Minister's powers Report, page 6.

The country having stagnated for over one hundred and fifty years under foreign rule, our legislatures are now trying to advance the nation in all directions. In their zeal to achieve quick results, they have not infrequently enacted legislation interfering with the vital and daily functions of the citizen. In order that their policies may go forward uninterrupted, they have endeavoured to entrench the executive and succumbed to the temptation of restricting the powers of the courts.

6. Nor must we lost sight of the peculiar circumstances which brought us independence. Our success in the struggle for freedom was brought about very largely by the efforts of a powerful political party with a single well-knit political organisation. That party has now come into power all over the country and is in charge of the infant democracy born of our independence. The party and its organisation wield an almost unlimited influence throughout the country. The legislatures which have been elected reflect in large majorities in most of the States the views of this party. There is no effective opposition in a large number of legislatures. In such conditions, both the legislatures and the executive inevitably tend to be intolerant and sometimes even contemptuous, of the decisions of the courts interpreting laws in a manner which they consider to be opposed to their policies. This tendency to trample ruthlessly upon the rights of the individuals with the aid of a steam roller majority is to be deprecated. As has been said:

> "Whereas in India today, the Legislature is really dominated by a single party and where the Press is not functioning fully as the fourth estate of the Realm, the executive must be kept in bounds until opposition has grown by a conscience of its own. Authority has tended to give the executive a taste for blanket powers which it is almost impossible to contest in a Court of law. The last of our defences, the judiciary is being rendered less effective by reason of the drafting of our laws and ordinances which make it almost impossible for the action of the executive to be questioned."[1]

This position was envisaged by Chief Justice Kania as far back as 1948. He said:

> "In view of the fact, however, that the opposition is negligible, the position of the Judiciary becomes all the more important. In the Legislative Assembly a bill could be passed and made into an Act without much difficulty..... Having regard to this position of the Legislature, if the Executive Government, which is now responsible to the Legislature, does acts which

[1]Quoted from the Eastern Economist dated the 8th April, 1949 by Dr. Sir C. P. Ramaswamy Iyer in his address at the Diamond Jubilee celebration of the Madras Advocates' Association on 16-4-1949, A. I. R. 49, Journal p. 37 at p. 38.

encroach upon the liberty of the subject, the only forum which can give redress against the irregular action of the Executive, is the Court".[1]

It was said by Jefferson in the early days of the United States of America: "The executive in our Government is not the sole, it is scarcely the principal object of my jealousy. The tyranny of the Legislature is the most formidable dread at present and will be for many years".[2]

Critisism. The true role of the courts.

7. The legislator chafing at the restrictions imposed upon his power by the Constitution has failed to appreciate the new role of the judiciary under the Constitution. On occasions he has complained of the attitude of the courts, sometimes in unbecoming language. He forgets that this role has been expressly cast upon the courts for the common weal. The Constitution in express terms requires the courts to act as a supervisory body in the matter of laws alleged to encroach upon the exercise of fundamental rights.

The line as to how far a law shall go in derogation of the citizen's fundamental rights is, according to the Constitution, to be drawn by none other than the judiciary. Governments and their policies may change. What contributes to the stability of the State is its judiciary. A nation may afford to lose its confidence in its King or even in its Parliament but it would be an evil day if it loses its confidence in its judiciary. Amidst the strident clamour of political strife and the tumult of the clash of conflicting classes, the courts of law remain steadfast and impartial. Only a real and full acceptance of these principles, can enable our new born democratic republic to survive. Easing ourselves on this fundamental assumption, we now turn to a survey of some of the problems arising out of our rapid march towards a welfare State.

Growth of Governmental Powers.

8. Society in the twentieth century has become exceedingly complex and governmental functions have multiplied. The change in the scope and character of Government from negative to positive, that is from the *laissez faire* to the public service state, has resulted in the concentration of considerable power in the hands of the executive branch of Government. The direct result of this has been the growth of administrative law.

The problem before us thus is to prevent the potential threat to justice and freedom from the greatly extended powers and functions of the modern State.

Welfare schemes are planned and introduced by the Government in all progressive democratic States. To devise and carry out any general welfare scheme, it is always

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[1]Speech at the inauguration of the Assam High Court A. I. R. 1948 Journal p. 14.

[2]Cited by G. C. Venkata Subbarao : Legal Pillars of Democracy, p. 94.

necessary to affect adversely some private rights of property and personal liberty. These facts have to be faced by all those who live in a Welfare State. The trend is the same in all countries whether it is in the United Kingdom, the United States of America, France or India. The real problem therefore is "to reconcile freedom and justice for the private citizen with the necessities of a modern government charged with the promotion of far-reaching social or economic policies".[1] The problem.

9. In order that Government may be able to discharge the variety of functions which it is called upon to undertake it has become the practice to delegate legislative powers as well as powers of adjudication to administrative organs. Delegation of legislative powers.

We have elsewhere referred to the growing volume of delegated legislation in our country and the measures needed to ensure its scrutiny before its enactment so that questions may not later arise as to its *vires* and its compatibility with other laws. The extent to which Parliament is competent to delegate powers of legislation has been examined by the Supreme Court in the Delhi Laws Reference.[2] What we are concerned with in this chapter is the delegation of powers of adjudication in administrative and quasi-judicial matters to tribunals consisting of administrative officers or bodies at different levels.

10. The subject of administrative adjudication has in recent years received serious attention in all countries. Administrative adjudication is said to be a major threat to the rule of law. For, as Dicey has explained "any encroachment on the jurisdiction of the courts and any restrictions on the subjects' unimpeded access to them are bound to jeopardize his rights....." Administrative Tribunals.

11. The increasing tendency in England to invest administrative agencies with powers of adjudication has been thus explained: "The trend in recent years has been to subordinate individual rights to what is conceived to be the public welfare. Parliament seems to have been apprehensive lest its social policies might be nullified by decisions in the courts in protection of individuals whose rights are invaded. It is natural that the executive, charged with carrying out a social policy, should view with distrust any interference with that policy. Where, therefore, there may arise a dispute between, on the one hand, an individual whose property is taken or whose other rights have been invaded, and on the other those who are charged with executing that policy, such disputes have been increasingly Their increase.

[1] Rule of Law by Sir William Patrick Spens, British Journal of Administrative Law, Vol. II 1955-56, p. 4.

[2] In the Delhi Laws Act, 1912, 1951 S.C.R. 747. *See* also Rajnarain Singh *v.* Chairman, Patna Administrative Committee, A.I.R. 1954, S.C. p. 569.

withdrawn from the traditional courts and vested in administrative courts or bodies, or in Ministers executing quasi-judicial functions."[1]

The reasons.

12. The view of Prof. Robson, a noted authority on Administrative Law is not very different. He observes: "This tendency is not the result of a well-thought out constitutional principle. Its growth was haphazard, sporadic and unsystematic. Yet it was not, on the other hand, due to a fit of absentmindedness. Parliament did not merely overlook the courts of law. But the possibility of setting up new organs of adjudication which would do the work more rapidly, more cheaply, more efficiently than the ordinary courts; which would possess greater technical knowledge and fewer prejudices against government; which would give greater heed to the social interests involved and show less solicitude for private property rights; which would decide disputes with a conscious effort at furthering the social policy embodied in the legislation; this prospect offered solid advantages which induced the legislature to extend, in one sphere after another, the administrative jurisdiction of government departments so as to include judicial functions affecting the social services. In doing so, Parliament was only repeating a process which has happened again and again in the history, not only of England but of many civilised countries."[2]

Dicey and several others following him entirely misunderstood the true nature of the Code of rules which constituted the *droit administratif* in France and thought that there existed no administrative tribunals or administrative law in England. He concluded: "It would be a grave mistake if the recognition of the growth of official law in England led any Englishman to suppose that there exists in England as yet any true administrative tribunals or any real administrative law."[3]

The position in England.

13. It is true as Lord Hewart, then Lord Chief Justice of England stated in his address to the American Bar Association in September 1927 that the common law of England does not recognize any *droit administratif*.[4] It is also true that in England there exists no system akin to the French. But it does not follow that England is without a system of administrative law. This seems to have been later recognised by Dicey himself.[5] It cannot be denied

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[1] Simon-Administrative Procedure and the Rule of Law, British Journal of Administrative Law, Vol. I, 1954-55, p. 14.

[2] Justice and Administrative Law 3rd Edition, pp. 442-443.

[3] Dicey: Law of the Constitution, 8th edition issued in 1914 Introduction xliv.

[4] The times, Sept. 2, 1927 and Sept. 30, 1927 cited by Robson op. cit., p. 32.

[5] The Administrative Law in England Developments by A.V. Dicey: Law Quarterly Review, Volume 31, page 148.

that today there exists in England a vast body of administrative law and numerous bodies other than courts of law exercising judicial or quasi-judicial functions. The growth of administrative law is due to the expansion in the functions of government from one field to another and the progressive limitation of the rights of the individual in the interests of the community as a whole. Therefore at the present day there has arisen a need for "a technique of adjudication better fitted to respond to the social requirements of the time than the elaborate and costly system of decision provided by litigation in the courts of law."[1]

14. As it has been asserted that the French system of administrative tribunals with the *Conseil D'etat* at its head can serve as a model for a system of administrative tribunals in our country, we propose to examine the French system in some detail.

The French system. No unfettered freedom to the executive.

The French system of administrative law—or the "*Droit administratif*" as it is commonly referred to, is clearly a form or branch of law which governs the dealings of State officials with private citizens. The popular conception that in France, the State officials in their official dealings with private citizens are above the law, or are a law unto themselves, is erroneous. The official transgressing the bounds of law or acting contrary to the rules of natural justice in his dealings with the citizen is subject to a greater and more effective control in France than in some Anglo-Saxon countries.

Its nature.

15. The essential idea which underlies and gives meaning to "*droit administratif*" is that "the position and liabilities of State officials, and the rights and liabilities of private individuals in their dealings with officials as such, form a separate and distinct chapter of law, which depends upon principles different, indeed, from the principles of the ordinary law, but nevertheless legal principles. Nor is it that the rights and liabilities of private individuals in their dealings with officials as such are matters which are beyond or beneath the reach of established legal procedure. It is rather that for these matters a special procedure is provided which has its own Courts, its own cases, its own precedents, and its own methods".[2]

The system has developed remarkably during the last century and that which was once administrative has become more and more judicial in character and in fact at no time was the judicial element absent. Thus, the *droit administratif* is a definite system of law with set rules and principles which, however, differ from the rules and principles of ordinary law.

The system is administered by a tribunal which applies judicial methods of procedure. To borrow the words of

[1]Robson : op. cit., p. 33.

[2]Hewart : New Despotism, p. 39 to 40.

Lord Hewart, " *'droit administratif'* is administered by real tribunals, known to the parties, and these tribunals apply definite rules and principles to the decision of disputes, and follow a regular course of procedure, though the rules and principles applied are different from those of the ordinary law governing the relations of private citizens as between themselves. Moreover, the tribunals give reasons for their decisions and publish them. In a word, the 'administrative tribunals' of the Continent are real Courts, and what they administer is law, though a different law from the ordinary law. More than that, the *'droit administratif'* is a regular system of law, applicable not only to all matters pertaining to the public service, but also to all disputes between the Government or its servants on the one hand and private citizens on the other hand".[1]

The Conseil d'etat Its composition and functioning.

16. The body known as the Conseil d'etat has supreme jurisdiction to correct the decisions of various administrative authorities. The council functions for all practical purposes like a judicial body, though the councillors occupy only an administrative position. Their position is in no way less independent than that of an ordinary Judge.[2] The proceedings are conducted in public and the parties have the right to be represented by counsel. On matters decided, comprehensive judgments are delivered. These constitute valuable precedents for the future. The Council being the final judge regarding the appropriateness of the performance of an executive act, is rightly said to represent the "science and the moral conscience" of the administration.

Powers.

17. The Council exercises very wide powers over administrative tribunals. Where the Council is constituted as the final court of appeal from the administrative tribunals, it goes into the merits of questions of law as well as fact. In other cases, the Council will entertain an application in revision to test the legality and propriety of the impunged decision of the tribunal. Even in cases of revision, the council is not restricted to an examination of the error of law apparent on the face of the record. In the French system, unless the judicial or quasi-judicial order has set out the appropriate reasons, it would be treated as *ex-facie* bad and quashed. Even where the administrative authority is not required to function as a tribunal, whenever it appears to the council from the seriousness of the questions involved that it is appropriate to give a hearing to the person affected, it will insist upon such a procedure being followed. This is to prevent what it calls *violation de la loi.* This is a very broad concept which includes both procedural and substantive requirements.

The council requires an irreducible minimum of reasons for every administrative act or order being set out. First,

[1] Hewart New Despotism, p. 45.
[2] Sieghart : Government by Decree, 1950, p. 247.

there must be no *detournement de pouvoir,* a concept akin to the doctrine of *mala fides.* Secondly, facts set out in justification of the order must be true and the council will satisfy itself of their truth. It will also call for the administrative file and examine it. The citizen will be permitted to adduce external proofs. But it must be noted that the rules of evidence are not the same as those applied by civil courts. The jurisdiction exercised by the council prevents the administrative authority getting away with any discretionary act merely by referring to some damaging but false fact against a citizen. Thirdly, the Council requires that the grounds on which the order proceeds must conform to what it considers to be in law the true scope and object of the legislation to which the order purports to give effect. Even where a statute uses words which *prima facie* appear to confer wide and unlimited powers on an administrative authority, the council confines the administration strictly to objects which are permitted by it. Even in cases where no grounds are stated upon the face of the order, the council, whenever it considers necessary, may require the authority concerned to furnish reasons and grounds for its acts.[1] and Jurisdiction.

18. Professor Hamson has emphasised the great utility of the Council in its parent country in safeguarding the rights of the citizen and has contrasted the protection given by it to the citizen with the position obtaining in England. According to him, the French institution provides greater safeguards for the rights of citizens than the English courts of law, save in cases of false imprisonment. Its failure in such cases is due to the fact that the council has no concern with the ordinary administration of justice and has no control over the magistracy and the courts. Its utility.

19. Certain examples of cases with which the council has dealt will illustrate this proposition.[2] In what is popularly known as the *Ecole* case, the Council directed the Minister to allow three candidates to take the competitive examination for entry into Government service, when the Minister had banned their participation on the ground of their alleged communist leanings. Again when a Prefect had prevented a news vendor from plying his trade, the order was quashed by the Council. We may contrast these cases with the decision of the High Court in England in *exparte* Parkar,[3] in which the High Court expressed its inability to interfere with an order of the Commissioner of Police cancelling a cab driver's licence. Instances of control of executive action.

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[1]Hamson, Executive Discretion and Judicial Control, London (1954) pp. 194 seq.

[2]These illustrations and the comment of the French Commissaire du Government on the Liversidge case are based on Hamson p. 24 and the following pages.

[3]All England Law Reports (1953) Volume 2, page 717.

The reaction of French administrative lawyers to the decision in *Liversidge* v. *Anderson*[1] is particularly noteworthy. When the decision in that case upholding the doctrine of subjective satisfaction of the Minister in a case of preventive detention (also followed in India in the Gopalan[2] case) was explained to the French Commissaire du Government, that official was unable to comprehend the explanation of that case. According to the French officials of the Conseil d'etat, the actual decision in Liversidge's case was one which must be unacceptable in any civilised country and more particularly in a country which after all had invented the term, the rule of law.

The position in France it seems would have been as follows:

If a French Minister is to be satisfied, he must as a Minister have reasonable grounds upon which his satisfaction is based and having such grounds he is automatically under a duty to disclose them to the competent administrative court, should the body so require it. Consequently the court would be in a position to judge the adequacy of the ground on which a Minister's order of preventive detention is passed.

The Conseil d'etat has taken upon itself the task of inquiring into the propriety of the refusal on the part of a Minister to grant a passport. This according to Indian Law is entirely a matter for the discretion of the executive.[3]

The extent of its control.

20. The jurisdiction which enables the council to quash executive decisions is based on the concept of *ultra vires*. By virtue of this jurisdiction, it has become possible for the council to control not merely the exercise of powers not warranted by law but also the exercise of a power for a purpose different from that for which it was granted. This brings within the purview of its control a vast field of administrative activities which, in the past, was within the field of discretionary acts. In substance, the council has thus virtually abolished the notion of the unfettered discretion of the administrative authorities.

As a well-known French authority has stated, "Just as there is no longer an act of State so there is no longer a discretionary act, an act that is to say of a sheerly discretionary character..... The Council of State can always take account of the purpose by which an act is determined and annul it if it thinks that the administration, however much within its formal competence, has pursued an end other than that which the law had in view when conferring the powers. Thus we have what is called abuse of power.

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[1]1942 A.C. 206.

[2]A. K. Gopalan *v.* The State, 1950 S.C.R. 88.

[3]V. G. Row *v.* The State of Madras, A.I.R. 1954 Mad. p. 240.

At bottom this is simply an *ultra vires* act. The official violates the enabling statute when he does something for an object he has no right to pursue. The phrase "abuse of power" is felicitous because it clearly shows the way in which the violation of the law becomes apparent".[1]

History and procedure.

21. We annex to this Chapter a brief note setting out the historical growth of the Council and its working and procedure. We shall point out later how its very peculiar growth rooted in French history and tradition makes it unsuitable for being adopted with any success in India.

Position in U. S. A.

22. In the United States, various attempts have been made to secure a uniform administrative procedure embodying the principles of natural justice. Administrative procedure is now regulated by the Administrative Procedure Act of 1946. In the words of Justice Jackson, the Act "represents a long period of study and strife: it settles long-continued and hard-fought contentions, and enacts a formula upon which opposing social and political forces have come to rest. It contains many compromises and generalities and, no doubt, some ambiguities. Experience may reveal defects".[2]

Administrative Procedure Act.

It is a comprehensive piece of legislation which prescribes three types of rule-making procedures: (1) discretionary, (2) administrative and (3) adjudicatory. We are concerned only with the adjudicatory procedure prescribed by the Act.

Statutory procedural requirements adjudication.

The Act provides that in every case where a statute requires an adjudication to be made after an opportunity for a hearing has been given, certain procedural requirements shall be observed. The Act also provides for certain exceptions.

A person entitled to an administrative hearing must be given such specific notice of the time and place of the hearing and of the charges against him as will enable him to formulate a defence. A notice received in any manner other than that prescribed by the statute will not be a legal notice.

It provides that the notice issued to the private party by an Administrative Agency shall set forth "the legal authority and jurisdiction under which the hearing is to be held" and "the matter of fact and law asserted".

It may be noticed here that the right to be represented by counsel or by a qualified representative, though not a member of the Bar, is universally recognized in administrative enforcement proceedings. The Administrative Procedure Act also provides that when a hearing takes place "every party shall have the right to represent his

[1]Duguit : Law in the Modern State, 1919, pp. 185-186 quoted in Sieghart, Government by Decree, p. 248.

[2]Wong Yang Sung *v.* McGrath 339, U. S. 33 at pp. 40-41.

case or defence by oral or documentary evidence.... and to conduct such cross-examination as may be required for a true and full disclosure of the facts".

The Act also authorises administrative tribunals to summon witnesses at the request of the party concerned upon his furnishing information as to the general relevance and scope of the evidence sought to be so obtained.

The Act also makes it clear that the exclusionary rules of evidence followed by the ordinary courts have no place in administrative proceedings. It expressly provides that any oral or documentary evidence may be received. It must, however, be noticed that a safeguard against possible prejudice to the individual by means of this rule is provided by the right to judicial review which is discussed later.

It should also be noticed that the Act expressly provides that where decisions are made on the basis of "official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded opportunity to show the contrary" [Section 7(d)].

Scope of Judicial Review.

23. The Act of 1946 has expressly given the courts power when reviewing the decisions of Administrative Tribunals to consider the whole record and to take due account of prejudicial errors. The same Act also provides that when the courts review administrative findings based upon legally inadmissible evidence they are to satisfy themselves that there is a residuum of legal evidence to sustain the findings and in the absence of such residuum, they can quash or set aside the proceedings. Although the courts normally insist upon the parties exhausting all their administrative remedies by way of appeal and do not substitute their own findings of fact for those of the administrators, yet under the Act they have the power to see that the decision is in accordance with "reliable, probative and substantial evidence".

The foregoing brief sketch will show that the Act was framed to suit the special conditions obtaining in that country. It is not a model which can be easily copied in India. Even in its parent country, the Act has been fulsomely praised and bitterly denigrated. It does seem however to have made some contribution to the control of powers of administrative bodies in the United States. We may conclude our short account of this enactment with the following words of Professor Louis L. Jaffe in a recent article:

> "The A. P. A. is clearly not a prolegomenon to all future administrative procedure acts, it is not a codification of formal doctrine, it is not a model for any other State or country. But it has made an important contribution to administrative law because its spirit and philosophy do have general validity.[1]

[1]Public Law 1956 p. 220.

24. The subject of administrative tribunals and its impact on the rule of law have been also the subject of study by various committees in England.

25. The Committee on Ministers' powers was appointed in 1929 under the Chairmanship of Right Honourable the Earl Donoughmore to examine the problems of delegated legislation and the judicial and quasi-judicial powers exercised by persons or bodies appointed especially by the Ministers and to suggest suitable safeguards necessary to ensure the Supremacy of law.

26. After a thorough study of the problem the Committee made the following recommendations: Its recommendations.

(1) After making a distinction between judicial, quasi-judicial and administrative functions, the Committee suggested that judicial functions should normally be entrusted only to the ordinary courts of law; any deviations from this wholesome principle must be regarded as exceptional and requiring valid justification.

(2) Where Parliament considers it necessary to depart from this course, judicial functions should be entrusted to a Ministerial Tribunal other than the Minister personally. Any tribunal constituted should be independent of the Minister in the exercise of its functions.

(3) Though the quasi-judicial functions naturally fall within the province of the Ministers, yet where it appears that the Minister may be disqualified by an 'interest' which would prejudice the impartial discharge of the judicial functions involved in the quasi-judicial decision, it would be desirable to entrust the judicial functions to a tribunal whose adjudication would be binding on the Minister.

(4) Before any decision, judicial or quasi-judicial is given, the parties should be given the opportunity of stating their case and knowing the case they have to meet.

(5) Likewise a decision given by the Minister or by the tribunal should be in the form of a reasoned document which should be available to the parties.

(6) where a statutory public inquiry is held in connection with the exercise of judicial or quasi-judicial functions by Ministers, the report of the person holding the inquiry should be published. Only exceptional circumstances of public policy should justify any departure from this principle.

(7) The supervisory jurisdiction of the High Court to compel the Ministers and the tribunals to keep

within their powers should be maintained intact. A simpler and less expensive procedure commensurate with the needs of the modern times may be devised.

(8) Any party aggrieved by the judicial decision of the Minister or tribunal should have an absolute right to appeal to the High Court on questions of law. Here also a uniform and simple procedure may be established.

(9) Instead of maintaining the legal distinction between an excess of jurisdiction wherein *certiorari* is the appropriate remedy and an error of law wherein an appeal is appropriate, a new form of procedure applying to both may be devised. Such a procedure should provide the time limit within which an appeal may be brought. Further, the appeal should be determined in a summary manner after being heard by a single judge whose decision should, as a general rule, be final.

(10) On any issue of fact, as a general rule, there should be no appeal to any court of law from the decision of a Minister or tribunal. However, in certain exceptional cases an appeal on fact may be allowed to an appellate tribunal constituted by the Lord Chancellor and consisting of three persons, the Chairman being a Barrister or Solicitor. The procedure ought to be expditious and governed by rules made by the Lord Chancellor on the Rule Committee.

(11) Lastly, the Committee expressed the view that it was not desirable to devise in England a system analogous to the French system.

Spens Committee.

27. In 1955, a Committee of the Inns of Court Conservative and Unionist Society under the Chairmanship of Right Honourable Sir Patrick Spens undertook a study of this problem. The object of the study was thus stated by the Committee: "Our object, then, is to reconcile freedom and justice for the private citizen with the necessities of a modern government charged with the promotion of far-ranging social and economic policies. We firmly believe that such a reconciliation can be brought about".[1]

The themes underlying this study by the Spens Committee were four:

First: there was a growing feeling that the citizen was no longer having the protection of an objective law from the capricious exercise of arbitrary power by an executive officer enjoying a very wide grant of discretionary powers. *Secondly*, it was being felt that a system which makes inadequate provision for review of the decisions of its servants enshrines and sanctions

[1]Rule of Law, page 12.

error. *Thirdly,* it was being felt that there had been a failure to observe, if not a deliberate disregard of, the rules of natural justice, such as the rules against bias, the duty to hear both sides and to give reasons for the decisions made. *Fourthly,* in view of all these it was firmly believed that fairness and justice should be as much an object of the administrative process as of the legal process.

The Committee was of the opinion that the most urgent and imperative reform called for was the giving of reasons for the decisions made by a Minister and a tribunal. Otherwise in its opinion Parliamentary democracy would degenerate to bureaucratic absolutism.

While the Donoughmore Committee recommended a similar review in respect of judicial and quasi-judicial decisions, the Spens Committee recommended such a review even in cases of disputed administrative decisions. The Committee was of the view that even in these cases, the Minister while announcing his decision should state in a letter or by some other reasonable mode of publication, the authority under which he had exercised the discretion, the material facts of which he was satisfied and the reasons which had impelled him to his decision. Such a procedure, the Committee felt, would do away with the arbitrary and capricious exercise of discretionary power. The Committee also was clearly of the opinion that an appeal should always lie from an administrative decision on any point of law and any attempts to exclude it would mean the "direct subversion of the rule of law".

For certain reasons which it gave, the Committee was of the view that it was not practicable to entrust the task of hearing these appeals to Parliament or to the Queen's Bench Division of the High Court or to the Privy Council. It expressed the view that the existing procedures should wherever possible be modified to meet the modern needs. Administrative efficiency would not justify the relaxation of the rule of law.

Administrative Division of the High Court

28. It reached the conclusion that it was necessary to create a new division of the High Court of Justice to be called the Administrative Division presided over by a High Court Judge. Such an Administrative Division would be an appropriate and effective machinery of control. It would be part of the traditional system of courts. It would have the requisite high standing and authority. It was essential that it should be so constituted as to be able to appreciate the requirements of administration and to balance them fairly against the rights of individual citizens. The procedure to be followed should be simple, flexible and speedy. It should be informal and not bound by strict rules of evidence that normally apply in the High Court.

The Administrative Division should, in the opinion of the Committee, have the following powers:

(1) It would be entitled to call for a statement of the facts and reasons upon which the disputed decision was based.

(2) Where there has been a hearing by a tribunal, it should have the power to review the findings of fact, the reasons given by the tribunal and the Minister. These various powers of review could be exercised suitably and in accordance with the circumstances.

(3) In cases where there has not been a hearing by a tribunal before the decision of the Minister, the Administrative Division should be empowered to receive complaints from persons affected, alleging that a material fact on which the decision was based was incorrect. If a *prima facie* case was disclosed by the complaint the Administrative Division would call for evidence and determine the accuracy of the facts found by the Minister and review the reasons given by the Minister.

(4) The phraseology of subjective satisfaction adopted in a statute should not prevent the Administrative Division from reviewing a decision. It would be its function to decide whether there was any reasonable cause to support the Minister's belief within the meaning of the subjective phraseology.

(5) The Administrative Division would have power to decide all questions of law. There could be no question of exclusion of appeal on points of law from the decision of any Administrative tribunal or other administrative body.

(6) Where it is found that there has been a material error of fact or law, the Administrative Division should have the power to annul the decision or order a rehearing or to substitute new facts or reasons or recommendations.

(7) The Administrative Division of the High Court should also have the power to grant in addition to the above, any remedy which can under existing law be granted in the High Court including such remedies as can be granted only by a Divisional Court.

It would thus be clear that the most important suggestion made by the Committee was the creation of a suitable instrument of review—a new Administrative Division of the High Court—which would hear appeals on points of law from the decision of any administrative body and would also have the power to decide whether the reasons given for a decision can bear examination. It would not, however, review the actual exercise of discretion or any statement of departmental policy which would naturally fall within the sphere of control by Parliament.

29. Though the Donoughmore Committee had submitted a Report in 1932 after a thorough study of the question, much had happened during the interval of twenty-five years which had elapsed after the submission of its Report. In the post-war years, the relationship between the State and the citizen had become further complicated in view of the number of specialized tribunals that had been set up. These facts led to the appointment of a Committee presided over by Sir Oliver Franks in November 1955 for the consideration of the question of Administrative Tribunals. The Committee consisted of lawyers, Members of Parliament, constitutional specialists, former Ministers and others with a knowledge of the administrative process.

Though there was a widespread belief that tribunals set up were in substance a part of the machinery of the Government, the Franks Committee did not accept such a contention and was of the opinion that these tribunals were independent organs of adjudication. The Committee reviewed the work of over ten different tribunals set up under different Acts for specialised purposes which were beyond the competence of ordinary courts. The Committee noticed the divergence in the quality of the membership of the tribunals and in the procedures adopted by them. It expressed the view that good administration demanded not merely the attainment of the objectives of policy securely and without delay but also that the citizens be satisfied that the State was in the execution of its policies acting with "reasonable regard to the balance between the public interest which it promotes and the private interest which it disturbs".[1] In order that such a balance may be attained the Franks Committee made certain general recommendations.

Its recommendations.

30. The Committee was of the view that as far as possible, adjudications involving the administration and the individual citizen should preferably be left to the ordinary courts of law rather than to a tribunal or to a Minister, excepting where for reasons of cheapness, accessibility, freedom from technicality, expedition and expert knowledge of a particular subject, a tribunal may be considered more appropriate. The Committee set out three basic requirements for the saisfactory working of such tribunals.

(a) They should manifest openness—which requires publicity of proceedings and knowledge of the essential reasoning underlying a decision.

(b) They should show *fairness*—which calls for a clear procedure that enables parties to know their rights, to present their cases fully, and to know the cases they have to meet.

(c) They should display *impartiality*—which requires the freedom of the tribunals from the

[1]Report, 5, para. 21.

influence, real or apparent, of departments concerned with the subject-matter of their decisions.

The Committee proposed the creation of two standing councils on tribunals which would take the form of permanent statutory bodies. These councils one for England and Wales and the other for Scotland would keep the working of the tribunals continuously under review—an arrangement that would free the tribunals from the objection that they appear to be instruments of official policy rather than bodies protecting the citizen.

Finally, the committee was of the opinion that in all cases, the ultimate control in regard to matters of law should be exercised by the traditional courts.

The Franks Committee very pertinently observed: "each country seeks to work out for itself, within the framework of its own institutions and way of life, the proper balance between public and private interest. It follows that translation of the practice of one country into the procedures of another is not likely to be appropriate, although since the basic issue, the relationship between the individual and the administration, is common, there will continue to be advantage in comparative study"[1].

That also has been the object of the comparative study we have made of the procedures in France and the United States and the proposals made from time to time by responsible bodies who studied the problem in the United Kingdom.

Foreign Systems : General.

31. While each country has evolved procedures best suited to its legal system and tradition certain broad features emerge from our examination. The French system has its origin in the political and legislative set up of France. In its examination of administrative decisions both on facts and law, the French system is much wider in its sweep than the system that prevails in the United Kingdom and the United States of America. Decisions of administrative tribunals and officers which would not be open to examination in the latter countries are set aside in France. For this purpose the French citizen has to approach special tribunals operating under special laws and bound by precedents of their own.

In the United Kingdom and the United States, the recommendations made and the legislation introduced leave untouched the powers of the courts to reach and quash administrative decisions. All the three Committees which have considered the problem in England have recommended that the jurisdiction which the courts have at the moment by way of writs of *certiorari* and *mandamus* in regard to these administrative tribunals should continue and the procedure simplified so that the citizen may find it easier

[1]Report, p. 90.

to approach the ordinary courts. What they appear to have in mind are procedures somewhat analogous to those our Constitution has provided in articles 32, 136 and 226. But the Committees recommended that the existing powers of the courts should be supplemented by the creation of an administrative division of the High Court or by the conferring of a right of appeal on questions of law either to a newly constituted administrative division of the High Court or to the ordinary courts. In the United States also, the powers of the ordinary courts by way of the writ of *certiorari* and other writs remain unaffected. The legislation in the United States lays down, as we have already seen, standard procedures for observance by administrative bodies. What therefore has to be thought of in our country is not the curtailment of the existing powers of the courts in regard to administrative decisions. The continuance of these powers is essential and imperative. What is needed are supplementary and extended powers which will enable greater control to be exercised by the ordinary courts on the administrative bodies so that the rule of law will be enforced and the citizen protected.

The study of the French system by Prof. Hamson referred to above tells us how peculiarly French in its origin and development is the system which has at its head Conseil D'Etat and how unsuitable such an institution would be in England or any other country.

Nor as appears from the observations of Professor Jaffe quoted above, is the American Administrative Procedure Act a model which we can without radical modifications, copy in India.

Our problem therefore is to suggest some supplementary and effective measures which can be conveniently fitted into the pattern of our constitutional and judicial framework.

Existing position in India.

32. The provisions relating to judicial control of administrative process enshrined in articles 32, 136, 226 and 227 of our Constitution may now be examined.

Available remedies.

Article 32.

33. Article 32 which empowers the Supreme Court to issue *inter alia* suitable prerogative writs for enforcing the fundamental rights guaranteed in Part III is itself a guaranteed remedial right. A citizen whose fundamental right has been infringed can, if he so chooses, directly approach the Supreme Court without having to go to the High Courts in the first instance[1]. All actions of the administration—judicial, quasi-judicial or semi-judicial, ministerial or even purely discretionary—are within the control of the Supreme Court. The Court can by the issue of an appropriate writ quash the offending order even though the impugned action is purely of an administrative character.[2]

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[1]Romesh Thapper *vs.* State of Madras, 1950 S. C. R. 594.

[2]Dr. Ram Krishan Bhardwaj *vs.* The State of Delhi A. I. R. 1953 S.C. 318.

Article 136. 34. Article 136 confers plenary powers upon the Supreme Court and *inter alia* enables it to entertain appeals from the determination or an order made or passed in any cause or matter by any tribunal in the territory of India, other than those constituted under any law relating to the armed forces. As was pointed out by Mahajan C. J. in the Dhakeswari *Cotton Mills Case*[1], it is neither possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in the Supreme Court by virtue of the constitutional provision contained in article 136 nor is it feasible to fetter the exercise of this power by any set formula or rule.

"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 this Court to see that injustice is not perpetrated or perpetuated by decisions of courts and tribunals because certain laws have made the decisions of these courts or tribunals final and conclusive".[2]

But the power of the Supreme Court under article 32 is restricted only to cases of the infringement of fundamental rights. Article 136 would also seem to empower the court to entertain appeals only from the orders of tribunals —that is, bodies which are under an obligation to act ~~obligation to act~~ judicially or quasi-judicially.

Article 227. 35. Article 227 gives the High Courts only powers of superintendence and does not empower them to admit appeals as article 136 does. It would also appear to be restricted in its application to bodies which are under an obligation to act judicially or quasi-judicially.

Article 226. 36. The real constitutional protection of the citizen against arbitrary administrative action is article 226 which empowers the High Courts to issue any directions, orders or writs not only for enforcing fundamental rights but "for any other purpose".

In our chapter on Writs we have pointed out how largely this constitutional provision has been availed of by the citizen, particularly for the vindication of his fundamental rights. The fundamental rights conferred by the Constitution would have lost much of their significance but for this simple and quick remedy which the Constitution has provided against their infringement.

The High Courts' jurisdiction under article 226 still remains to be authoritatively defined. Will it extend to

[1]A. I. R. 1955 S. C. 65.

[2]At page 69.

purely administrative action as distinguished from quasi-judicial determination? However, it has been clearly laid down that the High Courts acting under article 226 do not and cannot sit in judgment as courts of appeal in cases where the statute invests the administrative authority with power and discretion. The Supreme Court said:

> "However extensive the jurisdiction may be" (under article 226) "it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions in view and decide what is the proper view to be taken or order to be made".[1]

Judicial decisions would appear to lay down that the courts will interfere under article 226 in cases of excess or want of jurisdiction or an error of law apparent on the face of the record or of violation of the principles of natural justice. The Court may also interfere in cases of findings of fact when these findings are based on no evidence at all or on irrelevant evidence. The courts will also interfere where the authorities have failed to comply with some mandatory provision of the law. However, it still remains to be decided whether it is open to the courts acting under article 226 to interfere with purely administrative action.

Other remedies.

37. We have also some remedies like a suit for a declaratory decree under section 42 of the Specific Relief Act or for an injunction. These though more extensive in scope than article 226 are less speedy and are therefore often valueless.

Administrative Bodies

38. The number of Indian statutes which constitute administrative authorities, purely administrative and quasi-judicial, is legion. Some of these affect valuable rights of the citizen and impose onerous obligations upon parties. These may be broadly classified as our revenue and taxation laws, labour laws and land laws. Some of them provide no right of appeal or revision even to higher administrative authorities. Others confer right of appeal and revision but these lie to the higher administrative authority and not to any judicial authority. It is only in a few cases that we find an ultimate appeal or revision given to a court of law. Finally, in a number of statutes care is taken to exclude in express terms the appearance of lawyers before the administrative bodies and to bar the courts from entertaining any appeal or revision.

It is surprising that duties of customs should be levied on sea and land frontiers under laws which leave not only the determination of the duty but the levy of penalties of confiscation and fine to administrative officers and provide an appeal and revision to superior officers, prescribing no procedure whatever for the hearing of these appeals and

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[1]Veerappa Pillai *vs.* Raman and Raman Ltd., 1952 A. I. R. S. C. page 192 at page 196.

revisions. Not infrequently under these Acts, the citizen is subjected to heavy penalties without any opportunity of a review by a judicial authority in matters of a clearly quasi-judicial nature.

39. Another class of disputes in which the validity of administrative action is frequently challenged in the courts are those in which Government servants seek redress for real or fancied violations of their constitutional safeguards or the breach of the rules regulating their conditions of service.

A large volume of case law has developed on this subject and the number of such cases are increasing. This is in part due to the growing complexity and unintelligibility of the rules which has led a judge of the Supreme Court to remark[1].....no one can be blamed for not knowing where they are in this wilderness of rules and regulations, and coined words and phrases with highly technical meanings. Instances are to be found in the Law Reports of many frivolous applications. In a number of cases the courts had however to intervene because it was found that clear injustice had been done as a result of a deliberate violation of clear and mandatory provisions of the Constitution or the service rules.

The problem presented by such petitions seeking redress in service matters serious consideration. For the reasons already stated we do not favour a curtailment of the jurisdiction of the High Courts under article 226. At the same time there is danger that if a large number of petitions of this kind continue to be filed, the High Courts may be turned into tribunals for deciding disputes between the Government and its employees.

A simplification and re-drafting of the relevant rules is very necessary. In addition we would also recommend the establishment at the Centre and the States of an appellate tribunal or tribunals presided over by a legally qualified Chairman—and with experienced civil servants as members to which can be referred memorials and appeals from government servants in respect of disciplinary and other action taken against them.

The establishment of such a tribunal or tribunals will serve a double purpose. Apart from providing a speedy remedy in genuine cases of injustice, the existence of a speaking order drawn up by a qualified tribunal will enable the courts to reject all frivolous petitions summarily entertain and only those cases where their intervention is really necessary in view of the importance of the constitutional and legal points involved.

There is also a vast field of administrative action in which an administrative authority may contravene the law

[1]Per Bose. J., K. S. Srinivasan *vs.* Union of India, A. I. R. 1958 Sup. at page 432.

without opportunity to the injured citizen to obtain redress, from any judicial authority for the unlawful action of the authority.

40. That broadly is the problem which needs a solution. In solving it we have to bear in mind some basic considerations.

Establishment of Administrative Tribunals undesirable.

It would be derogatory to the citizens' rights to establish a system of administrative courts which would take the place of the ordinary courts of law for examining the validity of administrative action. It may be that in view of certain inherent advantages like speed, cheapness, procedural simplicity and availability of special knowledge in extra-judicial tribunals, these may be useful as a supplementary system. But it will not be right to conceive them as a device to supplant the ordinary courts of law. It would be unthinkable to allow judicial justice administered by courts of law to be superseded by executive justice administered by administrative tribunals. It would be a step backward to erect in the place of deliberate judicial tribunals restrained by formal procedure and deciding according to fixed principles, off hand administrative tribunals, in which the relations of individuals with each other and with the State would be adjusted summarily according to notions for the time being of administrative officers, unfettered by any rules as to what general interest or good conscience demands. So conceived, the administrative court might well be regarded "as a court of politicians enforcing a policy, but not a court enforcing the law"—a description which Maitland gave to the Court of Star Chamber. One may in this connection use the felicitous phraseology of Mr. E. F. Woodle, President of the Cleveland Bar Association: "Justice cannot stand half free and half enslaved * * * * We cannot have in this country two systems of dispensing of justice one * * * safeguarded by restrictions and limitations and privileges which have been found to be wise and necessary through centuries of experience, and another system administered largely in disregard of our principles of jurisprudence, largely in disregard of the limitations, restrictions and privileges which our courts have found it wise and necessary to observe".[1]

Though we may imbue our administrative tribunals with a greater judicial spirit and insist upon their observance of the rules which would obtain in any system moulded on the principles of natural justice, the ultimate review must lie with our High Court judiciary. However sound and well-equipped an administrative judiciary may be, it cannot command from the public the confidence which the irremovable superior judiciary in High Courts have enjoyed for over a century and more. Any scheme of

[1]28 Journal of the American Judicature Society 118-119 : (1944) cited by Walter Cellihorn ; Individual Freedom and Governmental Restraint pp. 9-10.

administrative adjudication which has not at its apex the High Court or a High Court Judge in some manner, will fail of its purpose.

Existing constitutional remedies not to be curtailed.

41. It is of equal importance to remember that any measure we suggest and which we adopt should be supplementary and in addition to the constitutional remedies that are now open to the citizens. Their beneficial effect has, as noted elsewhere, been felt throughout the country and has kept even the highest executive constantly on the alert for fear of their action being quickly challenged in a court of law. It would be disastrous to remove this most salutary restraint on the administration. It is not surprising that suggestions for the modification of some of these constitutional remedies have been recently voiced by the executive. In our view, these suggestions must be sternly discountenanced.

If resort to these constitutional remedies results in delaying administrative action the remedy is to strengthen the Courts, for dealing expeditiously with these matters.

Summary of recommendations.

42. We shall now summarize our recommendations.

(1) The existing jurisdiction of the Supreme Court and the High Courts which enables them to examine to a limited extent the action of administrative bodies should be maintained unimpaired.

(2) The creation of a general administrative body like the Conseil d'etat in France is not practicable in our country.

(3) Decisions should be demarcated into—

(a) judicial and quasi-judicial, and

(b) administrative.

(4) In the judicial and quasi-judicial decisions, an appeal on facts should lie to an independent tribunal presided over by a person qualified to be a Judge of a High Court. He may be assisted by a person or persons with administrative or technical knowledge. The tribunal must function with openness, fairness and impartiality as laid down by the Franks Committee.

(5) In the case of judicial or quasi-judicial decisions, an appeal or a revision on questions of law should lie to the High Court. Special machinery can, if necessary, be provided to assist the High Court Judge. The suggestions made by the Spens Committee may be (adopted) in this connection.

(6) In the case of administrative decisions, provision should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs.

(7) The tribunals delivering administrative judgments should conform to the principles of natural justice and should act with openness, fairness and impartiality.

(8) Legislation providing a simple procedure embodying the principles of natural justice for the functioning of tribunals may be passed. Such procedure will be applicable to the functioning of all tribunals in the absence of special provision or provisions in the statutes constituting them.

(9) Appropriate legislation will have to be enacted to provide for tribunals to operate in the manner indicated above for the discharge of quasi-judicial or judicial functions by administrative bodies or officers, which may be entrusted to them by any legislation.



APPENDIX

The History of the Conseil d'etat

The origins of the Conseil d'etat founded by Napoleom can be traced back to pre-revolutionary France. It was modelled on the earlier Council D'-Roy. The members of the Council were a group of administrators designed to assist the Government in the formulation of policy and it was parallel to and distinct from the Council of Ministers. Originally no doubt, it was intended to act as a shield of the Government and was entrusted with the task of deciding questions of jurisdiction and preventing the ordinary courts from encroaching on the field of administration. It, however, also began from early times to entertain certain actions against the Government and has throughout maintained a distinction between its advisory and judicial functions. In view of the value of the Council as an instrument of revising Government Bills and securing justice in certain cases, it survived the restoration of the Bourbons and was continued even under the Orleans monarchy. In 1831, an ordinance was passed reorganising the contentious or judicial business of the Council. Gradually, as the prestige of the Council increased, its decisions ceased to be advisory and in 1872, executory force was given to all its judgments. At about the same time its power to decide is not unknown for ambitious men to seek a change. Younger members of the Conseil are occasionally encouraged to go on deputation for a time to the active administration or the foreign service for the time being and to return to their original position in the Conseil without gain or loss of seniority. The Council is not associated with active administration in the sense that it is not immediately responsible either for policy or the actual execution thereof but it serves to advise the administration generally on the formulation of policy and its execution. It is a dynamic body having in its personnel, people of varying ages.

Though the Council as a unit is primarily an administrative body yet its judicial business is strictly separated from the non-judicial. When the Council meets to transact its judicial business, all the members of the administrative sections excepting four, who are annually chosen to represent their administrative colleagues, are excluded from its deliberations and take no part in making the final decision. The entire Council works as one unit and there is a strong *esprit de corps* among its members, though it is divided into sections for the sake of convenience. The members of the Council engaged in executive work accept the decisions of the sections *contentieux* (the Judicial section) as their own and support it in their dealings with

the Ministries of Government. In the case of an internal dispute, the views of the section *contentieux* finally prevail and instances are not unknown when that section has annulled orders of the Council acting as a whole in administrative matters. The section *contentieux* of the Conseil d'etat, the judicial organ, is only one of the five sections into which the Council divides itself for the purpose of conducting its business but it comprises more members than the other four put together. Thus in 1953, of the 149 members on the staff of the Council, more than 80 were members of that section. Alone of the five sections, the section *du contentieux* is divided into sub-sections, nine in number. Of these, sections 5—9 deal with matters of technical and lesser importance like tax cases, disputed elections and claims against the Government arising out of accidents in which Government vehicles are involved. The other four sections deal with the ordinary judicial business. It is very easy to invoke the jurisdiction of the Council. The intervention of an advocate is not necessary and the request or petition may be drafted with extreme informality. The inquisitorial process of the court will be to it that a substantially good case is not unduly prejudiced by the lack of an able advocate.

The procedure followed in the Council is as follows:—

As soon as a petition is received in court it is numbered and is allotted to a particular sub-section, otherwise known as a *sous* section. Once a case has been assigned to a sub-section, the President of that section assigns it to a *rapporteur*, usually a junior member of that section. It is the duty of this *rapporteur* to follow to the end the case assigned to him. He studies the papers and calls for such files and papers as he may find necessary. After gathering the necessary material, he submits a report which summarises the pleadings of the parties, the evidence, the draft order which he proposes and the questions of law and fact which arise in the case. The first part is read out at the final public hearing and thereafter the parties may have their day in court. Counsel for both sides including the Government may address the court. The matter is then discussed between the members of the sub-section incharge of the case and another sub-section and the *Commissaire du Government* is present at the discussion. After the case has been discussed and the advocates of the parties have made their submissions, the Commissioner who acts as the embodied conscience of the court and is usually a civil servant in the middle rank of the hierarchy sums up the case in open court and sets out the points of law and fact involved, the contentions of the parties and finally suggests a draft order. This he does after the advocates of the parties have had their say. In effect, he charges the members of the court as a judge charges the jury. In view of the

fact that the Council is not bound by his views even on questions of law, he might perhaps be more appropriately compared to the Judge-Advocate at a court martial.

Thereafter the sections discuss the matter among themselves and an order is prepared and is given effect to.

It should be noticed that apart from this public hearing, the Council has also resort to what may be called the inquisitorial procedure. Once it is satisfied that the complainant has made out a *prima facie* case, the court does not insist upon the adversary procedure being followed. It becomes rather the duty of the court to satisfy itself as to the truth of the matter. It carries on correspondence with the Government Department in question, to ascertain the reason for any particular decision which has been taken. Basically the procedure of the court is a written and secret one. All proceedings, except the final public session, take place in private but in the presence of the parties. The filing of documents and interrogatories normally takes the place of examination and cross-examination of witnesses.

As we have already seen, counsel are permitted to appear before the Conseil d'etat. The number so permitted is very small, being limited to 60 and they are the same body of men as those who practise before the court of cassation.

Under the procedure followed by the Council, no surprise is possible as in a witness action tried in the ordinary civil courts.

Normally, before the court renders judgment in a particular case, it takes time for consideration and normally a fortnight is necessary for this purpose. But it is very rarely that a judgment is delayed in any case beyond fifteen days.

The law of the Conseil d'etat is unlike the law of the French civil courts which is based upon the civil codes; instead it resembles the English Common Law and has developed from precedent to precedent. Attempts are made by parties to rely on precedents and to distinguish one case from another. The decisions of the Council are published and reported.

32.—LAW REFORM AND LEGISLATION

1. The need for a constant scrutiny of the law by a body permanently constituted for the purpose was envisaged as far back as 1837 by Lord Macaulay in his letter to Lord Auckland presenting the first part of the Indian Code. Referring to the questions which might be raised in regard to the construction of the Code he stated:

The role of a permanent Law Commission : Views of Lord Macaulay.

> "Such questions will certainly arise, and, unless proper precautions be taken, the decisions on such questions will accumulate till they form a body of law of far greater bulk than that which has been adopted by the Legislature * * * * it is most desirable that measures should be taken to prevent the written law from being overlaid by an immense weight of comments and decisions. * * * * All the questions thus reported to the Government might with advantage be referred for examination to the Law Commission, if that Commission should be a permanent body. In some cases it will be found that the law is already sufficiently clear, and that any misconstructions which may have taken place is to be attributed to weakness, carelessness, wrongheadedness, or corruption on the part of an individual, and is not likely to occur again. In such cases it will be unnecessary to make any change in the Code. Sometimes it will be found that a case has arisen respecting which the Code is silent. In such a case it will be proper to supply the omission. Sometimes it may be found that the Code is inconsistent with itself. If so, inconsistency ought to be removed. Sometimes it will be found that the words of the law are not sufficiently precise. In such a case it will be proper to substitute others. Sometimes it will be found that the language of the law, though it is precise as the subject admits, is not so clear that a person of ordinary intelligence can see its whole meaning. In these cases it will generally be expedient to add illustrations such as may distinctly show in what sense the Legislature intends the law to be understood, and may render it impossible that the same question, or any similar question, should ever again occasion difference of opinion. In this manner every successive edition of the Code will solve all the important questions as to the construction of the Code which have arisen since the appearance of the edition immediately preceding[1].

2. Speaking of the need for constant revision and re-enactment of the various laws, Sir James Stephen stated

[1]Cited by Acharya : Codification (Tagore Law Lectures), pp. 142-143.

Need for periodical revision of laws.

in 1872 that such a course was "..... as necessary as repairs are necessary to a railway. I do not think that any Act of importance ought to last more than ten or twelve years. At the end of that time, it should be carefully examined from end to end, and whilst as much as possible of its general frame work and arrangement are retained, it should be improved and corrected at every point at which experience has shown that it required improvement and correction. .....If you want your laws to be really good and simple, you must go on re-enacting them as often as such a number of cases are decided upon them as would make it worth the while of a law book seller to bring out a new edition of them[1]".

3. Nor is the need for such constant scrutiny and revision confined to countries with a codified system of laws. The need has also been felt in England and other countries where a great part of the law is unwritten. It was in 1836 that Lord Langdale, Master of the Rolls, emphasised the importance of constant revision of the laws. He said:

Position in England.

> "It will be admitted that it is the first duty of Government to provide for the due administration of justice * * * *. But justice * * * * depends on the law, and it becomes necessary for the Government to take care that the law, on which justice in its practical application depends, is in as good a state as the advancement of knowledge, the state of society and other circumstances will permit. The constant fluctuation of all human affairs * * * makes it absolutely necessary * * * that such corresponding changes as wisdom and experience may sanction should from time to time be made in the law[2]".

After deploring the fact that the Chancellor, upon whom the duty devolved, found it utterly impossible to perform it and the absence of a Minister able to bestow time on the subject, he went on to say:—

> "Every Government has struggled with the difficulty, and at times even attempted to dissemble it; but the present arrangement of the offices does not afford to the executive Government and to the legislature such regular and constant information respecting the state of the law, the proceedings and situation of the courts, and all other matters relating to the administration of civil and criminal justice, nor such assistance in the preparation of new laws, as may afford the best guide to safe and useful improvement, and the most secure check to rash and ignorant proposals to change[3]".

Periodical revision necessary in India.

4. In our country, the third Law Commission presided over by Lord Romilly again emphasised the need for a

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[1]Gazette of India Supplement, May 4, 1872, p. 534.

[2] & [3] Cited in the Law Quarterly Review, Vol. LXIX 1951 at pp. 60-61.

vigilant scrutiny of the law from time to time for the purpose of resolving the difficulties that have been noticed in its working and with a view to the clarification of all matters of doubt. The Report stated:

> "For the prevention of this great evil the enacted law ought, at intervals of only a few years, to be revised and so amended as to make it contain as completely as possible, in the form of definitions, of rules, or of illustrations, everything which may from time to time be deemed fit to be made a part of it, leaving nothing to rest as law on the authority of previous judicial decisions. Each successive edition after such a revision should be enacted as law, and would contain, sanctioned by the Legislature, all judge-made law of the preceding interval deemed worthy of being retained. On these occasions, too, the opportunity should be taken to amend the body of law under revision in every practicable way, and especially to provide such new rules of law as might be required by the rise of new interests and new circumstances in the progress of society".[1]

Need for special body for law revision.

5. The question of the appropriate machinery which could be entrusted with this important duty of revision of the law from time to time was considered by Acharya in his Tagore Law Lectures for the year 1912. He stated:

> "A Permanent Law Commission or a Ministry of Justice is essentially necessary for further codification in this country for various reasons: (a) If codification is to be done well, it must be done by experts whose time is valuable. The case is not as though the Indian Legislative Department had nothing to occupy itself with except codification. 'Even if it were to leave this work undone it would still remain the hardest worked of all the Indian departments. It could not do more without strengthening its staff or seeking extrinsic aid".[2] The Permanent Law Commission will render this extrinsic aid. (b) Such a Commission or Ministry of Justice will supply the improved machinery to work new materials into the codes during the interval between periodical revisions. (c) Such a Commission is necessary for receiving complaints against the law, because cases of hardship continually occur that never enter courts of Justice, and defects in the law are often suggested to lawyers in private practice, by cases neither in court nor in hand, which they forget in the hurry of business, but which might be made available for law reform if there is a Commission to which they might be notified".[3]

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[1]Report dated 23rd June, 1863, Gazette of India Extraordinary, July 1, 1864, p. 56.

[2]Ilbert's Legislative Methods and Forms pp. 151-152.

[3]Tagore Law Lectures: Lecture IX Feasibility of Further Codification in British India pp. 314-315.

6. Efforts have been repeatedly made during the British days, to set up in India, a body designed to bring about the needed revision of the law.

Earlier attempts. Statute Law Revision Committee.

As early as 1921, a Statute Law Revision Committee consisting of the then President of the Council of State as Chairman and six members of the Legislature was established. Its task was limited to preparing for the consideration of the Government "measures of consolidation and clarification as might be necessary to secure the highest attainable standard of formal perfection in the Statute Law of India." It was also intended that the Committee should be a permanent and independent body which would also assist the Government in effecting necessary reforms from a purely legal point of view. The Committee continued to work till about 1932. It succeeded in consolidating the law relating to merchant shipping, criminal tribes, succession, forests and torts; but, gradually, the Committee ceased to function effectively. The Government did not avail of the services of this Committee when they took up more important measures for codification and consolidation.

Proposals for creation of such a body.

7. In 1925, Dr. Gour moved a Resolution recommending to the Governor-General-in-Council to take steps for the appointment of a Law Commission. The proposal, however, failed to find support. In 1947, a Resolution was moved by him in the Constituent Assembly to the same effect, but it was withdrawn on the assurance given by the then Law Minister.

Recommendations of the Rankin Committee.

8. The Rankin Committee referred to the need for the constant revision of laws in the following words:—

> "For our purposes it is beyond question that the most useful recommendation to be made is that the codes we have should be revised carefully and at frequent intervals. Here there is much to be gained and daily difficulties can be removed. The best code must necessarily produce a crop of new litigation. The existing codes cover a very large area and in amending them it is possible to know within limits what one is doing".[1]

Law revision abroad.

9. Measures have been taken in other countries to constitute bodies for the purpose of revising the laws from time to time.

In New York State.

A Law Revision Commission, a full-time salaried body, was set up in New York as far back as 1934. It appears to have done extremely useful work in examining the laws already enacted and has, from time to time, made reports recommending a large number of legislative changes. Indeed, the legislative machinery of the State has not found the time to carry out all the suggestions made by the Commission which is still functioning.

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[1]Civil Justice Committee Report, p. 536, para. 5.

In the United Kingdom.

A Law Revision Committee was set up in the United Kingdom in the year 1934. Its function was "to consider how far, having regard to the statute law and to judicial decisions, such legal maxims and doctrines as the Lord Chancellor may from time to time refer to the Committee require revision in modern conditions". In practice, however, the Committee, like its post-war successor, chose subjects for its consideration with the approval of the Lord Chancellor and enunciated certain recommendations most of which were accepted and enacted into statutes.

A similar Committee called the Law Reform Committee was appointed in 1952 "to consider, having regard especially to judicial decisions, what changes are desirable in such legal doctrines as the Lord Chancellor may from time to time refer to the Committee". Its labours have resulted in the enactment of some legislation. It may be mentioned that the activities of those committees were not confined to suggesting changes in the existing laws. It was open to them to suggest legislation in fields not covered. Suggestions of this character made by them have also been put on the Statute Book.

Function of such a body-establishment desirable.

10. It is unnecessary to emphasise the imperative need for the establishment of a permanent body of the nature indicated in India not only for the purpose of revising laws in the manner discussed above, but for the purpose of consolidating, co-ordinating and re-modelling them in the light of modern legal concepts.

Composition of this body.

11. Such a body will have to consist of experts who will devote continuous attention to this arduous work. Most of our statutes have not undergone substantial revision or examination for many years, and the task involved in revising them and in incorporating into them the views judicially expressed from time to time can only be performed by a competent body of persons of experience giving their entire attention to it. As observed by Prof. Goodhart: "Law Reform, if it is to be properly done, is not the work of a few spare afternoons".[1]

Bodies at State level.

12. Bodies of this character will have to be appointed at the State level also in order that State legislation may also be subjected to scrutiny from time to time. In this connection, we refer with satisfaction to the appointment by the State of West Bengal of a Statute Revision Committee constituted in 1952 which has since been reconstituted as the Law Commission consisting of a Chairman and a member.

Scrutiny of future Legislation.

13. So far, we have dealt with the question of the revision of laws already made. Of no less importance is the question of the scrutiny of (a) legislation which may from time to time be undertaken by Parliament, and (b) delegated legislation.

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[1]Presidential Address to the Holdsworth Club on Law Reform, cited by R. E. Megarry, Canadian Bar Review 1956, page 108.

Statutory Legislation.

14. It is widely recognised that modern conditions have led to an enormous growth of legislative activity. Within the last few years, Government has been called upon to legislate upon a variety of topics in an atmosphere of haste to deal with situations and contingencies that did not arise in the pre-independence period. Without reflecting in any manner on the patience and ability of our legislators, it must be admitted that laws have been passed which, with more leisure for scrutiny, would have avoided many defects subsequently found to exist and which have called for amending Acts. Cases have frequently arisen where a statute or a part of it has been struck down as being unconstitutional by the High Court or the Supreme Court. The point of view from which the legislature scrutinizes a statute is entirely different from that of a body of legal experts. One cannot, therefore, expect Parliament to be in a position, even if it were so inclined, to examine the contents of each statute and its effect in such a manner as to ensure that every part of it lies within the limits of the legislative power or that it does not offend the Fundamental Rights guaranteed by the Constitution or that it is otherwise a sound and workman-like piece of legislation.

Deficiencies of the present system.

Suggested measures.

15. It is in our view, practicable to provide for a considered scrutiny of legislation undertaken by Parliament. Legislation may for this purpose, perhaps, be divided into legislation which is emergent and legislation, the enactment of which can wait for a time. It is obvious that it would be difficult to provide scrutiny by an expert body of legislation which is of an emergent character. Such legislation will have to be examined by the Law Ministry and the Ministry concerned with the aid of their own staff in order to see that it conforms to constitutional requirements and that it is in other respects proper.

Emergent legislation : scrutiny not possible.

Other major legislation : prior scrutiny recommended.

16. However, in regard to fresh major legislation, as distinguished from routine or amending legislation, the enactment of which can wait for scrutiny by an expert body, we would recommend that it should, as a rule, be sent for examination to the expert body, whose creation we have recommended, before its submission to Parliament. Such a course has been adopted with advantage in some legislation which has recently and in the past been passed by Parliament. We have in our minds certain provisions of the recent Central Sales Tax Act (LXXIV of 1956) and legislation like the Partnership Act and the Sale of Goods Act enacted several years ago. The adoption of such a course will avoid pitfalls and shortcomings such as have been brought to light by the decisions of the courts in regard to several statutes.

Delegated legislation.

17. As an inevitable consequence of the increasing amount of legislation, the legislatures have found it necessary to confer upon specified authorities the power to make rules, regulations or bye-laws for the purpose of carrying out the object of the enactments. Such delegated legislation

largely exceeds in quantity the amount of direct legislation and is necessary for conserving parliamentary time for the discussion of matters of principle and importance, leaving the making of detailed regulations to the departments concerned. In framing these regulations, very wide and general powers are exercised by the departments; the only restraint on the discretion of the department in framing them is that they should not be *ultra vires* the parent Act. No adequate machinery is, however, provided for the scrutiny of the regulations so framed nor is sufficient care bestowed on their drafting.

Need for scrutiny.

18. Not a few of the petitions filed under article 226 of the Constitution in the High Courts have raised the question of the *vires* of such rules. Frequently, the High Courts have been called upon to pronounce judicially upon the validity of subordinate legislation and a great deal of their time is taken up in determining its validity and even its scope. It is obvious, therefore, that a great amount of judicial time can be saved if delegated legislation made by these subordinate authorities were made subject to an independent and expert scrutiny before it is permitted to take effect.

Prior publication.

19. While conferring powers to make rules or regulations on subordinate authorities, some of the statutes require that these rules should be published before they can be brought into force. Other require that these rules should be placed on the Table of the Houses of Parliament or the State Legislature after publication; some others empower the Legislature to alter or vary them after they have been placed on the Table of the House. In some cases, while power to alter or vary is not specifically given, the rules or regulations are required to be placed before the House for a specified period before they come into operation.

Parliamentary scrutiny.

20. The requirement that the rules should be placed on the Table of the House was presumably intended to ensure that the members of the Legislature would examine those rules and if they found that those rules exceeded the authority of the statute itself or contained provisions which conflicted with the constitutional provisions and protections or were otherwise undesirable, action could be taken by a member to have the matter set right. It was thus left to the individual enterprise of a member of the Legislature to take upon himself this difficult task of examining the rules. It may be broadly stated that this expectation was not generally realised.

21. We may, however, draw attention to an important step taken towards surmounting this difficulty by the Lok Sabha in providing by its Rules certain salutary procedures for the examination of statutory rules. The Sabha has established a Committee called "The Committee on Subordinate Legislation" for the scrutiny of orders. Rule 271 of the Rules of Procedure and conduct of business of

The Lok Sabha Committee on Subordinate Legislation.

the Lok Sabha gives a wide definition of an "order" which includes statutory rules. Rule 272 provides that after each order referred to in Rule 271 is laid before the House, the Committee shall, in particular, consider:

> "(i) whether it is in accord with the general objects of the Constitution or the Act pursuant to which it is made;
>
> (ii) whether it contains matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
>
> (iii) whether it contains imposition of any tax;
>
> (iv) whether it directly or indirectly bars the jurisdiction of the courts;
>
> (v) whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;"
>
> ..... and
>
> "(ix) whether for any reason its form or purport calls for any elucidation".

The Committee was nominated by the Speaker in December, 1953, and it has submitted a number of reports. All rules required to be laid on the Table of the House are examined by the members of the Committee with the aid of notes prepared by the Secretariat. Whenever the members feel that a particular order transgresses the limits of propriety, they formulate questions to be answered by the Ministry or Department concerned; the questions are then consolidated and a questionnaire is prepared by the Parliament Secretariat. The Committee is authorised to examine on oath, if necessary, witnesses representing the department which has issued the rules in question.

The Committee has recommended that the lack of uniformity in the various statutes in regard to the manner in which rules were to become operative and to be laid on the Table of the House should be avoided and that in all future enactments conferring rule-making powers on Government, provision should be made in express terms that the rules should be laid on the Table of the House for a uniform total period of thirty days before the date of their final publication and that they should be subject to such modifications as the House may find necessary.

Its functioning. The position in the States.

22. There is no doubt that the Committee constituted by the Rules of the Lok Sabha has performed and is performing very useful functions and keeps subordinate legislation under control. The activities of the Committee have earned the commendation of Sir Ceceil Carr, an authority on subordinate legislation, who has described its work as that of "a rigorous and independent body".[1] Committees on similar lines have been constituted by several of the State

[1]Public Law, 1956, page 218.

Legislatures. We recommend the establishment of a similar Committee by all the State Legislatures.

Prior scrutiny of rules by an expert body

23. The question, however, still arises whether a scrutiny of the regulations by an expert body would not be desirable. However close the scrutiny by the Parliamentary Committee may be, it cannot subject the rules to an examination such as a qualified body of experts can give. Various points would be looked at by the expert committee which the Parliamentary Committee would be unlikely to consider. We would, therefore, recommend that whenever possible, the more important rules made under an Act should be submitted for prior scrutiny to the permanent body we have recommended. A Committee of this body may be entrusted with the task of examining delegated legislation before its publication and before it is laid on the Table of the House. The Committee will, undoubtedly, have to be assisted in its deliberations on the rules by a representative of Government in the concerned department. Such association is necessary in order that the Committee may have before it the reasons and the point of view which have led to the formulation of a particular rule or rules. The procedure we are recommending need not cause any delay in the publication of the rules or in their being laid on the Table of the House provided a proper procedure is evolved for the examination of these rules by the Committee of the permanent body.

The position in the United Kingdom.

24. In the United Kingdom, a Committee known as the Select Committee on Statutory Instruments is constituted by the House of Commons. Its duty is to consider every statutory rule or order laid in draft before the House upon which proceedings may be or may have been taken in either House (*i.e.* all rules which require to be confirmed by a resolution of the House, or can be annulled in like manner). The Committee considers the rule or order from points of view similar to those outlined in the Rules of Procedure of the Lok Sabha.

The Statutory Instruments Act.

25. As a result of the recommendations of this Committee, the Statutory Instruments Act of 1946 was passed in England. This Act applies to every statutory instrument and includes every order-in-council and any form of subordinate legislation made by a Minister; and it provides for the publication, printing and sale of copies of such instrument. It requires that copies of an order which is required by any law to be laid before Parliament shall be laid on the Table of the House as required prior to its coming into operation except in cases where it is necessary to bring it into force before copies are so laid, in which case, reasons have to be given to the House. The House is competent to present an address for annulment of the order within forty days in cases where the statutory instrument is made expressly subject to annulment by Resolution of either House. In other cases, the instrument is not to come into force until after the expiry

of forty days from the date of its being laid before the House. This Act ensures that statutory instruments are properly published and made available to the public and that no penalty for the contravention of a statutory instrument shall be incurred unless such publication is made. It seems to us that a general provision of this nature could with advantage be included in our General Clauses Act.

Drafting of legislation.

26. The process of law making assumes far greater importance in a democratic State, particularly, in a democratic welfare State. The laws tend to become more and more numerous covering, as they do, most phases of a citizen's social and industrial activities. Very often, legislation is hastily conceived and still more hastily prepared. Finally, it is deliberated upon, amended and adopted in large committees and assemblies which are not places suitable to the formulation of precise ideas and to the framing of accurate phraseology.

Increase in legislation.

27. One may refer to the tremendous increase in legislative output during recent years. Thus, while from 1933 to 1940 only two hundred and forty-nine Acts were passed by the Central Legislature, the number of Acts passed by Parliament during the last eight years is as large as five hundred and eighty. In addition, several ordinances, regulations and President's Acts have also been promulgated. Most of the Acts are followed by the framing of a multitude of rules and regulations under them.

There has been heavy legislative activity in the States also. Before the recent reorganization of the States, about twenty-four State legislatures were occupied with making laws in the erstwhile Part A, Part B and Part C States, and their legislative output during the last few years has been truly colossal.

Burden on the draftsmen.

28. With such mass legislation continually on the anvil, the problem is to devise measures which will keep the stream of law clear and pellucid. What can be done to make these multitudinous laws brief, clear, precise and free from contradictions and ambiguities? The increased legislative activity has undoubtedly imposed a heavy burden upon those who are entrusted with the task of drafting legislation. An Act generally lays down only the broad policy of the law. For implementing its provisions, rules and regulations have usually to be made. The drafting of such subordinate legislation entails an even heavier burden on the draftsmen.

The importance of the role of a draftsman in the present set-up cannot be over-emphasised. It has been said that the draftsman is to the legislatures and the Governments what the pen is to the poet and the brush to the artist.

29. Our draftsmen seem to have stood the stress to which they have been subjected not too badly. Quite a large number of our Acts and the rules framed under them have been subjected to judicial scrutiny during the last few years. Though they have not been generally found defective, cases have not been infrequent where the courts have commented on "bad drafting", "looseness of expression" and "not happily worded" enactments and rules. That legislation is often hastily conceived and ill-drafted is shown by the large number of occasions on which soon after the passing of the principal Act, the Government has to come forward with an amending Act to make provision for the omissions and the defects in the principal Act. Out of the total number of four hundred and three Acts (this figure excludes the one hundred and two Appropriation Acts, Finance Acts and the like) passed during the period 1950-56 by Parliament, not less than 217 were amending Acts. It is not unlikely that quite a few of these were intended to rectify defects in the principal Acts. Defects in drafting.

30. In justice to the draftsman, it must, however, be said that these defects are not always his responsibility. So hastily has legislation sometimes to be prepared that he is asked to be ready with a Bill in a matter of days or even hours. Often enough he has to work on the barest outline of policy and clothe the skeleton himself. What is worse is that the draft Bill prepared by him undergoes in the legislative process changes (about which he is not consulted) at the hands of those who think that they know the art of drafting better. Reasons for defects.

31. We are of the view that in the matter of preparing legislation two things are essential. Firstly, the proposed legislation should be well considered. For this purpose, sufficient time should be given to the draftsmen and the administrative officials to deliberate upon all its implications so that they may take into account all the possible circumstances and situations which ought to be provided for by the legislation. Secondly, our draftsmen should be well trained and should also be persons equipped with "wide knowledge and a great mastery of language". They should be capable of having a "precise conception of the objects desired and to express those objects in unambiguous phrases". Essentials. Adequate time; trained draftsmen.

32. The Government of India have recently issued a memorandum on the "Preparation and Passing of Bills". It contains detailed rules to be observed and instructions to be followed by the administrative Ministries with a view to ensuring that the draftsmen get adequate instructions, time and material for preparing the Bills. The first stage in the preparation of a Bill is the formulation of the legislative policy. This is a matter that has to be settled Preparation of Bills.

Hasty drafting.

Inadequate instructions.

by the administrative Ministry in the light of administrative, financial, political and other considerations. There has been a general complaint, very strongly voiced, at the recent Conference of All India Draftsmen that the administrative Ministries seldom apply their minds in determining the legislative policy, and instead of giving precise instructions to the draftsmen, send sketchy notes, not clearly indicating the policy, and expect the draftsmen to draft the Bill within a short time for presentation to Parliament.

Legislative programme to be planned.

33. We are of the view that what is really needed is an adequate advance planning of the legislative programme. In emergencies, of course, legislation may have to be framed at short notice, but normally one should imagine that the expected programme of legislation would be settled at least a year ahead. We are informed that, in England, official draftsmen refuse to draft Bills if they are not mentioned in their scheduled list; and that the Government not infrequently has to request the members of the Bar to get their Bills drafted on payment of fabulous fee.[1] If the programme of legislation is settled well in advance not only would greater opportunity be afforded for the proper consideration of the proposed legislation by the administrative Ministry, but it will also ensure all possible material facilities, instructions and advice being given to the draftsmen. A great deal depends upon the care and skill with which the draftsman is given instructions. He has to be given the whole of the legislative proposals in full detail and has to be acquainted with the complete background of the proposed legislation. Apart from the definite legislative policy, the draftsman should have ample time to discuss matters with the officials of the administrative Ministry concerned who should be readily available for consultation.

Proper instructions to the draftsman.

Procedure in preparing legislation.

34. We understand that the procedure at the Centre, when it is decided to undertake legislation, is as follows:

> Matters involving legislation have to be first brought before the Cabinet for decision. If the Minister in charge of an administrative Ministry decides after consulting the Ministry of Law that legislation on any particular topic should be sponsored in Parliament, he causes a self-contained summary setting out the facts and the legislative measures proposed to be prepared. This summary is vetted in the Ministry of Law before submission to the Cabinet for approval. The summary is expected to be drafted in a manner so as to fully bring out the need for legislation and the implications of the proposed legislation. If the Cabinet approves the proposed legislation, the Ministry which initiated the legislative proposal, prepares an office memorandum indicating

[1]Proceeding of the All India Legal Draftsmen's Conference, February, 1958.

sufficiently the grounds on which it has been decided to legislate. This memorandum is sent to the Ministry of Law for taking steps for drafting the Bill for introduction in Parliament. It appears that notwithstanding these rules, in a large number of cases such memoranda are not furnished to the draftsmen, possibly owing to the lack of trained officials in the administrative Ministries. The result is that the drafting of Bills is made very difficult. We believe that the procedure followed in the preparation of Bills in the States is similar. What we wish to emphasize is that to achieve better results, it is imperative that full and adequate instructions should be given to the draftsmen in time so as to enable them to do justice to their task.

Parliamentary amendments.

35. When a Bill is before the Legislature, it frequently happens that the Government accepts amendments proposed by the members. Members of Parliament may not always realize the full legal implications of the amendments proposed by them. It is, therefore, necessary that such amendments, before they are finally accepted, should be thoroughly examined by the draftsmen who should not be hustled to produce drafts of such amendments at a moment's notice. Sufficient time should be given to the draftsmen to scrutinise them.

Circulation of Bills for eliciting opinion.

36. We are also of the view that the drafts of all important Bills, unless they are urgent, should be circulated to the High Courts, Bar Associations and the interested members of the public for eliciting opinions.

Drafting in Pairs.

37. We may also draw attention to a small but important step in the procedure of preparing a draft Bill. We understand that in England, draftsmen usually work in pairs. Working together they get an opportunity to discuss the draft each of them has prepared and to exchange ideas and to point out the errors or omissions, if any, in the drafts. We think this is a very useful practice which may be advantageously adopted in our country. It is bound to reduce errors and defects in drafting.

Training of draftsmen.

38. The need for the training of our draftsmen cannot be over-estimated. Our draftsmen are daily being called upon to shoulder an ever-increasing burden. They are expected to have both imagination and clarity of thought and, as far as possible, some knowledge of the subject-matter with which they deal. They cannot, of course, be expected to be experts in every field of knowledge; but, whenever they are required to draft legislation concerning a technical subject, the concerned administrative officials are expected to instruct them suitably. Nevertheless, it is necessary that the draftsmen should have the art and the requisite experience of stating the formal law in precise and unambiguous language, so as to bring out clearly the true intention of the legislature. Drafting is an art which is cultivated and acquired only after considerable

experience of actual drafting. Initial training at the hands of experienced draftsmen is essential to the newcomer. We understand that this matter was discussed at the recently held All India Conference of Draftsmen. The conference considered two proposals in this regard, namely, (1) starting of a training school for draftsmen and (2) the revival of the "attache system". It was suggested that if a school were started, junior draftmen from States could be trained for a period of one or two years in the school under the guidance of some trained draftsmen. Such a scheme would, however, be very expensive, and we are not quite sure, if a suitable number of trainees could be spared by the States every year who could be usefully absorbed in the State service after training.

School for drafting not feasible.

Another method : the attache system.

39. We think that the second alternative, *viz.*, the "attache system" under which junior draftsmen from the States would be deputed to the Ministry of Law for training would be a less expensive measure. Normally, such training is given for six months. We are, however, of the view that such a short period is totally inadequate for imparting the requisite training to the States' draftsmen. The period of training should be longer, at least twelve months, and, during this period, the States' draftsmen should be asked to try their hand at drafting and to produce drafts of Bills under the guidance and instructions of senior draftsmen of the Union Government. We believe that a period of one year's intensive training in the Law Ministry, would greatly help in meeting the increasing needs of the States for trained draftsmen.

Modifications.

Training abroad.

40. But the Law Ministry has itself to be adequately equipped with competent draftsmen who can do justice to the drafting of Union legislation, both substantive and delegated, and help to train draftsmen from the States. We suggest that arrangements be made by the Union Government to send their rising young draftsmen for training under the Parliamentary draftsmen in England.

It is true that the perfect statute has never been written and never will be. The utmost that a draftsman can do is, perhaps, to try to reduce doubts and ambiguities to a minimum. The success of the draftsman can be measured only the extent to which he achieves this end. We believe the measures which we have suggested will, to some extent, help him towards this goal.

Summary of recommendations.

41. Our recommendations with regard to the periodical revision of law and the drafting of legislation can be summarised as follows:—

(1) There should be a permanent body or Commission at the Centre charged with the duty of periodically revising Central enactments in the light of developments in law and practice and for consolidating and remodelling them in the light of changed conditions and fresh legislation.

(2) If this work is to be properly done, this body should consist of fulltime members.

(3) Similar bodies should be established in the States for a similar purpose.

(4) Whenever Government proposes to undertake fresh legislation on a matter which is not emergent, it should refer the proposals for examination by the expert body whose establishment has been recommended.

(5) The legislative programme of the Government should be adequately planned in advance so that the draftsman is given sufficient time for preparing proper Bills.

(6) Generally, before important Bills are introduced, they should, unless they are of an emergent character, be circulated to the public, the courts and the Bar Associations for inviting criticisms and opinions.

(7) Full and adequate instructions should be given to the draftsmen before they are asked to draft Bills.

(8) As far as possible, the English practice of draftsmen working in pairs should be adopted in India.

(9) When amendments are moved and accepted in Parliament, the draftsmen should be given sufficient time for scrutinising and reshaping them.

(10) Delegated or subordinate legislation which is likely to prove difficult should also be referred to the permanent body of experts for prior scrutiny before being brought into force.

(11) Committees similar to the Committee of the Lok Sabha on subordinate legislation should be established in all States.

(12) Provisions similar to those contained in the English Statutory Instruments Act of 1946 should be incorporated in the General Clauses Act.

(13) Steps should be taken to ensure that the draftsmen at the Centre and in the States receive adequate training.

(14) Draftsmen in the States should be trained in the Law Ministry for a period of one year.

(15) Suitable draftsmen may be deputed by the Union Government to undergo training in England.

33.—ORGANISATION OF CRIMINAL COURTS

Classes of criminal courts.

1. The hierarchy of criminal courts has remained practically unchanged since the enactment of the Criminal Procedure Code in 1898. The provisions of the Code control the working of these courts down to the minutest detail. Some slight variations have been introduced in those States where the executive has been separated from the Judiciary. These details have been dealt with in a separate chapter and do not require to be specified here. The following are the existing classes of criminal courts:—

(1) High Courts.

(2) Courts of Session (including Additional and Assistant Sessions Judges).

(3) District Magistrates.

(4) Magistrates of the First, Second and Third Class.

(5) Presidency Magistrates.

(6) Honorary or Special Magistrates.

(7) Panchayat Courts.

The panchayat or village courts are constituted by special Acts.

High Courts.

Original jurisdiction.

2. Of all the High Courts, only those of Calcutta, Madras and Bombay exercised ordinary original criminal jurisdiction. The High Courts of Madras and Bombay have, however, recently been deprived of this jurisdiction by the creation of sessions courts at the seats of the High Courts. All offences triable by a court of session arising within the ordinary original civil jurisdiction of these two High Courts are now tried by the courts of session established for the purpose, namely, the City Sessions Court, Madras and the Court of Session for Greater Bombay. In the State of West Bengal also, Act XX of 1953 has been passed creating a City Sessions Court for Calcutta for the trial of offences triable by a court of session arising within the ordinary original civil jurisdiction of the Calcutta High Court. This Act, however, lays down that certain of the more serious offences, that is, those falling under sections 131—134, 302, 307, 396, 468 and 477-A of the Indian Penal Code and abetments of and attempts to commit these offences should continue to be tried by the High Court. This Act, though passed in 1953, was brought into force by a notification of the Government only early in 1957. The High Court at Calcutta, therefore, exercises ordinary original criminal jurisdiction within the limits of its ordinary original civil jurisdiction in respect of the offences set out above.

3. All the High Courts possess both appellate and revisional jurisdiction under the Code. Appellate and revisional jurisdiction.

4. Normally, a sessions division is constituted and a court of session presided over by a sessions judge is established for every revenue district. In some parts of the country, however, a sessions division is constituted for more than one revenue district. The State Government may appoint additional sessions judges or assistant sessions judges to preside over such Courts if the volume of work makes it necessary. Their powers are defined in the Code. It should be noted that, barring cases falling under section 198-B, Criminal Procedure Code, Sessions Courts have no power to take cognizance of and try cases other than those committed to them by the magistrates. But they exercise both appellate and revisional jurisdiction to the extent provided by the Code. Sessions courts. Their jurisdiction.

5. Except in those States where the separation of the executive from the judiciary has been effected resulting in a slight modification of the pattern of the hierarchy of courts of magistrates, the district magistrate is the head of the magistracy in the district. All magistrates of the first, second and third class, including magistrates of the first class specially empowered under section 30 of the Criminal Procedure Code and honorary or other special magistrates and even additional district magistrates are subordinate to him. Apart from the statutory duties laid upon him by the Criminal Procedure Code and other enactments, the district magistrate's principal function is to ensure the proper working of the magisterial machinery His supervisory duties are by no means the least important though, in the States where separation of the judiciary from the executive has not been effected, they are rarely discharged in a satisfactory manner. Magistrate's courts. The district magistrate.

6. Under the control of the district magistrate, a large number of stipendiary or honorary magistrates of the first, second or third class function, who between them dispose of the bulk of the criminal work. The powers of these magistrates are described in detail elsewhere. Generally speaking, the lower class of magistrates deals with comparatively minor offences, whether under the Indian Penal Code or under other special or local law. The more serious offences are dealt with by the superior magistrates, or in appropriate cases committed to the court of session for trial.

7. Presidency magistrates are appointed in the three towns of Calcutta, Madras and Bombay for the trial of all lesser offences, that is, other than those triable by the court of session or the High Court in the presidency towns. These presidency magistrates are not superior to magistrates of the first class in so far as the powers conferred upon them by the Code are concerned; but they enjoy certain Presidency magistrates.

privileges, such as the right of recording evidence in a condensed form. The limits of the non-appealable sentences that can be passed by them are higher than those applicable to first class magistrates and even to courts of session. Presidency magistrates can, under the Code, commit cases to the High Court or the sessions court for trial.

Honorary magistrates.

8. In addition to the various classes of magistrates appointed by Government who hold judicial posts under the State, the State Government is authorised under section 14 of the Criminal Procedure Code to confer upon any person who holds or has held any judicial post under the Union or the State or possesses such other qualifications as may, in consultation with the High Court, be specified by it, the powers of a magistrate in respect of particular cases or categories of cases or generally in regard to cases in any local area. Such magistrates are called honorary or honorary special magistrates.

Their role.

9. Though the power under this section has been exercised fairly freely, the practice of appointing honorary magistrates appears to have been given up in some States in recent years. The honorary magistrates are intended to give relief to the stipendiary magistrates in their work; most of the work entrusted to them is of a petty type which does not require to be dealt with by a trained judicial officer and which would needlessly clog the files of the stipendiary magistrates. The institution of honorary magistrates is also helpful as a method of associating the public with criminal judicial administration. In practice, these magistrates are appointed where the volume of criminal work is very large and the regular magistracy feels the need for additional help. As the appointment of a sufficient number of paid magistrates in some areas would impose a heavy financial burden upon the State, suitable persons are chosen and appointed in those areas to work as Honorary Magistrates.

Extent of the system of honorary magistrates.

10. In the States of Assam, Madhya Pradesh, Mysore, Orissa and Rajasthan, the institution of honorary magistrates is not in vogue. In the Punjab, the system has been discontinued, though it continues to prevail in the Delhi State area.

In Uttar Pradesh, the honorary magistracy has helped to expedite the disposal of criminal cases and to relieve the congestion in criminal courts. They dispose of nearly twenty-five per cent. of the criminal work in the State.

In U.P.

In 1956, there were three hundred and fifty-seven honorary magistrates in the State of Uttar Pradesh. Some of these magistrates sit singly as honorary special magisrates and the rest in Benches. Important police cases are not, as a rule, sent to these magistrates for trial; but complaint cases of less importance and petty cases under the various local and other Acts are disposed of by them. The Government

of Uttar Pradesh has stated that the duties performed by these magistrates, if entrusted to stipendiary magistrates would cost the exchequer several lakhs of rupees every year.

In Madras.

In the State of Madras also, these honorary magistrates have served a very useful purpose. According to the chief presidency magistrate, Madras, in the year 1956, out of a total of two lakhs of cases, the honorary magistrates disposed of one lakh thirty-two thousand and odd cases. The problem in large towns is the extremely large number of petty cases which calls for disposal; the task of finding the necessary number of honorary magistrates in such places is simpler inasmuch as retired judicial officers and other capable persons are more easily available there than in the mofussil.

The Code contemplates two classes of honorary magistrates special and bench magistrates. Men of greater experience can be appointed to sit singly whereas others can be empowered to sit in benches.

Appointment and training of honorary magistrates in U. P.

11. We may here refer to the Rules framed by the Government of Uttar Pradesh in regard to the appointment of honorary magistrates. Appointments are made by the State Government on the recommendation of the district committees of which the district magistrate and the district and sessions judge, one member of the Bar elected by the District Bar Association and six non-officials not being lawyers, are members. Certain qualifications are prescribed. Particular stress is laid upon the reputation of the person appointed and his freedom from pecuniary embarrassment. What is more important to notice is that these rules provide for a short period of training of about three months to a person appointed for the first time as an honorary magistrate. After familiarizing himself with the Penal Code, the Criminal Procedure Code and the Evidence Act under the guidance of a senior stipendiary magistrate, he has to watch the progress of trials in courts, to take notes of evidence, and to write out judgment for the approval of the magistrate. We have not been informed how this system of training has worked; at any rate, the authorities have endeavoured to see that the usefulness of the person appointed is enhanced by a suitable training. The courts of the honorary magistrates are also expected to be inspected by the sessions judge or the district magistrate.

12. In other States, like West Bengal, however, it is the district collector who makes a recommendation to the Government for the appointment of honorary magistrates. In Bombay, the appointments of these special judicial magistrates, as they are called, are made by the State Government in consultation with the High Court. In the Delhi State area, a selection committee consisting of the

sessions judge, the district magistrate and the Home Secretary, recommends the persons to be appointed. A course of practical training is also given to the magistrates.

Utility of honorary magistrates.

13. It is clear from the facts stated in regard to Uttar Pradesh and Madras that honorary magistrates are capable of serving a very useful purpose in relieving the paid magistracy from a large number of petty criminal cases, particularly in the larger towns. We recommend that the system should be tried in other States where it has not so far been used. Care should, however be taken to provide a proper machinery for recommending suitable persons for appointment. It would be preferable if the appointments are made by the State Governments with the concurrence of the High Courts. The High Court would be in a position to recommend retired judicial officers and other suitable persons after eliciting opinion from the judiciary subordinate to it. It may be pointed out that, like other magistrates, honorary magistrates should sit during fixed hours and should be provided with the necessary staff.

Mode of trial.

14. The mode of trial in these courts is not different from that obtaining in other courts. They follow the pattern laid down for trial of summons or warrant cases or for summary trials which is set out elsewhere.

Criminal Courts in England.

15. We may, at this stage, refer to the hierarchy of the English criminal courts. They are:—

(1) Courts of summary jurisdiction (Magistrates' courts);

(2) Courts of quarter session;

(3) Courts of assizes.

The lowest of these courts, the magistrates' courts, are presided over either by two or more Justices of the Peace or one Stipendiary Magistrate either sitting alone or with other Justices. Such a court is competent to try and convict an accused person for what may be broadly described as summary offences; but the same court is also competent to make an inquiry and commit an accused person to take his trial either at the quarter sessions or at the assizes. The Court of quarter session corresponds roughly to the court of session in our country but, instead of a single judge, it consists of a number of justices with a legally qualified Chairman, the qualification being ten years standing as a Barrister or as a Solicitor having such legal experience as is sufficient in the Lord Chancellor's opinion. Trial before these courts is by jury. This court has jurisdiction to try all indictable offences, except those expressly excluded by law. Like our sessions courts, courts of quarter session have jurisdiction to hear appeals from the magistrates' courts. While hearing appeals, the justices sit by themselves without a jury. Courts of assizes are superior courts which are presided over by a Judge of a High Court. In fact, under the Judicature Act, 1925, all

Courts of assizes are branches of the High Court. Only very serious offences are tried before them on commitment and trial is by jury.

Court structure not complicated.

16. The above description shows that our system of criminal courts is substantially similar to the English system. The structure of our criminal courts cannot be said to be complicated and it appears to us that there is no room for its simplification. There is, however, scope for improvement in the methods of trial and for investing the lower classes of magistrates with larger powers. We shall proceed to examine the classification of offences and the powers given to magistrates courts in regard to trial in order to see how far improvements can be effected.

General features.

17. We have, in an earlier chapter, referred to the large number of persons who are brought before the criminal courts not only as accused persons but also as witnesses. In addition to those who actually figure in the criminal courts as witnesses, a large number of persons would have been examined by the police at the stage of the inquiry. There are also cases in which a number of persons would have been interrogated by the police in the course of inquiries into suspected commission of offences which did not ultimately lead to the filing of charge-sheets. Further, by the very nature of a criminal proceeding, it is sometimes necessary for a witness to appear more than once in a court. Sometimes, adjournments due to various reasons are also responsible for making a witness come to court on more than one occasion and they have to be paid batta and travelling allowance for this purpose out of State funds. In view of the very large number of persons with whom they have to deal, it is very necessary that criminal courts should function with reasonable expedition and efficiency.

18. Criminal courts, designed by the State for the punishment of the offender against the law, control of crime and the maintenance of law and order, should function in an orderly and efficient manner. Every measure tending to increase their efficiency should be welcome. If large number of persons are needlessly taken away from their ordinary activities for making this organization function, not only will their means of livelihood be affected but the resources of the country as a whole, which depend on the work done by the individual citizen, will suffer. It is true that the maintenance of law and order, the punishment of the offender and an effective control over crime are essential. It is equally true that the attendance of a large number of persons at the courts is inevitable, if these purposes are to be served. But it is imperative that the taking away of persons from their normal avocations should be reduced to the minimum period of time possible. From this broad point of view, the quick, efficient and smooth working of the machinery of criminal courts has vital importance.

Jurisdiction of criminal courts.

19. All offences under the Indian Penal Code have been classified in Schedule II to the Criminal Procedure Code into offences which are triable exclusively by a court of session; or by a court of session, or a presidency magistrate or a magistrate of the first class or even a magistrate of the second class in the alternative; or by a magistrate in general. Only very few offences are exclusively triable by a court of session. In the generality of cases, the more serious offences are triable either by a court of session or a presidency magistrate or a magistrate of the first class. This concurrent jurisdiction has been provided because though the offence might be of a serious nature, in the majority of cases it may not call for the infliction of a punishment heavier than what the magistrate can impose.

First Class magistrates.

20. Whether a case is to be tried by a first class magistrate or is to be sent to the court of session for trial depends largely on the facts of that case and on whether the proper punishment for that offence would exceed the limits of the powers of the first class magistrate. For instance, the offence of rioting armed with a deadly weapon, which is punishable with imprisonment up to three years, is triable by a court of session, a presidency magistrate or a first class magistrate; but it is very seldom that an accused charged with this offence is committed to the court of session. When that is done, he is always charged with some other offence which is generally exclusively triable by the court of session. Other cases where the magistrate is not competent to impose a sentence of sufficient severity are also taken to the court of session. Before a case is tried at the court of session, there has to be a preliminary inquiry by a court authorised to hold such an inquiry and the accused has to be committed to the sessions to undergo his trial. There is, accordingly, a double investigation, as it were, an initial inquiry by a magistrate followed by a trial in the court of session.

21. Another feature that has to be noticed is that even when a magistrate tries a case for which the punishment prescribed exceeds his own powers of punishment, rarely does he award even the maximum sentence that he can impose. A first class magistrate's power in this regard is limited to two year's imprisonment. If, for example, such a magistrate tries an offence under section 326, Indian Penal Code, namely, voluntarily causing grievous hurt by dangerous weapons, the punishment for which may extend to ten years' imprisonment, he rarely awards a sentence of two years. In the normal run of cases triable by magistrates, therefore, the sentence imposed by them falls short of the maximum of their powers and where it is considered necessary to commit such cases to the court of session, it is for the reason that the sentence to be awarded would exceed the maximum which a first class magistrate can impose. There seems to be no reason why in such cases, the magistrate's powers to impose sentences should

not be raised so that such cases can be tried by the magistrate himself instead of having to be placed before the court of session involving, as it does, a preliminary inquiry and a trial.

22. Under section 30 of the Code of Criminal Procedure, authority has been given to the State Government to invest any district magistrate, presidency magistrate or a magistrate of the first class with powers to try, as a magistrate, all offences not punishable with death or imprisonment for life or with imprisonment for a term exceeding seven years. There is a proviso to this section added by the recent amendment which requires that a magistrate, before he is invested with such powers, should have exercised, for not less than ten years, the powers of a magistrate not inferior to those of a first class magistrate. A magistrate so empowered may pass any sentence, except a sentence of death or imprisonment for life or imprisonment for a term exceeding seven years. The Legislature evidently proceeded on the view that a person who has exercised the powers of a magistrate of the first class for not less than ten years is a fit person to be invested with such enlarged powers. This section recognizes that it is by no means unusual or improper to invest a first class magistrate with power to try more serious offences and invest him also with the power to award severe sentences of imprisonment.

23. We, therefore, feel justified in recommending that all first class magistrates with five years' experience may be given the power to impose a sentence of imprisonment up to four years *provided that the judiciary is separated from the executive*. If this recommendation is accepted, Schedule II to the Code will have to be amended to enlarge the list of offences triable concurrently by the court of session and the court of the magistrate. The provision for specially empowering first class magistrates under section 30, Criminal Procedure Code, will also have to be repealed.

24. It should then be the normal rule that all cases which are so concurrently triable should be tried by the courts of magistrates and except for reasons to be recorded, such cases should not be committed to courts of session. This, in our view, would also have the advantage of reducing the time taken in the disposal of cases which at present have to be sent up to the court of session for trial.

25. Except in those rare cases when a magistrate takes cognizance of a case upon information received from any person other than a police officer or upon his own knowledge or suspicion, criminal cases are initiated either on the basis of a police report or a private complaint, but generally most cases arise out of a police report. In whatever manner the case might come before a court, the procedure provided by the Code of Criminal Procedure prior

to the recent amendment was the same. The Code devised two methods for dealing with them by effecting a division of cases into summons cases and warrant cases.

Warrant cases.

26. A warrant case means a case relating to an offence punishable with death or imprisonment for life or imprisonment for a term exceeding one year. All other cases are summons cases. This division is important as the method of procedure to be adopted in the trial of the two classes of cases varies. In a warrant case which is also triable by a court of session, if the magistrate finds that the offence is of a nature that justifies trial by the court of session, he can, if competent to commit, make an inquiry and commit the accused to take his trial before that court.

27. The trial of warrant cases is fairly elaborate. By the recent amendment of the Code, the procedure applicable to warrant cases arising on police reports was made different from that applicable to those instituted on private complaints. Summons cases are of a less serious nature. Accordingly, for their trial, a simpler form of procedure is devised.

Procedure in summons cases.

28. Whether a summons case arises on a private complaint or on a police report, the accused, on his first appearance in court, is informed of the particulars of the offence which he is alleged to have committed and is asked to show cause why he should not be convicted. It is not necessary to frame a formal charge. If he admits the commission of the offence, his admission is recorded and if he shows no sufficient cause why he should not be convicted, conviction follows. If the accused does not make such an admission, then the magistrate proceeds to take all the evidence produced in support of the prosecution; he hears the accused and takes all the evidence produced for the defence. In proper cases, the magistrate may, on application by either side, summon witnesses. Upon taking evidence as above and examining the accused, the magistrate either finds the accused guilty and convicts him or finds the accused not guilty and acquits him. It is open to the magistrate, however, to convict the accused of any offence triable under this procedure, if such an offence (though it is different from that mentioned in the complaint) is made out from the facts admitted or proved.

Procedure simple.

29. In the above class of cases, evidence of both sides is required to be ready and is recorded at a single sitting and is followed by a judgment without any delay. The trial of a case under this procedure is thus designed to occupy the minimum amount of time. As offences triable by this procedure are of a minor nature, power has been given to the magistrate to acquit the accused if the complainant does not appear on any date fixed for hearing. The complainant is also at liberty to withdraw his complaint with the permission of the magistrate.

30. We have noticed that the procedure of trial in summons cases laid down in Chapter XX of the Code of Criminal Procedure leads to expeditious disposal of cases. The procedure is, however, available only in respect of a comparatively few offences; for, a summons case is one which is not punishable with a term of imprisonment exceeding one year. Prior to the amendment of the Code by Act XXVI of 1955, this limit was six months. During the debate in the Rajya Sabha, it was stated that prior to the amendment, only seventy eight offences under the Penal Code came under the category of summons cases and that the amendment added only twenty six more offences. The amendment accordingly has not enlarged to any appreciable extent the number of cases triable by this procedure. The creation of numerous statutory offences during recent times which are, for the most part, technical in nature and involve nothing more than a violation of or a non-compliance with a rule or regulation calls for a speedier determination of those cases. Even under the Indian Penal Code, there are several offences of the same kind, but differing in degree, which at present have different modes of trial. Extension of summons procedure desirable.

31. The division between summons cases and warrant cases is undoubtedly arbitrary. What the Legislature intended seems to be that offences which can be described as somewhat serious, applying the test of the punishment which the law provides, should be tried with more deliberation than others not so serious. The arbitrary nature of the division into summons and warrant cases will be clear from a consideration of the following instances. An offence under section 168, Indian Penal Code, is committed when a public servant unlawfully engages himself in trade and is punishable with simple imprisonment upto one year or fine or both. This is accordingly a case triable under the summons procedure. Section 169, Indian Penal Code deals with an offence committed by a public servant in unlawfully buying or bidding for property the punishment for which extends to imprisonment for two years. The case is triable under the warrant procedure. There is, as far as we can see, no difference in principle in the two types of offences; but for a purely arbitrary division on the basis of the punishment provided by the law, there is no reason why the latter offence should not also be tried as a summons case. The offence of wrongfully confining any person (Section 342 I. P. C.) carries a punishment of imprisonment extending up to one year, while the offence of wrongful confinement for three or more days (Section 343 I. P. C.) is punishable with imprisonment up to two years; the offence becomes graver still when the wrongful confinement is for ten or more days and the maximum punishment provided for this offence is three years (Section 344 I. P. C.). The first alone is triable as a summons case, although all the three offences under sections 342, 343 and 344, Indian Penal Code are of like nature. The essential Division into summons and warrant cases arbitrary.

ingredients of the offence of wrongful confinement are the same in all these three cases except for the duration of wrongful confinement which is the particular circumstance that makes the offence lighter or graver. No prejudice will be caused to an accused person, if all these offences are made triable under the summons procedure.

Three years imprisonment limit for summons cases.

32. It, therefore, seems to us that, as a general rule, all offences which do not carry punishment of imprisonment for more than three years can be tried under the summons procedure, without any prejudice to the accused. If this course is adopted, the result will be the addition of one hundred and twenty seven more offences under the I. P. C. alone to the existing list of offences triable by the procedure applicable to summons cases.

Procedure in warrant cases.

On private complaint.

33. We shall now deal with the procedure as it applies to cases arising from a private complaint. In these cases, the inquiry commences with the examination of the witnesses for the prosecution in the presence of the accused. The accused has the right to cross-examine them. If, after taking such evidence and examining the accused, the magistrate thinks that no case against the accused has been made out which, if unrebutted would warrant his conviction, the magistrate discharges him. The magistrate is competent to discharge the accused at any earlier stage of the case if, for reasons to be recorded, he considers the charge to be groundless. If, however, on the evidence and the examination of the accused, the magistrate thinks that there is ground to presume that the accused has committed an offence triable as a warrant case, which he is competent to try and adequately punish, he proceeds to frame a charge. The charge is read out and explained to the accused, and he is asked whether he is guilty or has any defence to make. If he pleads guilty, the plea is recorded and the magistrate convicts him. If the accused pleads not guilty, the case is adjourned after recording the plea, and, at the next hearing, the accused is asked if he wishes to cross-examine any of the prosecution witnesses already examined. The witnesses he desires to cross-examine are made available for the purpose. Thereafter the evidence of the remaining prosecution witnesses is recorded and the witnesses summoned by the accused for his defence are also examined. The magistrate then passes judgment either of acquittal or of conviction. In this class of cases also, the magistrate is at liberty to discharge the accused, if the complainant is absent on any date fixed for the hearing of the case before the charge has been framed, provided that the offence is not a cognizable offence or may be lawfully compounded.

On police report.

34. The procedure outlined above formerly applied to all warrant cases alike whether they arose out of a private complaint or on a police report. But the recent amendment of the Code has made a material alteration in the procedure

in police cases. In these cases, there would have been a prior police investigation. Police officers would have examined and recorded statements of witnesses and gathered the material necessary for the prosecution of the offender. The Code requires that following such investigation, the investigating officer should submit a report to the magistrate setting out the names of the parties, the nature of the evidence, the names of persons who appear to be acquainted with the circumstances of the case and such other matters. Before the commencement of the proceedings in the court, the officer is required to furnish to the accused a copy of the report forwarded to the magistrate, a copy of the first information report and copies of all other documents or extracts thereof on which the prosecution relies, including statements and confessions made and recorded under section 164 and the statements of witnesses recorded under section 161 Cr. P. C.

Police statements to be supplied by accused free of cost.

Before the commencement of the inquiry the magistrate is required to satisfy himself that the documents referred to above have been furnished to the accused. In cases tried under the amended warrant procedure, these records are expected to take the place of the actual examination of the witnesses prior to the framing of the charge. They constitute the "inquiry" stage in contrast to the later proceedings which form the "trial" of the accused for the offence with which he is charged. The magistrate examines these documents, makes such examination of the accused, if any, as he thinks necessary. After giving the prosecution and the accused an opportunity of being heard, the magistrate either discharges the accused, if he considers the charge to be groundless, or proceeds to frame a charge in writing against the accused. It will be noticed that under this amended procedure, the initial examination of the prosecution witnesses is dispensed with and a charge is framed against the accused straightway if, upon a perusal of the documents and the statements made by the witnesses during the police investigation and upon hearing the prosecution and the accused, the magistrate believes that there is ground for presuming that the accused has committed an offence. The time that would be taken by an examination of the prosecution witnesses and their cross-examination by the accused at this stage is thus saved. In substance, therefore, under this procedure, the trial of the accused commences on the very first day of the hearing of a case. The charge is framed in the manner stated above and the magistrate proceeds to fix a date for the examination of the witnesses thereafter. On this adjourned date, all the evidence that is produced in support of the prosecution is recorded by the magistrate. The accused is then permitted to cross-examine the prosecution witnesses. The Code directs the magistrate to thereafter question the accused on the case generally before the accused is asked to enter on his defence. The answer given by the accused may be taken into consideration in the trial of the case.

Charge framed on their perusal.

Thereafter, the accused either produces his witnesses or causes them to be summoned and they are examined and cross-examined. This marks the conclusion of the case. After hearing the arguments on either side, the magistrate proceeds to give judgment.

Differences between the two procedures.

35. The differences between the two warrant procedures in their application to cases instituted on police reports and on private complaint are substantial. In so far as the duration of the proceeding is concerned, the amended procedure certainly has the effect of shortening it. Apart from the time occupied in summoning the witnesses and procuring their attendance, one stage of the proceeding, as it obtained earlier, has been done away with, altogether. While under the earlier procedure the magistrate had to examine all or some of the prosecution witnesses before the framing of the charge and make them available for cross-examination by the accused, both at the stage of inquiry and subsequently after the framing of the charge, the amended procedure requires them to be examined and cross-examined only after the framing of the charge. The former procedure also required that after recording the plea of the accused, the trial should be proceeded with only on an adjourned date. This interval was designed to enable the accused to study the evidence against him and to call for further cross-examination, one or more of the prosecution witnesses examined earlier. It gave him, therefore, the opportunity to cross-examine the prosecution witnesses on two different occasions. That opportunity has been taken away. The witnesses are not, therefore, now required to attend the court on more than one occasion. On these two heads alone, there has been a considerable saving of time and expense in the conduct of the prosecution.

Objections to the new procedure.

36. Many are the objections to the new procedure that have been urged before us. Several lawyers with large criminal practice have complained that the new procedure places the accused in a very disadvantageous position in that he does not know all the "evidence" against him till after the charge has been framed. In a way, this is no doubt true, because the charge is framed after a perusal of the documents prepared by the police during investigation and on the strength of the statements recorded by the investigating officer of persons who are yet to be examined as prosecution witnesses. Obviously, the statements recorded by the police officer during investigation are not "evidence" led before the court. Leaving aside the question of the reliability of the statements recorded by the police, it is argued that these statements are not tested by cross-examination and that it is not proper to place reliance upon them even for framing a charge against the accused. It is said that the police in an excess of zeal may record only those parts of the statements of the witnesses which are favourable to the prosecution, that at the stage of

inquiry by the police, interested parties might make statements without being under any obligation to speak the truth and that it is not possible for the investigating officer to check these statements in the manner in which a cross-examination on behalf of the accused can test them. It was also claimed that the former procedure which gave the accused the "right" to cross-examine the prosecution witnesses at two stages was a very valuable right and that the accused had been prejudiced by that right being taken away.

37. It is true that under the new procedure, the charge against the accused is based upon the statements made by witnesses to the police and other documents. It may also be conceded that in relying upon these statements for the purpose of framing a charge, the Code requires the magistrate to accept them in advance as evidence though they have not been made on oath in the presence of the accused. It must, however, be remembered that they do not form part of the evidence on the basis of which the magistrate will finally proceed to deliver judgment. The magistrate is not entitled at that stage to rely upon these police statements. He has to proceed only upon the evidence that has been duly recorded by him in the presence of the accused who had the right and the opportunity to cross-examine the witnesses. All that the magistrate does in the opening stages of the case is to examine these statements, examine the accused if he thinks it necessary, hear the prosecution and the accused and, if he is of the opinion that there is ground for presuming that the accused has committed an offence, to frame a charge. Objections answered.

It must be conceded that while under the old procedure a charge had to be framed only if the magistrate took the view that it was necessary after hearing the witnesses in the case, he has, under the new procedure, the liberty to discharge the accused without framing a charge, only if, after perusing the records of statements and the documents, he considers that the case against the accused is groundless. There is no doubt that the number of cases in which the magistrate would find it possible to discharge the accused merely on a perusal of the statments would be far fewer than those in which he can do so after the examination of the witnesses.

But we are of the view that the mere fact that a charge has been framed against the accused in the above manner does not cast any heavier burden upon him. Though, technically under the old procedure, there was an inquiry followed by a trial only if a charge was framed, the burden of facing the inquiry under it was not less onerous than that of facing a trial. The omission of the inquiry stage cannot, by itself, be regarded as having prejudiced the accused in any manner, particularly, as it was open to the magistrate to frame a charge before the entire prosecution evidence had been recorded.

There is, perhaps, some substance in the claim that the right of the accused to cross-examine the prosecution witnesses a second time after the framing of the charge had some value. But the availability of the second opportunity to cross-examine the witnesses after the charge, generally resulted in counsel waiving or limiting the initial cross-examination before the framing of the charge. In most cases, the witnesses were subjected to an effective cross-examination at only one of these two stages. It may be that in a very small percentage of complicated cases, a further cross-examination of some of the prosecution witnesses in the light of the entire evidence might serve some useful purpose and might elucidate some points in favour of the accused. Even under the amended Code, ample powers are given to the magistrate to recall any witness for further cross-examination. What was formerly a right of the accused, has now been made to depend upon the proper exercise of judicial discretion by the Magistrate. If he is satisfied that such further cross-examination is necessary for the purpose of justice, it is open to him to call the witnesses for further cross-examination.

Further curtailment not desirable.

38. We must, however, strike a note of caution against making further inroads upon the procedure in a feverish search for expedition. Speedy administration of criminal justice is, undoubtedly, of the greatest importance to the well-being of society; but at the same time, in any criminal proceeding, the life and liberty of the citizen are in hazard; the elementary principles of justice require that an accused person should not be denied a fair opportunity of defending himself. Any alteration in the procedure which would infringe that right will ultimately bring the administration of justice itself into disrepute. Men with ripe experience have deplored the fact that in India "owing to factions in villages, lack of public co-operation with the administration of criminal justice, distrust of the police force, absence of social conscience, perjury is rife...." It is no doubt true that these factors work often in favour of the accused; but this fact does not lessen the need for ensuring that an accused person is given a fair trial and has no cause for complaint, that his case has not been considered fully and fairly. The true remedy for the evils mentioned above has to be found in measures other than an amendment of the procedural laws.

Essential steps in a fair criminal trial.

39. There are four principal steps in a criminal trial:

(1) Informing the accused of the offence he is charged with having committed;

(2) Examining the prosecution witnesses in his presence and giving him an opportunity to test that evidence by cross-examination;

(3) Giving the accused an opportunity of explaining the circumstances in the evidence against him; and

(4) Giving him an opportunity to produce his evidence in defence. However much a proceeding may be shortened, none of these four steps which are vital to a just hearing can be done away with. Whether a case is tried under the old or the new procedure, the procedure itself is generally not the cause of delay in the duration of the trial. The reasons for the delay and the methods for avoiding them are examined later.

Amended procedure satisfactory.

40. The conclusion we reach is that the amended warrant procedure has not in any manner operated to the prejudice of the accused. But it would not be proper to shorten it further. It has to be remembered that the more serious offences call for very careful examination and trials of the accused for them cannot be rushed for achieving a quick administration of justice. To do so would be to sacrifice the principles of natural justice to mere expedition. Swift injustice is worse than tardy justice.

Summary trials.

41. A modification in procedure which ensures speedy disposal of cases is known as the procedure for summary trials. The procedure is, however, not suitable for adoption in complicated cases which call for detailed scrutiny.

Courts competent to try summarily.

42. The shortening of the duration of a case in a summary trial is achieved not so much by a radical pruning of the procedure as by empowering a magistrate to record the evidence in a more summary fashion. Generally speaking, certain kinds of offences, mostly of a petty nature, are triable under this procedure. All cases not punishable with death, or imprisonment for life or imprisonment for a term exceeding six months are triable in this fashion, in addition to certain other offences specified in section 260 of the Criminal Procedure Code. Only district magistrates and magistrates of the first class specially empowered in this behalf by the State Government are competent to adopt this procedure. An important exception is that a magistrate who has been empowered under section 30 of the Code to award enhanced sentences and to try as a magistrate some of the more serious offences is not authorised to adopt this procedure in the trial of these serious cases.

Procedure in such cases.

43. The procedure relating either to the trial of summons cases or warrant cases has to be followed by a magistrate even if he tries cases summarily, except for some slight modifications. In cases where no appeal lies, it is not necessary for the magistrate to record the evidence of the witnesses or to frame a formal charge; but certain particulars have to be noted by him in a prescribed form. In case of conviction, "a brief statement of the reasons" has to be given in this form. In cases where an appeal lies, the substance of the evidence of the witnesses and a judgment also has to be recorded. The most important limitation on the powers of a magistrate trying a case under this

Abbreviated procedure.

Limitations on the power.

procedure is that he cannot impose a sentence of imprisonment for a term exceeding three months. The magistrate has, therefore, to determine either upon a perusal of the record or after hearing the prosecutor and the accused, whether the case should be tried summarily or not. If he decides to try the case summarily, then, the next question for determination would be the procedure to be followed whether that relating to a summons case or to a warrant case. Therefore, the magistrate will have to determine either upon the facts on record, or after the examination of the witnesses, whether the case would be one in which an appealable sentence would be passed. It may be mentioned that under section 414, Criminal Procedure Code, no appeal lies in cases tried summarily in which a magistrate acting under section 260, Criminal Procedure Code, passes a sentence of fine not exceeding Rs. 200. To that extent, therefore, he will have to judge before hand what sentence would have to be awarded in the event of the accused being found guilty. In the majority of cases tried summarily, the facts are not likely to be complicated and an opinion in this respect can easily be formed by the magistrate. If the magistrate decides that the case is one in which a non-appealable sentence would eventually be passed if the accused is found guilty, the evidence of the witnesses would not have to be recorded, nor a formal charge framed. The particulars of the case, the plea of the accused and finding are recorded in a prescribed form. In appealable cases, in addition to these details, the magistrate has to reduce to writing the substance of the evidence of the witnesses and also to record a judgment before he passes sentence.

Defects of the procedure.

44. The procedure for the summary trial of offences is one devised for use by a fairly experienced magistrate. In the majority of cases, non-appealable sentences are likely to be passed; no evidence would be recorded and no judgment written. There would thus be practically no record which could be scrutinised by a court of revision. It follows, therefore, that only experienced magistrates should be invested with this power. It is undeniable that, by this procedure, a great deal of time occupied in recording the evidence which, under the Code, has to be read over to the witness in his language and admitted by him to be correct is saved. Nevertheless, we must point out that the court of revision sometimes finds it difficult to do justice to a convicted person, if the record which it has, does not contain even the substance of the evidence of witnesses. We have discussed this aspect of the matter and made appropriate recommendations in the chapter on "Criminal Revisions."

45. There seems also no reason why in cases which are tried summarily, two different kinds of procedure should be followed. When the Code defines the offences triable summarily and provides for the appointment of specially empowered magistrates for the purpose of holding such

trials, it would seem to be sufficient to provide a uniform procedure for trial of such cases, whether they are warrant cases or summons cases. The majority of the offences which can be tried in this manner is that in which the punishment provided is imprisonment for six months or less. They would be summons cases. Even in those specified offences where the warrant-case-procedure is to be followed, the maximum sentence that can be passed is limited to three months. No particular advantage would, therefore, be derived in following the more complicated warrant procedure, if the case is to be tried summarily. A uniform procedure in all cases triable summarily can, therefore, be adopted without any untoward consequences.

Distinction between summons and warrant procedure to go in summary trials.

46. It will be noticed that expeditious disposal of these causes results only from the summary manner in which the evidence is recorded. Hence, it has been provided that in all summons cases and cases summarily triable under section 260(1) clauses (b) to (m) Cr. P.C., any magistrate of the first or the second class, even if he is not specially empowered to try cases summarily, need record only a memorandum of the substance of the evidence of the witnesses (Section 355). But the trial will not be a summary one attracting the provisions relating to appealable and non-appealable cases; the different procedures, according as the case is a summons or a warrant case, will have to be strictly followed.

Recording of evidence.

47. The Chapter on Summary Trials also contains provisions whereby the State Government can empower any Bench of magistrates invested with the powers of the second or third class magistrate to try summarily certain offences under the Indian Penal Code and also offences under the Municipal Acts, Conservancy Laws, or Police and other Acts, which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine and attempts to commit any of the specified offences. This power can be conferred only upon Benches of magistrates and not on individual magistrates. In States where there are magistrates of the second class, a power enabling them, sitting singly, to try such cases summarily would achieve expedition.

Second class magistrates to be empowered to try cases summarily.

48. We may summarise our conclusions on this head as follows:—

Summary of conclusions.

(1) The structure of criminal courts in our country is not complicated and does not need simplification.

(2) The institution of honorary magistrates is capable of serving a very useful purpose by relieving the regular magistracy from the large number of petty cases. It also serves to associate the public with the administration of criminal justice.

(3) Care should be taken in appointing suitable persons as honorary magistrates and the State Government should make such appointments with the concurrence of the High Court.

(4) Honorary magistrates like other magistrates should sit during fixed hours and be provided with the necessary staff.

(5) After the judiciary has been separated from the executive, first class magistrates of five years' experience may be empowered to impose a sentence of imprisonment up to four years.

(6) Consequential amendments to Schedule II to the Criminal Procedure Code will have to be made and the existing provisions for specially empowering first class magistrates under section 30 of the Criminal Procedure Code will have to be repealed.

(7) All cases relating to offences punishable with imprisonment for a term not exceeding three years should be classified as summons cases and the summons procedure adopted in their trial.

(8) The new procedure prescribed for the trial of warrant cases instituted on police report has not prejudiced the accused but there is no room for shortening or curtailing the procedure further in such cases.

(9) In all cases tried summarily only the procedure relating to the trial of summons cases should be followed.

(10) State Governments may be empowered to authorise second class magistrates sitting singly to try summarily those cases in which summary procedure can now be followed by a Bench of second class magistrates.

34.—INVESTIGATION BY THE POLICE

Cognizable and non-cognizable offences.

1. For the purpose of police investigation, offences under the Indian Penal Code are divided into cognizable and non-cognizable offences. Cognizable offences are defined as those in which a police officer can effect an arrest without a warrant. Such cases are specified in column 3 of Schedule II to the Criminal Procedure Code.

The distinction.

2. The principal difference between cognizable and non-cognizable offences is, that a police officer on receipt of information of a cognizable offence has the power of investigation, including the power of arrest. But in non-cognizable offences, a police officer has no such power, unless the investigation is authorised by a competent magistrate. In the case of offences against laws other than the Indian Penal Code, a broad classification is, that those which are punishable with imprisonment for three years and upwards are cognizable while those with lower limits of punishment are non-cognizable. The Code has also placed upon every police officer the general duty to interpose and prevent, to the best of his ability, the commission of any cognizable offence.

Investigation into cognizable offences.

3. The general authority to investigate a cognizable offence is found in Section 156 of the Code. This section confers upon the police officer unrestricted power to investigate into cognizable offences without the orders of a magistrate. He may start the investigation either on a report by some person or, even of his own motion, when on his own knowledge or on the basis of some reliable though informal intelligence, he may record a report and commence the investigation. In the case of cognizable offences, a police officer on receipt of a report has to reduce it to writing and get the statement signed by the complainant. The substance of the report has also to be entered in a book kept for the purpose. He is also obliged to send a report of the commission of the offence to the magistrate through such superior police officers as the State Government may direct. He thereafter proceeds to the spot for the purpose of investigating into the case. It is however not obligatory upon the police to investigate into each and every cognizable case. It is open to a police officer not to undertake investigation, if the case is not of a serious nature or there is no sufficient ground for entering on an investigation. In such cases, however, he is bound to report the fact with his reasons to the Magistrate competent to take cognizance of such offences on a police report. The police rules usually provide, that this discretion must be exercised by the police officers very cautiously and as a safeguard against the possible abuse

Procedure on receipt of complaint.

of this power, it is generally provided, that all such cases should be brought to the notice of the Superintendent of Police.

Collection of evidence

4. The investigating officer has full powers to summon and examine witnesses (subject to certain exceptions) who appear to be acquainted with the circumstances of the case. The examination of witnesses is not on oath and it need not be in the presence of the accused. The person so questioned is bound to answer all questions, but not bound to give incriminating answers. Nor is an obligation cast on him to answer truly. No prosecution can be launched against a person who refuses to answer incriminating questions or gives false answers in reply to the questions put by a police officer. A police officer is prohibited from offering any inducement or giving any threat to a person whom he examines, but he is not bound to caution such persons against making any voluntary statement which he may be disposed to make. The statements of these witnesses may be reduced to writing and, if the officer does so, a separate record of the statement of each witness has to be maintained.

Power to examine witnesses.

Power to call for and seize articles.

Power of search.

5. Whenever any document, article or thing is required for the purpose of investigation, a police officer can call for the production before him of the same, and it is the duty of the person in possession or control of the document to produce it before him. But if this procedure is likely to prove ineffective, the police officer is authorised to make a search without warrant, if need be, after observing certain formalities which include the presence of respectable witnesses. A record of the proceedings of search along with any articles seized, is forthwith sent to the nearest magistrate. A copy of the record of such search has to be furnished to the owner or occupier of the place searched.

Non-cognizable cases.

6. As pointed out earlier, a police officer is not competent to investigate non-cognizable offences without the orders of a magistrate. If a complaint of the commission of such an offence is made to him, he notes the substance of the complaint in a book kept for that purpose and refers the informant to the magistrate. It is open to the magistrate on taking cognizance of such complaint, to direct a police officer to make an investigation even if it is a non-cognizable offence; but in the absence of such a direction the police officer is not competent to undertake the investigation thereof.

Arrest and investigation.

7. Normally, whenever any person is arrested or detained the investigation is expected to be completed within twenty four hours, but where the investigation cannot be so completed and there are grounds for believing that the accusation or information is well-founded, the police officer is bound to transmit to the nearest magistrate a copy of the entries in the diary and has to produce the

accused before him. It is then open to the magistrate to authorise the detention of the accused for a term not exceeding fifteen days on the whole. Except for special reasons to be recorded in writing, a detention in the custody of the police is not contemplated.

Subsequent action.

8. If after the investigation it appears to the police officer that there is not sufficient evidence in the matter, he can release the accused on a bond to appear before a magistrate if and when so required. If, however, there is sufficient evidence, the accused has to be produced before the magistrate or if the case is a bailable one and the accused is able to give security, he has to be bound over to appear before the magistrate. Any article necessary to be produced in the case and seized by the police has also to be forwarded to the magistrate. The police officer is also required to bind over the complainant to appear before the magistrate. Witnesses also may, at the discretion of the police officer, be bound over to appear before him.

Police report.

9. At this stage, that is, the conclusion of the investigation, the police officer has to forward a report, called the police report to the magistrate setting out the names of the parties, nature of the information, names of the witnesses and stating whether the accused, if arrested, has been forwarded in custody or has been released on his bond. All these steps taken by the police officer as stated above ensure, that all the materials necessary for the prosecution of the offender are placed in the hands of the magistrate at the earliest opportunity.

Supply of documents to the accused.

10. One of the very important details preceding the commencement of the enquiry or trial is the duty cast upon the police officer to furnish certain documents free of cost to the accused person. These are:—

(1) A copy of the police report submitted to the magistrate.

(2) A copy of the first information report recorded by the police officer.

(3) Copies of all other documents or relevant extracts thereof on which the prosecution proposes to rely.

(4) Copies of the statements of the witnesses recorded during the investigation whom the prosecution proposes to examine.

(5) Copies of the statements of confessions recorded under section 164 of the Code.

This requirement of furnishing copies of the above documents to the accused person has been introduced by the recent amendment of the Code. As the manner of holding an inquiry or trial in cases arising on police report

Its purpose.

has been altered by the amendment, the supply of these documents to the accused person is intended to make a full disclosure to him of all the facts and circumstances in the case against him. Every effort is thus made by the Code as amended, to ensure that the accused person is not taken by surprise and is made aware of the evidence that is likely to be brought against him during the enquiry. This amendment of the Code has been generally welcomed.

Delays in investigation.

11. At the places we visited, we heard vehement complaints about the inordinate delays in the investigation of offences and the general inefficiency of the investigating officers. Some high-ranking police officers frankly admitted that investigation had "terribly deteriorated". Except in some of the less serious offences, an investigation is not generally completed within twenty four hours. In fact, in several cases an accused person is detained in custody for the full period of fifteen days which the law allows and is thereafter discharged for want of a final police report. Generally, an investigation almost invariably takes several days even in the less complicated cases. In the more complicated cases, investigations have very often taken months to finish. The quality of investigation is also poor. It has been repeatedly asserted that the large number of acquittals in courts is due to inefficient investigation. The investigating officers still continue to adopt old, timeworn methods of investigation. Very little has been done to initiate them in the use of modern and scientific methods. They suffer from lack of adequate training, lack of legal assistance and from the absence of effective supervision by senior officials.

Inadequacy of personnel.

12. It is the general complaint of the police officers that the department is very much understaffed and has to meet a very heavy demand on its personnel. The requirements of the law and order situation, *bundobust* duties, escort of prisoners to the court, patrol duties, traffic arrangements, protection of the V.I.Ps, the growth of crime in general and the creation of new types of offences during the last few years, have all increased the work of the Police considerably, while the police strength has remained more or less at the same level. A considerable part of the police force is concentrated on the prevention and detection of offences against social welfare laws like prohibition. The Inspector-General of Police, Punjab told us that several of the senior officers had left the country and junior men had become burdened over-night with new responsibilities which they could not adequately shoulder. This is no doubt a passing phase. But the Inspector-General further stated that having regard to the increase in population and the increased incidence of crime in the Punjab, the police department was very much understaffed. According to the Punjab Police Rules, every additional fifty cases recorded at a police station require one more investigating officer. On this basis the State requires not less than five hundred more investigating

officers and three thousand more men for watch and ward staff. According to him, the Punjab has got the smallest police force in proportion to its population.

13. We are told that in England, which is much smaller in area than Uttar Pradesh and has a considerably lesser population, the police strength is about twice that of Uttar Pradesh.

Large areas.

14. The territorial jurisdiction of a police station is also generally very large and runs into several square miles. We were informed by the Inspector-General of Police, Bihar, that while in England there is one policeman for every five hundred persons and he has not to travel on an average more than three to four miles to discharge his duties, India has only one policeman for every seven hundred and ninety people. In Bihar, there is one policeman for every one thousand four hundred persons and he has to travel as many as twenty five miles without the aid of transport. A sub-inspector of Police in Bihar has charge of an area of one hundred and fifty to two hundred square miles with a population of two lakhs. It is often usual for a police officer who is actually engaged in the investigation of a serious offence at a spot far away from the police station to receive a message giving information of the commission of another offence at another corner of his beat. The police officer may, accordingly have more than one case simultaneously pending investigation on his hands and has to move backwards and forwards from one place to the other; and this in the mofussil on account of lack of adequate transport and bad roads, is by no means easy. In addition to the sub-inspector of police who is in charge of a police station, there is generally a head constable who is empowered to investigate some of the simpler types of cases. Even with two officers, the investigation of all crimes occurring within the jurisdiction of the police station cannot be satisfactorily attended to. There are also several routine duties which have to be performed by the personnel of a station. In the result the investigation of cases seldom receives adequate attention from a police officer.

Strength to be reassessed.

15. We have heard a number of Inspectors-General and Commissioners of Police complain of the inadequate strength of the police staff. They emphasise that with the growth of population there ought to be a proportionate increase in the police staff and such an increase has not been made. This is a matter which requires a careful and detailed scrutiny and consideration by the Governments, if the investigation of offences is to be speedy and effective.

Methods of investigation.

16. Instances were given to us of investigating police officers not having taken even the elementary precaution of making a search for finger-prints or drawing a plan of the scene of the occurrence. The senior police officials

who appeared before us admitted that many police officers do not have sufficient training in the matter of investigation. The old methods of investigation still hold sway and there is generally a tendency to obtain confessional statements and neglect independent investigation which may yield conclusive results. It is admitted on all hands that the methods of investigation call for improvement.

Facilities for transport and scientific investigation lacking.

17. In recent years great progress has been made in foreign countries in the application of science as an aid to police work. The introduction of motor cars, giving greater mobility to the police forces, the use of wireless to facilitate dissemination of messages, gradual development of police laboratories to help in investigation, are some of the methods by which the investigation of crime has been modernized. Almost every police officer whom we examined, emphasised the need of the introduction of scientific methods of investigation in our police system. The Inspector-General of Police, Punjab, complained that the absence of scientific aids to investigation was a severe handicap in the detection of crime. No police station is provided with elementary technical facilities, nor do the officers possess the training, necessary to make use of such facilities. He also complained that investigations are unnecessarily delayed by the need of obtaining reports from the Chemical Examiner and securing other expert evidence which take a great deal of time. The Inspector-General, Bihar, also told us that the police force was not provided with adequate means of transport with the result, that by the time the investigating officer reached the place of crime, most of the clues would have already disappeared. We were also told by Inspector General of Police, Himachal Pradesh, that leaving aside towns where some flying squads had been stationed which could reach the scene of occurrence very quickly, in the rural police stations, the average time taken to reach the scene of the offence was about twenty four hours.

18. Speed is the most important factor in gathering valuable evidence. The Inspector General, Punjab, therefore, suggested that each police station should have a jeep at its disposal so that the investigating officer could move freely from place to place in his jurisdiction. We think it is obvious that in order to solve the problem of unsatisfactory and delayed investigations, it is essential that provision of quick means of transport (like motor cars, jeeps and cycles) wireless sets, trained photographers, expert in finger-prints, forensic laboratories and other technical assistance has to be made available to the Police Departments to enable them to modernise the existing methods of investigation.

Government's efforts.

19. The recent debate on the Home Ministry's Demand for grants indicates that the need of improving the methods of investigation is being recognised by Government though

not to the extent required. The Home Minister recently stated in Parliament: [1]

> "There was also, I think, some observation to the effect that the police has to be trained in modern methods. That aspect of the matter too has not been ignored by us.
>
> "Apart from our Intelligence Bureau, we have got a number of institutions, the Detective Training School, the Finger Bureau for giving training in that art, Fire Training Services and Emergency Training Service and a Forensic Laboratory. And it is also under consideration whether something should not be done to train people for obtaining degrees in Criminology and allied subjects. So the question of improving the methods of investigation has not been neglected. This has also been receiving due attention. We have our Police Training School in Abu and it is intended to overhaul the system in a way and have the best of the policemen, or as suitable and efficient as may be, trained in that school."

Piecemeal investigation.

20. Another complaint relating to the method of investigation by the police was that the cases were not investigated by one officer but by several officers in succession. We were told in Madhya Pradesh that there were cases in which no less than half a dozen police officers had taken part in the investigation at different stages. Such cases were not infrequent. On many occasions, while the investigating officer was in the midst of the investigation, he would be called away in connection with some other duty. The result would be that he would either suspend the investigation or hand it over to a junior officer. Many a time, investigating officers were transferred without being allowed to finish the investigations on hand. Further, the general practice appears to be that even in murder cases, investigation is first started by head constables, who record some statements of witnesses. These witnesses are then in turn examined by a sub-inspector of police and a circle inspector, one after the other and very often variations occur in the versions of witnesses. It may be that the witnesses themselves make such varying statements or it may be that the manner of recording evidence by different officers results in differing statements. These varying statements destroy the effectiveness of the evidence of the witnesses whose statements are taken. Piecemeal investigation is one of the principal defects in investigation of which frequent advantage is taken by the defence. We therefore suggest, that as far as possible, the investigation of an offence should be undertaken by a single officer, with the assistance of junior officers when-

[1] Lok Sabha Debate dated 15th April 1958, Second Series, Vol. XV—No. 46, Column 9986.

ever necessary. The entire responsibility for the investigation should however rest upon him.

Investigation by Junior officers.

21. It also appears that investigation of serious crimes is often entrusted to officers below the rank of a sub-inspector of police. We think that it is desirable that the investigation of serious offences should be invariable undertaken by senior officers like the inspector or even the deputy superintendent of police. In fact the Police Standing Orders do generally require the investigation of such offences to be made by senior officers. Not unoften, however, the investigation is conducted by a junior officer, and the senior officer merely signs the papers as if he had conducted it. The conduct of the investigation by the senior officer will not only ensure a better and more efficient investigation but also conduce to a greater measure of public confidence in the police department.

Separation of investigating branch.

22. It has also been stated to us that on account of the various duties of police officers, it is not practicable for them to give exclusive and single-minded attention to the investigation of crime. As already stated, it sometimes happens that a police officer while investigating a particular offence is suddenly called upon to attend to some other duty and he has either to suspend the investigation or hand it over to a junior officer. The Inspector-General of Police, West Bengal, frankly stated that the police officers do not give to the investigation of lesser offences the amount of care and attention which they require. Having regard to the insufficiency of personnel and their varying duties, it is difficult to expect from them either the thoroughness or the promptness in investigation which are the characteristic features of the police force in the western countries.

23. It was suggested that the police personnel entrusted with investigation of crime should be separate and distinct from the police staff entrusted with the enforcement of law and order and other miscellaneous functions. It was said that if this was done the detection of crime would get the exclusive attention it needs and that such a course would lead not only to greater specialisation in the art of investigation but will also promote speedy detection of crime. Though a separate trained staff for the purpose of investigation is desirable, in our view the two parts of the police organisation cannot be kept in water-tight compartments. The senior police officers were not very sanguine of the success of any such separation. They agreed that in the larger towns it would be practicable to have a separate investigating staff. In fact, there is a separate branch generally known as the Crime Branch operating in the larger cities and we gather that the separation of the staff in these cities is working satisfactorily. If the two wings of the police are separated in the mofussil, there may be lack of co-operation between them. It was also said that police officers dealing with law and order

would be better able to obtain information in the course of investigation on account of their closer contacts with the people than officers exclusively entrusted with the task of investigating into crime. The Inspector General of Police, West Bengal, told us that as an experimental measure, a central pool of experienced officers has been formed for each district in West Bengal and the more important cases were entrusted to them for investigation. When an officer of the central pool goes to investigate an important case, the local officer is also associated with the investigation. This not only avoids professional jealousy but also ensures that if the local officer is needed elsewhere, his absence would not affect the continuity of the investigation.

24. We think on the whole that there is great force in the suggestion that, as far as practicable, the investigating agency should be distinct from the police staff assigned to the enforcement of law and order. We do not however suggest absolute separation between the two branches. Even officers of the police department have taken the view that if an officer is entrusted with investigation duties, his services should not be required for other work while he is engaged in investigation. The separation of the investigating machinery may involve some additional cost. We think however, that the exclusive attention of the investigating officer is essential to the conduct of an efficient investigation and the additional cost involved in the implementation of our proposal is necessary. The adoption of such a separation will ensure undivided attention to the detection of crimes. It will also provide additional strength to the police establishment which needs an increase in most of the States.

Training.

25. The need for a systematised training for the police officers in proper methods of investigation cannot be overemphasised. Skilful investigation is an art which can be learnt only by training and experience. We were told that on account of the migration of several officers after the partition of the country, the gap in the higher posts was filled by promotion of officers who were lacking in experience of investigation. This also resulted in the police force suffering from lack of experienced staff at the lower levels. The police force has thus lost a great many of the officers who had been trained by sheer experience. We think it is imperative that training centres should be established in different parts of the country for the training of men selected for detection work. We understand some institutions of this kind already exist in Uttar Pradesh, Bombay and West Bengal and some other States. The existing institutions are, it appears, not adequately equipped and sufficient in number to meet the needs of the police forces. Instruction in crime investigation should in our view be given to every officer who is recruited to the police force or at any rate to recruits intended for investigation work. The Inspector General,

Madhya Pradesh, suggested that short refresher courses of instruction may be arranged for senior officers from time to time. We are of the view that the question of training of police officers engaged in investigation work requires the urgent attention of the State Governments.

Legal assistance to investigating officers.

26. One of the causes of defective investigation which often results in acquittals is the lack of legal assistance at the stage of investigation. Most of the investigating officers are not law graduates, nor do they have sufficient knowledge of law and the procedure of the law courts. They are often unable to appreciate the significance or importance of a particular piece of evidence to the prosecution case. Whether any links in the chain of evidence connecting the accused with the crime are missing, whether any connected matters require to be investigated in order to fill up lacunae in the prosecution case, whether sanction for the prosecution is necessary and such other matters, cause difficulties which the investigating officers find it difficult to solve or even to appreciate. It is true that such difficulties generally arise only in the investigation of serious crimes, particularly where the proof of them depends upon circumstantial evidence, or where the evidence consists of entries in books of account and in like cases. In such cases the police officers do sometimes seek the advice of the public prosecutor but that is not often done. Elsewhere, we have suggested the creation of the office of a Director of Public Prosecutions at the district level, who can render such legal assistance to the police as may be necessary even at the stage of investigation. We have also suggested that the functions of the Director of Public Prosecutions may be delegated to the assistant public prosecutors at the sub-divisional level, so that the local police officers can directly seek from them legal assistance, whenever necessary.

Lack of supervision.

27. A large number of witnesses whom we examined were of the view that there was not only incompetence and negligence but a great deal of corruption among police officers. Not only was the investigation defective, but evidence was deliberately distorted and often a dishonest record of the evidence was prepared by the police. Some of the lawyer witnesses went to the length of stating that the daily record of investigation by the police officers was usually written up at a later date. The rules did require that copies of this record should be sent from time to time to the magistrate through the immediate superior police officer, but these rules were often disregarded. As the idea persists among most of the junior police officers that their promotion will largely depend upon the number of convictions they are able to obtain, in their anxiety to obtain convictions or from other motives, these officers not unoften deliberately concoct false evidence to connect the accused with the crime. Two Inspectors-General conceded that there was some measure of truth in some of these allegations against the police officers.

28. We are of the view that if the pernicious practice of measuring the efficiency of the investigating officers by the number of convictions obtained by them exists it should at once be put a stop to. It is imperative that any notion that their promotions depend on the number of convictions they obtain should be eradicated from the minds of the investigating officers. They should be told that their promotions will depend not upon the number of convictions that result but upon their integrity and the quality of their investigation.

We feel that these defects and dishonest practices can be remedied only by a very strict supervision of the work of the investigating officer by the senior departmental officials. Some of the higher police officers stated to us that on account of their pre-occupation with administrative duties, the senior officers were not able to devote sufficient attention to the supervision of the work of the investigating officers. The Committee of Inquiry into the working of the scheme of separation of the Judiciary from the Executive in Madras stated in 1952 as follows:[1]

> "The fairly effective supervision over investigations conducted by head constables and sub-inspectors that prevailed in the past has to a large extent disappeared.... Quite a number of deputy superintendents and assistant superintendents were prepared to concede, though not officially, that they just had not the time sufficient to go through the case diaries submitted to them.... but something must be done to provide for effective supervision of investigation by circle inspectors and by sub-divisional police officers."

In what manner this supervision should be exercised is a matter of detail which can be worked out by the department itself. We may however broadly suggest that better returns, insistence upon prompt despatch of case diaries, scrutiny of case-diaries, frequent visits of senior police officers to police stations, and the appointment of special officers of the rank of a deputy superintendent of police to undertake the work of supervision are perhaps some of the methods which may achieve this purpose. We must emphasise, however, that strict supervision is a vital need of the police department today in view of the enormous powers which the police, including those in the lowest ranks, can wield.

29. The Police officers have complained that investigation is hampered by lack of co-operation on the part of the public. It is said that it is not unusual for even persons who have been eye-witnesses to the commission of an offence to evade or attempt to evade giving evidence. In our view, one of the reasons for this lack of co-operation

Public co-operation.

[1] Report page 183 para. 601.

is the scant regard which the police department pays to the convenience of persons who may offer to give evidence and the general discourtesy and even suspicion with which they are treated. Witnesses should receive a far better treatment both when they appear before the police and in court than they actually receive. The manner of their cross-examination by the opposing counsel not unoften borders on the insulting and offensive. This naturally leads to a disinclination on their part to appear in court. No one can expect a citizen, zealous though he may be, to assist in the detection of crime and the promotion of justice, to interrupt his normal life and avocation if he is to be subjected to such treatment. Very often the provision of elementary conveniences to persons appearing in courts as witnesses is sadly lacking. Witnesses in the rural and smaller urban areas are not assured even of their expenses of going to and coming from police stations and courts. All these factors undoubtedly add to the difficulties of investigation.

30. The Inspector General of Police, West Bengal, fully appreciated the difficulties of the witnesses. He told us that the long delay in the disposal of cases leads to difficulties in the production of witnesses; witnesses forget many of the details; and they are not examined when they appear. In fact, the witness feels he is harassed by having to appear in court more often than necessary.

31. In dealing with the question of the want of co-operation on the part of the public with the police, we cannot ignore the erstwhile traditions of the Indian police, the part they were compelled to play in the history of the country and the use to which they were put in the past. The police force was not unoften employed as a weapon of oppression by the then ruling power. The past is too recent to be forgotten by the public. As some of the police officers have conceded, in those days they could detain witnesses with impunity for a considerable length of time. They inspired fear and were never looked upon with trust or confidence. Even though that fear of the police no longer exists, their continued use in law and order situations prevents the citizen from regarding them as the protectors of his rights and liberties. This is another and an important reason for the investigating staff being as far as possible separated from the rest of the police organisation. As to the wider question of begetting public co-operation, the police force can earn the confidence of the public only by the rectitude of its own future conduct. What is needed is an orientation in the outlook of the police officers towards their duties and their attitude towards the public so that the people should consider them as friends to whom they could resort for succour and aid. This is bound to take time. But we hope that in the meanwhile, the division of the police into two wings as suggested above, will help in inducing the co-operation of the public in the detection and investigation of crime.

CONFESSIONS

32. We shall now deal with confessions. The Indian Evidence Act, 1872 has laid down certain rules regarding confessions. Section 24 provides that a confession made by an accused person which appears to the Court to have been caused by an inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority under the circumstances mentioned in the section, is irrelevant in a criminal proceeding. By section 25 a confession made to a police officer is prohibited from being used as against the person accused of any offence. Further, under section 26, no confession made by an accused person in the custody of a police officer can be proved against him unless he made it in the immediate presence of a magistrate. Admissibility of Confessions.

33. A "confession" has been explained by the Privy Council as a statement which "must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence"[1]. A self-exculpatory statement will not amount to a confession. A statement so worded that some of the facts establish the commission of an offence while some others are exculpatory in nature thereby negativing the offence would obviously be not a confession. Section 27 of the Evidence Act permits the proving of a statement, whether it amounts to a confession or not, if in consequence of that statement, any fact is deposed to as discovered. What is a confession ?

34. It is not necessary to deal with the voluminous case-law on the true interpretation of section 27. The extent of its application has been laid down by the Supreme Court in a recent decision[2]. The important and controversial question which arises for consideration is; whether the prohibition against the admission of confessional statements made to a police officer is justified in the present conditions. It was claimed by the police officers all over India that this provision, based on a lack of confidence in the integrity and honesty of the police, should in view of our independent status and the changed set-up in the country, be discarded and a certain measure of trust be reposed in the police. It was urged that the restrictions upon the admissibility of a confessional statement were imposed at a time when the police in general did not enjoy a good reputation. The conditions have now altered and persons who man the higher levels of the police machinery belong to the same strata of society as those in the other services of the State, including the Distrus of the police. The case for making confessions admissible.

[1]Pakala Narayanaswami *vs.* The King Emperor 66 I. A. p. 66 at page 81
[2]Ramkirshnan Mithanlal Sharma *vs.* State of Bombay A.I.R. 1955 S. C. p. 104.

judiciary. It was claimed that the character of the police as a whole had risen considerably and that it was desirable that confessions made to police officers should be made admissible in evidence subject of course to the court examining their probative value as in the case of any other evidence. It was conceded that historically considered, the police organization had come into existence primarily for the maintenance of law and order and for the support of the foreign rule and that its function of detection and investigation of crime were in the past treated as of secondary importance. In days when the police force was used for the suppression of the people, the Government was not much interested in the beneficial aspects of the police organization. The two ideas were to a certain extent mutually inconsistent. It was not necessary for the Government to get a police officer of high integrity if it was proposed to make use of him for suppressing national aspirations. These facts were recognized by the police officers and they conceded that under conditions which existed in the pre-independence period, their character and status were not such as to inspire public confidence. But they claimed that it was of the utmost importance in the present conditions that the police should be shown a greater measure of confidence in the interests of the development of the nation. It remains to be considered whether this claim can be accepted; and if so; to what extent we can advance in this respect.

Contrast with the English police force.

35. We may refer in this connection to the position of the London Metropolitan Police Force.

This Force was established in 1829. The first two Commissioners of Police laid down the following two principles in 1829.[1]

> (1) That the Police are not above the law but subject to it like any ordinary citizen and answerable for every action exceeding their legal powers; and
>
> (2) That the Police must be strict and impartial and must seek to administer the Law without fear or favour whatever the political, national or social complexion of the persons with whom they have to deal.

Sir Harold Scott, himself a Commissioner of Police, observes:

> "The Police in this country have fortunately never been involved in politics. Not only are the individual officers expressly forbidden to take part in political activities but it has become the rule of Government of whatever party to avoid any action which might impair the reputation of impartiality which the Police have gained over so many years[2]. * * * * *

[1] Scotland Yard by Sir Harold Scott, p. 18.

[2] *Ibid* page 17.

> During the blitz for the first time, people who looked at the Police as their natural enemies found that the Police were in fact their best friends."[1]

In answer to the oft-repeated question how a London policeman is regarded by every law-abiding citizen as a friend and helper, Sir Harold Scott writes:

> "My reply was always that this relationship is not to be achieved in a day and it is necessary to begin a hundred years ago with the sound principles laid down by Mayne and Rowan. Successive generations of Police officers have been schooled to regard themselves not as masters but as servants of the public. They have been taught that even when prosecuting a case against an offender they must be scrupulously fair and that when they have put a case before the court, their duty is done; and that they are not concerned with the verdict. If there is anything to be said in favour of the accused, it must not be withheld from the court after conviction, and if a piece of evidence favourable to the accused comes to light during their inquiry, it must as a matter of course be communicated to the defence."[2]

36. When the police officers who gave evidence before us attacked the provisions in the Indian Evidence Act as derogatory to the force as a whole, they referred to the law in England in support of their point of view. They pointed out that in England a statement made to a police officer is accepted in evidence. They pleaded that the police in India should be similarly treated. In taking up this position, they seemed to ignore the circumstances which have made the Indian policeman what he is. It must be conceded that in India, the police force as a whole is not, even today regarded as a friend of the citizen. This is natural as the facts and circumstances of its creation and the use made of it by an alien government cannot be forgotten so soon. The principles referred to above which entered into the making of the Metropolitan Police Force were at no time sought to be adopted in the formation of our police force. It is the application of these principles for over a century which has made the Englishman regard the policeman as his friend and protector. In order that the citizen in this country should come to look upon the Indian policeman in the same manner, the police force in the country will have for many years to conform to the principles and practice which have governed the conduct of the British Police. Such a course of conduct alone can win for them the confidence and esteem of the public.

Position in India different.

37. The police officers who gave evidence seemed to forget that the rules laid down in the Evidence Act are not a reflection on individual members of the police force

Relaxation of sections 25 and 26.

[1] *Ibid* page 22.
[2] *Ibid* page 98.

All statements to police cannot be made admissible.

but only a recognition of the imperfections of the system as it prevails today. The large mass of offences in our country are investigated only by the subordinate police officials. The high sense of fairness and justice which might actuate the superior personnel does not permeate the lower ranks. To make a confession made to a subordinate police official admissible in evidence would therefore be fraught with dangerous consequences. It is seldom that a confession is voluntarily made to a police officer. It is probably only after a considerable amount of questioning that a statement is obtained from an accused person. At what stage the questioning takes the form of undesirable methods can never be known. The questioning itself may be of such a nature as to deprive the statement of its voluntary character. The reasons which have led to the laying down of the rules mentioned above are equally valid today. We are, therefore, unable to accept the suggestion that these provisions of the Indian Evidence Act should be modified so as to make all confessions made to the police or at a time when the accused persons are in the custody of the police, admissible in evidence.

A suggested relaxation.

38. It is, however, true that the superior officers of the police are today recruited from the same social strata as officers of other departments including even the judiciary. The change that can be suggested must therefore be a limited one and must have reference to these officers.

Statements to superior officers.

Though some of the lawyer witnesses who appeared before us were not inclined to see any merit in the proposal that the higher officers of the police should be regarded as persons fit to be trusted in this respect, a large number expressed themselves in favour of it. We are of the view that officers of the status of a deputy superintendent of police and above might be trusted and that confessions made to them can be accepted in evidence. *This relaxation must necessarily be restricted to cases which such officers themselves investigate.* If the investigation is in the hands of a subordinate police officer, he might so work on the accused as to bring him to the point of making a confession and then produce him before the superior officer. In such cases the safeguard of the confession having been made to a superior police officer will not be present. In cases of serious offences and grave crimes, it should be the general rule that a superior officer of the police of the status referred to should conduct the investigation. If during such an investigation, a confessional statement is made by an accused it should be made admissible in evidence. A rule should also be made obliging the police officer before he receives such a statement to warn the accused person that any statement made by him may be used in evidence against him. We are aware that this proposal can be of only limited application. This is, however, a matter in which we must proceed with great caution and we can only make a beginning, the scope being broadened later on proof of its successful working.

39. We are further of the view that this change cannot be introduced at once all over the country. We are suggesting it as an experimental measure. We feel that it should be first tried in the Presidency towns or places of like importance where investigations can be conducted by superior police officers and where the average citizen would be more educated and conscious of his rights. The extent to which this change in the law helps the administration of justice will have to be carefully watched for some years before its extension to other areas can be decided upon. If our proposal regarding the admissibility of such confessions is accepted, consequential amendments to sections 25 and 26 of the Indian Evidence Act would be necessary. In certain areas to be admissible.

In the three Presidency towns, we have a magistracy which is directly under the control of the High Court. We feel, therefore, that such a magistracy would take a detached view of the evidence before it and not be led into accepting without due scrutiny, the evidence in the shape of such confessions. The introduction of this change in other areas should in our view be preceded by the separation of the judiciary from the executive. Without this safeguard, we would not feel justified in recommending the admissibility of confessional statements made even to superior police officers.

Even the limited change proposed by us was objected to by certain witnesses on the ground that if the accused is willing to make a confession it should be easy for the police to produce him before the magistrate so that, after observing the formalities laid down in section 164 of the Criminal Procedure Code, a judicial confession might be recorded. No doubt, when an offence has been deliberately committed, the accused person is unlikely to confess to the offence in a fit of remorse. However, in the normal run of cases where an investigation speedily follows upon the report of the offence and the offender is present during the investigation or is aware of the evidence collected against him, he is likely to feel impelled to state how the offence was committed. It is generally the time-lag that causes an accused person to refrain from admitting the facts. The delay that would be occasioned by having to produce the accused before a magistrate would thus have the effect of preventing the accused from admitting the facts.

40. Section 27 of the Indian Evidence Act is in the nature of an exception to the rigid requirements of the earlier sections 25 and 26. The view has been repeatedly expressed that it has been grossly misused. It is urged that while sections 25 and 26 are intended to afford protection to the accused, that protection is to a large extent destroyed by the ingenuity of the police officers in recording the "information" given by the accused. The information is deliberately recorded in a manner so as to make it appear Section 27 Evidence Act.

that it has led to the discovery of some facts incriminating the accused person. Section 27 follows the English law, where the principle underlying it is called the theory of confirmation by subsequent facts. But the admissibility of the information, whether it amounts to a confession or not, is bounded by the requirement that only "so much of such information" as relates "distinctly" to the fact discovered can be proved. The view that any information which served to connect the object discovered with the offence charged was admissible, was negatived by the Privy Council in *Pulukuri Kotayya* vs. *Emperior*.[1]

It has been urged on the one hand that even on the interpretation put by the Privy Council on section 27, its operation leads to an abuse by the police, as the police manipulate the information recorded by them in the manner mentioned above and that therefore section 27 should be repealed. This view has been met by the argument that the section embodies a well-accepted principle of English criminal jurisprudence and that there is no reason why a statement by an accused person which is corroborated by the discovery of a fact should not be available for use against him. We are not prepared on the material which we have been able to gather to recommend a repeal of the section. To discard this principle accepted for years both in British and Indian criminal law would be to impose a handicap on the proof of crime in our courts. The repeal of the section will also be contrary to the principles which have been accepted by our courts generally that statements by accused persons and accomplices could be acted upon, if corroborated by independent testimony or facts. It may be that a closer study may reveal some method of preserving in many cases the valuable evidence of the commission of a crime consistently with preventing abuse by the police of this method of adducing proof of the crime. This aspect of the matter may be considered by us later when the revision of the Indian Evidence Act is taken up.

Modification in special areas.

However, the recommendation which we have made in regard to the admissibility of confessions made to superior police officers in the Presidency towns will necessitate abrogation of the rule laid down in section 27 in cases in which such confessions are admissible. The rule in the section is, as already stated, in the nature of an exception to the requirements of the provisions of sections 25 and 26. As we are relaxing the application of the requirements of that section in the case of statements made to superior police officers in the Presidency towns, there can be no room for the application of the exception in such cases.

Corroboration of retracted confessions.

41. There is no statutory requirement that the confession of an accused person, later retracted, should be corroborated before it is acted upon. In a large number of

[1] A. I. R. 1947 P. C. 67.

cases, prisoners who have made lengthy and detailed confessions duly recorded under section 164 Criminal Procedure Code, and have reiterated them in the committing magistrate's court resile from these confessions in the court of session. The task of the Judges in such cases is made very difficult. Judicial decisions have therefore laid down the rule that while a conviction on a retracted confession is not illegal, yet prudence dictates that a conviction should be based on such a confession, only if it is corroborated by independent testimony. The rule of practice and prudence requiring corroboration of a retracted confession has achieved the status of a principle of law and has been universally recognised and acted upon. We would suggest that this rule might be given statutory recognition.

Statements of Witnesses during Investigation

Examination of witnesses by the police.

42. A police officer making an investigation is authorised to examine any person supposed to be acquainted with the facts and circumstances of the case. The statement so made to the police officer by the witnesses is generally reduced to writing. The person examined is bound to answer all questions relating to the case put to him by the officer, other than questions the answers to which would expose him to a criminal charge or to other penalty. The Criminal Procedure Code of 1882 was slightly different, in that, it called upon the person to answer the questions "truly". The word "truly" has been omitted in the present Code.

Their importance.

43. The recent amendment of the Code in 1955 has resulted in making the record of such a statement a very important one. Formerly, a statement made to a police officer during an investigation could be used only by the accused person for the purpose of contradicting the witness in the manner provided by section 145 of the Evidence Act. The recent amendment has made such a statement also available to the prosecution with the leave of the court for a similar purpose. In addition, in the procedure relating to the trial of warrant cases instituted on police report, the magistrate is competent to frame a charge in writing against the accused, upon a perusal of all the statements recorded by the police, other documents and after hearing the prosecution and the accused. In fact, in such cases the statements recorded by the police form the basis for the framing of the charge against the accused and the trial. In all such cases the accused has to be furnished with copies of these statements so that he might know at the outset, the nature and volume of the evidence against him. The importance of these statements has thus been greatly increased under the new procedure.

44. There is another point which needs to be noticed. Section 162 provides that no statement reduced to writing in the manner required by section 161 by a police officer

shall be signed by the person making it. That was the position even prior to the recent amendment. Though the statement is not required to be signed by him, the witness can be contradicted by his earlier statement made to the police if he is called by the prosecution in the inquiry or the trial.

Amendment of s. 161 (2) Cr. P. C.

The difference between the Act of 1882 and the present Criminal Procedure Code is, that the witness is now under a duty only to make a statement in reply to questions put to him by a police officer in relation to the case but is not obliged to answer these questions truly. It is no doubt true that the statement made before a police officer during an investigation is not one made on oath and it does not subject the maker of it to a prosecution for perjury even if it is found to be false. However, it is said that it is only proper that the law should require the witness to speak the truth even during investigation. The deletion of the word "truly" seems, it was said, virtually to suggest that the version of the witness need not be the true one. Some police officers have therefore urged that the Code should be amended by reintroducing the word "truly" in section 161(2).

But the position is not so simple. Under section 177, Indian Penal Code, "Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished....." A witness examined by a police officer under section 161 of the Criminal Procedure Code is "legally bound" to answer questions put to him with reference to the case under investigation. If the Code continued to be worded as it was in 1882, requiring the person to answer such questions "truly", the witness would become liable to a prosecution under section 177, if it was shown that the information furnished by the witness was false to his knowledge or that he had reason to believe it to be false. It is difficult enough to get witnesses to speak to facts relevant to the investigation of an offence; if the threat of prosecution were to be held over their heads, it might deter witnesses still further from giving information and seriously impede the investigation. It might also be, that notwithstanding that the version of a witness is true, the final result of the prosecution might be the discharge or acquittal of the accused; in such an event, the witness's version might well be held to be untrue and the witness might become liable to a prosecution. It is presumably for these and like reasons that the word "truly" was dropped from the provision. We are therefore of the view that it is not desirable to restore the language used in the Code of 1882.

Not advisable.

Record of the statement of a witness.

45. Except for the few amendments introduced in 1955, the Code in this regard is mainly in the same form as in 1898. The Code continues to provide that the statement made to a police officer, if reduced to writing shall not be

signed by the witness making it. We presume that it was so provided because of the prevalence of illiteracy among the people and the incompetence or want of integrity in the police in the earlier days. It would certainly be unsafe to ask a person either to sign or to make a thumb impression acknowledging the correctness of a statement which he could not read for himself. It seems to have been assumed that the police were unreliable. Statements made to them were not admissible in evidence. Even if a statement purporting to have been recorded by a police officer was read over to the witness, there was no guarantee that in the reading over of the statement, a dishonest police officer would read to him the statement as recorded in fact. All these reasons, perhaps, justified the enactment of the provision.

Under the amended Code, the statement of a witness can be used to contradict him not only by the accused but by the prosecution as well. If the witness has spoken to a particular set of circumstances relating to the case when he was examined by a police officer and later during the examination in the court he gives a different version, it is open to the prosecution to make use of his earlier statement under section 145 of the Evidence Act. The witness can accordingly be cross-examined, and if it is intended to contradict him by the writing, his attention must be called to those parts of it which are to be used for the purpose of contradicting him. Such a procedure cannot possibly advance the case of the prosecution. At the most the prosecution may be able to convince the court that the witness is a liar. The witness usually protests that his earlier statement was not properly recorded by the police, that it was not read over to him (no provision requiring it to be read over exists) and that he was not aware of what the police officer recorded. The magistrate has in these circumstances to consider generally, having regard to the surrounding circumstances, whether what the witness had stated before the police could be true. But his earlier statement cannot be treated as evidence in the case merely because he has been effectively contradicted. If there is other evidence which goes to support the witness's earlier version, the magistrate may, relying on such other evidence, convict the accused and discard the evidence of the witness who has been effectively contradicted. If there is no such other evidence the witness's later statement in court would alone be evidence, which can be acted upon. Notwithstanding the use of section 145 of the Indian Evidence Act, the earlier version can never become substantive evidence. We are for these reasons not satisfied that the amended provision is of much use.

46. However, it needs consideration whether in the light of present-day conditions when the extent of literacy has substantially increased, it should not be provided that the statement of a witness should be reduced to writing and

signed by him, *provided* the witness is capable of reading what has been so recorded. Psychologically, persons who have witnessed the commission of an offence are generally eager to state the true version, if they are questioned soon after the commission of the offence and before their memory of the events has faded away or other considerations or influences have worked on them. If the witness is literate—in the sense that he can read for himself—there should be no objection to get the witness to sign and date the statement and also certify that he has read it and that it is in accord with what he stated. Such a provision may act as a valuable check upon the tendency of the witnesses either to waver or to be won over by the other side. A greater reliance will be placed upon statements so signed and verified, if it is later found necessary to contradict the witness in the manner provided in section 145 of the Evidence Act.

From the point of view of satisfactory investigation, such a provision may be of great use. The percentage of acquittals in criminal cases has reached a high figure; and this is not always due to the police being unable to place adequate evidence before the courts. What often happens is, that the witnesses when they appear to give evidence in courts display a tendency to reduce the effectiveness of their evidence by deposing to a version different from that given by them in their statements to the police. The Inspector-General of Police, Bihar, told us that at least fifty per cent of the police cases failed because the witnesses turned completely hostile under the influence brought to bear upon them by the accused and his supporters.

Statements to be signed in certain circumstances.

If, therefore, the law enables the police to get the witness to sign and date the statement, *if the witness can read for himself what has been recorded*, it should go a great way towards combating the tendency of the witnesses turning hostile. We recommend an amendment to section 162 making such a provision. We are aware that limited as it is only to literate persons, such an amendment of the law does not go far; but it would certainly mark a desirable advance upon the present position.

Statements to be recorded.

47. The importance of the statements of witnesses has been greatly increased by the amended procedure in sections 207A and 251A of the Code. Among the documents that are to be supplied to the accused under section 173, copies of the statements of witnesses recorded by the police are perhaps the most important. On the basis of these statements, the magistrate will proceed to frame a charge and it is on that basis that the accused will have to formulate his defence. While making suitable amendments to the other provisions of the Code in the light of the introduction of sections 207A and 251A, section 161 has not been touched. We have therefore to consider whether section 161 requires amendment.

Under this provision, any police officer making an investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such person shall be bound to answer all questions relating to such case put to him by such officer excepting those which might expose him to a criminal charge or forfeiture. Section 161(3) runs as follows:

> "The police officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so, he shall make a separate record of the statement, of each such person whose statement he records".

The section does not compel the police officer to record the statement of the witnesses examined by him. It is optional on his part to do so. In what manner the statements should be recorded is also not specified in the section. He may record merely the substance of what the witness states or he may make only notes thereof. But if he does record the statements of witnesses, the law requires that a separate record of the statement of each witness shall be made. What we wish particularly to refer to is, that unrestricted discretion has been given to the investigating officer to reduce or not to reduce to writing any statement made to him in the course of his investigation. The purpose of section 173 requiring copies of the statement of witnesses to be supplied to the accused would be wholly defeated, if the police officer either does not record the statements or does it in such a perfunctory manner that the usefulness of the record is lost. It has to be remembered, that apart from furnishing the foundation for the charge, such statements of the witnesses are available to the accused as well as the prosecution with the leave of the Court under section 162 for the purpose of contradicting the witnesses. It seems to us, therefore, that in the case of persons whom the prosecution proposes to examine as its witnesses, the law should insist that the investigating officer should record the statements of the witnesses as far as possible in their own words and that no discretion should be left to him to record or not to record such a statement. The accused person should be entitled to receive a copy of the statements of witnesses who are to be called to give evidence against him. Unless it is made the duty of the police officer to record the statement and a copy of the statement is required to be furnished to the accused, the purpose underlying the recent amendments of the Code would tend to be defeated.

Searches.

48. We have been informed that considerable difficulty is being experienced by the police officers in obtaining the presence of respectable residents of the locality at searches made under Chapter VII of the Code. Section 103 requires that the officer about to make a search shall call upon two or more respectable inhabitants of the locality to attend and witness the search. He may even issue an order in writing to them to do so. A person who without reasonable

cause refuses or neglects to attend and witness a search when called upon to do so by an order in writing, is liable to punishment under section 187 of the Indian Penal Code. The police officers have stated that respectable persons do not desire to get involved in searches of this kind and make attempts to evade being required to act as witnesses. What probably prevents respectable persons from serving as witnesses is the fact, that subsequently they may have to appear a number of times at the police station or in court to give evidence. It is probable that if such witnesses are not required to attend court frequently and are treated with proper courtesy they might be available in a larger number. The difficulty appears to have assumed grave proportions, as we were told that on several occasions the police officers had failed to obtain the attendance of any persons of "the locality" and that prosecutions had failed for this reason. It is obvious that it might sometimes be difficult to get as witnesses to the search, inhabitants of the locality by reason of their interest in the accused or other causes. If, for want of such persons in the locality, other respectable persons not of the locality are called to be witnesses to the search, the search should not be vitiated; but nevertheless it should be for the prosecution to show that no such persons were available in that locality. We would therefore suggest that the law should not insist upon the presence of persons of the particular locality and it should be sufficient if respectable persons, wherever they might be found, attended and witnessed the search. We suggest that section 103 of the Code should be amended accordingly.

Difficulty of getting respectable search witnesses.

Remand.

49. The provisions of the Code of Criminal Procedure lay special emphasis on the need for the expeditious completion of investigations. Section 173 provides that "Every investigation under this Chapter shall be completed without unnecessary delay". In the investigation of an offence a police officer generally arrests a person. Section 61 of the Code lays down that "No police officer shall detain in custody a person arrested without warrant for a longer period than * * * * * is reasonable and such period shall not* * * * * exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court". Article 22 of the Constitution makes a similar provision. Under these provisions, no person can be detained in custody beyond the specified period without the authority of a magistrate. Section 167 of the Criminal Procedure Code enables the magistrate to direct such detention or custody.

Detention beyond twenty-four hours. Authority of magistrate necessary.

Remand during investigation.

50. The opening words of section 167 contemplate that an investigation into an offence after the arrest of the accused should normally be capable of completion within twenty-four hours. Failing that, it is incumbent upon the investigating officer, in cases where there are grounds for believing that the accusation is well-founded, to forward the accused person to the nearest magistrate, whether such

magistrate has or has not the jurisdiction to try the case. At the same time, he has to forward to that magistrate a copy of the entries in the diary relating to the case. The moment the accused person is produced before the magistrate, he passes into judicial custody. Thereafter, it is for the magistrate to decide whether the accused person should be retained in judicial custody or whether for furthering the progress of investigation he should be placed in the custody of the police. The magistrate is expected to decide the question judicially on a consideration of the facts and after considering whether the circumstances of the case require that the accused should be placed in police custody. The importance which the law attaches to the liberty of the individual needs no emphasis. It is in recognition of this principle that a magistrate, authorising detention in the custody of the police is required by the section to record his reasons for doing so. If the order is passed by a magistrate other than the district magistrate or sub-divisional magistrate, he is further directed to forward a copy of his order with his reasons to his immediate superior.

Duration limited.

51. Under section 167, whatever the nature of the custody of the accused person, the magistrate is not competent to authorise the detention of the accused for a term exceeding fifteen days in all. The law therefore clearly contemplates that in the generality of cases, there should be no occasion for an investigation to be protracted beyond a period of fifteen days.

Remand beyond fifteen days.

52. What should happen at the end of the fifteen days of remand under section 167 has been the subject of some controversy. If at the end of that period no police report as required under section 173 is filed, the question arises whether it is competent for the magistrate to continue to detain the accused person in custody. The latter part of section 167(2) which contemplates an analogous position states that if the magistrate "has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction." Under that sub-section, if the magistrate having jurisdiction to try the case or commit it for trial comes to the conclusion that the facts revealed by the police diary do not warrant the further detention of the accused person, he can order the release of the accused forthwith. If on the other hand he thinks that there is sufficient reason for believing that the accusation or information is well-founded and that further detention of the accused person is necessary for the completion of investigation into the case by the police, the question arises whether he can exceed the time limit of fifteen days set to the detention of the accused person under the section.

Submission of preliminary charge sheet.

53. It has come to our notice that even in such cases, there has arisen a practice under which magistrates remand the accused to custody and authorise his further detention purporting to exercise powers under section 344 of the Criminal Procedure Code. It is a matter of doubt whether section 344 has any application at all at the stage of investigation. It is possible to take the view that the section applies only to inquiries and trials. It may be said that a magistrate having jurisdiction to try the case or commit it for trial, acquires jurisdiction only on the presentation of a police report to him. Section 173 provides that as soon as the investigation is completed, "the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report, a report in the form prescribed.....". It would appear that the police report can be submitted only after the completion of the investigation. We understand that in some States a practice prevails of filing, what are called "preliminary" charge sheets after the expiry of the fifteen days contemplated by section 167(2) and the magistrate is then asked to grant a further remand under section 344. The final report under section 173 is filed later; sometimes months after the apprehension of the accused. In such cases, it is a matter of doubt whether a magistrate can be said to have taken cognizance of an offence because police report in the form prescribed has not been placed before him by the officer in charge of the police station. The magistrate may no doubt have jurisdiction to try the case; that has relation only to the nature of the offence and the requirements contained in Schedule II to the Code. But taking cognizance of an offence is something different from merely having jurisdiction to try a case. Broadly stated, a magistrate takes cognizance of the offence upon a report in writing of such facts made by any police officer [section 190(1) (b)]. Having taken cognizance, the magistrate becomes competent to commence the inquiry or the trial, as the case may be, and to take steps for the summoning of witnesses and their examination. Section 344 occurs in Chaper XXIV which deals with "General provisions as to Inquiries and Trials". Sub-section (1A) of section 344 states:—

> "If from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may,..... from time to time, postpone or adjourn the same ..... and may by a warrant remand the accused if in custody:
>
> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time."

The language of the section would seem clearly to show that the power of remand conferred by it can be exercised

only after the magistrate has taken cognizance of the offence and if it becomes necessary thereafter to postpone the commencement of the inquiry or trial for reasons to be stated. It seems to us to be difficult to invoke the power given under this provision in cases where a police report in the prescribed form has not been filed before the magistrate. A preliminary charge sheet clearly will not be a police report in the prescribed form.

Apparently, however, the explanation to this section seems to be relied upon by some magistrates in justifying a remand even in cases which should legitimately come within the scope of section 167. The explanation reads:—

> "If sufficient evidence has been obtained to raise a suspicion that the accused might have committed an offence, and it appears likely that further evidence may be obtained by a remand, it is a reasonable cause for a remand".

Whatever the true meaning of the explanation, it obviously cannot be read into section 167 and made applicable at a stage prior to the filing of the police report.

Conflict of decisions.

54. There is a conflict of opinion[1] on the question whether on the expiration of the fifteen days specified in section 167 without a police report being filed, the magistrate is bound to release the arrested person or whether the period of remand can be extended by the magistrate under his powers under section 344 Criminal Procedure Code.

Amendment suggested.

55. It seems to us that considering the scheme of these provisions, there is no warrant for the continued detention of a person beyond a period of fifteen days under section 167. Nor would section 344 be applicable, till a police report in the prescribed form has been filed and the court has taken cognizance of the case. The solution of the difficulty lies in the Legislature providing specifically for the contingency of a remand after the expiry of fifteen days by an appropriate provision which, while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual.

No doubt serious offences require a much longer time for investigation; but no one can contemplate an accused person being kept in custody for months awaiting the completion of the investigation and the filing of the police report. We would not have dealt with this matter at such length but for the fact brought to our notice that in some of the northern States, accused persons were being kept under remand for long periods extending over several months without any police report being filed in the courts. If section 344 is to be utilised in such cases, it would mean in effect, giving an unrestricted licence to the police and

[1]Kali Charan *vs.* State, A. I. R. 1955, Allahabad 462.

the discretion of the magistrate could seldom be effectively exercised.

In view of the conflict of judicial opinion on the question, it is desirable that the law should be clarified by providing in section 167, that if investigation is not completed within 15 days and the police are therefore unable to file the report under section 173, the Magistrate may in suitable cases remand the accused to custody for a term not exceeding fifteen days at a time. The law must, however, fix a maximum time-limit beyond which an accused person cannot be detained without a police report being filed before a magistrate competent to take cognizance of the offence.

The position in the United Kingdom.

56. In this connection we may point out that in the United Kingdom even a person accused of a serious offence like treason or felony cannot be kept in prison indefinitely awaiting his trial. The trial has to commence within a specified period.

If a person is charged with treason or felony "he can insist upon being tried at the first sessions after his committal, or if he is not then tried, upon being bailed, unless the witnesses for the Crown cannot appear. If he is not tried at the second sessions after his commitment, he can insist upon his release without bail[1]. The prisoner can apply for a writ of *habeas corpus* which would ensure his being brought to a speedy trial. In this connection we would also invite attention to the provisions of Section 497(3)A of the Criminal Procedure Code. It provides that in cases triable by a magistrate, if the trial of persons accused of a non-bailable offence is not concluded within a period of sixty days from the date first fixed for taking evidence, such person shall be released on bail unless the magistrate for reasons to be recorded refuses it.

S. 497(3)-A Cr. P. C.

The Code itself thus contemplates the release of a person undergoing trial for an offence if he has been in custody for some time and the trial has not been concluded.

It would be indeed anomalous that a person should be entitled under the provisions of this section to be enlarged on bail after his trial has commenced and yet it should be permissible to keep him indefinitely in custody at the stage of investigation preceding his trial.

We would, therefore, recommend that the period during which a person can be remanded to custody at the stage of investigation should under no circumstances exceed sixty days.

Supply of copies to the accused persons

Importance of police statements.

57. What we have already said shows how important to the accused is the supply of copies of documents referred to

[1]Dicey's Law of the Constitution, page 218 (9th edition).

in section 173. However, we have noticed a tendency to treat this vital requirement as a mere formality. We have been shown copies of statements of witnesses supplied to accused persons which were wholly illegible. The carbon copies supplied are made in a careless manner so that even the writer himself would not be able to make out what he wrote. Counsel have told us that such copies made it impossible for accused persons to have any idea of the evidence against them and that the advantage which the accused was supposed to derive from these copies being supplied to him, had become illusory in a majority of cases. Such difficulties probably arise only in cases where there are a large number of accused persons and numerous copies of the statements and other documents have to be prepared. On the other side, while police officers admit that these copies are not as well prepared as they might be, they complain that the preparation of these copies has thrown a very heavy burden upon the police staff. Generally, it is the station writer or some other person attached to the police station who prepares these copies. Additional staff is employed when the work becomes particularly heavy. The police officers suggested that in the circumstances the court itself might be empowered to prepare and supply copies to the accused persons. Under section 251A(1) and under section 207A(3), a duty has been cast on the magistrate "to satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished". The Magistrate has to satisfy himself in regard to this matter at the commencement of the trial or inquiry. Under this section, therefore, the magistrate is under no duty and has presumably no power to ascertain in advance of the date of the inquiry or trial whether the copies have been furnished as required. The magistrate should, in our view, satisfy himself that the copies supplied are of such a character that the accused is able to read them and know their contents. If, therefore, on the date of the inquiry or trial, the magistrate finds either that copies have not been supplied or that copies supplied are illegible, he should direct the police to supply the required or proper copies and adjourn the inquiry or trial. We have not been told whether adjournments on this ground have become necessary in a large number of cases. We are of the view that since the law has cast a duty upon the magistrate to see that the accused has been supplied with the relevant copies, it would be desirable to entrust the magistrate with the duty of supplying the copies to the accused person. Immediately after the filing of the police report, the magistrate can after considering the volume of the papers to be copied, fix the date of inquiry or trial. He could, thereafter see that the copies are prepared well in advance of the date of the inquiry or the trial and supplied to the accused. Additional staff will be necessary whether

Illegible copies.

Magistrate to supply copies.

the duty is entrusted to the police establishment or to the magistrate. The advantage of entrusting this duty to the magistrate will be to ensure despatch and a proper control over the copying establishment. If the police establishment is entrusted with this task, the police officers' investigatory and other functions may suffer by the addition of these administrative duties. We therefore recommend that the Code be amended and the duty of preparing and supplying copies to the accused persons be laid on the magistrate, the magistrate being given additional staff for the purpose.

Establishment to be strengthened.

Voluminous documents.

58. The accused person is also entitled to be supplied with copies of "all other documents or relevant extracts thereof, on which the prosecution proposes to rely". In some cases, the evidence largely consists of account books and entries. It is easy to see that in such cases, a large number of entries, probably covering whole pages of account books, might be relied upon by the prosecution. If the law is to be strictly followed copies of numerous pages of account books will have to be supplied to the accused. We were told that such a difficulty had to be faced in West Bengal in some cases. These bulky documents would be lying in court and could be made available for the perusal of and examination by the accused and his counsel. There seems therefore to be little purpose in requiring copies of these to be made and furnished to the accused at the cost of a great deal of labour and expense. Section 173 should therefore, be amended suitably by vesting a discretion in the court that in the case of documents considered voluminous, the supply of copies might be dispensed with, the originals themselves being made available to the accused or his Counsel for perusal, examination and taking notes in the court house.

Inspection to suffice.

Summary of recommendations.

59. Our recommendations regarding investigation by the police may be summarised as follows:—

(1) The State Government should undertake a careful examination of the adequacy of the strength of the police in relation to the prevalence of crime.

(2) The police, particularly the members of the investigation force, should be trained in modern methods of investigation and the application of science to criminal investigation.

(3) Refresher courses should be arranged for senior officers.

(4) The police should be provided with the necessary modern equipment.

(5) Serious offences should invariably be investigated by senior police officers.

(6) As far as practicable, the investigation of a case should be the responsibility of one officer.

(7) Wherever possible, there should be separate investigating officers who do not have other duties than investigation of crime.

(8) Superior police officers should exercise greater control and supervision over the investigation carried out by their subordinates.

(9) The time has not yet come for making confessions to police officers generally admissible in evidence.

(10) However, a beginning may be made by permitting confessions made to superior police officers in the Presidency towns and other places of like importance admissible in evidence in cases which have been investigated by such officers themselves.

(11) In such cases there should be no scope for the application of section 27 of the Evidence Act which should be suitably amended.

(12) Before confessions to superior police officers are made admissible in respect of any local area, the judiciary in that area should be separated from the executive.

(13) The rule of prudence requiring corroboration of retracted confessions should be given statutory recognition.

(14) When a police officer records a statement under section 161 of the Criminal Procedure Code, the person making the statement, if he is able to read it for himself should be required to read what has been recorded and sign and date it and certify that it is a correct record of his statement.

(15) The law should be amended so as to provide that the investigating officer should record the statement of every person whom the prosecution proposes to examine as a witness and that the statement should as far as possible be in the witness's own words.

(16) Section 103 of the Criminal Procedure Code may be amended so as to permit the officers conducting a search to call as witnesses even persons not residing in the locality.

(17) Section 167 of the Criminal Procedure Code should be amended to enable a magistrate to remand an accused into custody for a period exceeding fifteen days if investigation is not completed within that period. The law should, however, also fix a maximum period beyond which such a remand cannot be granted.

(18) The duty of supplying copies of statements of witnesses, documents and the like to the accused should be placed upon the court and not upon the police.

(19) The court should be provided with additional staff for this purpose.

(20) In cases where the documents to be supplied to the accused are voluminous, the court might be empowered to dispense with such supply and instead allow the accused and his counsel to inspect them in court.



35.—PROSECUTING AGENCY—DIRECTOR OF PUBLIC PROSECUTIONS

The role of Public Prosecutors.

Appointment of Public Prosecutor.

His duties and powers.

1. A Public Prosecutor is appointed by the State Government under Section 492 of the Criminal Procedure Code, generally, or in any case, or for any specified class of cases in any local area. His duties principally consist in conducting prosecutions on behalf of the Government and in appearing on behalf of the State in proceedings like criminal appeals, revisions and other matters in the sessions courts and the High Courts. He is competent to appear and plead before any court in any case that is entrusted to him. He is empowered by law with the consent of the court to withdraw from the prosecution of any person. Though it is no part of his statutory duties, he has also sometimes to advise the Police and other Government departments with regard to prosecution of offenders, if called upon to do so.

The role of the public prosecutor.

2. The integrity of a person chosen to be in charge of a prosecution does not need to be emphasised. The purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of a Public Prosecutor is not to represent any particular party, but the State. The prosecution of accused persons has to be conducted with the utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community. There should not therefore be "an unseemly eagerness for, or grasping at a conviction".[1] A Public Prosecutor should be personally indifferent to the result of the case. His duty should consist only in placing all the available evidence irrespective of the fact whether it goes against the accused or helps him, before the court, in order to aid the court in discovering the truth. It would thus be seen, that in the machinery of justice, a public prosecutor has to play a very responsible role: the impartiality of his conduct is as vital as the impartiality of the court itself.

Not subordinate to the Police.

3. There was a time when the Public Prosecutor was inclined to regard himself as the right-hand man of the Superintendent of the Police. Occasionally complaints are still heard that some Public Prosecutors function as though they are a part of the police machinery. But we believe that this tendency has now largely disappeared. Fairly senior members of the Bar are now appointed Public Prosecutors and it is unlikely, that they would sacrifice their independence and self-respect and conduct themselves as subordinate of the District Superintendent of Police.

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[1] Anant Wasudeo Chandikar *v.* The King Emperor A.I.R. 1924 Nagpur 243 at page 245.

Assistance at the stage of investigation.

4. In the investigation of important criminal cases, the assistance of the Public Prosecutor is frequently sought by the investigating agency itself. The majority of cases which are of a simple nature are handled by the police without much difficulty. Now and again, however, there arise very important and complicated cases, which require legal assistance even during the stage of investigation. Whether any particular link in the chain of evidence is missing, whether any connected aspect of the matter requires to be investigated in order to fill up a possible lacuna in the prosecution case, whether sanction for the prosecution is necessary and such other matters cause difficulty to the investigating officers during the investigation and before they file a police report. When such difficulties arise, the Public Prosecutor is generally approached for advice and assistance by police officials. The Public Prosecutor has however no power to interfere in the investigation, nor can he call for the police papers and scrutinise them or otherwise examine the available evidence before a report is actually filed in court. This is somewhat anomalous. Though he is responsible for the conduct of the prosecution in court, he has no opportunity of controlling or shaping the materials on which the case is to be founded and put before the court.

Organisation of Prosecuting Agency.

In Magistrates Courts.

5. Before we proceed to suggest measures for the improvement of the Prosecuting Agency, we may outline the salient features of this organisation in some of the States. There is no uniformity in the prosecuting organisation in India. Generally speaking, prosecution in magisterial courts is in the hands of either the police officials or persons recruited from the Bar and styled "Police Prosecutors" or "Assistant Public Prosecutors". These officers work under the directions of the Police department. The Public Prosecutor who is entrusted with the prosecution of trials in sessions courts is under the general control of the District Magistrate.

In the States of Andhra Pradesh and Madras, however, the system of police officers functioning as Prosecutors has been completely given up. Even in the Magistrates' Courts, prosecutions are conducted by a class of officers known as Assistant Public Prosecutors who are recruited from the Bar and are under the control of the District Collector. There exists in Madras a regular cadre of whole-time Assistant Public Prosecutors. In Bombay, these officers, though they are recruited from the Bar, are styled "Police Prosecutors". In the Punjab, the Prosecuting Agency is a part of the Police Department itself and is headed by a Deputy Superintendent of Police in charge of prosecution work in all the Magistrates' Courts. In Uttar Pradesh, a Prosecuting Inspector is generally appointed either from the Bar or from the Police Department, if he has worked for three years as an investigating officer and has either a degree in Law or holds a certificate

of having passed LL.B. (Previous) examination of the Allahabad University in the subject of the Indian Penal Code, the Criminal Procedure Code and the Evidence Act. In other States, police officers including Head Constables, who need not possess any legal qualification are authorised to conduct prosecutions in the Magistrates Courts. They are called "Prosecuting Inspectors," or "Prosecuting Sub-Inspectors" according to their rank in the Police Department. In Bihar, law graduates are recruited both from the Bar and the Police Establishment for appointment as Assistant District Prosecutors and they are under the control of the Police Department.

In Sessions Courts.

6. In most of the States, the Public Prosecutors are not whole time employees. In Bombay and Madras, the Public Prosecutors are not whole time Government servants. They are paid monthly retainers and daily fees for the work done. They are also entitled to accept private work subject to certain restrictions. In some of the districts of the Punjab, Public Prosecutors are whole-time Government servants.

Prosecution Machinery in England.

7. In England, there is no centralized prosecuting agency. The Common Law theory is that prosecution of an offender is essentially the concern of the aggrieved party. In contrast with this, in Scotland, the right to institute and carry on criminal proceedings is that of the State. But even in England, the great majority of prosecutions are in fact instituted and conducted by the police. Even where the prosecution is started by a private citizen, it is normally conducted by the police in all cases of serious offences. In a preliminary enquiry, the prosecution may be conducted by a police officer, but serious offences which cannot be tried summarily are handed over to a Counsel engaged by the Police through a Solicitor. In the case of offences of exceptional gravity, the responsibility of initiating the prosecution lies with an officer known as the "Director of Public Prosecutions." He is an official appointed by the Home Secretary from among barristers or solicitors of ten years' standing. He does not conduct the prosecutions himself, but is generally represented by a Counsel in court. He has his own legal and administrative staff to assist him. The Director's main functions are as follows[1]:—

Director of Public Prosecutions.

His duties.

(1) He gives advice to police authorities, Government departments, and others;

(2) He prosecutes (a) all offences punishable with death (b) cases referred to him by Government departments, if he thinks there should be a prosecution, and cases which appear to him to be of importance or difficulty or which for any other reason require his intervention.

[1] The Prosecution of Offences Regulation, 1946 and under the Prosecution of Offences Acts. Cited in Archibald Pleading, Evidence & Practice in Criminal cases 33rd Edition, pages 113-114.

(3) The Police must report to him certain offences specified in the Regulations, like offences of murder, man-slaughter, rape, sexual offences, sedition, public mischief, bribery and corruption of public servants, fraudulent conversion by a public official, solicitor or trustee, and others. The list of such offences is a long one.

8. In respect of these and certain other specified offences, reports are sent to the Director of Public Prosecutions by the chief officer of Police from every police district. This enables him to keep a check on the final result of the investigations into these offences. He is also informed of every case in which the prosecution for an offence instituted before examining justices or a court of summary jurisdiction is wholly withdrawn or is not proceeded with within a reasonable time. In such cases if the Director is satisfied that some circumstance, *e.g.* improper conduct, has arisen in connection with the proposed withdrawal, he can intervene and carry on the prosecution under his statutory powers.

However, the most important duty of the Director is to give advice, whether on his own initiative or when asked, to Government departments, Chief Officers of the Police, and other officers, in any matter relating to a crime which appears to him to be of sufficient gravity. One of his important duties is to advise the investigating agency in important and serious cases. Such advice is particularly sought in matters where technical evidence may be required *e.g.* of a medico-legal kind, or where questions arise which may require examination by an expert accountant or some scientific expert.

Prosecutors in U.S.A.

9. In the American Legal System, Prosecutors are generally elected by the people for a fixed term, and appear to enjoy even greater powers than their counter-parts in England. The American Prosecutor has the power to investigate into the case himself. Every Prosecutor has a separate investigating staff attached to his office. The District Prosecutor may disregard the police investigation or he may supplement it with his own. In cases of grave and heinous crimes, where indictment by Grand Jury is not obligatory (that is so in many States), the Prosecutor has the exclusive power to decide, whether to send the accused for trial or not. Being an elected official, the District Prosecutor is independent of the police and other executive influences and enjoys complete discretion in the matter of initiation and conduct of prosecution. He, therefore, occupies an important position in the machinery of criminal justice. He exercises considerable initiative in the matter of investigation, and his concurrent powers of investigation which the police enable him to exercise an effective check on police investigation.[1]

[1]Meyers : The American Legal System, P. 104 and following pages.

10. Can we with advantage introduce in India some useful aspects of the systems that obtain in England and in United States?

Main defects of Prosecution machinery in India.

11. We have pointed out earlier, that in most of the States, the prosecutors in the Magisterial courts are either police officers, who may or may not be legally qualified, or members of the Bar; but they all function as a part of the Police Department. However experienced the specially appointed police officers might be, want of legal knowledge or legal qualifications must affect adversely prosecutions conducted by them. On account of a lack of adequate knowledge of law, and particularly of case law and the law of evidence, such prosecuting officers are not capable of presenting their cases with ability and effectiveness. As compared with counsel appearing for the accused, who are all legally qualified and trained, their performance is bound to be inadequate. The burden of proving a case is upon the prosecution, and the prosecution ought to be represented by advocates, as able if not abler than the lawyers for the accused. In any case, there can be little dispute about the general principle, now largely accepted, that the prosecutors ought to be legally qualified persons and should be recruited from the Bar.

Limitations of a Police Prosecutor.

12. It must not also be forgotten that a police officer is generally one-sided in his approach. It is no reflection upon him to say so. The Police Department is charged with the duty of the maintenance of law and order and the responsibility for the prevention and detection of offences. It is naturally anxious to secure convictions. Not infrequently, relevant witnesses are kept back by the prosecution. Intimidation of defence witnesses is also not unusual. These are the results of an excess of zeal by the police officers and a want of a realization of their true function. But if the purity of judicial administration is to be maintained, such conduct must be sternly checked. We have also been told of police officers of the lower grade in charge of the prosecutions deliberately weakening their cases out of corrupt motives. It is obvious that by the very fact of their being members of the police force and the nature of the duties they have to discharge in bringing a case to court, it is not possible for them to exhibit that degree of detachment which is necessary in a Prosecutor. It is to be remembered that a belief prevails among police officers that their promotion in the department depends upon the number of convictions they are able to obtain as prosecuting officers. Finally, the only control or supervision of the work of these prosecuting officers is that exercised by the departmental officials.

Weakness of the system in India.

13. The Public Prosecutor in India is almost wholly occupied with the conduct of prosecutions in the Sessions Courts and in appearing for the State in criminal appeals or revisions and like matters. Apart from such advisory

functions as he may discharge when requested to do so by the District Magistrate or the District Superintendent of Police, he has no control over the cases before they come to the court. Even in the exercise of the power to withdraw from a prosecution, he is controlled to a large extent by the District Magistrate or the District Superintendent of Police. On account of the practice that has prevailed for a long time, the Public Prosecutor has come to occupy a subordinate position. Even when he is aware of the defects in the prosecution evidence, he is not in a position to influence the future course of the prosecution. He is rarely consulted at the crucial stages of investigation and has no opportunity of guiding the investigating agency in the matter of gathering relevant evidence.

A large number of complaints never come to court for the reason that the police after investigation report them to be not worth proceeding upon grounds of insufficient evidence or legal difficulties. It is true that in such cases, the complainant can himself directly file a complaint. The propriety of dropping the prosecution in such cases is a matter that is at present examined only by the departmental officials. The Public Prosecutor is unable to interfere in any of these matters, being regarded more or less as a subordinate official under the control of the District Magistrate and the District Superintendent of Police.

Separation of Prosecuting Agency.

14. It has been suggested, and we see great usefulness in the suggestion, that the prosecuting agency should be separated from and made independent of its administrative counter-part, that is the Police Department, and that it should not only be responsible for the conduct of the prosecution in the court but it should also have the liberty of scrutinising the evidence particularly in serious and important cases before the case is actually filed in court. Such a measure would ensure that the evidence in support of a case is carefully examined by a properly qualified authority before a case is instituted so as to justify the expenditure of public time and money on it. It would also ensure that the investigation is conducted on proper lines, that all the evidence needed for the establishment of the guilt of the accused has been obtained. The actual conduct of the prosecution by such an independent agency will result in a fairer and more impartial approach by the prosecutor to the case.

A Director of Public Prosecutions for each District.

15. We therefore suggest that as a first step towards improvement, the prosecuting agency should be completely separated from the police department. In every district a separate prosecution department may be constituted and placed in charge of an official, who may be called a "Director of Public Prosecutions". The entire prosecution machinery in the District should be under his control. In order to ensure that he is not regarded as a part of the police department, he should be an independent official,

directly responsible to the State Government. The departments of the machinery of the criminal justice, namely the investigation department and the prosecuting department should thus be completely separated from each other.

16. The principal functions of the Director of Public Prosecutions should be as follows:— His functions.

(1) He should be the Head of the entire prosecuting machinery in the district and exercise administrative control over all the Prosecutors in the sessions courts and in the magisterial courts of the district.

(2) He should arrange for the prosecution of all cognisable cases, through Assistant Public Prosecutors and distribute the work among them. He should himself conduct important prosecutions.

(3) He should receive copies of the first information reports in all cognizable cases and also case diaries and other reports which are at present sent to magistrate's courts and are seldom looked into by them.

(4) Every police charge-sheet before it is laid in the court, should be scrutinised in his department so that, in case any difficulty or lacuna exists in the prosecution case, it should be possible to remedy it by further investigation on the lines indicated by his department.

(5) He should advise the Police Department, or other Government Departments at the District level, on the legal aspects of a case, at any stage of criminal proceedings, including the stage of investigation. His advice will be particularly helpful in difficult and important cases, like cases involving charges of conspiracy, fraud and forgery, cases based on circumstantial evidence and evidence gathered from account books, especially of firms or corporations.

(6) In important and difficult cases he may, with the approval of the State Government, engage advocates as Special Public Prosecutors to appear in sessions courts or even in magisterial courts on behalf of the State.

(7) Cases in which the police department decides not to initiate prosecutions should similarly be scrutinised by his department.

(8) He should examine all cases of acquittals, or cases where there is a conviction only for a minor offence, the accused having been acquitted of more serious offences. This will enable him to find out the causes of acquittal, and devise methods to avoid miscarriage of justice.

(9) He should encourage the prosecutors to consult him in all cases of difficulty.

A full-time Government Servant.

17. It is necessary that the Director of Public Prosecutions should be a full time Government servant and should not be allowed the right of private practice. The nature of his duties is such that if he were allowed the right to practise privately, his personal interest may clash with the due performance of his duties. There have been occasional complaints, about the failure of part-time public prosecutors to perform their duties properly and efficiently. Being in a position to confer favours, they are able to obtain advantages for themselves in private practice. We therefore recommend in the interest of integrity and efficiency, that the practice of appointing part-time prosecutors be abandoned.

Pay.

18. It is difficult to suggest a definite pay scale for the Director, for the conditions vary in each State. But we think that the present public prosecutors can be drawn upon to fill the office of the Director. Taking into account the fact that the daily fees paid to them are not considerable, there should be no difficulty in arranging the payment of a fair salary to them. It should therefore be possible to attract efficient members of the bar to these posts.

Qualified Assistants.

19. In order to enable the Director of Public Prosecutions to efficiently perform his functions, it is necessary that he should be assisted by competent legally qualified assistants. We suggest that a separate cadre of prosecutors may be established in every State and one or two Assistant Public Prosecutors with the necessary clerical staff could be appointed to assist the Director of Public Prosecutions in the discharge of his functions. It is possible that some of the functions of the Director of Public Prosecutions like the scrutiny of police reports and the rendering of legal advice to the police department, could be delegated to the Assistant Public Prosecutors at the sub-divisional level, subject to the overall superintendence of the Director. These are however matters of detail, which can be worked out by the State Governments, having regard to the local conditions and the nature and amount of criminal work in each State. We believe that these proposals, if accepted, will go a long way towards strengthening the prosecuting agency and keeping an effective indirect check on the investigating machinery.

Need of Improved Conditions of Service.

20. In addition to the Public Prosecutor or the Additional Public Prosecutor, who looks after the criminal work in Sessions Courts, Additional or Assistant Sessions Courts, prosecuting officers needed for prosecuting work in the magistrates' courts are also appointed from among the members of the Bar. So far as we have been able to ascertain, only in the States of Andhra Pradesh, Bombay and Madras, does there exist a separate cadre of officers

known as the Assistant Public Prosecutors. The remuneration paid to the Public Prosecutors who are often drawn from the higher levels of the Bar, is not altogether adequate.

In some of the heavy courts, the whole time of the Public Prosecutors is taken up by Government work and they have no time to take up private work. It is therefore necessary that they should be adequately remunerated. The Assistant Public Prosecutors in Madras and Bombay, are full time officers. Their pay is below the level of that of a District Munsif. In order to better their prospects, in Andhra Pradesh and Madras, they have been declared eligible for recruitment as members of the subordinate judiciary. The remuneration paid to them is even more inadequate than that paid to the Public Prosecutors. An Assistant Public Prosecutor or prosecuting officer attending to criminal work in the courts of more than one or two magistrates, it will be appreciated, carries a very heavy burden of work. One cannot expect efficiency from these officers if they are not paid satisfactorily. We therefore recommend that the conditions of service of and the remuneration payable to these officers should be suitably revised. The nature and extent of the revision needed will be a matter for the consideration of each State Government.

Co-operation between Prosecuting Agency and the Police.

21. Our attention was drawn to difficulties arising from the lack of co-operation between the Police Department and the Public Prosecutors. The Public Prosecutor has to be placed in full possession of all the relevant facts and documents. In the case of a private complaint, a counsel engaged by a party has the opportunity of examining all the documents and even of questioning witnesses, so that, he may be able to place a precise case before the court. A Public Prosecutor, we were told, is frequently denied such an opportunity. It is true that he is furnished with the case diary which contains the statements of the witnesses and with copies of the documents relevant to the case. But not infrequently, it becomes necessary for the Public Prosecutor to know more fully what a witness is likely to say. The statements of the witnesses are rarely recorded verbatim so that a mere perusal of the case diary does not give him enough information. Occasionally also, he wishes to communicate with the investigating officer in order to acquaint himself more thoroughly with the facts appearing from the diary and the documents. It is also important that he should have the assistance of the police officer in cases where defence witnesses are to be cross-examined. The Public Prosecutors do not however get sufficient assistance in these matters. The police officers appear, to treat the case as at an end, once they have completed the investigation and submitted the police report. Though the police officers should, in fairness to the accused, not adopt a partisan attitude and try to manoeuvre matters

so as to secure a conviction, it certainly is a part of their duty to see that all information needed for a proper trial is furnished to the prosecutor. In our view, it should be the duty of the Superintendent of Police, as the head of the Police in the District and as the person intimately connected with the control of crime, to see that the prosecutors are given all the assistance and information they need at the trial. Perhaps the Public Prosecutor now regards himself rightly as an officer of court, interested only in the proper presentation of cases. He does not wait on the District Superintendent of Police as was done in the British days. This is as it should be and the Police should appreciate and accept the new shape of things. Perhaps a more efficient co-ordination between the Prosecutors and police officers may be brought about by the acceptance of our recommendation for the appointment of a Director of Prosecutions for each district.

Training.

22. It was said that the recruitment of prosecutors from the Bar had not yielded satisfactory results. An Inspector-General of Police expressed the opinion that police prosecutors were better equipped than lawyer prosecutors. The chief advantage, it was said, lay in the fact that the Police Prosecutor had an intimate knowledge of the process of investigation; he had also training in other branches of police work. It seems to us that if this lack of acquaintance with methods of police investigation affects the competence of a lawyer-prosecutor a training for about six months may be given to him. He may during his training watch the investigation of cases and learn more precisely how the police department functions, before a police report is laid before a Magistrate. The training should be effective and the recruit should be made acquainted with those aspects of investigation of cases which would enhance his usefulness as a prosecutor.

Summary of recommendations.

23. Our recommendations regarding the Prosecuting agency may be summarised as follows:—

(1) All prosecutors should be legally qualified and be recruited from the Bar.

(2) The prosecuting agency should be separated from the Police Department.

(3) There should be a whole-time officer responsible for prosecutions in each district styled the Director of Public Prosecutions.

(4) His duties and functions should be as set out in paragraph 16 *ante*.

(5) Under him there should be a cadre of whole-time prosecutors responsible for conducting prosecutions who may discharge some of the functions of the Director at the Sub-Divisional level.

(6) The conditions of service of Public Prosecutors and Assistant Public Prosecutors should be improved and their emoluments raised.

(7) Assistant Public Prosecutors should be trained in the police department for six months.



36.—DELAYS IN CRIMINAL TRIALS AND INQUIRIES

Separation as a means to speedy disposal.

1. An important measure, which is bound to result in the speedier disposal of criminal cases is the separation of the judiciary from the executive. It has been amply demonstrated in some of the States where it is in force, that it results in a quicker disposal of cases. In non-separation States, the magistrates are frequently compelled to put aside criminal judicial work in order to attend to urgent executive duties. Apart from this the expedition which can be achieved only by a close and continuous scrutiny of the magistrates' work by a High Court Judge, as in Madras, is possible only if the judiciary is separated and put under the control of the High Court.

Causes of delay. General.

2. The other causes which occasion delay in the disposal of criminal cases are not very different from those that obtain in civil cases. The absence of witnesses, absence of counsel, adjournments—on adequate grounds or otherwise—crowded lists and failure to examine witnesses though present, absence of a system of day-to-day hearing, and delay in the delivery of judgments are all causes which lead to delay in criminal cases also.

Witnesses.

3. We have earlier called attention to the reluctance of witnesses to appear in Courts. We were informed in several States, particularly in Bihar and Madhya Pradesh that witnesses, including the investigating and other police officers often failed to attend the Courts, and, in consequence, cases had frequently to be adjourned. The adjournments caused considerable hardship to the accused, specially if he was in custody. We were told in Bihar that even sessions cases had to be adjourned several times on account of the non-attendance of witnesses. A large number of judicial officers and lawyers who were examined in Bihar, also attributed the failure of witnesses to attend as the principal cause of the delay in the disposal of criminal cases. It was said by the judicial officers that the police did not serve the summonses in time, while the police stated that the summonses were issued too late by the Courts for service in time. These, in our view, are matters which should be dealt with at the district level by a close co-operation between the Sessions Judge or the District Magistrate and the District Superintendent of Police. The Magistrates must undoubtedly share part of the blame for the failure of witnesses to attend which not infrequently arises from careless postings, and a failure to examine witnesses who have attended court and are present.

The prosecution of cases instituted on police report is undertaken by the State. These cases usually involve offences which need to be punished in the interests of

society. The expenses of the prosecution are borne by the State. The State provides the Courts and their machinery and the prosecuting agency. The State, however, overlooks the important circumstance that if the convenience of the witness is not attended to and his reasonable expenses are not paid, the prosecution which has been started in the interests of society will suffer for want of the necessary evidence.

Convenience of witnesses not considered.

4. No provision is as a rule to be found in the court houses for the convenience of the witnesses when they come to court. In several States the witnesses have to wait under the trees in the grounds of the court houses or in the verandahs of the court houses. No protection is provided to them from the sun and rain. No conveniences of any kind exist. In some Courts, there is what is known as the witnesses' shed, roofed but exposed on all sides. In many places even this shed is made use of for other court purposes.

Inadequate travelling allowance.

5. The scales of travelling allowance and daily batta paid to the witnesses are very inadequate in many States. It frequently happens that the budget provision for these expenses and batta is itself inadequate so that it soon gets exhausted and witnesses attending the courts after the allotted sum has been expended are not paid even the inadequate travelling allowance and batta that is sanctioned.

No payment in certain areas.

6. We may in this connection refer to a rule which obtains in the portion of the State of Mysore which constituted the old Mysore State. It states: "The attendance of complainants and witnesses at the criminal courts being a public duty, payment should be made only to such as are poor, or to those who have been put to considerable expense in attending the court. And, as a general rule, not more than four annas will be allowed to each witness for every day's attendance at the court, or for every day's journey of ten miles to and from court."[1]

Mysore.

The rule appears to have classified the witnesses into four classes: the batta being Rs. 3, Re. 1, Annas 8 and annas 4 for each of these classes.

The Inspector-General of Police, Mysore told us that witnesses attending the magistrate's courts were not being paid any travelling allowance or batta at all. He stated that they were being paid "something" in the Sessions Court. The officer had served in four States and told us that Mysore was the only State where witnesses were not paid any batta.

The majority of the witnesses who appear in magistrate's courts would belong to the classes entitled to payment at the rate of annas eight or annas four per day. It

[1] The Criminal Rules of Practice and Circular Orders, Vol. I, Chapter XXX, 1934 Edition, page 163.

is obvious that the amounts provided by the rules cannot be a sufficient recompense to these witnesses for the trouble and expense to which they are put. It is idle to talk in a sanctimonious manner of it being the duty of the citizen to attend as witnesses in criminal courts when the persons concerned would by reason of attendance in courts be taken away from their daily vocations and be put to the expense of travelling and food during the time that they are attending the courts. The suggestion that a subsistence allowance of annas four for a day is adequate even for witnesses of the lowest class is ludicrous.

Kerala.

We are informed that in the State of Kerala a sum of rupees twenty five is allotted annually to each criminal court for meeting the expenses of witnesses appearing in that court. Once the amount of Rupees twenty-five is exhausted, the witnesses cease to be paid anything at all. It is not surprising that in these circumstances in that State witnesses who are served with process very frequently do not attend court.

A further evil was brought to our notice in this connection. In several of the inferior courts the batta intended for the witnesses fails to reach them either wholly or in part. Payments are made by ministerial officers who make some unwarranted deductions from these monies before paying them to the witnesses or pocket them altogether.

Adequate provision to be made for batta and conveniences.

It is regrettable that while Governments have been repeatedly expressing their concern over delays in the disposal of criminal cases, they should forget the difficulties created by their own action in this respect. It is imperative that proper conveniences should be provided for the witnesses in court houses and that they should not be herded together and treated, as they are in some places, as cattle. It is necessary also to take immediate action to prescribe adequate scales of allowances for the witnesses and adequate budget provision for such payments. It is necessary also to provide a proper machinery for supervision so that the witnesses may be assured of the receipt in full of the allowances meant for them.

Punishment of recusant witnesses.

8. Even when the witnesses have been served in due time to enable them to appear before the Court but fail to do so, the magistrates seldom take any penal action. Under the Criminal Procedure Code, it is open to the magistrate to file a complaint and to have the witnesses prosecuted for non-attendance under section 174 of the Penal Code. Section 195 of the Criminal Procedure Code lays down that no court shall take cognizance of an offence punishable under section 174 Indian Penal Code except on the complaint in writing of the public servant concerned. Thus, a magistrate who has issued a summons for the appearance of a witness and finds that the witness though served does not appear, cannot proceed to deal with the witness himself but must file a complaint before a competent court having jurisdiction.

9. The recent amendment to the Code has however introduced a new provision in section 485-A. It provides that where a witness who has been summoned to appear before a criminal court neglects without just excuse or refuses to attend, the Court before which the witness is to appear may take cognizance of the offence and after a summary trial sentence him to a fine not exceeding one hundred rupees. This provision is in the nature of an exception to the general prohibition contained in section 195 of the Criminal Procedure Code. The Legislature, however, appears to have overlooked the fact that under section 487, no judge other than a Judge of a High Court shall try any person for any offence referred to in section 195 when such offence is committed before himself or in contempt of his authority except as provided in section 480 and 485. Section 480 lays down the procedure for certain cases of contempt and authorises a criminal court to take cognizance of the offences specified therein. Section 485 lays down the manner of dealing with a witness or a person called to produce a document who either refuses to answer questions or to produce the document required. Except in these two classes of cases, the Judge of a criminal court or a Magistrate cannot try any person for any offence referred to in section 195. In view of the prohibition contained in section 487, it appears to be a matter of doubt whether the new section 485A which was intended to confer the power on criminal courts to deal with a witness who has wilfully absented himself, has in fact conferred such a power. Section 487 would appear to require amendment so as to create an exception in respect of proceedings under section 485A.

Section 485-A Criminal Procedure Code.

A lacuna.

10. If section 485A has not altered the position the magistrate would have in such cases to file a complaint which would be heard by some other magistrate having jurisdiction. It is not surprising that the magistrates have not availed themselves of the power to file complaints against witnesses who have remained absent though served with summonses. Such proceedings if adopted by the magistrates would throw an additional burden of work upon them. It is no doubt open to magistrates to issue warrants under which the witnesses can be arrested and produced before the Court in such cases. In our view magistrates should not hesitate to adopt this drastic measure in cases in which the witnesses have wilfully remained absent. Magistrates and Sessions Judges should not hesitate to forfeit the bonds of witnesses who after having been bound over to appear on a particular day fail to appear. Stern action on the part of presiding officers by way of the issue of warrants and the forfeiture of bonds cannot fail to have a salutary effect all round and result in a marked improvement in the attendance of witnesses.

Stern action to be taken.

11. In order that steps could be easily taken against recalcitrant witnesses, we recommend that the summary

Section 487 Criminal

Procedure Code to be amended.

power contemplated in section 485A should be made available to all criminal courts by a suitable amendment of section 487. The criminal courts should in all proper cases utilise this provision to punish witnesses who flout the processes of courts.

Services of summonses.

12. Magistrates generally send a packet containing summonses by post to the concerned police station within whose jurisdiction the witnesses reside. Generally no record is kept by the Station House officer to show the receipt of the packet of summonses. Often the police officers allege that these summonses were not received by them or did not reach them in time to effect service. In this connection we may draw attention to certain instructions framed in the State of Madras. These rules provide that a magistrate, whenever he has to issue summonses should hand over the summonses to a police officer of that station which has to serve them if he appears before him that day in any connection or is otherwise present in court. This would be easy because summonses would be ready in respect of the cases which are posted a fortnight or three weeks ahead. Ordinarily, the police officers or constables of that station would appear in the court of the magistrate either in connection with a pending case or for the delivery of property or the return of warrants and other purposes. The summonses are handed over to the police officer on such occasions and his acknowledgment is taken in a register kept for the purpose. A similar register is maintained at the Police Station in which the receipt of the summonses is recorded against the name of the court. Immediate action is expected to be taken for the service of summonses and the served copies thereof have to be sent to the Court in advance of the hearing. Superior Police Officers have to inspect these registers, with a view to ensuring that prompt action is taken on receipt of the summonses. They are also authorized to look into the register of summonses kept by the Court and compare them with the police registers. We have referred to certain other details of this method in our chapter on the Supervision of Subordinate Courts. Similar instructions issued elsewhere would, in our view, help to avoid delays arising from non-service of summonses. These instructions will achieve their purpose only if their working is properly supervised.

Adequacy of Prosecuting Staff.

13. With the increase in the incidence of crime and in the number of criminal courts, it is obvious that there should be a corresponding increase in the strength of the prosecuting agency. Though it may not be possible, nor even necessary, to provide a prosecutor for each and every court, a sufficient number has nevertheless to be made available so that the trial of the cases may not be delayed for lack of a prosecuting officer. There have been complaints of such delays having occurred. It is imperative that the work of courts should not be delayed or impeded for want of a prosecuting officer.

In cases where a single prosecuting officer is provided for two or more courts the practice generally is that each court fixes a number of days which are devoted exclusively for cases arising on police reports. These days are so arranged that the days fixed by one court for such cases do not clash with the days fixed by the other or other courts. This practice normally enables the prosecuting officer to move from one court to another and to attend the different courts on the days fixed by them. But such arrangements do not always work satisfactorily, as the number of cases requiring the Prosecutor's assistance would fluctuate. This is however a matter which may be arranged so as to avoid delays in courts by the local officers such as the District Magistrate and the District Superintendent of Police. But it must be pointed out that the provision of an adequate strength of Prosecuting Officers is essential to the speedy disposal of the cases.

Absence of the Prosecutor.

14. Quite often cases are adjourned in magistrates' courts on the ground that the prosecuting police officer or the assistant public prosecutor is not present in court. Such absence may arise from a variety of reasons. In cases where the absence is due to an inadequacy of the prosecuting staff, the only remedy would be to increase its strength suitably.

But even with the existing strength delays can to a large extent be avoided by a methodical posting of the cases. If the same prosecutor has to attend more courts than one, it should be possible to fix definite days in the week in which a prosecutor is to appear in a particular court and cases in which his presence is required should invariably be posted to those days.

Similarly in cases which are prosecuted by officers of departments other than the police it should not be difficult for the magistrate to ascertain in advance the convenience of the departmental officers in charge of the prosecution and to post all cases prosecuted by that department to a particular date suitable to him.

It may also be pointed out that many cases, particularly petty ones, need not be adjourned merely by reason of the absence of the prosecutor. In Madras this difficulty has been got over by instructions to the presiding officers that in simple cases when the prosecutor is absent the magistrate should himself examine the prosecution witnesses on the basis of the memorandum annexed to the charge sheet which indicates the facts to which the witnesses are expected to depose.

Cases under Special Acts.

15. Cases under special Acts appear to suffer greater delays. In such cases the Court has generally to rely on the police for the apprehension of the accused and the service of summonses though in some of these cases such as those under the Forest Act, the Excise Acts or the Municipal Laws, the departmental agency also undertakes a part of

these duties. Police officers naturally do not display the same amount of interest in these cases which are primarily the concern of the other departments as in cases under the Indian Penal Code, even where the successful conduct of the prosecution depends to some extent upon the co-operation of their Department. It must also be noted that cases under these special enactments are far more numerous now-a-days than formerly. When, as happens fairly frequently, the departmental personnel fail to apprehend the accused or effect service on the witnesses, the task may finally be entrusted to the police. The delay arising in the disposal of these cases only emphasises the need for efficiency in the service of processes, particularly in the cases handled by the departments themselves.

16. The Court is practically powerless in the matter because the case has necessarily to be kept pending by reason of the failure to apprehend the accused or to serve the witnesses. In some of these cases, espcially petty ones which burden the files from month to month without any progress being made for the causes mentioned, the presiding magistrate may well draw the attention of the department concerned to the position and suggest a withdrawal of the cases unless he considers them suitable for taking action under section 512 of the Criminal Procedure Code.

Delays in postings and hearings.

17. These delays and the way in which they can be remedied have been examined in the chapter on Supervision. We do not wish to repeat what has been stated there. The problem is essentially one of supervision, capable of remedy by alert and watchful superior judicial officers.

Inadequacy of Magisterial strength.

18. A major reason for delays in the disposal of criminal cases is undoubtedly the inadequacy of magisterial strength in the various States.

Separation-States.

It is easy in States where the separation of judiciary from the executive has been effected to ascertain the sufficiency or otherwise of the number of magistrates having regard to the files of criminal cases. In several such States we came across heavy magisterial files. This congestion can be relieved and the necessary despatch in criminal work achieved only by the appointment of additional magistrates. In some States we were informed that even though the High Court and the Government have recognised the need for appointing more magistrates, the appointments were not made because of the absence of buildings in which the magistrates' courts could be housed. Clearly, the remedy lies in a greater realisation by the State Governments of their responsibility in the matter of the administration of criminal justice.

Other States.

In regard to the States in which the judiciary has not yet been separated from the executive, the task of assessing the adequacy of magisterial strength is difficult. The Chief Justice of Bihar has in a note referred to the extreme difficulty in assessing the number of magistrates

necessary as the Executive Magistrates did not devote their whole time to magisterial work. The officers are burdened with both magisterial and executive duties, and they seem to work on no fixed pattern, their executive duties very often calling them away by fits and starts from their magisterial work. Notwithstanding these difficulties, however, we have been able to reach the conclusion that even in these States, the magisterial strength needs to be augmented. If separation is not introduced, it would be advisable as far as possible to divide these officers into two groups and assign some officers to purely magisterial work while others may be entrusted solely with executive duties. Apart from yielding other beneficial results, such a division will tend to the quicker disposal of magisterial work as an officer will devote himself continuously to a particular kind of work. Interruptions and adjournments due to the urgent demands of miscellaneous executive work, which are a common feature in the non-separation States, will be avoided.

Division of officers.

19. But unfortunately even where the need for adding to the strength of the magistracy is realised, other administrative requirements, such as buildings seem to stand in the way of making adequate provision. We fail to see any justification whatever for this situation. If the proper working of the machinery of criminal justice is essential, which is not denied, and if for its working we need more magistrates, the so-called difficulties have to be faced and overcome. No purpose is served by crying ourselves hoarse with complaints about the inordinate delays of the law and blaming the judiciary and procedural laws for them, when the Government responsible for the administration of justice do not appoint much needed additional judicial personnel even though repeatedly called upon to do so. What is needed is a radically different approach to the problem on the part of many of the State Governments.

Difficulties of accommodation etc.

We understood that while the arrears in the Presidency Magistrates' Courts in Bombay would justify the appointment of additional magistrates, there is no place for them to hold their Courts, if appointed. The problem therefore becomes a financial one and the Government have to find funds for building court-houses if suitable buildings cannot be rented or requisitioned. In Bihar, we learnt that in six districts in which separation had been introduced, the need for twenty four additional judicial magistrates was felt as far back as in 1956. In the non-separation areas, as many as ninety-four more magistrates were said to be required. Even so, the Government while appreciating the need, were unable to depute the required number of magistrates "in view of the acute shortage of experienced officers required for various development works". In West Bengal, also the lack of accommodation has prevented the appointment of more

The position in Bombay and Bihar.

West Bengal.

magistrates. The problem exists in a more or less acute form in other States also.

We can only conclude with the observation that the matter really rests with the State Governments. It is for them, realising as they do, the need for increasing the strength of magistrates for the due administration of justice to make proper provision in this regard as early as possible.

Plea of guilty in the absence of accused.

Section 130, Motor Vehicles Act.

20. A method by which delays in the disposal of cases can be reduced and the time of the courts saved has relation to the large volume of petty cases which the magistrates are now-a-days called upon to try. Section 130 of the Motor Vehicles Act, 1939, provides for the summary disposal of cases arising under that Act in respect of a specified class of offences thereunder. The section makes it possible for the accused person to plead guilty to the charge by registered letter and remit to the court as fine such sum not exceeding Rs. 25 as the Court may specify. We need not refer to the other parts of the section. Though this Act has been in force from 1939, we understood, that it was not till recently that this procedure was largely tried in the case of traffic offences in the city of Madras. It appears that this procedure is not being used adequately or at all elsewhere. The expedition with which cases of this kind can be disposed of under this procedure and leaving the court free to utilise its time for more important cases, hardly needs emphasis. The question, that we propose to consider is whether this procedure can be extended to a large number of minor offences.

The position in England.

21. The question has recently been considered in England where a Committee[1] was appointed "to consider what changes, if any, should be made in the law relating to the trial of minor offences in magistrates' courts with a view to saving the time of the courts and of witnesses without prejudicing the rights of the defendant, and in particular to recommend whether changes should be made:—

> (a) to permit a defendant to enter a plea of guilty without appearing before the Court[2].....".

The Committee began by referring to the increase in the proportion of road traffic cases. It pointed out, that it had "become the practice, in an increasing proportion of cases, for the defendant not to appear; and it would, indeed, be unreasonable to require a defendant to come from a distance to appear in a comparatively unimportant case, since the cost of attending, including the loss of a day's work, might well exceed the penalty likely to be imposed by the justices. The habit of writing a letter to

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1. Departmental Committee on the Summary Trial of Minor Offences.
2. Report page 5, para 1.

the court, in lieu of attending, has grown and is now widespread, and this saves the time of the defendants,"[1] It was, however felt by the Committee that there was a substantial waste of time of the police for the reason that whether the accused person pleaded guilty or not by post, the police officer had necessarily to attend the Court not knowing what the plea would be. To meet this difficulty, the Home Office appears to have issued certain circulars. In these circulars it was suggested that the defendants should be invited to say whether they intended to appear in Court. It was, however, made clear that no defendant should be sentenced to imprisonment in his absence. After examining the provisions of the Magistrates' Courts Act, 1952, the Committee came to the conclusion that a change should be made in the law to permit the defendant to enter a plea of guilty without appearing before the Court, where the offence is necessarily triable in the magistrate's court and the proceedings were initiated by a summons.

It recommended that the defendant should be permitted to inform the Court in writing that he desired to enter a plea of guilty without appearing before the Court and that such a plea should be treated as one entered by a defendant who had appeared before the Court. The Committee also recommended as a safeguard that in such cases the defendant should be served together with the summons with a notice inviting him to say whether he wished to enter a plea of guilty without appearing before the Court and also with a concise statement of the facts of the case. The recommendations which the Committee made were further subject to the condition that where the Court had accepted the plea of guilty the accused should not be sentenced to imprisonment and that certain other orders should not be passed against him without giving him a further opportunity to appear.

In making these recommendations, the Committee expressed the view, that it was not proper to confine this procedure to motoring offences. The Committee thought it would be wrong for any new procedure to apply only to motoring offences and they understood their terms of reference to involve the question whether they could devise an acceptable procedure by which a plea of guilty could be entered by a defendant without appearing before the Courts. They felt that it would be best to confine the operation of any such new procedure to those cases, which the experience of the Courts had shown, could safely be dealt with in the absence of the defendant. They, accordingly, proceeded to determine the class of minor offences to which this new procedure could be made applicable. They finally recommended that the procedure should apply to all offences which are necessarily triable summarily, provided that the proceedings were initiated

Recommendations of the Departmental Committee.

[1]Report page 6, para 6.

by the issue of a summons.[1] Their recommendations were given statutory effect by the Magistrates' Court Act, 1957 (5 and 6 Eliz. 2 Ch. 29).

Scope for application in India.

22. To what offences such a procedure as is contemplated in section 130 of the Motor Vehicles Act, 1939, can be extended is a matter which calls for detailed scrutiny. This procedure has already shown its usefulness in the disposal of traffic cases. It should be of equal value in cases of breaches of rules or regulations under various local and certain other Acts most of which are punishable with fines only. Though the extension of this procedure to cases under the Indian Penal Code cannot be recommended without further consideration, its extension to minor offences created by special or local Acts is in our opinion feasible.

23. We may point out that in England, the Committee took the view that it was impossible to catalogue all offences to which the new procedure could be applied as any such catalogue would become out of date, almost overnight and that there was no convincing reason for a gradual extension. They therefore formulated a general rule that the procedure should apply only to proceedings initiated by the issue of a summons, in case of offences not punishable with imprisonment; offences punishable with imprisonment but only on a second or subsequent conviction, and offences punishable with imprisonment, on first conviction; but that it would not be applicable if the case warranted the imposition of a sentence of imprisonment.

Extension recommended.

24. As indicated, there are a large number of petty offences, mostly of a technical kind, in which the imposition of a fine as penalty would meet the ends of justice. In those cases, where there is every likelihood of the accused pleading guilty, the need for the examination by the courts of a large number of witnesses, often public servants, may be avoided if the above procedure is employed.

There are in fact a large number of offences which can be compounded on payment of a penalty fixed by the prosecuting department; in those cases, the fact that an offence has or has not been committed is not determined by a court of law; nor is the penalty to be imposed decided by a court after taking into consideration all the circumstances of the case. The existence of such a system of composition of offences in our statutes provides ample justification for applying a procedure similar to that provided in section 130 of the Motor Vehicles Act, 1939.

25. In all cases suitable to be dealt with in this manner we recommend the adoption of the procedure outlined below.

Suggested procedure.

The prosecution should initially decide whether the procedure should be applied. If the prosecution decides to adopt the procedure, a summons should be issued to the accused, along with a concise statement of the facts or

[1]Report, page 16, para 36.

the case and a notice asking him to state if he wishes to plead guilty without appearing in Court. The notice should also state the fine that would be imposed on his entering a plea of guilty. The Court in fixing the penalty would take into consideration the facts of the case. The accused person would be at liberty to remit the fine to the Court by money order. On the fine being received, the case would stand disposed of. We do not wish to enter into the further details of the procedure. Assistance can in this respect be derived from the Magistrate's Court Act, 1957 (5 and 6 Eliz. 2 Ch. 29

Certain objections.

26. Some police officers thought that the enforced appearance of the accused in the Court had a deterrent effect and should not therefore be dispensed with. It is wrong in principle to take the view that having to appear in the Court is by itself a punishment with a deterrent effect. We do not agree with this view. These petty offences are not deliberately committed. The fact that a fine had to be paid will certainly tend to make the persons concerned more careful in the future.

Mobile courts.

27. It has been suggested that mobile courts should be established to ensure speedy disposal of criminal cases particularly in the larger cities. We understand that such a court has been created in the city of Madras and is working satisfactorily. It deals with a large number of petty cases in which the accused generally plead guilty and are ordered to pay small fines. A magistrate is required to go to a particular place at a given time, where the accused from the neighbouring localities are brought before him for trial. He works from 7-30 a.m. to 11 a.m. holding court at three different centres during these hours. In ninety per cent. of the cases, the accused plead guilty. The cases in which they claim to be tried are transferred to the regular magistrates. We were told that the mobile court in Madras disposed of as many as 13000 cases in 1954, 36000 in 1955 and 46000 in 1956. In Calcutta also there is a mobile court, which functions once in a week. We were told that it was working quite satisfactorily, and that the system could not be extended because of the insufficient number of magistrates.

Introduction recommended.

28. Having regard to the success of these courts in Madras and Calcutta, we recommend that such courts be created in all large cities and towns, particularly where there arise for disposal a large number of petty cases. The institution of such courts will reduce the inconvenience to the accused and witnesses, and relieve the regular magistrates of these petty cases, leaving them time to give better attention to the more important cases.

Summary of recommendations.

29. Our recommendations regarding delays in criminal trials and inquiries can be summarized as follows:—

(1) The judiciary should be separated from the executive to ensure the speedy disposal of cases.

(2) The rates of batta and travelling allowances for witnesses attending criminal courts should be revised.

(3) Adequate budget provision should be made to enable the courts to pay travelling and other allowances to all witnesses who attend in obedience to a summons.

(4) Provision should be made for the convenience of witnesses who attend courts.

(5) The provision for summary punishment of recalcitrant witnesses in section 485A of the Criminal Procedure Code should be made effective by a suitable amendment of section 487.

(6) Presiding officers should not hesitate to take firm action against witnesses who remain absent notwithstanding service of summons by the issue of warrants, forfeiture of bonds, and by instituting prosecutions.

(7) The measures set out in paragraph 12 and other similar measures should be adopted to ensure that summonses are served in time.

(8) A strict system of supervision should be devised to prevent delays arising from unmethodical postings.

(9) Steps should be taken to ensure that cases under special Acts initiated by departments other than the police are given necessary attention by the prosecution.

(10) The strength of the magistracy should be increased to the required level wherever the existing strength is inadequate.

(11) Provision should be made for the accommodation of new courts when they are established.

(12) A provision similar to that set out in section 130 of the Motor Vehicles Act, 1939, and explained in detail in paragraphs 20 and 25 enabling an accused to plead guilty without appearing in court should be made applicable to the trial of petty offences under special and local Acts.

(13) In the large cities, mobile courts on the lines of those now working in Calcutta and Madras, should be established.

37—COMMITTAL PROCEEDINGS

Who may commit.

1. Offences triable by a Court of Session are indicated in column 8 of Schedule II to the Code of Criminal Procedure. All Presidency Magistrates, District Magistrates, Magistrates of the First Class, Sub-Divisional Magistrates and Magistrates other than Third Class Magistrates empowered to do so, may commit a person for trial. A preliminary inquiry is conducted into these cases by such Magistrates and it usually takes the following shape:

Committal Proceedings in Police report cases.

'2. The difference between cases instituted on a police report and otherwise than on a police report which has been noticed in the trial of warrant cases is, generally speaking, maintained in these preliminary inquiries. In cases instituted on police report the Magistrate on receipt of the report fixes a date for the inquiry not later than fourteen days from the date of the receipt of the report unless for reasons to be recorded, he thinks that a later date should be fixed. Thereafter, processes to compel the attendance of witnesses or for the production of documents are, if necessary, issued. On the date so fixed, the Magistrate satisfies himself that the documents specified in section 173 of the Code have been furnished to the accused. If that has not been done, he takes steps to see that they are so furnished. The Code provides, that the Magistrate shall then "proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged". It is, however, open to him to examine other witnesses for the prosecution if he thinks it necessary to do so in the interests of justice. The accused is at liberty to cross-examine the witnesses examined by the prosecution. After the witnesses for the prosecution have been examined and the documents considered, the Magistrate may, if necessary, examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. If on a consideration of the prosecution evidence, the documents and the examination of the accused and after hearing the prosecution and the accused, the Magistrate finds "no grounds for committing the accused" to the Court of Session for trial, he records his reasons therefor and discharges the accused. If, on the other hand, the Magistrate feels that the accused "should be committed for trial", he frames a charge which is read and explained to the accused. The accused is also furnished with a copy of the charge free of cost. The accused is then required to furnish a list of persons whom he wishes to examine on his behalf at the trial. The Magistrate thereafter makes an order committing the accused to take his trial before the Court of Session or the

Procedure.

High Court, as the case may be. The Magistrate then summons the defence witnesses to appear before the trial court. The prosecution witnesses appearing before the Magistrate are bound over to appear when called upon by the Court of Session or the High Court.

Private complaint cases.

3. In cases instituted otherwise than on a police report, the Magistrate proceeds to hear the complainant and all his witnesses in the presence of the accused who is permitted to cross-examine those witnesses. It is open to the accused to call witnesses on his behalf. The accused is then examined. If the Magistrate finds that "there are not sufficient grounds for committing the accused person for trial", he discharges him. It is open to the Magistrate to discharge the accused "at any previous stage of the case" if, "for reasons to be recorded by such Magistrate, he considers the charge to be groundless". If, on the other hand, the Magistrate "is satisfied that there are sufficient grounds for committing the accused for trial", he frames a charge which is explained to the accused. A list of witnesses is then furnished by the accused. It is open to the Magistrate to summon and examine any of these witnesses. The Magistrate then proceeds to make an order of committal unless after hearing the witnesses for the defence (examined by him) he is satisfied that there are not sufficient grounds for committing him, in which event he cancels the charge and discharges the accused.

Procedure.

Examination of witnesses not obligatory.

4. The provision in sub-section (4) of section 207A of the Code of Criminal Procedure that "the Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged", has caused considerable difficulty. The view has been taken by some High Courts[1] that the section gives a discretion to the prosecution as to which of the witnesses to the actual commission of the offence it will produce before the Magistrate and that the Magistrate is not bound to examine even eye-witnesses to the commission of the crime, if none is produced by the prosecution though in his discretion he may do so. In such cases, the Magistrate would have to reach a decision whether he should commit the accused or discharge him on the basis of the documents placed before him. Normally, the prosecution would take care to see that the documents do indicate *prima facie* the commission of an offence so that an order of committal is made by the Magistrate. On this interpretation it would be open to the Magistrate to commit a person even though not a single witness to the crime has been produced and he may do so even in cases where the documents produced show that there are such witnesses.

Difficulties of such an interpretation.

5. Such an interpretation of this provision will, it is felt, result in practically every accused person being com-

[1] In re Thirumal Thevar and others A. I. R. 1958 Madras page 135.

mitted. All that the Magistrate will be required to do is to see that the accused person has been furnished with the specified documents, and that these documents disclose the commission of an offence. It would also seem that on such an interpretation, some of the following sub-sections will not have much meaning. If the prosecution do not choose to examine any witnesses, it is difficult to see how the Magistrate can discharge the duty laid on him by the section. It is true that the Magistrate sitting in the committal court is not expected to weigh the evidence in order to decide whether such evidence is sufficient to ensure a conviction by the trial court. However, it is his duty under the section to form an opinion whether "*such evidence* and documents disclose no grounds for committing the accused person for trial". It further becomes his duty, if he is of such opinion, to discharge the accused. It is apparent that if no evidence is called by the prosecution it will be impossible for the Magistrate to form an opinion on the "evidence" among other things which he is required to do by sub-section (6). Similarly, sub-section (7) also speaks of the framing of the charge following "upon such evidence being taken, such documents being considered". In the absence of any evidence being led by the prosecution it would seem difficult, if not impossible, for the Magistrate to comply with the requirements of sub-section (7) also. It appears to us that it could not have been the intention of the amended section that such a result should be reached and that the interpretation put on the sub-section (4) of Section 207A is unsound.

The interpretation seems to rest on reading the words "as may be produced" as meaning witnesses who are physically brought before the Magistrate by the prosecution. An examination of the preceding provisions of the Code of Criminal Procedure will show that the words cannot bear that meaning. Under section 170(2) of the Code, when a case is sent to a Magistrate upon an investigation under Chapter XIV, it is the duty of the police officer to require the complainant and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence in the matter. Section 171 *inter alia* requires that no witness on his way to a court shall be required to accompany a police officer. It is obvious, therefore, that it is not possible for a police officer to insist upon a witness accompanying him to the Court. Normally, it will not be possible for him to intimate a definite date for the appearance of the witnesses in the Magistrate's Court for giving evidence because as we have noticed, the fixing of the date for the inquiry is a matter for the Magistrate. Sub-section (2) of section 207A which enables a police officer to apply to the Magistrate *inter alia* for the issue of a process to compel the attendance of any witness clearly indicates that in an inquiry

under section 207A it is not the police officer who produces witnesses but that the witnesses are to be brought before the Magistrate by the issue of a process. Having regard to these provisions, it would appear that the expression in sub-section (4) of section 207A that "such persons, if any, as may be produced by the prosecution", has reference to the witnesses to the actual commission of the offence who have been summoned under sub-section (3) of section 207A.

Views of the Calcutta High Court.

5A. The Calcutta High Court[1] has also held that sub-section (4) does not impose a duty on the prosecution to produce before the committing Magistrate all or any of their witnesses to the actual commission of the offence alleged. It has, however, held that under the later part of the same sub-section the Magistrate has, even in cases where the prosecution has not called any witnesses, to form an opinion whether it is necessary in the interests of justice to take the evidence of any prosecution witnesses, whether they be witnesses to the actual commission of the offence or not. The Court observed that if the Magistrate did not take this course he will be acting illegally as he will be failing to exercise the power which he is required by law to exercise.

Another view.

6. Yet another view[2] taken by some of the High Courts is that the word "may" in sub-section (4) must, having regard to the context of the sub-section, be understood as meaning "shall" and that the prosecution is bound to produce before the Magistrate all witnesses to the actual commission of the offence alleged.

Examination of witnesses obligatory.

7. We are clearly of the opinion that the language of section 207A vests certain judicial functions in the Magistrate in the exercise of which he has to form a judgment and exercise a discretion, which functions he will be unable to exercise unless the prosecution has led before him evidence of the witnesses to the actual commission of the offence, where such witnesses are stated to exist. These difficulties of interpretation seem to have led the Madras High Court to issue administrative instructions to all Committing Magistrates to examine all important prosecution witnesses. We accordingly recommend that the language of sub-section (4) should be altered so as to make it clear that it is obligatory on the prosecution to examine before the inquiring Magistrate all witnesses or at any rate all important witnesses to the actual commission of the offence.

Recording of evidence to be obligatory. Clarification suggested.

Advantages of this course.

8. Apart from the considerations mentioned above, the recording of such evidence by the inquiring Magistrate would seem to be necessary from another point of view. It

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[1]Manickchand Choudhury *Vs.* The State 62 C. W. N. 94.

[2]State *Vs.* Govindan Thampe A. I. R. 1957 Travancore Cochin in *re* Kunjan Raghavan & other A. I. R. 1957 Kerala, p. 32 M. Pavalappa *Vs.* The State of Mysore, A. I. R. 1957, Mysore 61. State *Vs.* Ramratan Bhudhan A. I. R. 1957, Madhya Bharat, page 7.

is essential that the evidence of important witnesses should be recorded at the earliest point of time after the commission of the offence. So long as we retain the committal stage, the inquiry before the Magistrate would afford the earliest opportunity for recording such evidence. The importance of this early record arises from the practice of witnesses going back upon the statements made by them to the police earlier. A statement recorded by the police under section 161 is not part of the evidence; nor can a statement recorded under section 164 be used as evidence except in certain circumstances. The evidence recorded before the committing Magistrate can, however, be used as evidence at the trial under section 288 of the Code of Criminal Procedure under the conditions therein mentioned. If a witness to the actual commission of the offence alleged is not examined in the committal court by the prosecution, it may be that when he is first examined in the sessions court, he may resile from his statement made to the police. The prosecution would thus be denied the use of valuable evidence and the prosecution may fail. The accused will also have the advantage of knowing the case against him. It is thus necessary in the interests of justice that a provision should be made, so long as we retain committal proceedings, making it obligatory on the prosecution to lead before the inquiring Magistrate the evidence of all or at any rate the important witnesses to the commission of the alleged offence.

Abolition of the committal procedure.

9. The purpose of the recent enactment of section 207A for the purpose of providing a shortened form of committal proceedings in Police report cases was, as is well-known, intended to lead to a speedier disposal of criminal cases and avoid as far as possible a duplication in the taking of evidence by the committing Magistrate and the sessions court. Since this amendment of the Code, a view has been put forward suggesting that the time has now arrived for doing away with committal proceedings altogether in these cases. The main argument in support of this view is that the accused has, by reason of the documents furnished to him under the provisions of section 207A, full notice of what is alleged against him, that no useful purpose is served by the attenuated committal proceedings now in vogue and that the case should go straight to the sessions court which will finally deal with the matter.

Divided views.

10. The views expressed to us in reply to our Questionnaire and the oral evidence before us were sharply divided on this question. One view supported the abolition of the committal stage altogether so that the sessions court may be seized straightaway of these police report cases. On the other hand a large section of opinion emphatically supported a reversion to the old full committal proceeding. There was little support for the continuation of the present shortened committal procedure.

There were complaints by certain police officials as to the difficulty of complying with the present requirement of furnishing copies or extracts of documents to the accused persons particularly in complicated cases, where numerous documents and accounts were being relied on. On the other hand, a number of lawyers who had appeared for the accused in the new committal proceedings complained of the hardly legible copies of the documents which were being furnished by the police.

Case for the old procedure.

Benefit to the accused.

11. The main argument of those who advocated a return to the old procedure was that the documents and the evidence of such witnesses as were examined by the police did not adequately inform the accused of the true nature of the case and the evidence against him. The accused thereby laboured under a disadvantage under the new procedure. Under the old procedure all material witnesses were examined before the Magistrate, so that the accused had definite and clear evidence on oath stating the facts against him, which gave him a clear picture of the case he had to meet. Under the new procedure, all that he was entitled to have were vague statements made to the police which was not evidence and which the witnesses could with impunity alter or improve upon when they gave evidence. It was further said, that all evidence not being required to be led before the magistrate and the accused not being at liberty to lead evidence before him under the new procedure, the magistrate was hardly in a position to exercise the judicial functions which are vested in him under the new procedure. In the result he acted merely as a recorder of such evidence, as may be led before him and passed the matter on to the Sessions Court. The result, it is said, is that not only are the magistrate deprived of the opportunity of having before them material on which they could exercise their discretion to discharge the accused but they are led to send to the Sessions Court, cases which they themselves could well have dealt with. In the words of the Chief Justice of a major High Court, "now-a-days, in almost every criminal case where the offence involved may be tried either by a magistrate of the First Class or a Court of Session, the Magistrates invariably commit the case to Sessions and free themselves of further responsibility in regard to those cases". Not unnaturally, cases sent up in this manner to the court of session without examination result in a large number of acq ittals. This fosters in the public mind a belief that persons really guilty are being acquitted; and thereby the administration of justice is brought into disrepute.

Saving of time of the Sessions Court.

We have already referred in part to the reasons advanced in support of the view that committal proceedings should be abolished. In a sense, the very arguments used by those who express themselves in favour of a reversion to the old system are relied on by those who advocate the abolition of the committal procedure altogether. They

draw attention to the very unsatisfactory nature of the new committal procedure, argue that they serve no useful purpose and advocate the abolition of committal altogether.

12. Having given careful consideration to the subject we are of the view that the abolition of the committal proceedings altogether will not be justified. We have reached this conclusion for the following reasons: Abolition of committal proceeding not justified.

(1) There are bound to be a certain number of cases brought up before the Magistrate on a police report in which the Magistrate should, if he exercises his discretion properly, discharge the accused and it would not be right to burden the highly paid judicial officers who preside over the courts of sessions with duties which should be discharged by Magistrates.

(2) It would be unjust to an accused person against whom there is no *prima facie* case to deny him the opportunity of satisfying the magistrate that there should be no committal of the case to the court of session by leading, if necessary, evidence on his behalf. To expose a person to the anxiety and expense of a trial in a sessions court on the hearing of a charge, which in all likelihood would fail, is a course repugnant to notions of justice and fairplay.

(3) As pointed out already, the evidence of witnesses recorded in the committal proceedings is of great value as the earliest record on oath of their statements and delays in recording this evidence will encourage the tendency which already exists in witnesses to swerve from the truth.

(4) The large percentage of acquittals which results from the magistrates acting merely as conduit pipes to send the cases on to the sessions court results in shaking public confidence in the administration of criminal law and the functioning of criminal courts

13. The real remedy would, therefore, seem to lie not in doing away with committal proceedings altogether but in making them effective so that they may serve their true purpose. There is no reason why properly regulated committal proceedings should cause delays in criminal trials. In fact the Inspector General of Police in Madras stated in his evidence before us that in his experience committal proceeding under the old system did not occasion any considerable delays. The true remedy.

14. In England, in prosecutions for serious offences, a preliminary examination is held by an "examining" justice or justices, also called a magistrate, before the accused is sent up for trial. This procedure of preliminary examination was originally embodied in section 12 of the Criminal Justice Act, 1925 and now finds a place in a recent consolidating enactment called the Magistrates Courts Act, 1952 The Law in England.

and the rules framed under it. The procedure provided by it substantially corresponds to the old committal procedure, now applicable to cases instituted otherwise than on a police report. However, there are some points of difference. The proceedings need not be held in public. The Magistrate is not strictly bound by the rules of evidence though in practice, the prosecution evidence is led as at a trial. The accused is entitled to call evidence and examine himself as a witness. The examining justice or magistrate decides whether the accused person should be committed for trial.

At the preliminary inquiry the prosecution has to satisfy the Presiding Officer that there is sufficient evidence against the accused to justify his being put on trial. The evidence is recorded in the presence of the accused, each witness being examined by counsel for the prosecution and cross-examined by the accused or his counsel. The evidence of all the prosecution witnesses is reduced to writing and read over to the witnesses in the presence of the accused and signed by them. The examining Justice or Magistrate need not be satisfied that the accused person is guilty before he makes an order for committal. His duty is to find "on consideration of the evidence and on any statement of the accused", whether "there is sufficient evidence to put the accused upon trial by a jury for any indictable offence".

Notwithstanding the preliminary examination prescribed for indictable offences, the trials for these offences are, we are informed, not delayed.

In the United States.

15. The American system also provides safeguards against persons being put on trial for serious offences without a preliminary inquiry. There appears to be first a preliminary examination before a Magistrate "who is under the duty to bind him" (the accused) "over as soon as he is inclined on the whole to believe that there is probable cause to suppose that he may be guilty".[1] This is followed by an inquiry by the Grand Jury—a body of citizens—who have to deliberate "as to whether 'probable cause' has been shown—whether enough of showing has been made to warrant trying the accused on the charges contained in the indictment."[2] Only if such cause has been shown, is the accused to be indicted. The procedure adopted in the United States thus ensures that the accused gets an adequate opportunity of knowing the case of the prosecution before he is put on trial. It is also clear that as a result of the two inquiries above-mentioned, only persons against whom there is *prima facie* evidence of the commission of an offence are compelled to stand trial.

In other countries.

16. Our investigations show that a similar practice of having a preliminary investigation before subjecting a

[1]Puthkammer : Administration of Criminal Law, page 93.

[2]*Ibid.* page 127.

person to trial for serious offences is also provided in the judicial systems prevailing in the Western European Countries.

Duty of magistrate. Change in the law.

17. We may also here advert to the difference in the phraseology of section 207A(6) and section 209(1) which appears to be significant. Under the former, the Magistrate is to discharge the accused "if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial". Under the latter, the Magistrate is to discharge the accused "if he finds that there are not sufficient grounds for committing the accused person for trial". It would appear that the difference in the language used is deliberate and intended to make the former provision stronger in favour of a committal. Under it, even if he is of opinion that the grounds are not sufficient for committing the accused, the Magistrate would have no alternative but to commit him, unless he is prepared to go further and form an opinion that there are no grounds for commitment. Obviously, the discretion which the Magistrate can exercise under the latter provision is wider. He has to bring his mind to bear on the sufficiency or otherwise of the grounds. We are not aware of the expression of any judicial opinion on the true construction of the language used in the former provision. It may be that the use of this phraseology has been in part responsible for the Magistrate making committals which have been described as "practically automatic".

Need to gain greater experience of new procedure.

18. Having regard to what has been said above, it may be suggested that while there is a great deal to be said in favour of reverting to the old committal procedure, there is very little to be said in favour of its abolition and perhaps still less in favour of maintaining it in its amended form. But we feel that it would not be right to reach definite conclusions on this question in view of the fact that the amended committal procedure has been in operation only for a little over two years. Greater experience of its working has, we think, to be gained before a decision is reached to make radical changes in legislation so recently enacted. We are, however, clearly of the opinion that the defects and difficulties in its working, which we have noticed above, should be remedied by suitable amendments in section 207A of the Code.

19. We, therefore, recommend that—

Recommendations.

(a) section 207A(4) may be amended so as to provide that all witnesses to the commission of the crime and all other important witnesses should be examined in the committal proceedings; and

(b) section 207A(6) may be amended so as to enable the Magistrate to exercise a judicial discretion whether a case should or should not be committed by forming an opinion whether there are or are not sufficient grounds for committing the accused person for trial.

38.—CRIMINAL APPEALS

Right of appeal in criminal cases.

1. Under the Code of Criminal Procedure there is, generally speaking, a right of appeal, with some exceptions which we shall indicate later, from a conviction by any court to a higher court designated in the Code

From sentences of magistrates.

2. Formerly, appeals from convictions by a magistrate of the third class who is competent to impose a sentence of imprisonment not exceeding one month and/or fine not exceeding one hundred rupees, and a magistrate of the second class who is competent to impose a sentence of imprisonment not exceeding six months and/or fine not exceeding five hundred rupees lay to the district magistrate or to a first class magistrate invested with appellate powers. The Code, as amended in 1955, however, provides that appeals by persons convicted at a trial held by magistrates of these two classes (second and third class) shall lie to the court of session and may be heard by an additional session judge or an assistant sessions judge. Appeals from convictions by a first class magistrate who is competent to impose a sentence of imprisonment not exceeding two years and/or fine not exceeding two thousand rupees also lie to the court of session, but such appeals are heard only by the sessions judge or an additional sessions judge to whom they are made over either by the sessions judge or by the State Government by general or special order. Appeals, however, against orders made under section 122 of the Code by these magistrates refusing or rejecting a surety still lie under section 406A to the district magistrate. We recommend that these appeals should lie to the court of session.

Appeals from district and presidency magistrates.

A district magistrate being only a magistrate of the first class under the Code, appeals from his judgments and orders also follow a similar course. But, in cases of conviction for an offence under section 124A, Indian Penal Code, appeals lie to the High Court. Further, all appeals from the judgments and orders of presidency magistrates whose powers of punishment are equal to those of first class magistrates lie to the High Court.

Appeals from section 30 magistrates.

Appeals from convictions by magistrates who are specially empowered under section 30 of the Code to impose sentences of imprisonment not exceeding seven years also lie to the High Court, if the sentence imposed by them exceeds four years; otherwise, appeals lie to the court of session.

Appeals from sentences passed by the court of session.

3. Assistant sessions judges are competent to pass a sentence of imprisonment for a term not exceeding ten years. Appeals from any sentence passed by such judges for a term exceeding four years lie to the High Court; in all other cases, appeals lie to the court of session. Appeals against convictions by a sessions judge or an additional sessions judge who is competent to pass any sentence authorised by law lie to the High Court.

Appeals from orders of the High Court.

4. A person convicted on a trial held by the High Court in the exercise of its ordinary criminal jurisdiction can in certain circumstances, appeal under section 411A of the Code; such an appeal has to be heard by a Division Bench of the High Court.

Appeals to the Supreme Court.

5. A right of appeal to the Supreme Court from any judgment, final order or sentence of a High Court in a criminal proceeding is also permitted by article 134 of the Constitution, if the High Court certifies that the case is a fit one for appeal and, in certain other circumstances, when a sentence of death has been passed. In addition, the Constitution has provided for appeals by special leave under article 136.

Appeals against certain orders.

6. The Code confers a right of appeal not only against orders of conviction but also against certain other orders, like orders requiring security for keeping the peace or for good behaviour, orders refusing to accept or rejecting sureties and orders under sections 250, 486, 476-B, 515, 524 etc. of the Code.

No right of appeals in certain cases.

7. Though, ordinarily, a conviction by a criminal court is subject to an appeal to a higher court as provided in the Code, there are, however, certain cases in which the Code does not give a right of appeal. They are:

(1) Generally speaking, where an accused person has pleaded guilty in the trial court, such trial court being either a magistrate of the first class or a presidency magistrate, a court of session or the High Court, there is no right of appeal except as to the extent or legality of the sentence. (Section 412);

(2) Where a magistrate of the first class, a district magistrate or a court of session imposes a sentence of fine not exceeding fifty rupees, there is no right of appeal. (Section 413);

(3) There is no right of appeal where a person has been convicted by a court of session and sentenced to imprisonment for a period not exceeding one month. (Section 413);

(4) Where a presidency magistrate, the court of session for Greater Bombay or the High Court passes a sentence of imprisonment not exceeding six months or of fine not exceeding two hundred rupees, an appeal is barred by the Code. (Sections 411 & 413);

(5) There is no right of appeal when a person tried summarily has been sentenced to a fine not exceeding two hundred rupees. (Section 411).

Exception to the rule of non-appealability.

8. A special provision in the Code, however, enables an accused person to file an appeal even in the above-mentioned cases where the punishment therein mentioned is combined with any other punishment (section 415) or where he has been convicted in one trial along with other persons and an appealable judgment has been passed in respect of the other persons. (Section 415A).

Restriction on right of appeal.

9. It will be observed that an appeal lies *in all cases* against a conviction by a magistrate of the second or the third class. In the generality of cases of convictions by magistrates of the first class and sessions judges, a single appeal is provided, except in petty cases and from certain summary convictions. Unlike in civil cases, there is no right of second appeal. The High Court has, however, a revisional jurisdiction which can be availed of by a convicted person who has no right of appeal or who has failed to succeed in the appellate court. We shall deal with the revisional jurisdiction and its scope elsewhere.

Removal not favoured.

10. It was represented to us that as a conviction for a criminal offence is a stigma which may result in far-reaching consequences to the convicted person in his social and public life a right of appeal should be given in all cases. We are unable to agree with this view. We are of opinion that in not granting a right of appeal in the cases detailed above, the Code has proceeded on sound practical considerations of expediency. The right of appeal which amounts to a right to a re-hearing is not a natural or inherent right of any person. It is essentially the creation of statute. These provisions have been in existence for many decades and do not appear to have worked injustice. They make for finality in a number of petty cases. Nor has our attention been drawn in the course of our inquiries to any real hardship having resulted from them. The demand for their removal appears to us to be based more on theoretical grounds than on any actual instances of their unsatisfactory operation. In cases of clear injustice, it is always open to the person aggrieved to invoke the revisional jurisdiction of the High Court.

Anomalies in the right of appeal.

11. We may here refer to certain anomalies in regard to rights of appeal which, in our view, need to be removed. As set out above, a sentence upto six months' imprisonment or a fine upto two hundred rupees by a presidency magistrate is not appealable. The main reason for not permitting appeals in such cases would appear to be that the presidency magistrates are or at any rate were at one time, highly paid officers, generally selected from men of experience at the Bar or highly experienced judicial officers. Appeals from sentences passed by them lie to the

High Court. The non-appealable sentences which they may pass are, therefore, naturally higher than those of ordinary first class magistrates. They have been exercising these powers ever since the Code came into existence. Experience has shown that the institution of presidency magistrates has been very useful. Notwithstanding the recent appointments of junior judicial officers from the service to their cadre, the general view seems to favour the retention of their existing special powers.

Powers of presidency magistrates.

But it is surprising that in contrast with the position of presidency magistrates, the limit of non-appealable sentences in the case of sessions judges and additional sessions judges (other than those in Greater Bombay) should be much lower. These officers are empowered to impose the extreme penalty provided by law. They are recruited from persons with a long judicial experience or from among experienced members of the Bar. Cases which are normally heard by a court of session are of a very serious and complicated nature and more difficult than those tried by presidency magistrates. It may also be pointed out that presidency magistrates other than the chief presidency magistrate are lower in status than a sessions judge. It is far from logical that a right of appeal should exist from a conviction by a judge enjoying a superior status while no such right is available in respect of a like sentence passed by a judge of an inferior status. The limits of the non-appealable sentence that can be passed by a judge of the city sessions court in Calcutta or Madras are the same as those of sessions judges in the mofussil and thus lower than those in the case of presidency magistrates in the same towns. If the denial of a right of appeal in a certain categories of cases is justified, the rule should work uniformly. We are of the view that the limits of non-appealable sentences passed by sessions judges and additional sessions judges should be raised and made identical with those (in the case) of presidency magistrates.

And sessions judges.

12. We have pointed out earlier that under the Code, as amended in 1955, appeals by persons convicted on trial held by second and third class magistrates lie to the court of session. These appeals can, however, be heard by an assistant sessions judge. Prior to the amendment, such appeals were heard by either district magistrate or first class magistrate specially empowered in that behalf. The reason for this amendment was to prevent appeals from sentences of magistrates of even the lower categories being dealt with by executive officers like a district magistrate or a sub-divisional magistrate.

Appeals from second and third class magistrates.

Recent amendment of the law.

13. This amendment, though enacted to effectuate a very desirable purpose, has resulted in great inconvenience and congestion of work. An assistant sessions judge is generally an officer of the status of a subordinate judge or civil judge, senior division. On the civil side he has unlimited jurisdiction and is also generally invested with

Resulting inconvenience and congestion.

powers to hear appeals from the decisions of munsifs or junior civil judges. As assistant sessions judge, he is also competent to try criminal cases punishable with imprisonment for a term not exceeding ten years. It has been recognized that assistant sessions judges have, as a class been handling very heavy and important cases both on the civil and criminal side. It is on this class of officers that the amended Code has laid the additional duty of hearing appeals from sentences passed by the second and third class magistrates.

Transfer of work to the court of session undesirable.

14. We are of the view that these subordinate judges who would also be entrusted with the powers of assistant sessions judges should not be entrusted with criminal appellate work in the shape of appeals from second and third class magistrates as we would prefer them to devote their entire time to the trial of suits. If, on the other hand, these appeals are to be heard by sessions judges or additional sessions judges, it would mean burdening these highly paid and overworked officers with a good deal of petty work.

State amendments.

15. In States where separation of the judiciary from the executive has been effected, the amendment of the Code has not much meaning. The district magistrates have been under the direct control of the High Court except in the State of Bombay. In the State of Madras, the Code as amended, was, therefore, further amended by Act XXXI of 1956 which restored section 407 of the Code to its form prior to the Central amendment. The same measure was taken in the State of Kerala by Act V of 1957.

In States where separation has been introduced, except Bombay and parts of Andhra Pradesh where there are no Judicial district magistrates, the entire criminal judiciary, including the district magistrates (judicial), is under the control of the High Court and the reason which led to the Central amendment of the Code has no application.

Restoration of old position in Separation States.

16. We have, in another place, recommended the immediate introduction of the separation of the judiciary from the executive in States where it does not yet prevail by issue of executive orders as in Madras and that Central legislation providing for a uniform system of separation in all States be enacted. In the circumstances, the Central amendment will have to be repealed and the provision in section 407, as it stood before the amendment, restored.

Cadre of assistant sessions judges to be strengthened.

17. We recommend, however, that till a real system of separation is introduced in States where it does not exist, care should be taken to see that the strength of the judiciary at the level of the assistant sessions judge which has to hear these appeals is suitably strengthened in order that the other work allotted to these officers does not fall into arrears. This has, we understand, been done in the Punjab.

18. It is important that appeals by persons who have been found guilty of offences should be disposed of quickly. If one of the objects of punishment is to deter people from committing offences on account of a fear of the consequences, delay in the execution of the sentence against a person found guilty on appeal would only dull the edge of the deterrent effect. On the other hand, if a person is found not guilty on appeal, it is equally important that he should have been spared the agony of a long suspense. Looked at from any angle, therefore, it is very desirable that criminal appeals should be disposed of far more expeditiously than most other judicial work. As paper books have to be prepared in the High Courts before the appeal is heard, we suggest that criminal appeals in the High Courts should be disposed of within a period of six months from the date of their institution. Greater expedition can be achieved if suitable administrative arrangements are made, in order that printing is completed within a month or paper books are cyclostyled instead of being printed.

Speedy disposal of criminal appeals essential.

Disposal within six months in the High Courts.

19. An examination of the figures reveals, however, a very disheartening situation in regard to the pace and the volume of the disposal of criminal appeals in most of the High Courts. The tables set out below give the figures showing the institution, disposal and pendency of criminal appeals in the High Courts of various States in the year 1956 and also the years of institution of the criminal appeals pending in the various High Courts on the 1st of January 1957.

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TABLE A

Comparative statement showing the institution, disposal and pendency of Criminal Appeals in the High Courts of various States in the year 1956

Name of the State	Pending at the beginning of the year	Institution	Disposal	Pending at the close of the year	Remarks
1	2	3	4	5	6
Andhra Pradesh	544	902	954	492	(*a*) On 1-11-56.
Assam	78	194	91	181	(*b*) The figure represents the institution in original Nagpur Bench for the whole year and institution in Indore and Gwalior from 1-11-56 to 31-12-56.
Bihar	554	654	503	705	
Bombay	299	1644	1529	414	(*c*) The figure represents the disposal in original Nagpur Bench for the whole year and Indore and Gwalior from 1-11-56 to 31-12-56.
Kerala (A)	57	219	211	65	
Madhya Pradesh . . .	322(*a*)	485(*b*)	380(*c*)	382	(X) Includes institutions by transfer as a result of the Reorganisation of States.
Madras	225	838	744	319	(A) Includes institutions and disposals by transfer as a result of the Reorganisation of States.
Mysore	106	92	63	135	
Orissa	252	205	168	289	(C) Includes the figures relating to the Original Side of the High Court.
Punjab (X) . . .	239	928	729	438	
Rajasthan	334	388	432	290	
Uttar Pradesh . . .	4401	2453	3127	3727	
West Bengal (C) . . .	238	733	539	432	

TABLE B

Statement showing the year of institution of Criminal Appeals pending in various High Courts on 1-1-1957

Name of the State	Before 1949	1949	1950	1951	1952	1953	1954	1955	1956	Total	Remarks
1	2	3	4	5	6	7	8	9	10	11	12
Andhra Pradesh (A)	..	..	..	..	..	..	..	32	281	313	(A) Does not include the pendency of Criminal Appeals received from the Telangana region.
Assam . . .	..	..	..	..	..	..	..	44	137	181	
Bihar . . .	..	..	..	..	..	..	24	170	511	705	
Bombay (B) . .	..	..					1	22	571	594	(B) Includes the pendency in the Nagpur & Rajkot Benches.
Kerala . .	..	..	..	..	..	..	..	1	64	65	(C) Relates to the year 1947.
Madhya Pradesh .	..	..	..	..	..	5	19	28	330	382	*The figures shown against this State include Criminal Appeals from the Original Side of the High Court.
Madras . . .	..	..	..	..	..	..	..	3	316	319	
Mysore . . .	..	..	..	..	..	4	..	1	130	135	
Orissa . . .	..	..	..	..	..	..	15	99	175	289	
Punjab . . .	..	..	..	2	2	..	7	61	366	438	
Rajasthan . .	..	3	1	2	12	4	7	52	209	290	
Uttar Pradesh .	..	..	..	..	3	40	295	1408	1981	3727	
West Bengal .	(C) 1	..	..	..	..	..	..	96	335	432	

Delays in the High Courts.

20. It will be noticed that in several of the High Courts the disposal of criminal appeals has not kept pace with the institution. In fact, an analysis of the statistics for the years 1953 to 1956 reveals that the pendency of criminal appeals in the High Courts of Andhra Pradesh, Assam, Bihar, Bombay, Madhya Pradesh, Orissa, Punjab and West Bengal has been progressively rising. As many as 3727 criminal appeals were pending in the High Court of Uttar Pradesh on the 1st of January 1957 and quite a high percentage of those appeals had been pending for more than one year. In Rajasthan also, some of the pending criminal appeals are very old. We have earlier referred to the target of six months for the disposal of criminal appeals and revisions in the High Courts and strenuous efforts will be needed if this target is to be achieved.

Powers of a single judge of the High Court.

21. The need to enlarge the powers of a single judge so as to enable him to dispose of certain categories of matters in the High Court has been noticed elsewhere. In this respect, there is a large amount of variation in the practice of the High Courts. A single judge in Andhra Pradesh, Madhya Pradesh, Madras, Punjab and Uttar Pradesh hears all criminal appeals except those in which sentences of death or imprisonment for life have been passed; in Bihar and Rajasthan, a single judge hears criminal appeals in cases in which sentences of imprisonment upto a period of ten years have been passed; in Assam and Orissa, the single judge's power to hear criminal appeals is confined to cases of sentences upto one year's imprisonment; in West Bengal, a single judge cannot hear criminal appeals in any case in which there is a sentence of imprisonment whether substantive or in dafault. The extreme position is to be found in Bombay and Mysore where a judge sitting singly is not empowered to deal with any criminal appeal whatever.

Enlargement necessary.

22. We see no reason why the powers of a single judge in all the High Courts should not be enlarged so as to enable him to deal with all criminal appeals except those in which sentences of death or imprisonment for life have been passed. The evidence before us shows that such a practice which has prevailed in Madras for a long number of years and also in other States has worked satisfactorily; it is difficult to see why it should not work equally well in other States. The view was expressed by a senior Chief Justice that to enlarge the powers of a single judge in criminal cases would be to place the life, the liberty and the property of individuals in the hands of an inadequately equipped tribunal. We feel that such a view does not do justice to the capacity of the judges and arises mainly from the long practice in some of the States that all criminal matters should be disposed of by a Bench of judges. The adoption of the practice we recommend will greatly help in removing delays and in economising judge-power so that the targets we have indicated elsewhere for

disposal of the work in the High Courts will be reached. It should, of course, be open to particular High Courts to provide that criminal appeals of a certain category should be heard by a Bench of two judges if the state of work and the judge-power in that High Court enable it to so provide consistently with maintaining expedition in all other classes of work in the manner indicated by us.

23. In this connection we would like to draw attention to a practice obtaining in the Bombay High Court with regard to the disposal of criminal appeals. There is a convention in that High Court by which all ready criminal matters are disposed of before the court closes for the vacation at the end of a term. If necessary, two or even three Benches are constituted so that all pending criminal matters which are ready are disposed of.

We feel that if such a practice is established in all the High Courts and an effort is made to clear off all pending criminal matters by deploying as many judges as are necessary, there would be no likelihood of the High Court falling into arrears in this important branch of its work.

24. The position in regard to criminal appeals in the courts of session in the various States during the year 1956 appears from the undermentioned Table. Delays in sessions courts.

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TABLE C

Statement showing the volume of Criminal Appeals in the courts of session in various states during the year 1956

Name of the State	Pending at the beginning of year	Institution	Total available for disposal	Disposed of	Balance		Total Pendency
					Below one year	Above one year	
1	2	3	4	5	6	7	8
Andhra Pradesh	350	7076	7426	7431	495	..	495
Assam	378	1079	1457	1000	451	..	451
Bihar	1592	5481	7073	5454	1552	67	1619
Bombay	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Kerala	97	462	559	402	157	..	157
Madhya Pradesh	1357	5512	6869	5289	1356	224	1580
Madras	208	6413	6621	4061	N.A.	N.A.	236
Mysore	184	634	818	624	194	..	194
Orissa	246	1514	1760	1165	588	7	595
Punjab	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Rajasthan	513	2645	3158	2563	580	15	595
Uttar Pradesh	8450	23845	32295	22970	7965	1360	9325
West Bengal	477	3393	3870	3324	N.A.	N.A.	546

N.A.=not available.

NOTE.—These figures have been taken from the statistics furnished to us by the various High Courts.

It will be noticed that in the States of Bihar, Madhya Pradesh and Uttar Pradesh, there are pending before sessions courts a large number of appeals more than a year old, Uttar Pradesh again showing the largest number by far.

Time for disposals in Sessions Courts.

25. There is no reason whatever why, in States where proper supervision is exercised by the High Courts, there should be any arrears in criminal appeals in the courts of session. In Madras, a system of such rigid supervision prevails that one finds the average duration of criminal appeals in the sessions courts during the years 1954 and 1955 was only 32 days. In 1956 the average duration was as low as twenty-two days, notwithstanding the fact that sessions courts in that State do not hear criminal appeals during vacations. In Andhra Pradesh also, the average duration of criminal appeals during the years 1954 and 1955 ranged between thirty-eight and forty days. Though some High Courts have fixed and have been able to achieve a target to thirty days for the disposal of these appeals, in order to be on the safe side, we recommend a target of sixty days from the date of filing the appeal to the date of disposal. That should not, however, prevent courts from aiming at the ideal target of thirty days.

Sixty days.

26. We may, in this connection, invite attention to the practice prescribed by the High Court of Madras for the disposal of criminal appeals by magistrates which has, with some modifications, been observed by the sessions judges in the disposal of appeals in that State. It is the observance of this practice which has enabled the subordinate judiciary in that State to dispose of criminal appeals with an average duration of thirty two days.

Method of disposal of appeals.

In the first place, all jail appeals are subjected to a close scrutiny outside court hours and notice is issued only in proper cases. If it is decided to admit the appeal, it is posted for hearing within a week or a fortnight, after consulting the public prosecutor, and the records are immediately sent for. When a memorandum of appeal is presented by a lawyer, it is received and scrutinised by the magistrate personally. If he considers it to be a fit case for disposal under section 421 of the Criminal Procedure Code, he takes it up immediately and asks the appellant or his Counsel to commence his arguments. If an adjournment is asked for, a short adjournment of less than a week is granted, the date being fixed in consultation with the Counsel. In cases where the magistrate decides to admit the appeal and issue notice to the State, he fixes the date immediately in consultation with the Counsel for the appellant and public prosecutor. The fixation of dates in this manner by the judge himself after looking into his diary and consulting the convenience of Counsel avoids adjournments of criminal appeals.

Target of 30 days achieved in Madras.

A period of thirty days is fixed by the rules as the maximum period for the duration of criminal appeals. In all cases where an appeal has been pending for over thirty days, an explanation has to accompany the judgment as also a statement of dates which, under the rules, has to accompany every judgment and which is called the calender statement. The judgment and the calender statement have to be submitted to the superior court in every case.

The observance of this practice has resulted in the average duration of appeals in the court of magistrates who do not enjoy any vacations to be as low as seventeen days in 1955 and sixteen days in 1956.

Increase in acquittals.

27. A large body of evidence before us shows the rising proportion of the number of acquittals in criminal cases in recent years. This led to our attention being drawn to the provisions of the Code in regard to appeals from acquittals and the recent amendments made in the law in regard to such appeals. Comments were also made by certain witnesses on the uncertainty in the law as to how appeals from acquittals were to be dealt with by the courts which had arisen by reason of certain recent decisions of the Supreme Court. It becomes, therefore, necessary to deal generally with the law relating to appeals from acquittals with particular reference to the views expressed in regard thereto by certain State Governments and the uncertainty which is said to have crept into the law on the subject.

Appeals against acquittals.

28. The principle of permitting appeal against an acquittal has been condemned on numerous occasions as being contrary to the Western ideas of justice and unparalleled in the jurisprudence of any country. The matter was, on more than one occasion, considered by the Government of India who came to the conclusion that the right of appeal against acquittal was justified by the circumstances in this country. Indeed, the question of amending the law in India in certain respects was raised, particularly so as to require that in the case of appeals against acquittals the appellate court should be satisfied that the order of acquittal was "clearly wrong". That attempt, however, failed and the law has remained unchanged except for recent amendments made by Act XXVI of 1955 which will be referred to later. Thus, appeals against acquittals stand under our law on the same footing as appeals against convictions except that such appeals can be filed only by the State or by a private complainant with the special leave of the High Court.

Restrictions on that right.

29. However, the right to file an appeal against an acquittal which till recently could be exercised only by the State Government has, as a matter of principle, been availed of only in exceptional cases and when public interest and tranquillity required it. The power of appeal against acquittal has been described by a State Government as "a

special provision in the Government Armoury which is judicially reserved for exceptional occasions and which is to be used only after most anxious consideration in cases which are themselves of great public importance or in which a question of principle is involved. The Government therefore have a responsibility not to dull the edge of this salutary weapon by utilisation in cases which are of no general interest and importance or unless it is shown conclusively that the inference of guilt is irresistible or in which the indications of error in the judgment of the lower court are such as to produce a glaring and positive miscarriage of justice of grave nature which is derogatory to the reputation of the Judiciary and detrimental to the common interest of society". In accordance with the principles so laid down, before directing the public prosecutor to file an appeal against acquittal, the State Government directs the Legal Department to scrutinise the case and it is only after such scrutiny, if the case is found to be a fit one for being taken in appeal, that the public prosecutor is authorised to file the appeal.

Right of complainant to file appeal.

30. Act XXVI of 1955 has, however, introduced amendments to section 417 Code of Criminal Procedure which enable a private complainant to appeal against an order of acquittal after obtaining special leave from the High Court. A period of limitation of sixty days has been prescribed for filing a petition to obtain such leave. In the event of a dismissal of the application for special leave, no appeal can be filed from the order of acquittal; thus, in such an event, the State Government would be precluded from filing an appeal.

31. We have obtained from all the High Courts figures relating to the number of petitions by complainants for special leave to appeal against orders of acquittal in criminal cases and the number of cases in which leave has been granted. The percentages of successful petitions vary from fifteen to over sixty per cent.

However, we have not been able to obtain information as to the number of cases in which the appeals instituted on such special leave have been ultimately successful. In the absence of such information and on the basis of the figures now available to us, it is not possible for us to come to a conclusion as to whether the existing provision for the grant of such leave should be continued. It would be desirable to watch the working of this provision for some time and obtain information as to the number of successful appeals filed after obtaining such special leave. It would then be possible to come to a conclusion in regard to the value of this newly enacted provision.

Section 421 Cr. P. C.

32. Under section 421 of the Criminal Procedure Code, the appellate court is competent to dismiss an appeal summarily "if it considers that there is no sufficient ground

for interference". This provision is applicable both to appeals from convictions and to appeals from acquittals. The power of the appellate court in disposing of the appeal if it does not act under this section (421 of the Criminal Procedure Code) is laid down in section 423. It states "the Court may if it considers that there is no sufficient ground for interference, dismiss the appeal, or may

> (a) in an appeal from an order of acquittal, reverse such order and direct that further enquiry be made, or that the accused be retried or committed for trial as the case may be, or find him guilty and pass sentence on him according to law".

It will be noticed that so far as the powers of the appellate court are concerned, there is no difference between appeals from acquittals and appeals from convictions.

Summary dismisssal of Govt. appeals against acquittals.

33. It has been suggested by the State Government of Uttar Pradesh that the frequency with which appeals against acquittals filed by the public prosecutor under the directions of the State Government are being summarily dismissed under section 421 is a matter of grave concern to the State Government and that, therefore, such appeals should be excluded from the operation of section 421. It has been claimed that these appeals are filed after very careful scrutiny of the records by the law officers of the State and only when public interest or public policy requires that the correctness of the decision should be challenged before the appellate court. The view has been expressed that the summary dismissal of these appeals filed after careful deliberation by the law officers of the State is detrimental to the prestige of the State and that there should be an amendment of the law which would prevent appeals so filed from being rejected summarily without hearing a full argument on behalf of the appellant State. In substance, the suggestion amounts to taking away the court's power of summary dismissal under section 421 in cases of appeals against acquittals filed by the State.

This appears to us to be a curious and startling suggestion. There appears to be no reason in principle which can call for the State being differently treated from any other appellant. It is only right that the Judge before whom the appeal comes for admission should have as much right to test the merits in a Government appeal as in any other appeal. It is perfectly open to counsel for the appellant State to satisfy the judge at the preliminary hearing that the appeal deserves admission and there would appear to be no warrant for suggesting that the court would not hear counsel fully at that stage if he wishes to be so heard. If, before the filing of these appeals, the matter has been carefully thought over by the Legal Department of the State, it should be easier for Counsel for the State to put all his points of view to the admission judge and induce him to

admit the appeal. It is a matter of doubt whether sufficient attention is given by the Legal Department of the State before taking a decision to file the appeal. At any rate, the courts which have summarily dismissed some of these appeals do not think so. Desai J. of the Allahabad High Court observed in a case "I do not consider that this was an appeal which should have been filed by Government.**** They should not have filed an appeal when there is no evidence at all against the accused. If Government do not like their appeals to be dismissed summarily it is obvious that they should not file appeals which merit this fate. The Court makes no distinction between appellant and appellant".[1]

Power of summary dismissal should continue.

34. The evils of accepting the suggestion made by the State of Uttar Pradesh are obvious. Even in cases where it appears to the High Court at the admission stage that the appeal has no merit, notice would have to be issued to the accused person and he would either have to be kept in custody or enlarged on bail. He would be put to the expense of entering appearance and of engaging counsel. Ultimately, it may well happen that the High Court will dismiss the appeal without calling upon the respondent accused to reply. All this would cause unjustified harassment to the accused. We have, therefore, no hesitation in rejecting this suggestion.

Powers of the High Court under section 417 Cr. P. C.

35. We shall turn now to the question of the uncertainty in the law said to have been created by certain recent decisions of the Supreme Court.

Prior to 1934, High Courts in India had expressed differing views in regard to the principles on which they should dispose of an appeal against acquittal under section 417. In 1934, the Judicial Committee of the Privy Council granted leave to appeal in a case specifically "in order that the difference of judicial opinion, which it was alleged existed, might be resolved".[2] Though a large number of authorities was cited before the Privy Council, Lord Russel of Killowen who delivered the judgment of the Board, without referring to any of the cases, summed up the legal position which followed from a construction of the relevant sections of the Code in the following words:

View of the Privy Council.

> "There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered' or has 'through incompetence,

[1]State v. Ganga Sahai, A. I. R. 1953 Allahabad 211 at page 213.

[2]Sheo Swarup and others v. Emperor, A. I. R. 1934 P. C., 227 at 228.

stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice' or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

"To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice".

These principles were reaffirmed by the Judicial Committee of the Privy Council in a later decision.[1]

Early decisions of the Supreme Court.

36. Judging from its reported decisions, the question seems to have first arisen before the Supreme Court in March, 1950, shortly after its establishment. The matter was heard by a Court of six judges, judgment being delivered by Fazal Ali J.[2] He referred with approval to the decision of the Privy Council in Sheo Swarup's case as containing "the true position in regard to the jurisdiction of the High Court under section 417 Cr.P.C. in an appeal from an order of acquittal".[2] The judgment also stated that the court could not "support the view which has been expressed in several cases that the High Court has no power under section 417, Criminal Procedure Code to reverse a judgment of acquittal unless the judgment is

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[1]Nur Mohammad *v.*. Empreror A. I. R. 1945 P. C. 151, Lord Thankerton delivering the judgment of the Board and referring to the earlier decision stated :

".....there really is only one principle, in the strict sense of the word, laid down there ; that is, that the High Court has full power to reveiw at large all the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed" at page 152.

[2]Prandas *v.* the State A. I. R. 1954 S. C. 36.

perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice".[1]

A similar view was expressed by Kania C. J. in delivering the judgment of a Bench consisting of himself and Patanjali Sastri and S. R. Dass JJ. in January 1951.[2] In that case, the High Court had reversed an order of acquittal and convicted the accused. The Supreme Court set aside the conviction and restored the acquittal.

The question again came up before the Supreme Court in a case which though reported in 1953 was decided in May 1951.[3] The court, in that case, threw no doubt on the principles accepted by it in the earlier cases and recognized the right of the appellate court in such appeals to review the evidence and reach its own conclusion on facts. It was, however, pointed out that the presumption of innocence of the accused continued right upto the end and that great weight should be attached to the view of the trial judge who had the opportunity of seeing and hearing the witnesses.

A new approach: Need for "substantial and compelling reasons".

37. The Supreme Court had occasion again to deal with the powers of the court in an appeal against an acquittal in 1952.[4] Curiously enough, in the decision of this case the Supreme Court made no reference either to the decision of the Privy Council in Sheo Swarup's case or its *own* three earlier decisions. The court observed that "the presumption of innocence of the accused is further reinforced by his acquittal and the findings of the trial court can be reversed only for very substantial and compelling reasons".

and its consequences.

38. The Supreme Court appears by this decision to have applied two new principles in considering cases of appeals from acquittals. It seems to have laid down that in dealing with such appeals, the court is faced, not with the normal presumption of the innocence of the accused, but a higher presumption or a further reinforced presumption arising out of the order of acquittal made in his favour. It also seems to lay down that in such cases, the findings of fact of the trial court cannot be dealt with and departed from as in an ordinary appeal but that they can be reversed only for "very substantial and compelling reasons". These doctrines, which appear to be a departure from the decisions of the Privy Council and the earlier decisions of the court, have created doubts in the minds of the High Courts and have led them again to apply to these appeals principles similar to those which were rejected by the Privy Council and the Supreme Court itself in the decisions mentioned above.

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[1] Prandas *v.* The State, A. I. R. 1954 at 38.

[2] Tulsiram Kanu *v.* The State A. I. R. 1954 S. C. 1.

[3] Wilayat Khan *v.* State of U. P. A. I. R. 1953 S. C. 122.

[4] Surajpal Singh & others *v.* The State, A. I. R. 1952, S. C. 52.

Two lines of cases.

39. Since the decision in Surajpal Singh's case, there have been several decisions of the Supreme Court which have dealt with this question. Some of the judgments content themselves with reiterating the principles laid down by the Privy Council in Sheo Swarup's case while others refer to the further reinforced presumption of innocence and the substantial and compelling reasons referred to in Surajpal Singh's case. It appears that in deciding some of these cases, the court had not before it some of its own previous decisions. This seems to have led to the use of expressions which seem to law down divergent principles.[1]

Acceptance of the doctrine of "compelling reasons".

40. The doctrine of the need for the appellate court to have "very substantial and compelling reasons" before it could proceed to set aside an order of acquittal seems finally to have received unequivocal acceptance at the hands of the Supreme Court in 1955.[2] In that case, the court referred to Surajpal Singh's case and followed it. The court was divided, the majority consisting of Bose and Chandrasekhara Aiyar JJ. stated the legal position in regard to appeals of this character in the following words:

> "It is in our opinion well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong * * * * if the trial court takes a reasonable view of the case, interference under section 417 is not justifiable unless there are really strong reasons for reversing that view".

The dissenting Judge Venkatrama Ayyar J. traced the differing legal views expressed on the subject by the High Courts before Sheo Swarup's case and referred with approval to the judgment of the Judicial Committee in that case. After referring to a number of decisions, the learned

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[1]*C. M. Narayan *vs.* State of Travancore-Cochin A. I. R. 1953, S. C. 478 (decided on 10-11-1952).

**Puran *vs.* The State of Punjab A. I. R. 1953, S. C. 459 (decided on 13-11-1952).

*Zwinglee Ariel *vs.* State of Madhya Pradesh A. I. R. 1954, S. C. p. 15 (dated 3-12-1952).

**Ajmer Singh *vs.* The State of Punjab A. I. R. 1953 S. C. 76 (decided on 10-12-1952).

**Trimbak *vs.* State of Madhya Pradesh A. I. R. 1954 S. C. 39.

*Rao Shiv Bahadur Singh *vs.* State of Vindhya Pradesh A. I. R. 1954, S. C. 322.

*Madan Mohan Singh *vs.* State of Uttar Pradesh A. I. R. 1954, S. C. 637.

*Bansidhar Mohanty *vs.* State of Orissa A. I. R. 1955, S. C. 585.

*Atley *vs.* State of Uttar Pradesh A. I. R. 1955, S. C. 807.

**Surjan *vs.* State of Rajasthan A. I. R. 1956, S. C. 425.
Cases marked ** seem to follow Surjpal Singh's case: those marked * Sheo Swarup's case.

[2]Aher Raja Khima *vs.* State of Saurashtra A. I. R. 1956, S. C. 217.

Judge took the view that there was no scope for the application of "the doctrine of compelling reasons". He referred to the use of these words for the first time in Surajpal Singh's case and proceeded to analyse its implications. He stated:

> "Do the words 'compelling reasons' in the above passage import a limitation on the powers of a court hearing an appeal under section 417 not applicable to a Court hearing appeals against convictions? If they do, then, it is merely the old doctrine that appeals against acquittals are in a less favoured position, dressed in a new garb, and the reasons for rejecting it as unsound are as powerful as those which found favour with the Privy Council in A.I.R. 1934 P.C. 227 and A.I.R. 1945 P.C. 151".

Since the last mentioned decision, there have been two further judgments[1] of the Supreme Court in which the phrase "strong and compelling reasons" has again been used by the Supreme Court. In neither of these decisions, however, has the implication of this phrase been considered nor has any reference been made in them to the views expressed in the dissenting judgment of Venkatarama Ayyar J.

Uncertainty in the minds of the High Courts.

41. The phraseology used by the Supreme Court and the absence of any expression of its view on its implications have led the High Courts to put different meanings on the phrase "strong and compelling reasons". In a Bombay case,[2] the High Court has gone to the length of holding that, in actual practice, the findings of fact of a judge recording a judgment of acquittal have to be treated as having substantially the same finality and validity as the verdict of a jury which can be set aside only when it is one which no reasonable body of men could have reached upon the evidence. "Inevitably, therefore, the Government Pleader must satisfy us in appeals against acquittals that the conclusions of the trial court are not at all possible on the evidence on the record. In other words, we must not only come to the conclusion that the evidence (sic) is proved beyond a reasonable doubt, but we must also feel satisfied that it is difficult if not impossible to see how a contrary view can be held on the material available in the case". A similar view has been taken by the Allahabad High Court.[3] It stated that "the High Court should find such reasons which may be termed compelling and substantial reasons or which may be deemed to be clinching and conclusive before it would be justified in upsetting an order of acquittal".

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[1]Balbir Singh *v.* State of Punjab A. I. R. 1957, S. C. 216.

Bhagwan Das *v.* State of Rajasthan A. I. R. 1957, S. C. 589.

[2]State *v.* Vithal Maruthi Patil A. I. R. 1953, Bombay 369 at 371.

[3]State *v.* Ram Autar, A. I. R. 1955, All. 138 at page 147 (per Raghubar Dayal J.).

Immediate amendment of the Cr. P. C. unnecessary.

42. Notwithstanding what has been pressed upon us—the uncertainty and conflict in the principles laid down and the need for an amendment clarifying the law—we expect that the true legal position is bound before long to be laid down in clear and unequivocal terms by the Supreme Court itself. The need for an amendment of the law will arise, if at all, after the court has explained the true import of the principles laid down by it or in the event of its failure to do so.

Summary of Recommendations.

43. Our recommendations regarding criminal appeals may be summarised as follows:—

(1) The Criminal Procedure Code should be amended so that appeals even from orders passed under section 122 refusing or rejecting a surety lie to the sessions judge and not to the district magistrate.

(2) As in the case of presidency magistrates, a sentence of imprisonment not exceeding six months or a fine not exceeding two hundred rupees imposed by a court of session should be non-appealable.

(3) In non-separation States, the cadre of assistant sessions judges should be strengthened to enable them to dispose of appeals from the decisions of the second and third class magistrates.

(4) In separation States, appeals from the decisions of second and third class magistrates should lie only to the district magistrate (judicial) or to any specially empowered judicial first class magistrate. The Code may be amended for this purpose.

(5) Criminal appeals in the High Courts should be disposed of within six months and in the courts of session and the courts of magistrates within a maximum period of two months. It is, however, possible for the sessions courts and courts of magistrates to dispose of criminal appeals within thirty days and this should be aimed at.

(6) The powers of a single judge in all the High Courts should be enlarged so as to enable him to dispose of all criminal appeals except those in which sentences of death or imprisonment for life have been passed. However, if there are no arrears in a High Court and the judge-power permits this, it should be open to particular High Courts to provide that criminal appeals should be heard by a Bench of two judges.

(7) To ensure that criminal appeals in High Courts are disposed of early, the printing of paper books should be expedited and, if necessary, cyclostyling should be resorted to, instead of printing.

(8) The methods set out in paragraph 25 ante may be followed to ensure expeditious disposal of criminal appeals.

(9) The suggestion that Government appeals against orders of acquittal should not be liable to be dismissed at the stage of admission cannot be accepted.

(10) It is not immediately necessary to amend the law to clarify the position with regard to the powers of the High Court in dealing with appeals against an order of acquittal. The matter may be left to the Supreme Court itself for clarification.



39.—CRIMINAL REVISIONS AND INHERENT POWERS

Courts of revision and their powers.

1. The power of revising the orders of inferior criminal courts has been conferred by the Code of Criminal Procedure concurrently upon the High Court, the sessions judges, district magistrates and sub-divisional magistrates specially empowered by the State Government in that behalf. Under section 435 of the Code, these courts are competent to call for and examine the record of any proceeding before any inferior criminal court within their jurisdiction for the purpose of satisfying themselves as to the correctness, legality or propriety of any finding, sentence or order and the regularity of any proceeding before such inferior court. The powers of sub-divisional magistrates specially empowered, district magistrates and sessions judges are, however, limited. A sub-divisional magistrate cannot pass any order in revision if he finds any illegality, impropriety or irregularity; he can only forward the record with his remarks to the district magistrate. The powers of the district magistrate and of the sessions judge to pass final orders in exercise of their revisional jurisdiction are limited to cases of erroneous dismissals of complaints or the discharge of persons accused of an offence or when, in cases exclusively triable by a court of session, an accused person has been improperly discharged by the committal court. In these cases, they have the power to order further inquiry or direct the commitment of the accused person to the sessions court. In other cases of incorrectness, illegality, impropriety or irregularity, the district magistrate or the sessions judge is not empowered to pass any final order. He can only report the case with his recommendations to the High Court for orders.

Revisional Jurisdiction of the High Court.

2. The revisional jurisdiction of the High Court is of the widest compass. It may, in exercise of this jurisdiction invoke any of the powers conferred on a court of appeal and may even enhance the sentence. As observed in a case[1], "there is no form of judicial injustice which this court if need be cannot reach". However, though wide, the power of revision is a discretionary power to be exercised according to the exigencies of each case. Having regard to the provisions of section 537 of the Criminal Procedure Code, it is clear that the Court will not ordinarily interfere in revision unless the impugned order has occasioned a failure of justice. In addition to its powers of revision under the Code, the High Court has also the constitutional right of superintendence over all courts including courts

[1]Lekhraj Ram v. Deb Pershad 12 C.W.N. 678 at 680.

exercising criminal jurisdiction. The High Courts of Bihar, Bombay, Calcutta, Madhya Pradesh, Madras, Punjab and West Bengal have also revisional jurisdiction under their Letters Patent.

Pendency of criminal revisions in the High Courts.

3. We have indicated elsewhere that criminal revisions, like criminal appeals, should ordinarily be disposed of within six months from the date of their institution in the High Courts. The Tables below, however, indicate that in some of the High Courts these revisions have been pending for over a year and in some cases for over two years.



TABLE A

Pendency of Criminal Revisions as on 1st January, 1957

Name of the State	1952	1953	1954	1955	1956	Total	Remarks
1	2	3	4	5	6	7	8
Andhra Pradesh (A)	Nil.	48	1	66	425	540	(A) Does not include the pendency from the Telangana region.
Assam	Nil.	Nil.	Nil.	3	60	63	
Bihar	Nil.	Nil.	6	23	301	330	
Bombay (B)	Nil.	Nil.	Nil.	17	275	292	(B) Includes the pendency in the Nagpur and Rajkot Benches.
Kerala	Nil.	Nil.	Nil.	Nil.	71	71	
Madhya Pradesh	Nil.	Nil.	1	15	257	273	
Madras	Nil.	Nil.	Nil.	7	208	215	
Mysore (C)	Nil.	Nil.	5	12	139	156	(C) Includes Criminal Revision cases.
Orissa	Nil.	Nil.	Nil.	5	117	122	
Punjab	Nil.	Nil.	2	20	384	406	
Rajasthan	1	Nil.	2	15	161	179	
Uttar Pradesh	Nil.	2	23	877	1129	2031	
West Bengal	Nil.	Nil.	2	47	630	679	

NOTE.—The figures furnished in the above Table were supplied to us by the respective High Courts.

TABLE B

Comparative statement showing the institution, disposal and pendency of Criminal Revision Petitions in the High Courts of the various States in the years 1954, 1955 and 1956

Name of the State	1954			1955			1956				Remarks
	Pending at the beginning of the year	Institution	Disposed of	Pending at the beginning of the year	Institution	Disposed of	Pending at the beginning of the year	Institution	Disposed of	Pending at the close of the year	
1	2	3	4	5	6	7	8	9	10	11	12
Andhra* Pradesh	111	347	308	150	570	440	280	550	290	829	Note —The pendency at the close of the year 1956 includes Criminal Revision Petitions received by transfer on account of reorganisation of States and hence the figures shown in column No. 11 against each State are not equal to what they should be after deducting the figures given in Column No. 10 from the total
Assam .	50	157	149	58	156	159	55	179	171	63	
Bihar .	713	1401	1732	382	1374	1499	257	1328	1255	330	
Bombay*	151	1521	1475	197	1573	1646	124	1590	1568	311	
Kerala (Travancore-Cochin)	81	176	218	39	231	222	48	274	251	71	
Madhya Pradesh	267	742	735	274	704	723	485	657	539	603	

1		3	4	5	6	7	8	9	10	11	12
Madras	.	564	1055	1335	105	1010	971	204	1168	1157	215
Mysore	.	81	349	374	56	435	339	152	444	471	156
Orissa	.	117	424	449	92	361	334	119	283	280	122
Punjab	.	286	1611	1569	328	1468	1491	305	1697	1596	406
Rajasthan		366	439	470	335	424	486	273	435	529	179
Uttar Pradesh		2005	2165	2107	2063	2354	2549	1868	2094	1931	2031
West Bengal		931	1505	1699	437	1745	1609	573	1723	1617	679

of the figures contained in columns Nos. 8 and 9 of the statement.

(2) The figures shown in columns 8 to 11 against the State of Madhya Pradesh include the proceedings instituted and disposed of in the Gwalior and Indore Benches.

(3) The figures shown against the state of Mysore include Criminal Revision Cases.

(4) The figures shown again Kerala and Punjab in columns Nos. 9 to 11 indicater the position after reorganisation of the State.

*The figures shown against these States do not include institutions, disposals etc. as a result of the reorganisation of the States, however,

											the figures furnished in column No. 11 show the pendency including that received consequent upon reorganisation. The figures furnished in this Table were supplied to us by the respective High Courts.

Consequent delays in lower courts.

4. It has to be remembered that a number of these revisions would be against interlocutory orders passed in proceedings pending in the lower courts and delays in their disposal by the High Court would add to the time taken for the final disposal of the proceedings in the courts below. The Tables also show that the disposals in a number of High Courts are not able to keep pace with institutions.

Enhanced powers of single judge.

5. In dealing with criminal appeals, we have referred to the divergent practices which prevail in the High Courts in regard to their hearing. Similar divergent practices are also to be found in the hearing of criminal revisions. Generally speaking, the disposal of criminal revisions involves much less responsible work than in the hearing of criminal appeals. The considerations which we outlined in support of the view that criminal appeals should, except in cases of sentences of death and imprisonment for life, be heard by a single judge of the High Court apply with greater force to criminal revisions. The adoption of this practice should help in a substantial measure to relieve the congestion in this type of work in a number of High Courts.

Increasing jurisdiction of sessions judges.

6. A further measure which will relieve congestion in this category of work needs consideration. Could some of the revisional powers now being exercised by the High Courts be entrusted to sessions judges? The Judicial Reforms Committee of Uttar Pradesh recommended[1] that sessions judges should be given full powers to hear and determine all criminal revisions except revisions against orders of acquittal and revisions for enhancement of sentences.

The evidence before us generally favoured the grant of revisional jurisdiction to this extent to the sessions judge. There was general agreement that in most petty matters a party applying for revision labours under a disadvantage in that he has to take the matter to the High Court. The view was also expressed that there was no reason why sessions judges who are entrusted with the trial of very important cases and are competent to impose even the penalty of death should not be empowered to deal with minor matters in revision and be required to submit them to the High Court for its final orders. It is anomalous that a sessions judge should be able to deal with and dispose finally an appeal from a sentence passed by a first class magistrate but that he should not be competent to revise an order passed by a third class magistrate.

We are, therefore, of the view that sessions judges may well be invested with powers to pass final orders in revision in all matters other than petitions against orders of acquittal and for enhancement of sentences.

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[1]Report, 1950-51, page 63.

Retention of revisional powers of district magistrates.

7. In view of our proposal to give immediate effect to the separation of the judiciary and the executive and our consequent recommendation that the appellate powers enjoyed by the district magistrate under section 407 of the Code as it stood before its amendment should be restored, we would leave the powers of the district magistrate to order further inquiry under section 436 or to direct the commitment of an accused to the court of session untouched. His powers to call for the record of proceedings for examination under section 435 Criminal Procedure Code should also be preserved and all cases in which he considers that the lower court's order needs correction should be referred by him to the sessions judge for disposal.

Reference to sessions judge.

Revision against summary convictions.

8. In order that the revisional court should be able effectively to exercise its correctional jurisdiction, it is necessary that the record kept by the lower court, whatever it be, should be made available to the revising court. This is of importance in cases where summary procedure is adopted. A magistrate trying a case summarily may impose a fine upto Rs. 200 and, as the sentence is not appealable, he is not bound to keep a record of the evidence taken in the proceedings. However, if the same magistrate follows the ordinary procedure and imposes a fine exceeding Rs. 50 the sentence would be appealable and the appellate court would have before it a record of the evidence taken in the proceedings. Though, in the former case, the accused person will have right to apply for a revision, such a right may not be of much use in the absence of a record of the evidence by the magistrate which can be examined by revisional court. We think, therefore, that it is essential that even in non-appealable cases tried summarily, the substance of the evidence of the witnesses should form part of the record to enable the revising court to exercise its revisional jurisdiction effectively.

Substance of evidence to be recorded.

Revisions against convictions by presidency magistrates.

9. Though presidency magistrates are not empowered to try cases summarily, in non-appealable cases, even if they are warrant cases, they are not required to record the evidence or to frame a charge. They can, in exercise of this jurisdiction, pass a sentence of imprisonment not exceeding six months or a fine not exceeding Rs. 200. Cases in which non-appealable sentences are awarded would be the subject matter of revision applications to the High Court. The revisional court is, in such cases, at a disadvantage for want of a record of the evidence.

We are of the view that this is likely to lead to injustice. Where the witnesses are all heard, at a stretch and judgment follows immediately, it may be that the magistrate is able to do full justice to the accused without having before him a record of the evidence. However, looking at the matter from the point of view of an accused person who may be sentenced to a period of imprisonment and who may wish to take the matter to the High Court in revision,

the position would be very unsatisfactory if the magistrate has not recorded any evidence. On what materials can he ask the revising court to scrutinize the matter? It may be that presidency magistrates do, in such cases, record the substance of the evidence for their own use. Such a record, however, not being required to be kept by the law, would not be before the revisional court. One may compare the position with that which arises in the case of other magistrates and even sessions judges. These judicial officers have to keep a record of the evidence even in cases where non-appealable sentences are awarded by them, except in summons cases and in the case of offences triable summarily. There appears to be no principle underlying this distinction. We would, therefore, recommend that the presidency magistrates should, even in non-appealable cases, make a record of the substance of the evidence before them.

Presidency magistrates to record substance of evidence.

Presidency magistrates to frame charge in all warrant cases.

10. A further distinction which stands on more or less the same footing is in regard to the framing of a charge. A presidency magistrate is not obliged to frame a charge even in warrant cases if the sentence passed by him is non-appealable. This position has been adversely commented upon by the Madras High Court[1] which has suggested an amendment. We think it is desirable that the Code should be amended so as to impose an obligation on the presidency magistrates to frame in all warrant cases.

Inherent powers of courts.

11. Though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make it impossible to lay down provisions capable of governing every case which in fact arises. Courts which exist for the furtherance of justice should, therefore, have authority to deal with cases which, though not expressly provided for by the law, need to be dealt with to prevent injustice or an abuse of the process of law. This has led to the acceptance of the principle that even in cases where the law is silent and has made no express provision to deal with a situation which has arisen, the courts have inherent powers to do real and substantial justice and prevent an abuse of their processes.

Statutory recognition of inherent powers of High Court in criminal cases.

12. The doctrine of inherent jurisdiction was for the first time given statutory recognition in the case of High Courts exercising criminal jurisdiction by the enactment of section 561-A in the Criminal Procedure Code in 1923. This section assumes the existence of such inherent power in the High Courts and provides that nothing in the Code is to be deemed to limit its inherent power to make such

[1] In *re* Yalpanathan and others, A. I. R. 1952 Mad. 50.

orders as would be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or to otherwise secure the ends of justice. The inherent power, thus recognised, empowers the court, *inter alia*, to prevent the abuse of the process not only of the High Court but of any court. The High Court thus exercises its inherent jurisdiction not only in respect of proceedings before it but also in respect of proceedings in the subordinate court.

Inherent powers of other criminal courts.

13. This statutory recognition, however, extends only to the inherent powers of the High Court. One may compare it with the recognition of the inherent powers of all civil courts by section 151, Civil Procedure Code.

In a number of decisions before and after the enactment of section 561-A, various High Courts have also recognised the existence of such power in subordinate criminal courts.[1] We would, therefore, recommend a statutory recognition of such inherent power which has been recognised as vesting in all subordinate criminal courts.

Limitations on their inherent power.

14. However, the general principle of law is that the inherent power of a court can be exercised only to give effect to orders made by it or to prevent abuse of its own processes. Section 561-A has, however, enabled the High Court to exercise inherent power to give effect not only to its own but to any order passed under the Code and to prevent the abuse of the process of any court. The court of session which exercises appellate and limited revisional jurisdiction over the criminal courts and which we are now recommending should exercise a fuller revisional jurisdiction, is, however, not entitled to exercise its inherent power in respect of proceedings pending in lower courts. Thus, it has been held in an Allahabad case[2] that when a sessions judge had granted bail to an accused person against whom committal proceedings were pending in a lower court, he could not in the exercise of his inherent power cancel the bail even if he was satisfied that the accused was tampering with the prosecution evidence. Similarly, it has been held[3] that a sessions judge could not, in an appeal under section 476-B of the Code, order the lower court to record further evidence inasmuch as that would be an exercise of his inherent power to require another court to do a certain thing.

Grant of inherent powers to the sessions court.

15. The court of sessions is, generally speaking, a court of appeal against sentences passed by magistrates. We have recommended an enlargement of its revisional juris-

[1]Achambit Mondal *v.* Mahatab Singh and others, A. I. R. 1915 Cal. 119 ; Nagen Kundu *v.* Emperor 61 Cal. 498 ; Krushna Mohan *v.* Sudhakur Das A. I. R. 1953 Orissa 281.

[2]Manni Lal *v.* Emperor A. I. R. 1937 All. 305.

[3]Bachhu Lal and another *v.* the State A. I. R. 1951 All. 836.

diction so as to enable it to pass final orders in revisions from proceedings of the lower courts. We think it, therefore, appropriate that the sessions court should, like the High Court, have inherent jurisdiction in respect of proceedings pending before subordinate courts. We, therefore, recommend an amendment of section 561-A so as to confer on the court of session such an inherent power.

Summary of recommendations.

16. Our conclusions on criminal revisions and the inherent powers of criminal courts can be summarised as follows:—

(1) All criminal revision petitions in the High Court other than those in which a sentence of death or transportation for life can be passed should be heard and finally disposed of by a single judge.

(2) Sessions judges should be invested with full powers to pass final orders in revision in all matters other than petitions against orders of acquittal or for enhancement of sentence.

(3) The judicial district magistrate should continue to retain his power of revision under the Code to refer cases to the sessions judge for final orders.

(4) Magistrates should maintain a memorandum of the substance of the evidence of witnesses even in non-appealable cases tried summarily.

(5) Presidency magistrates also should be required to make a memorandum of the substance of evidence in non-appealable cases.

(6) Presidency magistrates should be required to frame a charge in all warrant cases even if they pass only non-appealable sentences.

(7) The inherent powers of all criminal courts should be statutorily recognised.

(8) The courts of session should be recognised as having inherent power to pass appropriate orders to prevent the abuse of the process of any subordinate court by an appropriate amendment to section 561-A of the Criminal Procedure Code.

40.—ADMINISTRATION OF CRIMINAL JUSTICE—GENERAL

Perjury.

1. Section 193 of the Indian Penal Code deals with the punishment for perjury. The giving of false evidence in a judicial proceeding or fabricating false evidence for the purpose of being used in a judicial proceeding is an offence against public justice and is punishable with imprisonment of either description for seven years and fine. It has been stated that perjury has of late greatly increased. The sanctity of the oath has almost disappeared and persons seem prepared readily to make false statements on oath in courts of law. The law, however, is very rarely invoked for the purpose of punishing the perjurer. It is perhaps felt that if punitive steps were to be taken against all persons who give false evidence the number of such prosecutions would be enormous. Nevertheless, steps have to be taken to control this growing evil which tends more and more to bring the administration of justice into disrepute.

Procedure for prosecution.

2. Section 195 of the Criminal Procedure Code provides that no court shall take cognizance of the offence of giving false evidence "when such an offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate". The procedure for laying a complaint is prescribed by section 476 of the Code. When a court is of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in section 195(1) (b) (this includes the offence of giving false evidence), "which appears to have been committted in or in relation to a proceeding in that Court, such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction...". This section, accordingly, contemplates that when a court, whether *suo motu* or on an application made to it, feels that it is necessary to prosecute the offender, it may hold a preliminary enquiry and if it comes to the conclusion that it is necessary in the interests of justice that the offence should be enquired into, it shall thereafter make a complaint to a magistrate having jurisdiction. The preliminary enquiry which the court may make is generally undertaken after the close of the case in which the offence is alleged to have been committed. In such an enquiry, it is usual to give the person concerned an opportunity to show cause why a complaint should not be laid against

him. The enquiry extends to the court satisfying itself that an offence appears to have been committed and that the interests of justice require that proceedings should be initiated against the person concerned. On the court laying a complaint before a first class magistrate having jurisdiction, the latter takes up the matter and proceeds to hear the case. The steps prescribed naturally result in proceedings of this character being greatly delayed. Firstly, the court before which the offence apears to have been committed holds an enquiry; secondly, the magistrate before whom the complaint is made has to hear the case in accordance with the procedure relating to the trial of warrant cases. A considerable interval of time elapses between the commission of the offence and the eventual conviction of the offender. The essence of penal law is that punishment should follow the offence as speedily as possible, if the preventive ends of the punitive law are to be achieved. Delay is also often caused as the law provides for an appeal against an order of the court laying the complaint after the proceeding under section 476. A great deal of the effect of the prosecution is thus lost by the enormous delay in bringing the offender to book.

Delay.

New procedure : section 479A.

3. The recent amendment to the Code has introduced a new provision, S. 479-A, to deal with certain cases of giving false evidence. It says that where ".... a Court is of opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding, and that, for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted....", the Court shall, at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect....". This finding has to be recorded at the time of the delivery of judgment. The court "may", if it so thinks fit, after giving the person an opportunity of being heard make a complaint in writing and forward it to a magistrate of the first class having jurisdiction. It will be noticed that the recording of the finding of the court has to be made contemporaneously with the delivery of the judgment and cannot be postponed as under the procedure outlined in section 476. Yet the court itself is not empowered to take action in the matter but has to lay the complaint before a magistrate. Another innovation introduced by section 479-A is that there is no right of appeal from any finding recorded and from an order laying a complaint. Sub-section (6) of section 479-A provides that if in respect of the prosecution of a person, proceedings can be taken under the section but are not in fact adopted, proceedings under sections 476 to 479 will be barred. If, therefore, the court either through oversight or through indifference neglects to take any steps for launching a prosecution against a witness who has given false evidence, the court

Defects.

cannot later act under section 476 and start proceedings after the close of the case. But an appellate court to which an appeal has been preferred from the decision of the lower court may take such action.

4. No doubt, one of the purposes of introducing section 479-A into the Code was to ensure an examination of the question of expediency of prosecution of the person who had given false evidence at the time of delivery of judgment in the judicial proceeding. That purpose has been achieved. But the main evil, namely, the time lag between the commission of the offence and the punishment of the offender has not been remedied by the amendment.

Speedy punishment necessary.

5. The evil of perjury can be dealt with effectually only if measures are devised to punish the offender immediately. No doubt perjury is as frequent in civil proceedings, as in criminal cases; but in civil proceedings, it cannot be detected so easily. We may, therefore, for this purpose deal with criminal cases alone and consider how far the punishment of perjury can be made quicker in criminal cases. In cases triable by a court of session, there is a preliminary enquiry of some description by a court different from the one which ultimately tries the case; there is, accordingly, an opportunity for a witness, if he is so minded, to alter his evidence in the trial court. The experience of innocent persons being brought to trial in courts of session on the basis of false evidence given by witnesses in the committal courts or of guilty persons being acquitted on the basis of similar testimony in the courts of session is not infrequent. In a number of these cases, the witness has deliberately altered his version in the latter court. Even in such cases, the law at present requires the court hearing the case to record its finding under section 479-A and to make a complaint to a first class magistrate. It may well be that there are two statements on oath, one contradicting the other, so that the commission of an offence of perjury is not in doubt. Yet, the conviction and the punishment have to be delayed. What is even more important is that the court making the complaint is often in a far better position to judge whether an offence has been committed and to measure its gravity in relation to the particular facts of the case it was trying, than the magistrate who eventually tries it. It seems to us that in such cases it is very desirable that the court before which the judicial proceeding has taken place and which has recorded the finding should itself be given the power to deal with the offender. If that court has such a power, a person appearing and giving evidence before it would be very careful being aware of the risk that he runs. The swiftness with which the punishment will follow the offence will, we believe, have a deterrent effect on him and will lead to a decline in the incidence of this evil. We, therefore, recommend that where two contradictory statements on oath have been made by a witness, the

Summary powers of punishment in certain cases.

Limits of punishment.

court before which the second statement has been made, should have summary powers to punish the offence of perjury. In such cases, a complaint to the magistrate should not be necessary. Since we propose that the matter should be dealt with summarily, we suggest that the maximum penalty that can be inflicted in such cases should be six months imprisonment and/or a fine up to five hundred rupees. Such a convicted person should, however, be given a right of appeal. We think that an alteration in the law in this regard is desirable.

Right of appeal.

Reasons for suggestion.

6. The procedure contained in section 476 and the following sections and section 479-A is applicable to any civil, revenue or criminal court. The recommendation we have made earlier relates only to criminal courts. The nature of the proceedings in the civil and revenue courts is different from that in criminal courts and it seems to us to be very doubtful if a civil or revenue court can, in the light of the evidence before it, come to a reasonably correct conclusion that a witness has intentionally given false evidence or fabricated false evidence for the purpose of being used in the judicial proceeding before that court. Such a conclusion must, in the nature of things, necessarily depend upon the decision in the case, which in its turn would rest upon an appreciation of the entire evidence. In criminal cases of the type that we have mentioned earlier the position is different. In such cases, a perjuring witness practically convicts himself by making contradictory statements at different stages of the judicial proceeding. Under our law it is not necessary for a court trying him for the offence of perjury to determine which of the two statements is false. The criminal court in such an event would have before it two statements of the same witness, both on oath, one contradicting the other. It is obvious that one of such statements must be false. There is, therefore, no reason why such a witness should not be convicted summarily by the court before whom the second or subsequent statement was made; provided, of course, the court feels that the circumstances warrant resort to this summary power. No doubt the special procedure recommended will be useful only in a limited class of cases. Nevertheless, we feel that it will be useful in fighting the evil which is widely prevalent.

Objections.

7. The suggestion that the court should be given these summary powers did not meet with the approval of a few witnesses. It was said that illiterate persons who might have given a false version in the committing court under pressure, would face the risk of conviction for perjury even if they come out with the truth in the trial court. We are not inclined to agree. The trial court would be in possession of the entire evidence; it should certainly be in a position to assess the contradictory statements in the light of the other evidence and to decide whether either or any of the statements were made voluntarily or under pressure. While a different court would

have nothing more than the two contradictory statements to go upon, the trial court would have the advantage of a knowledge of the entire background to the statements, and would be able to deal with the accused person more justly. We do not believe that any court would act in a mechanical manner and straightaway proceed to a conviction solely on the proof of two contradictory statements. In most cases, it will only be the superior courts that will be called upon to exercise these powers and they can be trusted to administer the law properly.

It is true that there may be numerous cases where even criminal courts may not be in a position to use the summary powers which we have recommended. In such cases, the present law will have to be left to govern the procedure of the prosecution of the offender.

Presumption of innocence.

8. The expression "presumption of innocence" has no statutory origin. It is an expression in terse language of the principle that the duty lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The expression is in reality bound up with the question of the burden of proof. It has achieved the status of a principle of law in the English system of jurisprudence and also in our own, solely for the reason that the burden of proving every ingredient of the offence, even though "negative averments are involved therein", is cast on the prosecutor. The general principle is relaxed in some cases where a statute permits some facts to be presumed against an accused person as under section 114 of the Indian Evidence Act. The extent to which an accused person is protected will be apparent from the following observations of the House of Lords:—

> "Just as there is evidence on behalf of the prosecution, so there may be evidence on behalf of the prisoner which may cast a doubt as to his guilt. In either case, he is entitled to the benefit of doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt. He is not bound to satisfy the jury of his innocence..... Throughout the web of English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt, subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is reasonable doubt created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the

The true scope of the principle.

Common Law of England and no attempt to whittle it down can be entertained."[1]

The presumption of innocence signifies no more than this that the Commission of a crime must be proved beyond all reasonable doubt; in other words as pointed out by Thayer[2] "the whole doctrine when drawn out is, first, that a person who is charged with a crime must be proved guilty, * * * so that the accused stands innocent until he is proved guilty; and, second, that this proof of guilt must displace all reasonable doubt". One would have thought that this principle was rooted firmly in the provisions of the Indian Evidence Act which lays down (a) that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, and (b) that a fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances in the particular case, to act upon the supposition that it exists.

The criticism directed against the principle appears to be more a criticism of the manner in which this principle and the principle of giving the accused the benefit of doubt has been applied and misused by weak and incompetent judges.

Criticisms.

9. The nature of this criticism can be illustrated by reference to an extract from a publication headed "Law Vs. Justice:"[3]

> "The current philosophy underlying criminal procedure is epitomised in the dictum: 'Let a hundred guilty men escape but let no single innocent man suffer'. It seems to overlook the fact that there cannot be a single guilty person without at least one innocent person having suffered already, and to let a hundred guilty persons escape is to let at least a hundred innocent persons suffer. It may be law, but hardly justice. In the pursuit of this philosophy, the accused is deliberately and invariably advised to plead 'not guilty' and the onus is thrown on the prosecution to prove conclusively the guilt of the accused, and the benefit of every doubt is given to the accused, resulting often in the acquittal of the guilty, injury to the innocent and defeat of justice by law. It promotes the manufacture of extra evidence, more helpful than truthful."

Based on a misconception.

In our view, there is very little relation between the dictum referred to in the above extract and the principle which we are considering. It is no doubt undesirable and

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[1]Woolmington *vs.* Director of Public Prosecutions 1935 A. C. 462.

[2]Cited in Amrita Lal Hazra & others, *vs.* Emperor 42 Cal. 957, 993 and 994.

[3]By Shri P. Kodanda Rao—formerly of the Servants of India Society

extremely unfortunate in the interests of society that guilty men should escape. But the conviction of guilty men will not necessarily be assisted by the weakening of the principle that we are discussing namely that a man who is to be convicted must be proved to have been guilty by those who accuse him of the guilt. The relaxation of this principle will not ensure the conviction of more guilty men. By its modification, we would rather make it easier for more innocent men to suffer the penalty of the law.

No scope for relaxation.

10. The views expressed to us are overwhelmingly against any relaxation of the rule that the accused should be presumed to be innocent and that it is for the prosecution to establish his guilt beyond reasonable doubt. We are of the view that in the generality of cases it would be dangerous to relax the application of these principles.

Special cases : Section 106 Evidence Act.

11. There are, however, some special situations which call for the application of section 106 of the Indian Evidence Act. In such cases, one may justifiably demand that the accused should be required to undertake the burden of proving a fact which is specially within his knowledge. The proved or admitted possession by the accused of an incriminating object or stolen property would call for an application of this special provision. Where the prosecution has proved facts necessary to establish the connection between the incriminating object and the offence and its possession by the accused, the onus will be on the accused person to explain how he came to be in possession of that object. It would be for the court to determine whether the explanation given by the accused is one that can be believed.

Prevention of Corruption Act.

In another class of cases such as those under the Prevention of Corruption Act, the law expressly provides that on the proof of certain facts particular presumptions shall be drawn against the accused person. The fact that the accused person is in possession of pecuniary resources or property disproportionate to his known sources of income has to be proved by the prosecution. On such proof, a presumption that the accused person was guilty of criminal misconduct in the discharge of his official duties shall be made, unless the accused proves the contrary, namely, that the property in his possession is not disproportionate to his sources of income. This, in substance, is an express extension of the principle contained in section 106, because the possession of the resources or the property and the manner by which the accused came to be in possession of such resources or property, would be facts specially within the knowledge of the accused person.

These special laws which throw the burden of proof of particular facts upon the accused persons, or which provide for certain limited presumptions being drawn against accused persons on certain facts being established

by the prosecutors do not in fact derogate from the principle of the presumption of innocence of an accused person. Even in these cases, though the burden is laid upon the accused to prove facts within his special knowledge failing which certain presumptions arise against him, the overall burden still lies on the prosecution to prove the guilt of the accused; thus the presumption of the innocence of the accused governs even these cases. As has been said, "But while the prosecution must prove the guilt of the prisoner there is no such burden laid on the prison to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence[1]."

Limitations.

Minimum sentence.

12. The protection of the public, the prevention of crime, the deterrent effect of the physical suffering imposed on the offender and his reformation are broadly the bases of the theory of infliction of punishment on an offender. The view has increasingly been accepted that punishment should not be regarded as a measure of retaliation. How far the imposition of bodily suffering has a reformative effect upon the offender is a psychological question which is not capable of an easy answer. But, it is generally conceded that for the protection of the public and the prevention of crime, some kind of punishment needs to be inflicted upon the offender.

Sentence a matter of judical discretion.

The determination of what should be the proper sentence in a particular case has always been left to the court for the very weighty reason that no two cases would ever be alike and the circumstances under which the offence was committed and the moral turpitude attaching to it would be matters within the special knowledge of the court which has tried the case. There can be no rule of general application laying down a specific quantum of punishment that should be inflicted in the case of a particular offence. A sound judicial discretion on the part of the trial judge in awarding punishment can alone distinguish between case and case and fit the punishment to the crime in each individual case.

Legislation prescribing minimum sentences: recent trends.

(13) Of late, an increasing tendency has been shown by the legislature towards prescribing a minimum sentence in the case of some offences. The principal reason underlying this change appears to be a feeling that courts seldom award sentences which would have a deterrent effect, particularly, in certain types of offences which are necessary to be dealt with sternly in the interests of society. If, therefore, it is argued, a minimum sentence were to be prescribed for certain offences or classes of offences, the award of the really needed deterrent punishment would be assured in these cases.

Its value.

The theory that the more severe the punishment the greater the deterrent effect is itself a matter of contro-

[1]Woolmington *vs.* The Director of Public Prosecutions, 1935, A. C. 462 at 481.

versy. It has not been ascertained whether there has been a fall in the commission of those offences where an enhanced penalty has been assured by prescribing minimum sentences. In dealing with the deterrent effect of really severe sentences, Puttkammer observes:—

> "If we are hopeful of the curative effects of a threat, we have to make the threat unpleasant, which is another way of saying that we have to be severe. But we tend to lose sight of a factor which is at the very least as important as severity and which is probably more important. That factor is certainty of punishment[1]."

He proceeds to point out:

> "A survey made in ..... Illinois, disclosed, that in a given type of felony only one of every twenty-six ever resulted in anybody's being tried. By no means all of those who were tried were convicted, but only one in every twenty-six was ever brought even to the trial stage. If, then, one puts one's self into the position of someone who is coldly calculating whether to commit the crime or not, as the deterrence advocates believe one does coldly calculate, he is going to figure out not only *what* he stands a chance to get but also how big the chance is that he is going to get that. And, if there is only one chance in twenty-six against him, he will probably not be worried too much, no matter how bad the fate for that twenty-sixth chance may be."[2]

He concludes:

> "Deterrence will really be tested only if we can so far increase the efficiency of our machinery as to produce, if not absolute certainty of punishment, at any rate, a high degree of certainty, by improving our police forces, by improving our judicial machinery, by improving our jury system, by improving the whole line of procedure. And, in analysing how far such an improvement is possible, we should never forget that to some extent at least severity and certainty tend to be mutually exclusive—not absolutely mutually exclusive, but that they tend so to be—because the more severe punishment is, the greater the precautions that have to be taken to make sure, that an innocent person does not undergo that punishment."[3]

It thus seems to be a matter of doubt whether fixing a minimum term of imprisonment, which is only another way of saying that the punishment be made more severe, will have the effect of reducing the incidence of particular kinds of crime.

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[1] Administration of Criminal Law pages 16 and 17.

[2] *Ibid* page 17.

[3] *Ibid* pages 17 and 18.

Comparative rarity of such provisions.

14. In the entire body of the Indian Penal Code there are only a few sections which prescribe a minimum penalty. Section 121 prescribes death or imprisonment for life. Section 302 provides for the punishment of imprisonment for life or death. Under section 303, where a person who is under a sentence of imprisonment for life commits murder, he shall be punished with death. There is no alternative punishment prescribed for such a case. Under section 397, a minimum sentence of seven years has been provided in the case of a person who uses a deadly weapon and causes grievous hurt to any person at the time of committing robbery. Under section 398, if a person attempting to commit robbery or dacoity is armed with a deadly weapon, he shall be punished with not less than seven years' imprisonment.

Recent Legislation.

But, during recent years, several enactments have been passed by the State Legislatures, or Parliament providing for minimum sentences. It is true that in some of these enactments the discretion of the court has not been completely fetterd. Though the section provides for a minimum sentence, the court has been given the liberty, for sufficient reasons to be recorded, to award a lower sentence. For instance, in the Prevention of Food Adulteration Act, 1954 (XXXVII of 1954), in respect of certain specified offences, the law provides that the convicted person shall be punishable—

> (i) for the first offence, with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both;
>
> (ii) for a second offence with imprisonment for a term which may extend to two years and with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such sentence shall not be less than one year and such fine shall not be less than two thousand rupees;
>
> (iii) for a third and subsequent offences with imprisonment for a term which may extend to four years and with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees. (Section 16).

Analogous provisions exist in the Bombay Prohibition Act, 1949. It is also to be noted that in that Act, it is mandatory that *both* imprisonment and fine should be imposed on conviction whether for the first or the subsequent offence.

Recently, section 5 of the Prevention of Corruption Act, 1947, has been amended by the Criminal Law (Amendment) Act (II of 1958), by providing for a minimum term

of imprisonment of one year for any public servant convicted of criminal misconduct in the discharge of his duty. The maximum punishment prescribed is seven years. There is a proviso to the effect, that the court may, for special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year. During the discussion in Parliament, it was stated, that the tendency on the part of judges to impose inadequate sentences had made it necessary to amend the law in this respect. Though figures relating to the number of prosecutions and convictions of public servants under the Prevention of Corruption Act were given, the number of instances in which the sentences awarded was considered to be low, was not indicated.

The Supression of Immoral Traffic in Women and Girls Act, (CIV of 1956) is an instance where even the limited discretion of the court, available under the Acts referred to, has been taken away from the court. An offence under section 3(1) of this Act, for keeping a brothel or allowing premises to be used as a brothel, "shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees". Similarly, an offence under section 5(1) *viz.* the procuring, inducing or taking a woman or a girl for the sake of prostitution "shall be punishable with rigorous imprisonment for a term not less than one year and not more than two years and also with fine which may extend to two thousand rupees. In the event of a second or subsequent conviction for an offence under this section, a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees".

Proper in special cases.

15. We are aware that desperate ills such as these and other enactments of a like nature are intended to cure, call for desperate remedies and that the punishments prescribed and imposed should be such as to have a deterrent effect on others likely to engage themselves in such anti-social and infamous activities. We, therefore, entirely approve of the provisions requiring imposition of a minimum sentence in enactments designed to prevent anti-social acts and intended to further social advancement.

Generally not advisable.

However, the placing of restrictions on judicial discretion in the matter of the award of a sentence is, on principle, to be deprecated as a general practice. If the law provides for enhanced sentences for a second or subsequent offence, only prescribing an upper limit, the duty will be cast on the courts to consider judicially the need for a

Proper remedy.

heavier penalty in any particular case. As already stated, the court would be best able to judge the adequacy of the punishment in each case. If, in the opinion of the State, an dequate sentence has not been imposed (or as required under some Acts, special and adequate reasons for awarding lesser sentence have not been given by the courts), provisions exist in the Code for invoking the powers of the High Court for enhancement of the sentence and they should be resorted to. Instances might have occurred occasionally where judges have failed to award sentences proportionate to the gravity of the offences. This cannot, however, warrant the assumption that the judiciary as a whole has failed to award adequate sentences or overlooked the need for passing deterrent sentences in appropriate cases.

Objections as to misjoinder of charges.

16. We propose to deal with two types of objections in regard to criminal trial, namely, a failure to observe the rules laid down by the Code in regard to joinder of the charges, and a failure to obtain sanction prior to the institution of a prosecution in cases where law requires such sanction.

Present position.

The general principle that a failure to observe the provisions of the Code in regard to joinder of charges will not necessarily result in making the proceedings void has been laid down therein. Such a failure will have that consequence only if it has occasioned a failure of justice. The position has recently been clarified by the amendment of Section 537 by Act XXVI of 1955 which has made it clear that any error, omission or irregularity in the charge, including any misjoinder of charges, shall not lead to a finding, sentence or order being reversed or altered unless such error, omission or irregularity has in fact occasioned a failure of justice. It was suggested that the recent amendment which has placed an irregularity in the charge on the same footing as other irregularities mentioned in section 537 of the Code of Criminal Procedure did not go far enough and that a general rule should be laid down to prevent questions as to error, omission or irregularity in the charge being raised at any stage of the proceeding except in the courts of the first instance. It was said that in a majority of cases an accused person becomes aware of the defect in the charge during the trial but chooses not to put forward such an objection in the trial court on the calculation that in the event of a conviction such an objection may help him in the court of appeal or revision. Such a manner of dealing with the court is undoubtedly most unfair and amounts to taking liberties with the court. It is said that in many cases the objection in regard to the irregularity in the framing of the charge is now raised sometimes for the first time in the Supreme Court. It may be that those advising the accused in the trial court have failed to apply their minds to the question at the initial stage or may be that those advising him in the court of appeal have thought

of the alleged irregularity in the trial in an attempt to obtain a setting aside of the conviction on technical grounds. There is no doubt that in many cases considerable delays are sometimes occasioned by a retrial being ordered, and that sometimes the accused person is acquitted on these points being raised in the higher courts. It has, therefore, been suggested that once the trial stage has been closed, no points as to any irregularity in joinder of charges should be allowed to be raised in any superior court. We think that the proposal is very drastic. The test in all criminal cases regulating an interference by a superior court must be that laid down in section 537. If a disregard of the contravention of the provisions of the law causes a failure of justice, it is manifestly unfair that merely because the point was not taken by those who advised the accused at an earlier stage he should be deprived of the opportunity of raising it and denied the relief to which he is entitled when the trial has in fact not been a fair and just one.

In the framing of the charge, the initial responsibility rests upon the court. The law lays down the circumstances under which there can be a joinder of charges and the court is expected to see that the charges are not joined in a manner which will handicap the accused in defending himself.

Duty of the court.

17. We have already referred to the provisions in the Criminal Procedure Code which limit the extent to which a misjoinder can lead to a reversal of the order of the trial court. Only cases which have led to a failure of justice invite interference by the superior court. It does not, therefore, appear to be necessary to have a special provision whereby the duty to take an objection as to joinder of charges at the earliest opportunity is cast upon the accused person. Even if an objection is not taken by a convicted person in appeal, it would be the duty of the appellate court to examine whether a failure of justice has been occasioned by reason of misjoinder of charges. If the appellate court comes to an affirmative conclusion, it will be its further duty to interfere with the finding of the trial court.

Change unnecessary.

We do not, therefore, think that it would be desirable to cast a burden upon the accused to raise this objection at the trial stage. We are of the view that the existing provisions are more consonent with the rules which should normally govern the administration of justice.

Lack of sanction.

18. The further question whether the plea of want of sanction should be permitted in the appellate or revisional courts, if it has not been raised in the trial court, is of greater importance.

Several provisions such as sections 195, 196, 196A, 198 etc., provide that "no court shall take cognizance" of certain categories of cases except on certain conditions.

Reason for the requirement.

Courts are not to take cognizance of offences against the lawful authority of public servants, offences against public justice and certain other offences except on a complaint in writing by the public servant or by the court concerned. In respect of certain offences against the State, specified in section 196, a prosecution has to be preceded by a complaint made by order of, or under authority from, the State Government or some officer empowered by the State Government in this behalf. In cases of conspiracy also, such a complaint by the State Government or some specified officer is necessary. In other categories of offences referred to in section 198, a complaint has to be made by some person aggrieved by such offence. Act XXVI of 1955 enacted section 198B dealing with prosecutions for defamation of public servants in respect of their conduct in the discharge of their functions. An exclusive jurisdiction has been conferred on the court of session to take cognizance of such offences upon a complaint in writing made by the public prosecutor. The public prosecutor is required to obtain the previous sanction of certain specified authorities before filing the complaint. In such cases, the law bars a court from taking cognizance of offences, except upon a complaint made by a specified person who must act with the previous sanction of specified authorities.

19. We may also refer to section 197 which relates to the prosecution of judges, magistrates or public servants. When any of these persons is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, the law provides that no court shall take cognizance of such an offence except with the previous sanction of the Central or the State Government, as the case may be. In these cases also, the previous sanction of the Government is necessary before a criminal proceeding of the nature specified can be launched against such a person. Though the police might investigate such an offence and prepare a police report, the court is not competent to commence proceedings upon such a report if, in the case of such an accused person, previous sanction has not been accorded by the Government concerned.

It has to be remembered that section 537 which deals with irregularities or illegalities does not include want of sanction within its scope. The reason for this omission probably is that unless such sanction is available at the commencement of the proceedings, the court would have no jurisdiction to deal with the matter. Where in a case in which previous sanction is required by the law and a prosecution has been launched without such sanction, the proceedings will be void as the court is prevented from trying the case without such previous sanction.

Underlying policy.

20. The policy underlying these provisions appears to be that persons in responsible positions ought to be protected from malicious or vexatious proceedings in respect of

acts done by them in the discharge of their official duties and that no prosecution should be permitted to be launched against such persons, unless there is some reasonable foundation for the accusation. It is obvious that the administration cannot be carried on, if a citizen is to be free to invoke the criminal law against public servants whose lawful action may engender his hostility. However, the public servant is not placed beyond the reach of the law. His official acts are, initially protected; but if an act purporting to have been done by him in the discharge of his official duties is alleged to be an offence, a superior authority responsible for the administration becomes entitled to examine the matter. If it is satisfied that the allegation calls for judicial scrutiny, it may sanction the prosecution of the public servant. By these provisions every public servant would not become liable to face frivolous prosecutions launched by disgruntled members of the public.

Section 197 applies only to offences alleged to have been committed by public servants' while acting or purporting to act in the discharge of their duties. It does not apply to all offences alleged to have been committed by a public servant. The Privy Council in interpreting this provision has observed that "The test may well be whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office[1]."

Raising such objections subsequent to the trial stage.

21. The question has been raised whether, in cases where the law requires sanction before courts can take cognizance of cases, a contention based on the want of sanction should be permitted to be raised in the appellate or revisional court, if it has not been raised in the trial court. The defence of want of sanction is, it is said, the last resort of many dishonest public servants and is generally not put forward till the matter is under appeal. It is, therefore, urged that it is important that courts should investigate at the earliest opportunity whether a sanction is necessary. The interests of the accused also require that he should raise the contention at the earliest stage because, if such a plea is upheld by the trial court, a duty would be cast upon the superior authorities to examine the facts of the case and to exonerate the public servant, if the charge against him is ill-founded or grant the necessary sanction in case the complaint is true. It has already been stated that only public servants who are conscious of having acted illegally in the discharge or the purported discharge of their official duties do not put forward the defence at the earliest stage. The prosecution would thus have the advantage of curing the defect of want of sanction in the proceedings started by it if it raises the contention at the earliest stage.

Wsnt of sanction affects jurisdiction.

22. It is difficult to regard a want of sanction required by the law to entitle the court to entertain the prosecution in the same light as an error, omission or irregularity in

[1]Gill v. Emperor, A. I. R. 1948 P. C. 128 at 133.

the framing of the charge. The court is, in the absence of sanction, without jurisdiction to entertain the proceedings. But when charges are improperly framed, a court having jurisdiction merely acts in contravention of some provisions of the Code regulating the course of the trial. It would, we think, be wrong in principle to permit an order passed by a court without jurisdiction to be effective merely because the accused person failed to raise the plea of want of jurisdiction before the trial court, as if such conduct of the accused could have the effect of giving sanctity to an order or sentence of a court not authorised to pass it.

Sanction necessary on grounds of policy.

23. Nor must we forget that sanction to the initiation of proceedings is required not only in the case of public servants charged with offences but also in other cases where public policy requires that offences should not be investigated by a court of law unless the State permits them to be investigated. We are referring to offences against the State like sedition or waging war against the Government of India. Obviously, want of sanction affecting the jurisdiction of the court must be treated alike in all cases whether they be cases of offences by public servants or offences against the State. As already pointed out, the principle underlying the requirement of sanction is that in the case of these offences public policy requires that prior to the initiation of the proceedings the State should decide whether the proceedings should or should not be started. Once the requirement of sanction is accepted to be a matter governed by considerations of public policy, it would obviously be unsound to treat it as a mere technical objection which, if not raised at the earliest stage, should not be allowed to be raised at a later stage.

Not an irregularity.

Nor would it be correct to treat the want of sanction as an irregularity or omission of the nature mentioned and provided for in section 537 of the Criminal Procedure Code. The underlying principle of that section is that the failure to observe the law should make the proceeding void only when such failure has occasioned a miscarriage of justice. No question, however, of miscarriage of justice having taken place could arise from a want of sanction which the law requires. It is not a procedural defect. It is a defect which goes to the root of the proceedings inasmuch as it bars the court from entertaining and dealing with the matter.

Change undesirable.

In the circumstances, we are unable to recommend any alteration in the existing law in regard either to the need for previous sanction or to the consequences of the absence of such a sanction.

Reading out judgment in court.

24. Section 366 of the Criminal Procedure Code requires that every judgment of a criminal court of original jurisdiction shall be pronounced in open court or the substance of the judgment shall be explained in the language of the court or in some other language which the accused or his pleader understands. There is a proviso to this section,

which requires that "the whole judgment shall be read out by the presiding judge, if he is requested so to do either by the prosecution or the defence." We were told that in the subordinate criminal courts judgments are not as a rule read out in open court; nor is a request generally made either by the prosecution or the defence that the judgment should be read.

The proviso appears to have been enacted to enable the accused person or the prosecution to know how the judge has viewed the case and how he reached his conclusions. Section 371 makes it imperative that the accused shall be given a copy of the judgment without delay and free of cost in any case other than a summons case. The recent amendment of the Criminal Procedure Code has rather provided by Section 371(4) that where the accused is sentenced to imprisonment, "a copy of the finding and sentence shall, as soon as may be after the delivery of the judgment, be given to the accused free of cost". These requirements are intended to enable the accused person after conviction to move for bail and to prefer an appeal. Its purpose.

25. It seems to us, therefore, that no purpose is served by the proviso to section 366. Section 367 requires that the judgment shall be dated and signed by the presiding officer in open court at the time of pronouncing it. It is also not competent to the court to alter its judgment in any manner except in order to correct a clerical error. Ordinarily, therefore, the written judgment would be ready in its final shape when the judge pronounces it. It should, therefore, be possible for the judge to have a sufficient number of copies of the judgment available for being handed over immediately to the accused if he is entitled to a free copy. Such a copy could perhaps be made available in every case both to the prosecution and the defence for their perusal without the judge being called upon to waste his time in reading the whole of the judgment. This would be in accord with our recommendation that the High Courts should not read out in court reserved judgments but make copies thereof available for perusal. Such an alteration in the law would ensure, that the Judge prepares his judgment before the date of its pronouncement and no opportunity would be left to the Judges to pronounce judgments without having written them previously. We accordingly recommend that the proviso to section 366 requiring the judgment to be read out, be deleted. It should be provided that a copy of the judgment should be made immediately available to the prosecution or the defence for perusal. That would, of course, be without prejudice to the rights of the accused person to a free copy of the judgment as other sections of the Criminal Procedure Code provide. Copy of judgment to be supplied for perusal.

26. The law of evidence requires the production of the best evidence in proof of all relevant facts. This principle is expressed in section 60 of the Indian Evidence Act, which prescribes the general mode of proof and requires that oral Exp Witnesses,

Section 510 Cr. P. C.

evidence tendered in the court should be direct evidence. This is, however, not an absolute rule and is subject to numerous exceptions. One such exception is contained in section 510, of the Criminal Procedure Code which lays down as a special rule of evidence, that a document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to the Government or the Chief Inspector of Explosives or the Director of Finger Print Bureau or an officer of the Mint, regarding matter or thing duly submitted to him for examination or analysis and report, might be used in evidence in any inquiry or trial or proceeding without actually summoning him for examination in court. The principal object of dispensing with the personal attendance of such witnesses is to avoid the expense, delay and inconvenience that would be caused, if these witnesses were to be obliged to rush from one court to another.

Recent amendment.

Before the recent amendment of the Code, this special mode of proof was restricted only to the reports of the Chemical Examiner or the Assistant Chemical Examiner but the scope of the section has now been extended to other categories of experts like the Chief Inspector of Explosives, Director of Finger Print Bureau or an officer of the Mint, all of whom, before the amendment, had to appear before the court and personally testify with regard to matters submitted to them for report. Another change that has been made by the recent amendment of Section 510 is that, while before the amendment, the Court alone had the discretion to summon the Chemical Examiner for examination, if it thought fit, under the amended section the court is bound to summon and examine any such expert on the application of the prosecution or the accused. The court has no discretion to refuse such an application, even if it be of the view that the personal examination would serve no useful purpose and that the sole purpose of an application to examine him is to delay the proceedings unnecessarily. The accused thus now enjoys the unrestricted privilege of summoning the expert witnesses, which at any rate so far as the Chemical Examiner is concerned, he never enjoyed before. Under Sections 252 and 257 of the Code, a magistrate trying a warrant case, has considerable discretion in summoning or refusing to summon prosecution or defence witnesses. He may summon only such of the prosecution witnesses, as he thinks necessary and refuse to summon defence witnesses, if he thinks that the application of the accused is made for the purpose of vexation of delay or for defeating the ends of justice. In contrast, section 510 confers an unrestricted privilege upon the prosecution or the accused, without any discretion being left to the court. We think that such an unqualified right given to the prosecution and the defence, is likely to be abused and cause unreasonable delay in the disposal of criminal cases. No specific cases of delay having occurred on this account were brought to our notice. But in the

replies to our Questionnaire, a substantial body of opinion expressed itself against this provision giving the prosecution or the defence an unrestricted right. In most of the States, very few such experts are available and if the prosecution or the accused is to be given the liberty, uncontrolled by the discretion of the court, to require the personal appearance of these witnesses, not only would unnecessary expense and inconvenience be caused to the prosecution, but considerable delays will arise in the disposal of cases. We therefore, recommend that section 510 Criminal Procedure Code be amended, so as to give the court, the discretion to summon these expert witnesses only in those cases, in which substantial grounds are made out by the prosecution or the accused to justify their personal attendance before the court. These officers are generally summoned to appear in the Superior Courts and these Courts may well be trusted to exercise the discretion properly. Recommendation.

27. Our recommendations in this Chapter may be summarised as follows:— Summary of recommendations.

(1) If a witness has made two contradictory statements on oath, the court before which he made the subsequent statement, should have the power to punish him summarily for perjury.

(2) The maximum penalty which can be awarded by the court in any such case should be limited to imprisonment for six months and or a fine of five hundred rupees.

(3) A person thus summarily convicted should have a right of appeal.

(4) It is not desirable to relax the presumption of innocence of an accused person.

(5) Except in the case of anti-social offences, it is not desirable to restrict the exercise of judicial discretion by prescribing a minimum penalty by statute. Instead, the High Courts' revisional jurisdiction should be invoked when inadequate sentences are passed.

(6) The law relating to the consequences of a misjoinder of charges or lack of sanction needs no alternation.

(7) The proviso to section 366 of the Criminal Procedure Code may be repealed. Instead it should be enacted that copies of the judgment should be immediately made available for perusal by the prosecution or the accused.

(8) Section 510 of the Criminal Procedure Code should be amended so that the expert witnesses mentioned therein can be called by either party to depose before the court, only with the leave of the court.

41.—SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS.

Constitutional directive and the present position.

1. Notwithstanding the directive principle in Article 50 of the Constitution that the State shall take steps to separate the judiciary from the executive in the public service of the State, a large number of States have failed to carry out the separation. The present position is that the judiciary has not been separated from the executive in Assam, Orissa, Rajasthan, West Bengal and in portions of the States of Punjab and Madhya Pradesh which as they existed before the re-organisation of States. In Uttar Pradesh, in some districts, judicial officers (criminal) are not entrusted with executive duties but the supervision of their work and their promotions rest with the executive. In Bihar, separation has been introduced in twelve out of the seventeen districts constituting the State.

Purpose of reform.

2. The real purpose of this reform is to ensure the independent functioning of the judiciary freed of all suspicion of executive influence or control, direct or indirect. It incidentally ensures that officers will devote their time entirely to judicial duties and this fact leads to efficiency in the administration of justice.

History of the movement for separation in British India.

3. The importance of the freedom of the judiciary from executive control was recognised by the British as far back as 1793. In section 1 of Regulation II of 1793, it was stated that "the Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers." Generations of eminent statesmen, administrators and judges have repeatedly pressed for this reform. Ever since the year 1886, the Indian National Congress has emphasised the urgency of this measure and called for its implementation from year to year. In 1899, a body of distinguished men including Sir Richard Garth, a retired Chief Justice of Bengal and Lord Hobhouse made a representation to the Secretary of State for India urging upon him the need for the carrying out of this reform. More recently, the Islington Commission dealt with this question and, in an impressive minute, Sir Abdur Rahim, then a Judge of the Madras High Court, investigated all its aspects. A number of schemes were prepared to give effect to this change by distinguished men like Mr. R. C. Dutt, Sir Harvey Adamson, Mr. P. C. Mitter and others, but they were not given effect to. In several provinces, Committees were appointed with a view to work out this reform but their recommendations also remained unimplemented. It was obviously to the interests of the foreign

rulers to entrench executive authority by bestowing upon it some judicial functions as well; and naturally, notwithstanding the acceptance of the principle and the insistent demands of various sections of the people, the reform was not carried out till after independence.

In the Indian States.

4. Though the first steps to effect this reform in what was British India were taken after Independence, in several former Indian States the judiciary had been separated from the executive for a long time. Among such States may be mentioned the States of Cochin in Hyderabad.

Article 50 of the Constitution.

5. So insistent was the public feeling in this matter that when the present Article 50 was being debated in the Constituent Assembly, there was a considerable body of opinion in favour of fixing a time-limit of three years in the Article itself for carrying out the separation. The time-limit, it appears, was eventually not fixed on the assurance of the Prime Minister, Shri Jawaharlal Nehru, that the Government was entirely in favour of the separation and that in a large part of India the change might be brought about much sooner than that.

We felt that after the consistent public opinion in favour of this change and the acceptance of it by the Constitution, its desirability would be beyond argument. Though the bulk of the evidence before us not only completely favoured it but called for its immediate implementation, there appeared to be in some quarters a reluctance to give effect to it.

It would be convenient at this stage to set out the manner in which the scheme of separation has been implemented in the major States of Madras and Bombay.

Scheme of separation in Madras.

6. The introduction of separation in Madras followed the report of a Committee appointed in 1946 for the purpose of formulating a scheme. The separation has been effected in Madras by executive orders and not by statute. In the initial stages, the scheme was introduced only in a few districts; it was extended to other districts year by year, care being taken to observe the difficulties found in its working and to remove their causes. It was thus gradually brought into force in Madras State including the separated Andhra.

Allocation of functions between executive and judicial magistrates.

Under the Criminal Procedure Code and other relevant statutes, the functions of a magistrate fall into three broad categories, namely—

(a) functions which are "police" functions in their nature, *e.g.*, the handling of unlawful assemblies;

(b) functions of an administrative character, *e.g.*, issue of licences for fire arms, and similar functions, and

(c) functions which are essentially judicial, *e.g.*, the trial of criminal cases.

These functions were, till the introduction of the scheme, all performed by the Collector of the district and by a number of magistrates subordinate to and controlled by him. The essential feature of the scheme was that purely judicial functions coming under category (c) were transferred from the Collector and magistrates subordinate to him to a new set of officers who were no longer to be under the control of the Collector. Functions under (a) and (b) were to continue to be discharged by the Collector and the revenue officers subordinate to him. Officers performing functions in category (c) were to be called "judicial magistrates" and those performing functions in categories (a) and (b) were to be called "executive magistrates." In the category of judicial magistrates were the District Magistrates, the Subdivisional Magistrates, the Additional First Class Magistrates and the Second Class Magistrates (Sub-Magistrates). The executive magistrates were the executive officers of the revenue department, namely, the Collectors, the Revenue Divisional Officers, the Tahsildars and the Deputy Tahsildars on whom the responsibility for the maintenance of law and order was to continue to rest. The Collector was, by virtue of his office, to retain some of the powers of the District Magistrate and was to be called the "Additional District Magistrate". Similarly, the Revenue Divisional Officers continued to be *ex-officio* First Class Magistrates and Tahsildars and the Deputy Tahsildars, *ex-officio* Second Class Magistrates. These officers were not to exercise any judicial functions in the sense that they were not to try any criminal cases. Their powers were restricted to the making of emergency orders under sections 133 to 144 of the Code of Criminal Procedure. They were also given powers to bind over persons to keep the peace under section 107 of the Code of Criminal Procedure. Powers under sections 108 to 110 were given exclusively to the judicial magistrates. Powers under section 144 could, however, be exercised by both classes of magistrates. Powers of revision under section 435 to 438 were to be exercisable by the judicial magistrates alone. The jurisdiction in disputes regarding immovable property (under section 145) and the following sections could be exercised by the executive magistrates. These changes were brought into effect by G.O. No. 3106 Public (Separation), dated 9th September, 1949, which has been from time to time amended.

The Bombay Scheme.

7. In Bombay (as constituted before the reorganization of States), a similar scheme was brought into effect by the passing of the Separation of Judicial and Executive Functions Act, (XXIII of 1951). The main points of distinction between the Madras and the Bombay schemes are that, whereas in Madras the head of the judicial magistrates in a district is the District Magistrate (Judicial), in Bombay the head is the Sessions Judge and that, whereas in Madras powers under sections 108 to 110 of the Criminal Procedure Code are exercisable only by judicial magistrates, in

Bombay these powers are left to be exercised by executive magistrates.

Judicial magistrates under the High Court.

8. It may be pointed out that in both the States the judicial magistrates are, like civil judicial officers, under the administrative control of the High Courts.

We annex at the end of this Chapter a statement showing some of the salient features of the allocation of powers and functions under the Criminal Procedure Code in the schemes of separation in Madras and Bombay.

Extent of separation.

9. In the other States or parts of States where separation has been introduced, the Madras method of issuing executive instructions has been followed and the allocation of powers and functions is broadly on the same pattern as in Madras or Bombay with changes in the nomenclature of the officers. The States in which separation is now in force are Madras, Andhra Pradesh, Kerala, Mysore, Bombay excluding Vidarbha, the Madhya Bharat and Vindhya Pradesh areas of Madhya Pradesh, the PEPSU region of the Punjab and twelve districts of Bihar.

The scheme in U.P. Not real separation.

In Uttar Pradesh, a scheme of what is called separation has been introduced by executive orders in some districts. In certain districts, some of the officers, called judicial officers, were appointed whose duties were only the trial of criminal and revenue cases; they had no executive duties. They were not to be under the control of the Collector and the District Magistrate. They were, however, placed under the control of the Commissioner of the division through an Additional District Magistrate (Judicial). These judicial magistrates devote their time exclusively to the trial of cases. Powers under sections 107, 108 to 110, 144 and 145 of the Criminal Procedure Code are, it appears, being exercised by the executive magistrates. The High Court has no control over these judicial magistrates. It will thus be clear that the system of separation which prevails in some of the districts of Uttar Pradesh is only a separation in form; the substance of separation, namely, the freeing of the judicial officers from executive control has not been achieved.

Critics of separation. Views of the Punjab Government.

10. The Chief Secretary of the Punjab Government who purported to represent the views of his Government stated that, "in the context of the situation that obtains in the Punjab, taking into consideration the incidence of crime and the nature of crime, the communal atmosphere, the constant law and order problem, Government are naturally keen to have as effective a machinery under their disposal as possible for dealing with different types of situations and that Government's view is that if there is complete separation, ... probably the Government's hands would not be as strong in dealing with crimes or dealing with law and order problem as they would be without separation".

According to him, the local magistrate is, in the eyes of the Government, responsible for the maintenance of law and order and by reason of his constant contact with the police he is able to exercise control over the law and order or the crime situation. He stated that the Government felt that they should have some sort of control over the proceedings in a criminal case right to its end. This officer had to concede that the local magistrate's view point is not "cent per cent judicial" and that he has always an eye on the law and order problem in his *ilaqa*. It was further said that, "the executive magistrates always look up to the Government for promotion and advancement in service and that the judicial magistrates would not do that and therefore they would not bother about the law and order situation". In effect, the officer seemed to plead for the perpetuation of the very evils which the separation of the judiciary from executive control is designed to remedy. Indeed, what is said seems to imply that the magistrate, in dealing with the case, should not be governed by strict rules of evidence and should, as it were, be free to act upon his belief that the person before him is guilty. This seems to us to be a complete negation of the very foundation of the system of our criminal jurisprudence which presumes innocence in favour of the accused.

The Inspector-General of Police of the Punjab also gave evidence before us and his view was that the judicial magistrates asked for too high a standard of evidence and that, even when they convict persons, the sentences awarded were too low having regard to the nature and frequency of the offence.

Contrary views.

11. The view of the Punjab citizen was expressed by a Member of Parliament hailing from the Punjab in these words: "If the Punjab Government still thinks that they cannot control law and order situation with separation, all that I can say is that the Government is not taking a correct view of the situation. If there is any difficulty it has to be crossed over. The main thing is that the executive do not want to part with their power. * * * Do they mean that they can control law and order situation better if they can secure the punishment for the crimes as they want? If they want to maintain law and order at that cost, then better abolish the judiciary".

Objection unsound.

12. We have given our most anxious consideration to the view put forward on behalf of the Punjab Government as it was said to arise from factors peculiar to the Punjab. It is noticeable, however, that in the erstwhile State of PEPSU which now forms part of the Punjab, separation has been in force for a considerable time and it has not been suggested that the continuance of separation in that area has given rise to any special problems or that the crime situation in that part of the Punjab has been worse than in other parts of that State.

Views somewhat similar to those expressed by the Punjab Government were also expressed by certain officers of the police and the magistracy in Rajasthan and Madhya Pradesh.

Separation not affected law and order.

13. On the other hand, we have before us the views of Inspectors-General of Police of all the States excepting the State of Kerala (where the Inspector-General did not give evidence) in which separation has been in force—in some of them for a considerable number of years—and their unanimous view was that the introduction of separation had not had any adverse effect on the law and order situation in their States. Indeed, some high executive officers welcomed the change as it had relieved the executive of the responsibility of some judicial work.

Other possible difficulties and their solution.

14. A somewhat different aspect of the law and order problem in relation to separation was stressed by the view expressed by some witnesses that the judicial magistrates very often failed to appreciate the difficulties encountered by investigating officers and the executive authorities and demanded unattainable standards of proof in weighing the evidence before them in criminal cases. It was stated that not infrequently they demanded a standard of proof in criminal cases which was higher than even that required by law and acquitted the accused in cases where they deserved conviction.

This certainly is a matter which requires careful consideration. Though it is necessary that magistrates should be independent of the control of the executive, they should at the same time be made aware of the difficulties of the executive in dealing with the matters which come before them and the procedure adopted by the police in the investigation of cases. Independence from the control of the executive does not mean looking askance at the executive or having a tendency to add to the difficulties of the executive. It appears to us, therefore, that it would be desirable to introduce in all the States where the judiciary is separated from the executive a system of training judicial magistrates such as now obtains, for instance, in the State of Madras. In that State, judicial magistrates are, before they are posted to their offices, subjected to a period of training in the revenue and police departments which enables them to appreciate the difficulties of executive officers and the way in which the investigation of crime is conducted. The witnesses who raised this aspect of the question before us readily admitted that such a course of training would result in the removal of the difficulties which they had mentioned.

It was also suggested that judicial magistrates would not be able to deal effectively with disturbances and like situations and that separation would, therefore, involve the recruitment of a larger number of executive magistrates who are trained to deal with such situations. An answer to such an objection was given by the Chief Secretary to the

Uttar Pradesh Government who stated that if a larger number of executive staff was needed to deal with such situations, the necessary personnel could be engaged and that, by and large, the number of officers needed, taking the judicial and executive magistrates together, would not be larger and the cost to the Government would not increase. This objection can, moreover, be met by adopting the Madras practice of training the judicial magistrates to deal with emergent situations so that their services can be utilised in such situations in the absence of executive magistrates.

Separation necessary for efficiency.

15. The problem of separation far from receding to the background by reason of the advent of freedom, as is suggested in some quarters, has really become more acute from the point of view of the efficiency of the magistracy. In a number of States, evidence was given before us of gross neglect of judicial work by executive magistrates by reason of the increased demands of their executive duties. It was pointed out that, with the advent of a number of welfare activities carried on in the country-side, new and important duties had fallen on executive officers which left little time to them to devote to magisterial and other judicial work. Increasing expansion of governmental activities has also made it very difficult for the District Magistrate to spare any time for the supervision of the magisterial work of his subordinates. It was frankly admitted by a number of District Magistrates in the revenue department that, in the circumstances which had arisen, supervision by them over the performance of magisterial duties by their subordinates hardly existed. The evidence showed that this situation had led in certain parts of Bihar, Madhya Pradesh and Rajasthan to extraordinary delays in the disposal of numerous cases pending before the magistrates. It may, therefore, be safely asserted that even apart from the need for giving effect to the universally acknowledged principle that the judiciary should be independent of the control of the executive, separation is most urgently and immediately called for to ensure the efficiency of the magistrates and the removal of the extreme delays in the disposal of criminal proceedings in the magistrates' courts.

Reform necessary even after Independence.

16. The argument that the advent of Independence had completely altered the situation in respect of separation and that there was no longer any need for it as the executive is now under the control of a popular government may be answered in the following words of the report of the Madras Committee on separation[1]:—

> ".....however vigilant and however anxious a Minister at the top may be, it would be humanly impossible for him to ensure that things never go wrong.

[1]Report of the Committee on the Separation of the Judiciary from the Executive 1946, page 48, para. 135.

As a very senior and experienced Advocate says in a memorandum he has sent to us 'An executive is an executive whether British or Indian'. If it were as simple and easy as the argument sounds to control all the acts of the agents of executive power, it becomes difficult to understand why such elaborate safeguards and balances of power are provided for in the English and American constitutional systems."

Judicial Magistrates responsible persons.

17. An equally effective answer was given by that Committee to the suggestion that magistrates under the control of the High Court exact standards of proof impossible of achievement and that this results in crimes going unpunished: "Underlying the discussion of this question there is an apprehension that an independent magistracy will favour the criminal especially when the magistrate is a lawyer but that if he were under the control of Government, he would look upon the Government point of view with more favour. This is not generally true. To the extent that a magistrate decides a case without fear or favour, it is a commendable attitude and not one to be deprecated. In times of disorder, magistrates do take cognizance of existing conditions and recognize the exceptional demands in the interests of public peace. The High Court has never been unmindful of the claims of order, and there is no reason to suppose that they will ignore them now that a popular Government has taken the place of the old."[1]

Power of the executive not weakened.

18. It needs to be emphasised at the risk of repetition that the scheme of separation will in no way "make the path of the wrong-doer easier or weaken legitimate authority. All that we are trying to ensure is that in the conduct of criminal trials, extra legal means are not held in terrorem to weight the scales in favour of the prosecution."[2] The powers necessary for maintaining law and order in the hands of the Collector and his subordinates will remain unaffected. What will be ensured is that those administering justice, *i.e.*, those conducting criminal trials shall not be in any manner under the executive so that not only will justice be done but that justice will be manifestly seen to be done.

Financial objections.

19. The increased cost of separation is, perhaps, the oldest argument used against its introduction. As far back as 1837, Lord Auckland, dealing with the subject of separation observed that "financial considerations" were one of the grounds which made the question "one of great difficulty." The increased financial burden was thereafter repeatedly referred to by officials and non-officials dealing with the matter. In 1897 Mr. C. D. Field, then a Judge of the Calcutta High Court, writing in the Asiatic Quarterly

[1]Report of the Committee on the Separation of the Judiciary from the Executive p. 49, para. 137.

[2]*Ibid.*, p. 11, para. 32.

Review for January, attacked what he called the "financial argument" in these words:—"In 1860 the financial difficulty was the strongest argument advanced against complete separation and ever since, as other means of defence have been weakened by time and progress, this big old gun has been brought out as an irresistible piece of artillery. But time has affected this also, and it can no longer do *** If the change would cost a little, would not this little be spared from the tax on justice, that justice may be done? Very little (if anything) would be required if the reform were carried out by someone having the knowledge of the existing system and some faculty of organisation. Bearing in mind this economy that results from division of labour and large existing establishments ready for rearranging, it is by no means impossible that an actual saving could be effected."[1]

Extra expenditure not excessive.

20. The matter has, however, now ceased to be one of merely making a guess of the increased cost as the new system has been at work in several States. In Madras, the Committee estimated the increased cost for the whole of the province before its division into Madras and Andhra at Rs. 3,57,936 per annum[2]. The information before us reveals that the cost has worked out at a lesser figure than was originally anticipated. In Orissa, which is about to introduce the system of separation, the net extra expenditure involved in bringing this scheme into effect in five out of thirteen districts is estimated at Rs. 33,455 recurring per annum and Rs. 10,000 non-recurring[3]. We are justified in concluding that while, no doubt, certain extra expenditure will result from the introduction of this system, it will by no means be excessive. Wherever the scheme is introduced it might be possible, as has happened in Madras, to effect retrenchment to a certain extent on the executive side as the existing executive officers would, as a result of the separation, be freed from their judicial duties.

21. It is not unlikely that difficulties of obtaining adequate trained personnel may be experienced in the initial stages. In such cases the scheme may be introduced by stages in groups of districts.

Personnel and machinery for supervision.

The evidence before us shows that a scheme of separation does involve additional duties of supervision over the judicial magistrates which the District and Sessions Judges will not be able to perform. It would, therefore, be necessary in order that the scheme may work efficiently that the district judge should be given the assistance of a District Magistrate (Judicial) or an Additional District and

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[1]Cited by the Report of the Committee on the Separation of the Judiciary from the Executive 1947, Bombay page 17, para. 66.

[2]Report of the Committee on the Separation of the Judiciary from the Executive page 65.

[3]Report of the Committee on the Separation of the Judiciary from the Executive in the State of Orissa, 1953, page 13.

Sessions Judge whose principal functions would be supervision of the subordinate magistrates' courts. The advantage of the appointment of a District Magistrate (Judicial) rather than an Additional District and Sessions Judge to perform these duties would be that he cannot be taken away for the performance of sessions or civil appellate work, and that he would probably be a person more fitted to supervise the work of the subordinate magistrates. It may be mentioned that the system we are recommending has worked satisfactorily in Madras.

Conclusions.

22. The system of separation of the judiciary from the executive having been accepted as one of the directive principles of State policy, one would have thought it unnecessary to discuss the advantages of separation, and the arguments against it. We have dealt with these matters because we found, as stated above, a lurking opposition to the principle of the scheme in various States based on considerations which are not well-founded. We are of the view that this is a matter on which legislation by Parliament is necessary. Such legislation will have the advantage of bringing into operation throughout the country a uniform system of separation and force the pace of its introduction in States which have delayed and fallen behind. The Bombay Separation of Judicial and Executive Functions Act (XXIII of 1951) would, we think, serve as a model for such legislation. We may, however, indicate that our preference is for leaving the actual trials even in cases under sections 108 to 110 of the Criminal Procedure Code to the judicial magistrates as in Madras, the executive magistrates' duties being confined in this respect to such immediate action as may be necessary. In order, however, to obviate delays which are bound to arise in enacting such legislation by the Union Parliament we would recommend that the States which have not so far introduced the scheme of separation should forthwith introduce it by executive action as has been done in Madras.

Recommendations.

Our recommendations which are set out below will have no application to the scheduled and tribal areas which are under the Constitution being administered under special provisions.

(1) Separation has worked satisfactorily where it has been introduced and its introduction has not led to any difficulties in the executive officers being able to maintain law and order. There is, therefore, no reason why the scheme should not be put into operation in the remaining States.

(2) The additional expense of administration due to the introduction of separation will not be great as is known by the experience of the States which have introduced it. Such additional expenditure as may be involved is essential for the proper administration of justice.

(3) The lack of adequate personnel may create difficulties in its immediate introduction all over the State. These difficulties can be met by following the Madras method of introducing separation in groups of districts year by year so that the scheme is introduced throughout a State within a period of three to five years.

(4) The system of separation should be a real one and not merely one in form as in Uttar Pradesh and in the Punjab.

(5) Under the scheme of separation, it would be desirable to appoint a District Magistrate (Judicial) for the purpose of exercising effective supervision and control over the subordinate magistrates, as the District and Sessions Judge will not be able to find the time for the performance of those duties.

(6) Legislation for bringing about separation should be enacted by Parliament on the model of the Bombay Separation of Judicial and Executive Functions Act (XXIII of 1951). But pending the passing of such legislation, the States which have not so far introduced separation should introduce it forthwith by executive action as in Madras.

सत्यमेव जयते

ANNEXURE

Statement showing the allocation of powers and functions between the judicial and the Executive Magistrates in the scheme of separation of judiciary in Madras and Bombay

Subject-matter	MADRAS		BOMBAY		Remarks
	Judicial Magisgrates empowered to act under section	Executive Magistrates empowered to act under section	Judicial Magistrates empowered to act under section	Executive Magistrates empowered to act under section	
1	2	3	4	5	6
1 Security for keeping the peace on conviction.	106	..	106	..	NOTE.—The numbers given in columns 2 to 5 indicate the section of the Code of Criminal Procedure.
2 Security for keeping the peace in other cases.	..	107	..	107	
3 Security for good behaviour from persons disseminating seditious matters.	108	108	..	108	Sections 108—126 A. In Madras, the rule is that only the judicial magistrates will have jurisdiction to conduct proceedings. But in order to provide for contingencies ; both the judicial as well as excecutive Magistrates have been given concurrent jurisdiction under these sections.
4 Security for good behaviour from vagrants and suspected persons.	109	109	..	109	
5 Security for good behaviour from habitual offenders.	110	110	..	110	
6 Procedure to be followed by magistrates in security proceedings.	112—126A	112—126A	..	112—126A	Sections 127—132 & 144. In Madras, according to executive instructions, judicial magistrates should take action only in grave emergencies in the absence of Executive Magistrates.
7 Procedure in dealing with unlawful assemblies.	127—132	127—132	127—132	127—132	
8 Procedure in dealing with public nuisances.	..	133—143	..	133—143	Sections 133—134 & 145—148. In Madras according to the original plan the Executive Magistrates exercised jurisdiction at the preliminary stage but at the trial

	1	2	3	4	5	6
9	Powers to issue temporary orders in urgent cases of nuisance or apprehended danger.	144	144	..	144	stage *i.e.* the final stage the cases were transferred to the judicial magistrates. Since 1954, these matters are exclusively dealt with by the Executive Magistrates.
10	Proceedings where dispute concerning immovable property is likely to cause breach of peace.	..	145—148	..	145—148	
11	Role of Magistrates at the stage of police investigations.	155—163	155—163	155—163	155—163	Section 144. In Madras Judicial Magistrates act in the absence of Executive Magistrates. A Chief Presidency Magistrate is empowered to act under the provisions of section 144 Cr. P. C.
12	Powers of Magistrates to record confessions and statements.	164	..	164	164	
13	Reports to Magistrates on investigation	165-166 & 169—173	165-166 & 169—173	165-166 & 169—173	165-166 & 169—173	Sections 155—163. In Madras, if any inquiry under these sections results in the submission of a charge sheet, it (the charge sheet) has to be laid before the judicial magistrate for trial of the case.
14	Authorising detention of accused .	167	167	167	..	
15	Inquest as to cause of death .	..	174—176	..	174—176	
16	Powers to take congnizance of offences	190 (1)(*a*)(*b*)(*c*) & 190(2)	190(1)(*c*)	190		
17	Procedure as to trial of cases .	200—265	..	200—265	..	
18	Power to tender pardon . . .	337(1) 2nd paragraph (proviso)	337(1) 2nd paragraph (proviso) 337(1) 1st paragraph	337(1) proviso & 337(2)	337(1) 1st paragraph	
19	Appeal from order refusing to accept or rejecting a surety.	406A(c)	..		406A(c)	
20	Procedure regarding reference and revision.	435—438	..	435(1), (X) 436(1) 437-438(Y)	435(2)&(4) & 436 (2)	(X) Only the High Court or the Sessions Court can exercise powers.

21	Order for maintenance of wives & children.	488	..	488	..	(Y) Only the Sessions Court can exercise powers.
22	Appeals from and revision of orders relating to forefeiture of bonds.	515	..	515	515	(M) In Madras City, only the High Court is competent to exercise powers under section 435 Cr. P. C.
23	Power to withdraw or refer cases	528(2), (3) & (4)	528(2), (3) & (4)	528	..	528(2), (3) & (4). In Madras, where a matter in respect of which an inquiry is being held falls within the jurisdiction of the Executive Magistrate the transfer of the case will be made by the Collector *cum* Additional District Magistrate. In other cases transfers will be ordered by the judicial District Magistrate.

42.—TRIAL BY JURY

General opinion for abolition of Jury trials.

1. The opinions expressed in the answers to our Questionnaire and by the witnesses examined by us were preponderatingly in favour of the abolition of trial by jury even to the extent to which it exists in certain parts of the country. There was a small section of opinion which took the view that its continuance in the Presidency towns of Calcutta, Madras and Bombay to the extent it is in force in these places was desirable. Only a few witnesses were in favour of its extension.

Prevalence of Jury trials.

2. It is necessary first to examine the manner in which the right to a trial by jury arises in India and its extent.

In the Presidency towns.

Sections 267, 268 and 269 of the Code of Criminal Procedure constitute the statutory foundation of the right to trial by jury in India. Section 267 provides that all trials before a High Court shall be by jury. It also provides that in all criminal cases transferred to a High Court under the Criminal Procedure Code or the Letters Patent, the trial may, if the High Court so directs, be by jury. Thus, trial by jury is obligatory only in the High Courts of Calcutta, Madras and Bombay in the trial of criminal cases in the exercise of their ordinary original criminal jurisdiction. In cases transferred to themselves by the High Courts (including the High Courts in the Presidency Towns) and tried by them in the exercise of their extraordinary criminal jurisdiction, trial by jury is optional and not obligatory.

In Madras.

However, the position even in the three Presidency towns in which the High Court exercised original criminal jurisdiction has been altered by special provisions. In Madras, the Criminal Procedure Code has been amended by Madras Act XXXIV of 1955 by deleting all references to the High Court in Chapter XXIII of the Code. All criminal trials in the City of Madras now take place either before the Presidency Magistrates or the City Sessions Court. A notification has, however, been issued under section 269 of the Criminal Procedure Code directing that the trial of certain offences in the City Sessions Court shall be by jury. They are, broadly speaking, offences against property under Chapter XVII of the Indian Penal Code. The more heinous offences are tried by the judge himself. The notification directing the trial of these offences by a jury was first brought into force in 1956 on the abolition of the original criminal jurisdiction of the High Court and has since been kept in force.

The position in Bombay and Calcutta is somewhat different. In Bombay, Bombay Act XXXII of 1948 has provided that the words "or the Court of Session for Greater Bombay" be added after the words "High Court" wherever used in Chapter XXIII of the Criminal Procedure Code and Greater Bombay has been declared to be a Sessions Division. All sessions cases in Greater Bombay are tried in the City Sessions Court by jury. In Bombay.

In Calcutta, a City Sessions Court has been established but its jurisdiction is limited to a certain class of offences. Section 9 of the City Sessions Court Act (XX of 1953) provides that all trials before that Court shall be by Jury. Offences punishable under section 302 of the Indian Penal Code and certain other offences still continue to be tried by the High Court. It will thus appear that a statutory right to be tried by jury exists only in the Court of Session for Greater Bombay, in the City Sessions Court of Calcutta and on the Original Side of the Calcutta High Court. In Calcutta.

3. Out side the three presidency towns the matter is regulated by sections 268 and 269 of the Criminal Procedure Code. Section 268 provides that all trials before a court of session shall be either by jury or by the judge himself. Section 269 empowers the State Government to order by notification in the Official Gazette that the trial of all offences or of any particular class of offences before any court of session in any district shall be by jury and that the State Government may revoke or alter such order. In the mofussil.

At one time in the States of Madras and Bombay notifications were issued under section 269 of the Criminal Procedure Code bringing into effect trial by jury in certain areas of these States. The working of the jury system was, however, found to be unsatisfactory; and, for several years past, the system has been discontinued outside the Presidency Towns.

In the State of West Bengal, the position is, however, different. Outside the Presidency town of Calcutta the system of trial by jury obtains in twelve out of the fifteen districts of the State. The system is applicable to all offences under Chapters VIII, XI, XII, XVI, XVII (excepting offences under sections 400 and 401), XVIII and XX of the Indian Penal Code and certain other offences. It is understood that the State Government is contemplating the extension of the system to one of the three districts where it is not in force at present.

The system of trial by jury does not prevail in the States of Andhra Pradesh, Assam, Orissa, Kerala, Punjab, Rajasthan and Uttar Pradesh.

States other than those dealt with above have adopted the system partially. It prevails in ten out of the seventeen districts of the State of Bihar and the offences which are

triable by jury are some of the offences against property in Chapter XVII of the Indian Penal Code. In the new State of Madhya Pradesh the system prevails only in three out of the forty-three revenue districts constituting the State and its application is restricted to certain classes of offences. These three districts are governed in the matter of jury trial by a notification issued while they formed part of Madhya Pradesh before its reorganisation. It is understood that the Government of Madhya Pradesh is considering the abolition of jury trials in these three districts. In the reorganized State of Mysore the system of trial by jury prevails in nine out of its nineteen districts. The class of offences to which the system applies are offences against property in Chapter XVII of the Indian Penal Code.

Limited prevalence of jury trial.

4. The above survey of the extent of the prevalence of the jury system in the country and the nature of the offences to which it has been made applicable, where it prevails, indicates that it has not been adopted over a large part of the country, that its application even in areas where it has been adopted is restricted to certain classes of offences and that some States which had adopted it have decided to discontinue it.

Jury trial not a constitutional right.

5. As we have seen, the statutory right to a trial by jury which was conferred by the Criminal Procedure Code was confined to the Presidency towns where the High Courts exercised Original Criminal Jurisdiction and it depended entirely on the Government of each province or State to decide in what areas and in respect of what offences trial by jury should be introduced in the other parts of the country. When the Constitution was framed in 1950, the Constitution-makers did not think it fit to confer on the citizen a fundamental right to trial by jury as in the United States of America. It appears that, though the system of trial by jury was introduced in some parts of the country over a hundred years ago, the system has never become a recognized feature of the administration of criminal justice. Trial by jury in India to the extent it exists today is but a transplantation of a practice prevailing in England which has failed to grow and take root in this country.

Jury trial in England.

6. Even in England where the system grew out of the need for the protection of the people against arbitrary prosecution and subservient Royal judges, a large number of criminal offences are at present tried without jury. Summary offences are not triable by jury. An accused has a right to trial by jury only in the case of indictable offences; but, in a great number of them, except the more serious ones, he can ask to be tried summarily by magistrates. It appears that about eighty-five per cent of the indictable offences are, in fact, tried summarily.

In civil litigation, trial by jury was the only form of trial in any Court of Common Law until 1854. After that date, there has been a marked decline in the popularity of

trial by jury. Jury trials now take place in only two to three per cent of the volume of litigation. It is stated that the decline is not due to the fact that the right to trial by jury has been curtailed. Even in cases in which it is open to the parties to ask for trial by jury, parties frequently prefer to have trial by the judge alone[1].

Success in England due to special reasons.

7. Notwithstanding the decline of jury trials in England, particularly in civil cases, there is still a large body of opinion in its favour. Indeed "There are many worshippers who believe that trial by jury is always the best tribunal for the trial of every question of fact."[2] Perhaps trial by jury has been a success in England essentially because it is an English institution of antiquity peculiarly suited to the genius of the English people. Comparing the jury system in England with the jury system in France where it proved a failure, Sir Alfred Denning (now Lord Denning) observed: "In making these comparisons, we no doubt think our system is better but we ought always to remember that it is the system which suits the temperament of our people. It would not necessarily be the best system for other peoples[3]". The following observations of Sir Patrick Devlin in this connection are interesting:

> "The English jury is not what it is because some law giver so decreed but because that is the way it has grown up. Indeed, its invention by a law giver is inconceivable. We are used to it and know that it works; if we were not, we should say that it embodies a ridiculous and impracticable idea. Consider what the idea is. Twelve (why twelve?) men and women are to be selected at random; they have never before had any experience of weighing evidence and perhaps not of applying their minds judicially to any problem; they are often, as the Common Law Commissioners of 1853 tactfully put it, 'unaccustomed to serve intellectual exercise or to protracted thought.' The case may be an intricate one, lasting some weeks and counsel may have in front of them piles of documents, of which the jury are given a few to look at. They may listen to days of oral evidence without taking notes—at least, no one expects them to take notes and no facility is provided for it in the jury-box, not even elbow room. Yet they are said to be the sole judges of all the facts. At the end of the case they are expected within an hour or two to arrive at the same conclusion. Without their unanimous verdict no man can be punished

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[1]The above information in regard to the decline of trial by jury has been taken from " Trial by Jury " by Sir Patrick Devlin (The Hamlyn Lectures).

[2]" Trial by Jury ", Sir Patrick Devlin (The Hamlyn Lectures), page 149.

[3]" Freedom under the Law ", Sir Alfred Denning, p. 63 (Hamlyn Lectures).

for any of the greater offences. Theoretically it ought not to be possible to successfully enforce the criminal law by such means."[1]

Jury trial in the U.S.A.

8. The early British settlers in America adopted in their home the practice of trial by jury and it later came to be embodied in the American Constitution. However, even though a right to trial by jury is conferred by the Constitution, it is frequently waived by accused persons in the United States. It is said that by reason of the wide publicity which precedes and accompanies trials, there is a real difficulty in procuring a truly impartial and unprejudiced jury. In some parts of the United States a waiver of jury trial has become common and trial by a judge is the ordinary routine. In fact "Students of criminal justice are inclined to believe that the extensive use of the waiver would, on the whole, greatly improve the efficiency of the trial process."[2]

In France.

9. The jury system as practised in England was tried in France for more than a century. The verdicts given by the juries were often fantastic and the system in the form in which it is in vogue in England has been abandoned since 1941. In the words of Sir Alfred Denning (now Lord Denning) "It does not work in the Latin countries with their mobile temperament, easily moved to pity or hate."[3] France has now adopted a system under which lay and professional judges sit and deliberate together and arrive at a conclusion including the question of sentence by a majority vote. It is noteworthy that in no country in continental Europe there prevails to-day a system of trial by jury in the English form.

Recent critics.

10. The recent trend of opinion in regard to jury trials may be summarised in the following words:—

> "Trial by jury has but few supporters among lawyers to-day, and it is indeed difficult for those familiar with its weak spots to say much in its favour. Almost its only consoling feature is the thoroughness of its decline. This process of displacing the jury by other types of criminal courts, the so-called 'correctionalization' has gone so far that in most of the larger countries only a tiny percentage of all offences are actually tried by a jury."[4]

Our task is to consider whether this exotic growth transplanted into India by British lawyers and jurists has worked well and should be continued.

The case for the Jury.

11. Those advocating the continuance of the system have relied on its successful working in England and have particularly emphasized the reference to the jury as a palladium

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[1]Devlin op. cit., pages 4-5.
[2]American Legal System, Lewis Mayers, page 169.
[3]Denning, op. cit., page 59.
[4]Mannheim—"Criminal Justice and Social Reconstruction", page 246.

of justice and liberty by Blackstone and other English writers. They point out that in England, the jury has served as a check on the arbitrary power of the Crown and assured to the individual his life and liberty against encroachments by the executive. The success of the system in England has, it appears to us, not much relevance because, what may suit English conditions and the English character may not work satisfactorily in India. Nor has the historical aspect of the jury having served as a protection to the citizen against the exercise of arbitrary powers by the Crown any significance in the present conditions in India. A palladium of liberty.

It has also been suggested that the practice of the jury system on a more extensive scale in this country will control and reduce the number of the unjustified acquittals by criminal courts which are said to be on the increase. It is said that a judge has to give considered reasons for convicting the accused and that, when he is unable to give such reasons, the appellate courts set aside the conviction. But the jury is not required to give reasons for their verdict and their general good sense will not allow crime to go unpunished merely because there are discrepancies in the evidence or because a plausible defence has been raised. In our view, this reasoning proceeds upon a misunderstanding of the judicial function and ignores actual experience of jury trials which are said to have resulted, as pointed out later, in failures of justice including erroneous acquittals. Checks unjustified acquittals.

No doubt, the system of trial by jury has the advantage of associating the public with the administration of criminal justice and it serves to inculcate in the citizen a sense of duty and responsibility and a respect for the majesty of the law. The system must, however, be judged mainly by the extent to which it works efficiently. Its main purpose is the dispensation of justice. If it fails to serve that purpose, its continuance cannot be supported for other reasons.

12. Broadly speaking, an accused person convicted by a court of session on a trial by jury has only a limited right of appeal. Section 418 of the Criminal Procedure Code which permits an appeal on a matter of fact as well as on a matter of law expressly bars an appeal on questions of fact where the trial has been by jury. It follows, therefore, that generally speaking, in the case of trials by jury, questions of fact cannot be agitated before the appellate court. The court of appeal would, in such cases, have to decide whether the verdict of the jury is erroneous owing to a misdirection by the judge or by a misunderstanding on the part of the jury of the law laid down by the judge. We may refer in this connection to section 537 of the Criminal Procedure Code which provides that no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on the ground of any misdirection in any charge to a jury unless such misdirection has in fact occasioned a failure of justice. The rights of a person Rights of appeal in Jury cases restricted.

convicted in a jury trial in the High Court are somewhat different and larger by reason of the amendment of the Criminal Procedure Code by Act XXVI of 1943. Under Section 411-A the convicted person has a right to appeal from a judgment of the High Court in its original criminal jurisdiction on any ground which involves a matter of law only or with the leave of the appellate court or upon the certificate of the trial judge on a matter of fact or on any other ground which appears to the appellate court to be a sufficient ground of appeal. The amendment also empowers State Governments to prefer appeals from orders of acquittals passed by the High Court in its ordinary original criminal jurisdiction subject to the same restrictions as in an appeal against a conviction. The only High Court in which appeals would lie under this amendment is the High Court of Calcutta which alone tries offences in the exercise of its ordinary original criminal jurisdiction.

Contrasted with the restricted rights of appeal mentioned above, a full appeal would be available to an accused person tried by a court of session without a jury. It has been urged that the extended right of appeal which the accused would have in cases tried by the judge himself particularly in trials involving complicated questions of fact is a valuable right which would be denied in cases tried by jury where the verdict of a certain number of persons arrived at without a judicial examination of the evidence would bar an appeal by the accused on the questions of fact.

Jury trials. Time consuming.

13. It may also be pointed out that a trial by jury invariably takes a longer time than a trial by the judge alone. The proceedings have to be conducted at a slower pace to enable the jury to understand the evidence and follow its sequence. Arguments of counsel have to be longer in order that the issues of fact and law may be put in a simple and clear manner to the jury. Further, the judge has to sum up the case to the jury. The summing up has necessarily to be very carefully drawn and in some cases, written out in advance and then read out to the jury. In cases where the charge has not been written out in advance, the judge will have to reduce the heads of charge later into writing. All these steps result in making a trial by jury a time-consuming process, and this is a point of view of considerable importance when the courts are burdened with heavy arrears. It is needless to point out that the greater amount of time taken by a jury trial necessarily means greater expense to the State.

The True Test-. "Fair Trial".

Actual working unsatisfactory.

14. It appears to us that a justification for the retention of the jury system on abstract and theoretical considerations is beside the point. The true test to be applied in determining whether the system should continue is to examine how it has worked. The Bihar Jury Committee has rightly pointed out, "that the real justification for the system, in any scheme of administration of justice, must be

found in its actual working in the prevailing conditions, its practical result rather than in abstract considerations as to the value of a right to trial by jury. In the ultimate analysis, the test must be a 'fairness of trial'—independent, impartial and just—and how far, in its practical working, the system ensures justice in its true sense."[1] Judged by this test, the institution of trial by jury which has prevailed in some areas of the country for over a century has clearly failed. Opinions that have poured in from every quarter are united in their strong condemnation of the system of trial by jury as it prevails to-day. There have been expressions of judicial opinion on the subject which have found their way into the Law Reports. The Acting Chief Justice of Bihar, while disposing of a jury reference stated as follows:— In Bihar.

> "The unsatisfactory manner in which the system is working is notorious and all those connected with the administration of criminal justice in the country must know of numerous cases of miscarriage of justice."[2]

Similar views have been expressed by other bodies that have gone into the question. Thus, as regards Uttar Pradesh, the Wanchoo Committee pointed out that a large majority of the witnesses before it was in favour of the abolition of the jury system and that even in the few districts in which the system was working it had not been a success. The general complaint before the Committee was that jurymen were "open to approach"[3] and did not give a fair verdict. The Committee recommended the abolition of this system and the repeal of all sections of the Criminal Procedure Code relating to trial by jury stating that "This Committee strongly feels that trial in Sessions Courts should be by the Judge alone."[4] This recommendation was accepted and trial by jury was abolished in that State with effect from the 15th October, 1953. In U. P.

The Bombay Government seemed to have experienced similar difficulties in the working of this system. It was found difficult to find jurors of the right type even in the advanced districts and such jurors as were available were shown to be easily approachable and moved by extra-judicial considerations. These factors and the expense and delay occasioned by jury trials led that Government to abolish trial by jury outside Greater Bombay. The Bihar Committee referred to above went exhaustively into the In Bombay.

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[1] Report of the Jury Committee, Bihar, 1952, page 2.

[2] Per Meredith, Ag. C. J., The King *v.* Baldeo 29 Pat., page 228 at 234.

[3] Report of the Uttar Pradesh Judicial Reforms Committee 1950-51, Vol. I, page 54.

[4] *ibid* page 55.

working of the jury system in that State for a long period and expressed its conclusion as follows:

> "The Committee has been impressed by the almost (*sic*) consensus of opinion that the system of trial by jury has in actual practice resulted in unsatisfactory verdicts—sometimes even in miscarriage of justice—in the prevailing conditions of selection of jurors. **** Therefore, it recommends that serious offences shall not be triable by jury, until the full effect of the recommendations made in this report is known."[1]

Among the recommendations of the Committee were those relating to the proper selection of jurors.

Professional Jurors.

15. The Bihar Committee was satisfied that "a number of persons have made it almost a profession to get themselves chosen as jurors for the sake of the remuneration and also the illegal gratification which some of them expect to get."[2]

Evidence against Jury system.

16. This evil of unscrupulous professional jurors was mentioned to us by some of the witnesses who gave evidence before us. It is obvious that such a state of affairs must render trial by jury almost a mockery and seriously affect the administration of criminal justice. As stated before, the opinions expressed to us whether by judges or by lawyers on the whole took the view that the system has worked unsatisfactorily excepting in the Presidency towns of Calcutta, Madras and Bombay. Even in regard to the continuance of the system in these Presidency towns, counsel with considerable experience of criminal work in the cities of Bombay and Calcutta favoured its abolition. We also understand that the High Court of Bombay has recently recommended to the State Government the abolition of the system of trial by jury even in Greater Bombay.

Views of Mahatma Gandhi.

17. A powerful voice against the continuance of the jury system in India was raised as far back as 1931. Writing in 'Young India', Mahatma Gandhi stated:

> "I am unconvinced of the advantages of jury trials over those by judges. * * * * I have known juries finding prisoners guilty in the face of no evidence and even judges' summing up to the contrary. We must not slavishly copy all that is English. In matters where absolute impartiality, calmness and ability to sift evidence and understand human nature are required, we may not replace trained judges by

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[1]Report of the Uttar Pradesh Judicial Reforms Committee, 1950-51, Vol. I, page 8 op. cit.

[2]*Ibid.* page 9.

untrained men brought together by chance. What we must aim at is an uncorruptible, impartial and able judiciary right from the bottom."[1]

18. For the reasons mentioned above, we are convinced that the jury system in India which has had such a long trial has been a failure and should be abolished. In view of the conclusion reached by us, we do not propose to recommend measures with a view to secure its improvement and efficient working. Abolition recommended.

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[1]Issue of 27th August, 1931.



43.—PANCHAYATS

1. The Civil Justice Committee of 1924-25 observed:

> "The Village Panchayat—villagers mediating between contending parties in their own village—has, in some form or other, existed in this country from the earliest times and that without resort to any elaborate or complicated machinery * * * * The judicial work of the panchayat is part of that village system which in most parts of India and Burma has been the basis of the indigenous administration from time immemorial."[1]

History of Panchayats.

In ancient times.

2. References to village panchayats abound in ancient literature and later historical accounts. In the structure of society as it existed in those days, the panchayat was the creation of the villagers themselves and was composed of persons who were generally respected and to whose decisions the villagers were accustomed to give unqualified obedience. It does not appear that these panchayats were brought into existence by the authority of the ruler. Except in matters of general importance, the ruler seems to have left the villagers to govern themselves and, among other things, the villagers assumed the responsibility for the settlement of disputes among themselves. It has, however, to be remembered that the disputes which these panchayats were called upon to determine were simple disputes between one villager and another; disputes that would otherwise have tended to disrupt the rural harmony. The village in those days was more or less self-contained and self-sufficient, the villagers being in a considerable measure dependent upon themselves. In such a condition of affairs, it was not unnatural that the panchayats should have exercised a great measure of authority and commanded the willing allegiance of the people.

Under the British Rule.

3. The Royal Commission of 1907 upon Decentralisation in India recommended the constitution and development of village panchayats with certain administrative powers and jurisdiction in petty civil and criminal cases[2]. The Government of India in their resolution of May 1915 on Local Self-Government recommended that though the jurisdiction of panchayats in judicial matters should ordinarily be permissive in order to provide an inducement to litigants to resort to them, reasonable facilities like the levy of small court fees, the avoidance of technicalities and a speedier execution of decrees should be allowed to

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1Report, pages 105-06.

2Report, p. 241, para. 708.

persons wishing to have their cases decided by panchayats. Following the expression of these views, steps were taken in most of the provinces to develop village panchayat courts.

Developments in Madras.

4. In Madras, these courts came into existence under the Village Courts Act of 1888 (Madras Act I of 1889) which has since been amended in 1920 and 1951. The scheme of the Madras legislation was to have two classes of village courts; firstly, courts presided over by village munsifs, (in places where panchayat courts were not constituted) and, secondly, panchayat courts consisting of not less than five and not more than fifteen members elected by the villagers. The suits cognizable by these courts were money claims due on contract or for personal property, not exceeding in amount or value the sum of Rs. 50, (Rs. 100 in case of village courts specially empowered) and Rs. 100 in case of panchayat courts with the exception of certain classes of cases. With the written consent, however, of both parties suits of the nature prescribed, not exceeding the value of Rs. 200 could be entertained by these courts. The jurisdiction of the village courts was concurrent with that of the District Munsif but it was provided that the District Munsif may, if a suit was instituted in his court which was triable by a village court, transfer it to the village court unless sufficient reasons were shown to the contrary. The number of village courts exercising civil jurisdiction in the province of Madras in 1923 was as many as 7,755 and the number of panchayat courts was 2,182. The number of suits disposed of in the year 1922 by the panchayat courts was 90,865 as compared with 88,664 suits disposed of by the village munsifs' courts.

The position in Madras in 1922.

5. The then Madras Government noted with satisfaction that village panchayat courts were affording substantial relief to civil courts and by dispensing speedy justice in simple cases were gradually laying claim to be recognised as useful institutions. Referring to the work of the panchayat courts, the High Court, in its report for the year 1922, observed:

> "The rise in the number of suits instituted is almost striking and so far as it represents suits that would otherwise have been filed in village or regular courts satisfactory." "The paid tribunals have been relieved only to the extent of one-fourth of the work turned out by the panchayat courts. It is hoped that this relief will increase from year to year."[1]

Thus, panchayat courts in Madras appear to have become popular and attracted a large number of suits though their jurisdiction did not exceed Rs. 50 in value and was not exclusive.

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[1]Cited by the Civil Justice Committee, pp. 109 and 110.

In other provinces.

Recommendations of the Civil Justice Committee.

6. Legislation similar to the Madras Act was undertaken in the other provinces at about the same time. Such legislation generally provided that the jurisdiction of the panchayat courts was to be exclusive; the nature of the suits triable by such courts being money suits (varying in value from about Rs. 25 to Rs. 100) with certain exceptions. It was generally provided that legal practitioners were not to be allowed to appear on behalf of the parties in these courts. These courts were not to be bound by the rules of evidence or procedure other than those prescribed under the Acts constituting them. The execution of their decrees was to be made by the Collector on certificates issued by the panchayats. In most of the provinces where these courts were introduced, they seem to have been popular, disposing of a large number of suits and relieving the regular courts of the burden of dealing with petty disputes. The Civil Justice Committee, after giving an account of the legislation which had been then enacted, stated that "everywhere (except in Bombay) it is accepted that village panchayats with judicial functions should be used for the disposal of small cases, varying in value from Rs. 25 to Rs. 200."[1] The Committee recommended that "in all the Provinces endeavour should be made to develop this system so as to withdraw all simple money suits of smaller value from the munsifs' and small cause courts, thereby relieving these courts of a large amount of petty work and making it possible for them to cope with the larger duties we think may be given to them."[2]

Criticisms overstated.

7. It appears that the objection to these courts based on the ground of the existence of factions and communal dissensions in the villages was also pressed before the Civil Justice Committee. In this connection they observed as follows:

> "In the course of our investigation we were told in the various Provinces by some witnesses that communal differences and factions are in the way of any further extension of the jurisdiction of these tribunals. There is some force in this objection, but it is in our opinion overstated. In villages where there are common interests to be protected, common services to be rendered and common funds to be administered, it is idle to ignore the common life of the village in which the necessities of neighbourhood have held their own or have prevailed against the divisions of caste."[3]

Present position. Constitutional provision.

8. A generation has elapsed since the matter was examined by the Civil Justice Committee. Naturally, the importance of re-organising and strengthening village units as organs of local self-government and for the dispensation of justice has been greatly emphasised since the advent of

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[1]Report pp. 115-116.
[2]*Ibid.* p. 116.
[3]*Ibid.* p. 116.

Independence. The Constitution has recognised the importance of these village units and in Article 40, one of the Directive Principles of State Policy, it provides that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The administration of justice was in old days, as we have seen, one of the functions of the panchayats in the villages. Following this age-old practice, many of the States have recently enacted fresh legislation for the constitution of village panchayats and have provided that committees of these panchayats should function as *nyaya panchayats* and deal with petty civil and criminal cases arising in the villages.

The general pattern of the constitution of these panchayat courts under the legislation now in force in the various States is not dissimilar. The following Table indicates in a broad manner the constitution of these courts in the different States, their territorial jurisdiction and the Acts under which they are constituted:



TABLE I

Panchayat Courts—Constitution

Name of the State and the Statute	Territorial Jurisdiction	Mode of appointment	Number of Panchas	Quorum of Bench	Duration of Office	Disciplinary action how panchas are removable
1	2	3	4	5	6	7
Andhra						
The Madras Village Panchayats Act (X of 1950) and the Madras Village Courts Act, 1888 (1 of 1889).	Village or a group of villages with not less than 500 population.	By election.	Not less than five and not more than fifteen.	Three	Three years.	The Collector may suspend or remove for incapacity, neglect of duty etc., he shall do so on a requisition from the D.J. when he notices a like cause in a judicial proceeding.
Assam						
The Assam Rural Panchayat Act (XXVII of 1948).	Area notified by Government.	By election (Elected members of the Rural Panchayat further elect Panchayat Adlaties who may or may not be members of the Panchayat).	Five	Three	Three years.	Removable from office for reasons prescribed by District or Sub-Divisional Magistrate.
Bihar						
The Bihar Panchayat Raj Act, 1947 (VII of 1948).	Village or part or group of villages as notified.	Election by the voter of the Gram Panchayat.	Fifteen	Three	Three years.	Removable by Government for misconduct, incapacity, neglect of duty etc., or a recommendation of the prescribed authority.

Bombay						
The Bombay Village Panchayats Act (VI of 1933) as amended by the Bombay Act VII of 1954.	Village or group of villages notified by Government.	Election. Elected members of the Panchayat elect five panchas from among themselves.	Five	Three	Four years.	Removable by the District Local Board for misconduct, negligence or incapacity with the previous sanction of the collector.
Kerala						
The Travancore-Cochin Village Courts Act (VII of 1954).	Two or more villages, division in a village or a specified area.	Nomination by Government.	Five	Three	Three years.	Government may suspend or remove for neglect of duty, misconduct, etc.
Madhya Pradesh						
The Central Provinces and Berar Panchayats Act, 1946 (1 of 1947) as amended by the Madhya Pradesh Act II of 1951.	Village having not less than thousand people or group of villages.	Selection by the State Government from amongst the elected members of the Gram Panchayat.	Not less than five.	Three	Five years.	Corruption, neglect of duty, moral turpitude, etc.
Madras						
The Madras Village Panchayats Act (X of 1950) and The Madras Village Courts Act, 1888 (1 of 1889).	Village or a group of villages with not less than 500 population.	By election	Not less than five and not more than fifteen.	Three	Three years.	Collector may suspend or remove for incapacity, neglect of duty etc., he shall do so on a requisition from the D. J. when he notices a like cause in judicial proceedings.

1	2	3	4	5	6	7
Mysore						
The Mysore Village Courts Act VII of 1913.	Village or a group of two or more villages or division in a village.	Appointment by the Deputy Commissioner.	Village Munsif or a Bench of more than one judge.	Village Munsif or a Bench of three judges including the Village Munsif.	..	Deputy Commissioner may suspend or remove for incapacity, neglect of duty, misconduct or other just and sufficient cause ; he shall do so on a requisition made by the District Judge for like cause appearing in the judicial proceedings of a Village Munsif.
Orissa						
The Orissa Gram Panchayats Act, 1949 (Act XV of 1948).	Village or villages with population of not less than 1500. (A circle comprising several gram sabhas as notified).	Election by villagers (that is, the Gram Sabha).	Panel consisting of Panchas elected by Gram Sabha at the rate of two panchas and one sarpanch per Gram Sabha.	Three	Three years	By the prescribed authority for prescribed reasons.
Punjab						
The Punjab Gram Panchayat Act, 1952 (IV of 1953).	Village or a group of villages with population of not less than 500.	Election by adult villagers.	Five to nine, Adalti Panchayats to whom larger powers can be granted, may be elected by the Panchas of a group Panchayats.	Three	Three years.	Removable by State Government for incapacity or misconduct.

Rajasthan						
The Rajasthan Panchayat Act 1953, (XXI of 1953).	Village or group of villages.	By election.	Not less than five and not more than fifteen.	One-third of the number of panchas.	Three years.	State Government may remove for misconduct, neglect of duty etc.
Uttar Pradesh						
The United Provinces Panchatat Raj Act (XXVI of 1947) and The United Provinces Villages Courts Act, (III of 1892).	Circle comprising of village or villages subject to the jurisdiction of Gaon Sabhas.	Appointment by prescribed authority from amongst the elected members of the Gaon Panchayat.	Five or lesser number from each Gaon Sabha included in circle.	Five	Five years.	Removable by the State Government for incapacity or abuse of position.
West Bengal						
West Bengal Act 1 of 1957.	One or more Gram Sabhas in the area to be specified by the Government.	Election by the elected members of the Anchal Panchayat.	Five — one from Gram Sabha.	Majority	Four years.	By Government for good and sufficient reasons.

Existing Enactments. General Provisions.

9. It is desirable to set out in some detail the broad pattern of the provisions regulating these courts.

Jurisdiction in civil cases.

Normally the nature of civil suits cognizable by the panchayat courts are:—

(1) Suits for money due on contract (other than contracts relating to immovable property);

(2) Suits for recovery of movable property or the value of such property;

(3) Suits for compensation for wrongfully taking or injuring movable property;

(4) Suits for compensation for damage caused by cattle trespass.

In certain States, other causes of action of a petty nature have also been brought within the jurisdiction of the panchayat courts such as suits for the recovery of rent, suits under certain provisions of the local tenancy laws and the like. An important feature is that an upper limit has been set to the pecuniary jurisdiction of these courts. This limit varies from State to State. Generally speaking, however, suits the value of which does not exceed Rs. 100 are cognizable by the panchayat courts. However, in Mysore and Bombay the limits are as low as Rs. 40 and Rs. 25 respectively. Generally, these Acts confer powers on the Government to increase the limit of pecuniary jurisdiction upto a maximum provided in the Acts. They also contain provisions to the effect that suits exceeding the value of the pecuniary jurisdiction of the courts can be heard and determined by them with the consent of the parties given in writing.

The panchayat courts, however, are not competent to hear the following classes of suits:—

(1) On a balance of partnership account unless the balance is struck by the parties;

(2) For a share or part of a share under an intestacy or for a legacy or part of a legacy under a will;

(3) By or against the Government or servants of Government in their official capacity; and

(4) By or against minors or persons of unsound mind.

Jurisdiction exclusive.

The jurisdiction of these courts is exclusive in the majority of the States; the States of Rajasthan, Andhra and Madras, however, provide for concurrent jurisdiction. The exclusive nature of the jurisdiction operates only in the areas for which panchayat courts have been created. But it is left to the Government under these Acts to create courts for such areas as they think fit.

Constitution of panchayat courts.

10. Civil suits and criminal cases have to be tried by a Bench of a panchayat consisting of the Sarpanch or President and two other Panchas. The choice of the two Panchas, who form part of the Bench, is, in some States, left to the President whereas in other States, each party is given the power to select a Pancha. A duty is laid on the Panchas trying a suit or dealing with a proceeding to bring about in such manner as they think fit an amicable settlement between the parties. For example, it is provided that the Bench of Panchas "shall, in such manner as it thinks fit and without delay, investigate the suit or case and all matters affecting the merits thereof and the right settlement thereof, and in so doing may do all such lawful things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement; and where such a settlement is brought about, the bench shall record the same and give its decision accordingly". (Section 58, Bihar Panchayat Raj Act, 1947).

The objective.

Their procedure.

11. In respect of the procedure to be followed by the panchayat courts, the enactments generally contain a provision such as this:

> "The procedure to be followed by a Bench of the *Gram Cutcherry* shall be such as it may consider just and convenient and the bench shall not be bound to follow any laws of evidence or procedure other than the procedure prescribed by or under this Act".
>
> (Section 60, Bihar Panchayat Raj Act, 1947).

Criminal Jurisdiction.

12. The jurisdiction of the panchayat courts in criminal matters extends to a large number of offences under the Indian Penal Code. Offences under certain provisions of the Cattle Trespass Act and under minor local enactments have also been made cognizable by the panchayat courts. In the case of offences of theft, receiving stolen property and the like, the jurisdiction of the panchayat courts is limited. Cases where the value of the property alleged to be stolen exceeds Rs. 50 and cases in which the old offenders are concerned cannot be tried by the panchayat courts. In some States, the panchayat courts have been given the power to bind over parties for keeping the peace for a period not exceeding 15 days, a provision analogous to section 107 of the Code of Criminal Procedure. In Assam, panchayat courts can impose a fine of Rs. 100 for non-execution or violation of the bond. In Bihar, panchayat courts can only issue a notice to the parties as to why they should not be bound over. Thereafter, the proceedings go to the Sub-Divisional Magistrate who would pass final orders in the matter.

Generally, panchayat courts have not been given the power to sentence an accused person to a term of imprisonment either substantively or in default of payment of a fine. However, in Bihar these courts have the

powers of a Magistrate of the Third Class and are, therefore, competent to impose a sentence of imprisonment up to one month. In Orissa and Rajasthan, the panchayat courts have power, in the event of a default in payment of fine, to order imprisonment. Generally, the fine which can be imposed by the panchayat courts is limited to Rs. 50. In Assam, however, the panchayat courts can impose a fine upto Rs. 250.

It is noteworthy that in the Kerala State (excluding the parts transferred from Madras) the village courts have no criminal jurisdiction.

Appeal and Revision.

13. The law in some of the States makes the decision of the panchayat courts final, subject to the powers of revision vested in the District Munsif or the District Judge. Some of the Acts provide for appeals to a Full Bench of the panchayat or to a Tehsil panchayat and even to the District Judge. In criminal matters, the revision lies generally to the Sub-Divisional Magistrate but sometimes a revision or an appeal is provided to the Sessions Judge. Broadly speaking, the grounds on which revision is entertained are want of jurisdiction, corruption, partiality or misconduct on the part of the Panchas or a miscarriage of justice. Power is also generally given to a superior court to withdraw any suit or case from the file of a panchayat court and transfer it to another panchayat court or to a regular court for disposal.

Appearance of legal practitioners barred.

14. These enactments also contain provisions preventing lawyers from appearing in these courts. For example, section 24 of the Madras Village Courts Act, 1888 provides:

> "No legal practitioner, whether qualified or unqualified, shall be allowed to appear before a village court on behalf of any party to a suit or proceeding but any party may authorise a servant, gumasta, partner, relation or friend to appear and plead for him....."

The Travancore-Cochin Act is, however, unique in that it does permit legal practitioners to appear before these courts (Section 22 of the Travancore-Cochin Village Courts Act, 1954). The maximum fee payable to a lawyer in a suit or case is, however, fixed at Rs. 3.

The Tables set out below indicate the extent of the civil and the criminal jurisdiction of these courts, the punishments which they can award, the court fees chargeable by them and the extent of the control exercised by superior courts over them.

TABLE II

Civil Jurisdiction

Name of the State	Pecuniary Jurisdiction	Pecuniary jurisdiction by consent of parties	Whether the jurisdiction is exclusive or concurrent	Nature of enquiry	Court fee	Nature of Suits triable	Control by superior courts	Whether legal practitioners are permitted or not
1	2	3	4	5	6	7	8	9
Andhra				Same as in Madras				
Assam	Upto Rs. 250/-	Any Civil Suit.	Exclusive	Dismissal for default, *ex-parte* decisions, addition of parties, impleading L.Rs. Rs., setting aside *ex-parte* decrees and revival of suits permitted. Summoning of witnesses residing within its jurisdiction.	By rules to be made by the State Government.	(*i*) A suit for money due on contract other than a contract in respect of immovable property. (*ii*) A suit for recovery of movable property or for the value thereof. (*iii*) A suit for compensation for wrongfully taking or injuring movable property. (*iv*) A Suit for damages caused by cattle trespass. (*v*) A suit for damages for malicious prosecution in the Adalat. (*vi*) A suit for recovery of rent in cash or kind.	D. J. may set aside or modify decree or direct retrial by the same or any other court. He may with the approval of the State Govt. delegate his powers to an Additional District Judge, sub-judge or Additional sub-judge.	Not permitted.

1	2	3	4	5	6	7	8	9
Bihar .	Upto Rs. 100/- Rs. 200/- when specially empowered	Any suit triable by a Civil Court subject to rules to be prescribed by the State Government.	Exclusive	Finding to be in writing.	Upto Rs. 10/-0-8-0 Rs. 10—25/-Re.1/- Rs. 25—50/-Rs. 2 Rs. 50—200/-0-8-0 for Rs. 10/- or part thereof. Above Rs. 200/- 0-12-0 for every Rs. 10/- or part thereof.	(i), (ii), (iii) & (vi)	Appeal to Full Bench. Munsiff can quash proceedings. Party can institute a suit afresh in regular Court. D. J. has administrative control.	Not permitted.
Bombay .	Upto Rs. 25/-	Upto Rs. 100/-	Exclusive	Majority decision. In case of equal division presiding member will have a casting vote. Settlement by oath or compromise permitted. Instalment decree and interest on decretal amount permitted. No arrest in execution of decree.		(i), (ii) & (iii)	Appeal lies to the D.J.	Not permitted.
Hyderabad	Upto Rs. 25/-	Upto Rs. 100/-	Exclusive	Do.		(i) but not including suits for rent of agricultural land. (ii) and (iii)	Appeal lies to the D.J.	Not permitted.

Madhya Pradesh	pto Rs. 100/- (Govt. may enhance upto Rs. 500)	Upto Rs. Rs. 500/-	Exclusive	Majority decision. In case of division the presiding pancha will have a casting vote. Decision in accordance with any settlement compromise or oath, agreed to by parties permitted.	Interest and instalment decrees False case—Rs. 100/- Compensation to defendant.	(*i*), (*ii*) & (*iii*)	D. J. may revise. Cancel jurisdiction whereupon the court cannot become seized of the matter.	Not permitted.
Madras	Upto Rs. 100/- Upto Rs. 50/- in case of Village Courts. (May be extended to Rs. 100/- by notification in the gazette)	Upto Rs. 200/-	Exclusive	Set off permitted. Decree on oath allowed, Judgement may be delivered on admission of claim Decree in terms of compromise allowed. C. P. C. I. E. A. applicable. Instalment decree permitted Oath permitted.	No Court fee.	(*i*), (*ii*) and suit for tax or other sum due to a local authority whether on balance of account or otherwise.	Dt. Munsiff may transfer suit to another village court. Dt. Munsiff can set aside the decree or order on ground of gross partiality or misconduct	Not permitted.
Orissa .	Upto Rs. 25/-Upto Rs. 100/- when specially empowered by State Government	..	Exclusive	Adalat may act as an arbitrator. C P. C. & I. E. A. not applicable. Majority decision. Decree in terms of compromise permitted. Dismissal for default and	Upto Rs. 10/- 0-4-0 Rs. 10 to Rs. 25/- 0-8-0 Rs. 25/- to Rs. 50/- Re. 1/- Rs. 50/- to Rs. 200/- 0-4-0 for every Rs. 10/- or part thereof.	(*i*), (*ii*) & (*iii*)	Revision by the Dt. Munsiff may cancel or modify decree or order retrial.	Not permitted.

1	2	3	4	5	6	7	8	9
				restoration. *Ex-parte* decision. To add parties & LRs. Instalment decrees.				
Punjab	Upto Rs. 200/- & Rs. 100/- in suits under the Punjab Tenancy Act (Rs. 500 & Rs. 200/- where the Panchayats have been given enhanced jurisdiction.)	..	Exclusive	C.P.C. & I.E.A. shall not apply. Memorandum of proceedings to be maintained. Oath permitted. Decision on oath permitted. May add parties. Dismissal for default and restoration. *Ex-parte* decision and rehearing. Instalment payments.	Court fees raising from Rs. 1/- to 5/- on suits upto Rs. 250/- and Rs. 10/- on suits valued above Rs. 250/-.	(*i*), (*ii*), (*iii*) and suits under certain sections of the Punjab Tenancy Act, 1887.	Revision by D.J. for failure of justice.	Not permitted.
Rajasthan	Upto-Rs. 100	..	Concurent	Settlement by oath or compromise permitted. Payment of decretal amount in instalments permitted. C. P. C. &. I. E. A. not applicable. Parties to produce their own evidence usually. To add parties and LRs. *Ex-*	Prescribed fees.	(*i*), (*ii*), (*iii*) and (*iv*)	Revision by D.J. Appeal lies to Tehsil Panchayat.	Not permitted.

				parte decisions and dismissal for default. Restoration of suits.					
Travancore-Cochin.	Upto Rs. 100/-	Upto Rs. 200/-	Exclusive	Settlement of claim in terms of agreement entered into on oath permitted. Set off allowed. Evidence to be recorded. Interest on decree allowed. C. P. C. to apply generally. Dt. Munsiff may transfer suits from one village court to another. Dismissal for default. *Ex-parte* decree. Restoration. Court specially empowered may arrest in execution of decree. Alternatively by issue of prohibitory orders. Majority decision.	5 percent subject to a minimum of one anna.	(*i*) & (*ii*)		Revision by Dt. Munsiff for corruption, partiality, misconduct etc.	Permitted.
Uttar Pradesh	Upto Rs. 100/- (State Govt. may raise this to Rs. 500/-)	Any suit	Exclusive	Majority decision will prevail. Munsiff may transfer suit to any other Nyaya	..	(*i*), (*ii*), (*iii*) & (*iv*)		Revision by Munsiff.	Not permitted.

1	2	3	4	5	6	7	8	9
				Panchayat or try it himself or transfer it to another Munsiff. C. P.C. & I. E. A. do not apply except as provided. Dismissal for default and *ex-parte* disposal. Restoration and rehearing.				
West Bengal	Upto Rs. 100/-	..	Exclusive	C. P. C. & I. E. A. not applicable. Decretal amount may be allowed to be paid in instalments. Dismissal for default and restoration. *Ex-parte* and rehearing. To determine and add parties and L.Rs. Written decision. Majority decision to prevail (President has casting vote).	..	(*i*), (*ii*), (*iii*) & (*iv*).	Revision by Munsiff for failure of justice.	Not permitted.

TABLE III

Criminal Jurisdiction

Name of the State	Nature of offences triable	Nature of enquiry and powers	Whether the Jurisdiction is exclusive or concurrent	Punishment	Court fee	Control by superior courts	Whether legal practitioners permitted or not
1	2	3	4	5	6	7	8
Assam	All offences specified under section 83 of the Act (XXVII of 1948).	Substance of evidence to be recorded. Majority decision to stand. In case of division, the presiding member shall have a casting vote. Admonition of youthful offenders. Award of compensation upto Rs. 25/- out of the fine to accused for false or vexatious proceedings. Bond for keeping the peace ; fine of Rs. 100/- for violation or non-execution of bond. Cr. P. C. & I. E. A., not applicable.	Exclusive	Fine upto Rs. 250/- No imprisonment either substantive or in default of fine.	Prescribed fee.	No appeal, Revision by the Sessions Judge (or the Addl. S. J. or the Asstt. S. J. if authorised).	Not permitted.

1	2	3	4	5	6	7	8
Bihar	. All offences specified under section 62 of the Act (VII of 1948).	Exercises third class magisterial powers. Should try to bring about amicable settlement between contending parties except in cases arising out of non-compoundable offences. Sub-Divisional Magistrate can transfer cases to another magistrate or to himself or can quash proceedings. When S.D.M. quashes proceedings fresh case has to be filed in the S.D.M. Court. Cr. P.C. & I.E.A., not applicable. Power to bind over for 15 days for breach of peace subject to confirmation by S.D.M.	Concurrent	Powers of 3rd Class Magistrate.	Re. 1/-	S.D.M. can quash the proceedings. Party can move afresh in regular Court.	Not permitted.
Bombay	. All offences specified in Section 41 of the Act (VI of 1933).	Compensation to complainant from the amount of fine allowed. Compensation to the accused up to Rs. 5/- for false, vexatious or frivolous case permitted. Youthful offenders to be merely admonished. Compounding of cases permitted. Cr. P.C. & I.E.A., not to apply.	Exclusive	Maximum limit of fine is Rs. 40/-. The limit varies according to the nature of the offence, as provided. No simple or rigorous imprisonment either substantive or in default of fine.	..	Appeal lies to the Sessions Judge. S.J. may quash proceedings.	Not permitted.

Hyderabad	All offences mentioned in section 87 of the Act (VIII of 1951).	First offenders may be released on probation or good conduct. Youthful offenders to be admonished. Compensation to the accused upto Rs. 5/- permitted if case is proved to be false etc. Compounding of offences permitted.	Exclusive	Fine upto Rs. 25/- or double the amount of loss subject to a maximum of Rs. 50/- and certain specified amounts. No imprisonment.	D.	Appeal lies to the District Magistrate.	Not permitted.
Madhya Pradesh	All offences specified in the Schedule to Act I of 1947.	First offenders may be released on probation of good conduct. Youthful offenders may be let off with an admonition ; or father or guardian to execute bond. Compensation to accused upto Rs. 10/- for false cases etc. Compensation out of fine to the complainant for loss or damage caused by the offence—allowed. Majority decision ; in case of division the Presiding Officer shall have casting vote.	Concurrent	Fine upto Rs. 50/- (IPC cases) Rs. 50 or less as specified under other Acts.	..	Revision by Sessions Judge. May cancel jurisdiction.	Not permitted.
Madras .	All offences mentioned in section 76 of the Act (1 of 1889).	..	Concurrent	As prescribed in the explanation to section 76 (1) of the Act.	...	No appeal. D. M. or S.D.M. may set aside any conviction on the ground of corruption, gross partiality, misconduct or gross miscarriage of justice by the court.	Not permitted.

1	2	3	4	5	6	7	8
Orissa	All offences mentioned in section 64 of the Act (XV of 1948).	Compensation to complainant out of fine. Compensation to the accused upto Rs. 25/- if case is false etc. and in default simple imprisonment upto seven days. Majority decision to prevail. (Bench to consist of one pancha from the local area in which any one of the parties reside and one who resides in a different local area).	Exclusive	Fine upto Rs. 50/- or double the amount of loss or damage whichever is higher ; in default of payment within 30 days imprisonment for 14 days. Release on admonition. (Specially empowered Panchayat may fine upto Rs. 100/- and impose one month imprisonment in default.	..	Revision by the S. D. M. who can cancel or modify the order or order retrial.	Not permitted.
Punjab	All offences mentioned in Sch. I-A of the Act (IV of 1953) (Enhanced powers under Sch. I-B).	Power to take bond for 500/- from accused for his appearance. Cr. P.C. and I.E.A. not applicable. Compensation to the accused upto Rs. 50/- if the case is proved to be false etc. Compensation to complainant out of fine.	Exclusive	Discharge after admonition. Bond for Rs. 100/- for 12 months not to repeat the offence. Fine upto Rs. 100/- or double the loss or damage whichever is higher. Direct parent to execute bond for good behaviour of offender.	Re. 1/-	Revision by the District Magistrate.	Not permitted.
Rajasthan	All offences mentioned in Sch. I to the Act (XXI of 1953).	Compensation out of fine to the complainant. Compensation upto Rs. 5/- to the accused for false case etc. Youthful	Concurrent	Fine upto Rs. 50/- and simple imprisonment only in default of payment (one day for every Rs. 2/-).	..	Appeal to Tehsil Panchayat. Revision by Sessions Judge.	Not permitted.

		offenders may be let off with admonition. Summary dismissal of complaints permitted.					
Travancore-Cochin		No criminal jurisdiction.	..	..	..	..	
Uttar Pradesh	All offences mentioned in section 52 of the Act (XXVI of 1947)	Compounding allowed. Compensation to the complainant of a portion or whole of the fine allowed for material loss or damage etc. Compensation upto Rs. 25/- to the accused for false cases etc. First offenders may be released on probation of good conduct. Cr P. C. & I. E. A., not applicable.	Exclusive	Fine upto Rs. 100/-	..	Revision by Sub-Divisional Magistrate.	Not permitted except where a person is arrested and is detained in custody.
West Bengal	All offences mentioned in Schedule III A & B of the Act (I of 1957)	Compounding of offences permitted. First offenders may be released on probation of good conduct. I. E. A. not applicable. Compensation to complainant may be awarded out of the fine. Compensation of Rs. 25/- to the accused for false case. Specified provisions of Criminal Procedure Code applicabe.	Exclusive.	Fine upto Rs. 50/- No imprisonment.	No. C.F.	Revision by District Magistrate or S. D. M. on the ground of miscarriage of justice.	Not permitted.

Number of cases disposed of.

15. It is necessary now to turn to the number of cases disposed of by these panchayat courts in various States so that we may know to what extent they have justified the expectation of the Civil Justice Committee of their being able to relieve the regular courts of a large amount of their petty work.

In a note prepared by the Joint Director, Panchayats, Uttar Pradesh handed over to us, it is stated that after the Panchayat Raj Act of 1947 the Panchayati Adalats in that State had during their life-time of nearly six years disposed of as many as 18,94,440 cases out of a total of 19,14,098 cases instituted before them. The figures of suits disposed of by these courts in other States are also considerable. In the State of Madras, these courts disposed of 40,635 suits in the year 1953 and 30,000 suits in the year 1954. The Tables below show the disposals of civil suits in these courts in the years 1953 and 1954 and the disposal of criminal proceedings in the years 1954 and 1955 in eight of the States, the complete figures of which only have been made available to us.



TABLE IV

Statement showing the number of suits disposed of by the Village and Panchayat Courts in the various States for the years 1953 and 1954

Name of the State	Pending at the beginning of the year	Instituted	Total for disposal	Disposed of	Pending at the close of the year	Pending for more than a year	Remarks
1	2	3	4	5	6	7	8
Andhra							
1953 . . .	3,617	16,375	19,992	14,850	5,142	Not available	
1954 . . .	5,177	18,155	23,332	16,325	7,007	Do.	
Bombay							
1953 . . .	15	48	63	45	18	1	
1954 . . .	18	39	57	53	4	3	
Madhya Pradesh							
1953 . . .	217	1,160	1,377	827	550	44	
1954 . . .	550	607	1,157	904	253	27	
Madras							
1953 . . .	7,428	41,861	49,289	40,635	8,654	Not available	
1954 . . .	6,931	30,462	37,393	30,333	7,060	Do.	
Orissa . .							
1953 . . .	432	147	579	85	494	Not available	
1954 . . .	494	77	571	127	444	Do.	
Travancore-Cochin							
1953-54 . .	560	1,774	2,334	1,888	446	21	
1954-55 . .	446	1,891	2,337	1,967	370	23	
Uttar Pradesh							
1953 . . .	27,332	97,590	1,24,922	1,10,101	14,821	Not available	
1954 . . .	14,821	88,242	1,03,063	90,624	12,439	Do.	

1	2	3	4	5	6	7	8
*West Bengal**							
1953 . . .	1,324	5,042	6,366	5,331	1,035	92	
1954 . .	1,035	5,752	6,787	5,558	1,229	134	*The figures shown against this State relate to the Union Courts.

TABLE V

Comparative Statement Showing the total number of criminal proceedings for disposal, number disposed of and pending in the Panchayat Courts in the various States in the years 1954 *and* 1955.

Name of the State	Total Number of Cases for disposal		Number disposed of		Pending at the close of the year		Remarks
	1954	1955	1954	1955	1954	1955	
1	2	3	4	5	6	7	8
Andhra . .	2,468	2,454	1,846	1,875	622	579	
Bihar . .	31,842	39,908	26,089	32,123	5,753	7,785	
Madhya Pradesh .	47,506	46,698	27,484	28,242	20,022	18,456	
Madras (A) .	2,331	598	1,565	463	766	135	(A) The figures shown against Madras relate to the institutions and disposals in five districts only.
Orissa	2,033	3,468	1,730	2,929	303	539	
Rajasthan . .	66,044	53,909	54,380	43,598	11,664	10,311	
Uttar Pradesh .	1,32,977	79,918	1,21,496	63,457	11,481	16,461	

Large number of cases compromised.

16. An analysis of the manner in which the 18,94,440 cases disposed of by the Panchayati Adalats in Uttar Pradesh set out in the Table below is interesting.



TABLE VI

Statement showing the manner of disposal of cases instituted in the Panchayat Courts in the State of Uttar Pradesh during the period 15th August, 1949 to 31st March, 1956

Total number of cases instituted in all the Panchayat Courts in the State	Disposed of					Total number of cases disposed of	Remarks
	By transfer to other courts	Ex-parte	By dismissal for default	After judgement	As a result of compromise between parties including cases (civil and revenue) which were referred to the Panchayati Adalats by the consent of both the parties for recording settlement even though they were beyond their jurisdiction.		
1	2	3	4	5	6	7	8
19,14,098	1,20,067	2,29,272	2,90,052	5,74,572	6,80,477	18,94,440	

It shows that as large a number as 6,80,477 of these cases were compromised and that these compromised cases included cases referred to these adalats by the consent of parties for recording settlement, even though they were beyond their jurisdiction. Such cases referred to these adalats numbered 32,357. This large proportion of cases compromised to the total number of cases disposed of amounting to over one-third clearly points to these panchayats being able to fulfil, in a large measure, the task of conciliating disputes.

Number of appeals and revisions filed small.

17. It has not been possible to obtain from all States the figures as to the number of revisions or appeals filed from the decisions of these panchayat courts. The Table set out below indicates the number of revisions and appeals filed in six of the States during certain years.



TABLE VII

Statement showing the number of suits and cases filed before Village or Panchayat Courts and the number of appeals or revisions from their decisions

Name of the State	Year	Number of Civil Suits or Criminal Cases disposed of	Number of appeals	Number of Revisions	Remarks
1	2	3	4	5	6
Sihar . . .	1951—1952	4,587 (Civil Suits)	363		In Bihar appeals lie to the Full Bench of the Gram Cutcherry.
		17,262 (Crl. Cases)	1,121		
	1952—1953	8,475 (Civil Suits)	218		
		19,867 (Crl. Cases)	1,542		
	1953—1954	8,681 (Civil Suits)	243		
		30,760 (Crl. Cases)	1,146		
	1954—1955	10,405 (Civil Suits)	506		(A) Includes Criminal Cases.
		35,574 (Crl. Cases)	1,243		
Keraia . . .	1956	4,000 (Civil Suits)		40	
Madhya Pradesh .	1956	18,953 (A)		772 (Civil)	
				464 (Criminal)	
Punjab . .	1951—1952	12,170 (Civil Suits)		77 (Civil)	
		15,293 (Crl. Cases)		148 (Criminal)	
	1952—1953	16,893 (Civil Suits)		137 (Civil)	
		18,813 (Crl. Cases)		252 (Criminal)	
	1953—1954	24,431 (Civil Suits)		119 (Civil)	

1	2	3	4	5	6
		31,213 (Crl. Cases)		281 (Criminal)	
	1954—1955	28,277 (Civil Suits)		550 (Civil)	
		33,661 (Crl. Cases)		885 (Criminal)	
	1955—1956	22,467 (Civil Suits)		389 (Civil)	
		23,473 (Crl. Cases)		435 (Criminal)	
Rajasthan . .	1955—1956	78,487 (Civil Suits)	6,539 (Civil)		In Rajasthan appeals lie to Tahsil Panchayats.
		82,432 (Crl. Cases)	7,841		
West Bengal . .	1952	5,383 (Civil Suits)		120	
	1953	5,331 (Civil Suits)		106	
	1954	5,558 (Civil Suits)		261	

These figures show that only a very small percentage of the decisions of these courts were taken to the superior courts and that out of those so taken, only a small proportion were reversed. The note in regard to the working of the Panchayati adalats in Uttar Pradesh referred to above indicates that over a period of over six years from the 15th of August 1949 to the 31st of March 1956, the percentage of revisions filed in civil matters was 3·2, in revenue matters 2·3 and in criminal matters 5·7, the average percentage being 4·1. The revisions accepted bore a percentage of 1·9 to the total number of cases disposed of by these courts. Fully allowing for the restricted powers of revision conferred on the superior courts in respect of the decisions of these panchayat courts, it would be a fair inference to draw from the above figures that the villagers in general are satisfied with the administration of justice obtaining in village or panchayat courts and that the decisions of these courts on the whole do substantial justice

18. The Table set out below shows the nature, value, institution and disposal of suits in the courts of munsifs for the year 1954 in various States. Nature of litigation in civil courts.



TABLE VIII

Statement showing the nature, value, institution and disposal of suits in the Courts of Munsifs or corresponding judicial officers for the year 1954

Name of the State	Number of suits of all kinds pending at the beginning of the year	Number of suits of all kinds instituted during the year	Number of suits for money or moveable property out of the number shown in column 3	Classification of suits mentioned in Column 3 according to valuation upto Rs. 500/-		Number of suits disposed of	Number of suits pending at the close of the year	Number of suits pending for over a year	Remarks
				Value upto Rs. 100/-	Value between Rs. 101 and Rs. 500/-				
1	2	3	4	5	6	7	8	9	10
Andhra . .	21 042	61,093	51,843	12,157	36,923	63,639	23,866	4,656	(A) The figures shown against this State relate to the official year 1954-55.
Assam . .	5,175	8,890	3,963	3,898	3,521	8,408	6,150	1,562	
Bihar . .	51,738	1,15,745	10,755	85,579	19,188	64,936	50,809	8,098	
Bombay . .	49,796	76,768	48,877	21,445	28,924	78,320	51,639	14,112	The figures shown in Column No. 2 against the States of Andhra, Madras and Travancore-Cochin include Small Cause Suits.
Madhya Pradesh	17 677	19.349	7,306	3,976	8,164	25,990	16,115	3,432	
Madras .	65,557	52,799	34,797	17,613	27,110	58,367	62,934	41,716	
Mysore (A) .	13,920	23,311	18,591	8,033	9,222	23,716	9,337	Not available	
Orissa .	8,829	9,007	4,878	2,158	4,257	10,262	9,299	3,802	
Panjab . .	9,400	19,248	8,674	4,602	9,386	20,392	9,013	481	
Rajasthan .	12,267	22,571	19,460	3,118	13,367	7,764	12,200	2,445	

Saurashtra	282	1,170	907	538	430	1,136	322	28
Travancore-Cochin (A) .	35,977	36,224	23,777	11,220	16,632	41,578	34,588	18,794
Uttar Pradesh .	84,676	95,961	17,160	39,351	33,825	1,09,862	1,09,841	34,314
West Bengal .	51,521	1,57,383	10,049	1,20,904	27,190	1,61,282	55,196	12,908

NOTE. 1. Though it was our intention to give the number of Suits valued above Rs. 100/- and below Rs. 200/- in Column No. 6, yet it was not possible to give the number of such Suits, as the figures could not be obtained either from the High Courts or from the reports on the administration of civil justice.

2. In the Punjab, there are four classes of subordinate judges; as it has not been possible to ascertain which class of subordinate judges corresponds to officers in the Cadre of Munsifs in other States, figures relating to the judicial business transacted by subordinate judges Class 1 to Class 4 have been given.

An examination of these figures shows that more than 50 per cent. of the suits, except in West Bengal, are money suits or suits for movable property and a very large proportion of these suits, it would be fair to infer, are of the pecuniary value of less than Rs. 500. The statement further shows that a large number of these suits remained pending at the close of the year and some of them have remained pending for over a year. Taking the figures relating to Madras, for example, out of a total of 52,799 suits of all kinds instituted during the year, 34,797 suits were for money or movable property. Out of these 17,613 suits were valued at Rs. 100 and below. Including the 65,557 suits pending at the beginning of the year, the total number of suits for disposal was 1,18,356. The total number of suits disposed of during the year was 58,367[1] leaving a balance of 62,934 at the end of the year out of which over 41,000 suits had been pending for over one year. Bearing in mind that more than 50 per cent of the suits that are filed relate to money or movable property, it would be legitimate to infer that about 50 per cent of the suits pending for more than a year were suits relating to money or movable property. As a major portion of these would be suits for claims not exceeding Rs. 500, it would be reasonable to conclude that probably suits between the number of 10,000 and 20,000 would be suits in respect of claims for money or movable property not exceeding Rs. 500 in value have been pending for over a year. Basing ourselves on these figures, the conclusion is irresistible that taking the country as a whole a very large number of suits—probably between a hundred thousand and two hundred thousand of the value of Rs. 250 remain pending in the regular courts for over a year. It may be that a proportion of these suits may not be such as may fall within the jurisdiction of the panchayat courts, either by reason of the nature of the suits or absence of territorial jurisdiction, or on account of their notional valuation under the Court Fees Act. Nevertheless, it is clear that a large proportion of these suits would be cognizable by the panchayat courts. This situation undoubtedly arises from the fact that the panchayat courts have not yet been established in large parts of the country and that in some parts of the country their pecuniary jurisdiction is very low. The reasonably efficient and expeditious disposal of these small suits falls peculiarly within the province of the panchayat courts. If these cases, capable of easy and quick disposal, could be taken away from the file of the regular courts, there would be a substantial improvement in the efficiency and despatch of the courts of the munsifs and a reduction may be possible in the number of officers manning these courts.

Large number of regular suits triable by panchayats.

Relief to regular Courts by the establishment of panchayats

19. One cannot also forget the inconvenience and expense to which the villager approaching the regular courts of

[1] Includes disposals by transfer.

justice is subjected. The file of the regular courts is congested with all types of cases, petty and substantial, cases where numerous parties are concerned, and cases in which interlocutory proceedings of various kinds arise. In such a congested file the simpler cases naturally are apt to be delayed and even lost sight of. In the regular courts even the poor litigant finds it necessary to engage the services of a lawyer, a step which sometimes involves more expense than the substance of his claim. Added to all this is the circumstance that the litigant has to journey to a place which may be 40 or 50 miles distant from his village in order to reach the regular court. Often times, he has to pay for processes to be served on the defendant and the charges of travel and subsistence of his witnesses, probably on more than one occasion at the hearing of his case. In the result, very often the costs incurred in proceedings in the regular courts are out of all proportion to the value of the claim in the suit. The trial of the suit not infrequently becomes more a trial of the financial capacity of the parties.

Benefits of panchayat courts.

Speed and cheapness.

20. A further point that needs notice is the adverse effect which the protracted proceedings in the regular courts have upon the rural economy of the country. The agriculturist litigants are taken away for long periods of time from their occupations and kept at the place where the court is situated for days together. It has to be remembered that it is not only the litigant but his witnesses as well who have to attend the court during the proceedings and at the adjourned proceedings if an adjournment takes place. Taking the country as a whole it would not, we think, be an exaggeration to assert that hundreds of agriculturists would thus be kept away from their occupations by having to attend to their litigation in the regular courts. This must undoubtedly have an adverse effect upon the agricultural economy of the country.

Convenience of witnesses.

21. The advantage of bringing justice to the door of the villager has been repeatedly stressed. It is obvious that apart from other difficulties the vast financial implications involved would make it impossible to provide regular civil and criminal courts functioning with legally trained personnel for all the villages to deal with the petty civil and criminal cases arising there. The establishment of regular courts involves provision of court houses and the various attendant paraphernalia which makes the establishment of such courts in each village or even for groups of villages unthinkable. The panchayat courts alone can solve the problem of bringing justice nearer to the villager.

Courts more accessible.

22. Not of the least importance is the educative influence of the panchayat courts on the villager. As the administrative panchayats would gradually train him in the art of

Educative value.

into political and communal factions, it was impossible to self-government and enable him to look after the affairs of his village, so would the nyaya panchayats where he would be doing justice betwen his fellow citizens in the village instil in him a growing sense of fairness and responsibility.

Opposition to panchayat courts.

23. One would have thought that the considerations mentioned above pointed overwhelmingly in favour, not only of the continuance of the jurisdiction at present conferred on these courts but also of the expansion of such jurisdiction and making it exclusive. But much of the evidence given before us, either in the written memoranda submitted to us or by the witnesses who appeared before us, has been very critical of the working of the panchayat courts and many have advocated their abolition.

Comparison with regular courts misleading.

Most of the witnesses who appeared before us were naturally lawyers or persons concerned with the administration of the law. By reason of their legal or judicial training they were apt to test the working of these courts by comparing them with tribunals manned by trained judicial officers assisted by trained lawyers and governed by regular procedures. Such a comparison was bound to tell heavily against the panchayat courts.

Existence of factions.

24. Apart, however, from this point of view, it was frequently stated that as the villages were generally divided into political and communal factions, it was impossible to obtain impartial decisions from the Panchas constituting these courts who would belong to one faction or the other. Indeed, it was stated that the constitution and functioning of these courts had led to an increase of feuds and factions in the villages. As against the loud voice of opposition to these tribunals raised by many witnesses, we had a certain body of evidence given by officials supervising the working of these tribunals who, while admitting that the Panchas were new to their duties and that they required training, bore testimony to the usefulness and good work done by these courts. These conflicting views have made our task more difficult.

West Bengal Judicial Reforms Committee's Report.

Perhaps the observations made by the Judicial Reforms Committee for the State of West Bengal in their report published in 1951 comprehensively express the reasons given by those who oppose the continuance of these tribunals. The Committee observes as follows[1]:

> "The countryside is now torn with factions—communal, political and personal and it has become

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[1]Report, page 36.

well-nigh impossible to ensure an independent and impersonal tribunal selected from inhabitants of the rural areas. Members of these Benches or courts invariably belong to the faction commanding a majority in the district and the courts cannot by reason thereof inspire any confidence in those who belong to the minority faction or factions".

The Committee proceeds to note that the members of these panchayats have no judicial training, that they are swayed by likes and dislikes, that they are amenable to influence and pressure and corruption and that no amount of supervision can give to these courts that impartiality and independence of judgment which is vital to the administration of justice. They concluded that "it is admitted on all hands that these Union Benches and Courts have not been a success and we are unanimously of opinion that no case whatsoever has been made out for an extension of their jurisdiction. On the contrary we feel strongly that these courts have wholly failed to serve the purpose for which they were intended and that being so we think they should be abolished."[1]

Criticisms exaggerated.

25. It will be remembered that the existence of factions and divisions in the villages was also urged before the Civil Justice Committee as a reason for the unsatisfactory functioning of these courts. It has been stated before us that these factions and divisions have increased by reason of the introduction of adult franchise all over the country and the appearance of political parties in the villages. It may be observed that very little, if any, of the evidence given before us by lawyers and those concerned with the administration of justice was based on personal experience. Such information as they had was derived from the few cases of revisions or appeals from these panchayat courts with which they had occasion to deal. A picture derived from a knowledge of these cases would necessarily be adverse to these tribunals, as the cases coming up in revision or appeal would be gross cases in which these tribunals, through ignorance or partiality, had been guilty of perpetrating a miscarriage of justice. Apart from this, one cannot expect from these tribunals by the very nature of their constitution and the conditions in which they work, the efficiency, the detachment and the impartiality of regular courts of justice. We feel that the views expressed by some of the witnesses against the manner in which these

[1]Report, pages 35-36.

tribunals have functioned are exaggerated and should be weighed in the background of their training and experience as practising lawyers and judges. As in all corporate life, there would exist in the village factions, divisions and parties. Notwithstanding these, however, the villagers have been accustomed to work in harmony in matters concerning themselves and it appears to us that there is no reason why, with proper safeguards, these courts should not function with a fair amount of success and either conciliate or decide the petty disputes arising in the villages.

Grouping of villages.

26. Several of the Acts provide for the constitution of village courts which would cover a group of villages situated not very far from one another. Such a provision should result in eliminating or diminishing the effect of factions and divisions on these tribunals. It may even be made a rule that wherever it is possible a dispute arising in one village should be dealt with by Panchas belonging to another village. This course will, of course, result in depriving the tribunal of the advantage of a knowledge not only of the conditions in a particular village but perhaps also of facts relating to the particular dispute which these tribunals would otherwise have. Such a provision need, therefore, be made only where the division of villages into parties and factions makes it necessary that such a course should be adopted;

Election to panchayat courts.

27. It appears that with the exception of the State of Kerala all the States have adopted election as the mode for appointing the personnel of the panchayats. A great deal of criticism has been directed against this method of selection of the panchas. It has been said that elections inevitably bring factions into existence and that a pancha chosen by election is bound to support the body of electors who put him in office. It is true that the method of electing the judiciary has many evils and that these evils are being increasingly recognised in countries where the system of electing Judges prevails. But it must not be forgotten that in the case of these courts, we are not dealing with judicial tribunals in the strict sense of the term. We are dealing with tribunals who have to inspire the confidence of the villagers and such confidence can be obtained only by persons chosen by the villagers themselves. Perhaps it would not be incorrect to say that the very basis of the constitution of a panchayat is a choice by the people, whether it be by a tacit consent unanimously given or by an election regularly conducted. It may be mentioned that most of the Acts constituting the panchayats provide for the election of the village panchayat as a whole and the persons so elected choose out of their number certain persons to be members of the nyaya panchayat, one of whom

is selected to be the Sarpanch or the President of the nyaya panchayat. It appears unlikely that members of the nyaya panchayat so elected would reflect any particular division or faction in the village. Further, it has been pointed out with a certain amount of justification that the very fact that cases are determined by the nyaya panchayats in the presence of numerous persons resident in the locality some of whom would be well aware of the true facts in regard to the case under enquiry is bound to act as a deterrent against partiality or prejudice having a play in the decision. The circumstance that the enquiry is being conducted in the presence of people who have knowledge of the true events should undoubtedly tend to ensure an attitude of fair play and propriety in the attitude of Panchas dealing with the matter.

Nomination of panchas.

28. A view was expressed by some of the witnesses appearing before us that the element of election in the constitution of the judicial panchayats should be replaced by one of nomination or appointment on the recommendation of the District Judge aided by some other officials. Having given our best consideration to this view we are unable to accept it. It is essential that only persons who command the complete confidence of the villagers should be chosen to administer justice at the village level. However impartial he may be, a choice of the personnel of the nyaya panchayat by a particular officer, who cannot possibly have a first-hand knowledge of the local conditions and who will have to depend upon information supplied by subordinates in making the choice can never have this essential advantage. The freely expressed will of the villagers, would, in substance, be replaced by the untrustworthy recommendations of subordinate officials. Panchas, so appointed would tend to act in a manner which will command the approval of the appointing authority rather than discharge their functions in the true spirit of service to the village community.

The question of appointment vis-a-vis election of Panchas was considered by the West Bengal Committee who expressed themselves definitely against appointment as a method of selection. They stated that it appeared to them "impossible to devise suitable machinery for appointing wholly impartial and independent persons to sit in these courts, though doubtless such persons do exist in the rural areas. Appointments to such courts must be made on the recommendation of some persons or authorities. Persons or bodies living in a particular locality are bound to be influenced in favour of their own factions, friends or supporters and such recommendations could not be safely relied on and their recommendations would in many cases be utterly valueless."[1]

[1] Report p. 36.

Nomination from elected Panchas.

29. As will be noticed from the Table relating to the constitution of the panchayats, some States have adopted a method of selection out of the members of the elected panchayat. The selection of the required number of nyaya panchas is made by a prescribed authority. This method prevails in Uttar Pradesh, Madhya Pradesh and Hyderabad. In Assam, Bombay and West Bengal the elected members of the panchayat themselves elect out of their number the nyaya panchas required to constitute the tribunal. It is only in the State of Kerala (erstwhile Travancore-Cochin area) that the appointment of nyaya panchas is made by the Government on the recommendation of the district officials. This system of appointment seems to have worked satisfactorily in that area, probably because of the smallness of the area and the consequent ease with which the higher officials are in a position to choose persons respected in the villages as the panchas.

Qualifications to be prescribed.

30. Perhaps the method of selection by a proper official from among those elected as members of the panchayat may afford a solution to this question. Such a method would have the advantage of securing persons chosen by the people from amongst whom persons regarded as more competent than the others may be selected to discharge the functions of nyaya panchas. The selection could be made by a suitable authority on the basis of the possession of certain qualifications such as literacy, reputation for impartiality and the like.

Procedure Codes not to apply.

31. It has been said that as the Evidence Act and the Procedure Codes have been made inapplicable to these courts by the Acts constituting them and that as the panchayats are left at liberty to discover the truth in the best manner open to them and permitted even to utilise their personal knowledge in respect of the matters in issue, the very basis on which these courts are constituted is wholly opposed to the recognized canons of the administration of justice. Though these enactments exclude the application of the Evidence Act and the Procedure Codes to these tribunals, they do contain specific provisions laying down the manner of the conduct of trial in these courts and also contain provisions in regard to the delivery of judgments, the maintenance of records and other ancillary matters. The criticism arises from the erroneous view which regards these courts in the same manner as ordinary judicial tribunals while they are essentially different. Their main function is to bring about, as far as possible, a compromise of the small disputes arising in the village. An amicable settlement of such disputes becomes easier to secure when the persons clothed with the authority of deciding them have the advantage of knowing the disputants, the subject-matter of the dispute, the way in which the

dispute arose and other facts relating to them. The personal knowledge of the panchas in these matters which they are entitled to use in inducing a settlement wherever possible and ultimately, if necessary, deciding those disputes is valuable for the efficient and smooth working of these tribunals, whether as conciliators or as adjudicators. It is, therefore, essential that these tribunals should be free from the fetters laid down in the Evidence Act and the Procedure Codes. Indeed, it would be anomalous to apply the complicated rules of evidence and procedure laid down in these laws to the adjudications of the simple and very frequently, the frivolous disputes which arise in the villages.

No legal representation.

32. Having regard to what has been stated above, it would be equally anomalous to permit parties to disputes in these courts to be represented by legal practitioners. It has been said that the litigant in these courts should not be denied the benefit of competent lagal aid. Such an argument overlooks the very simple nature of the disputes which come up before these courts and the fact that these courts are not judicial tribunals in the strict sense. The very purpose of these courts, namely the ready and commonsense administration of justice without regard to technicalities would be defeated unless the prohibition against the appearance of lawyers in these tribunals is maintained.

Constitutional limitation on exclusion of legal practitioner.

33. Attention may, however, be drawn in this connection to clause (1) of article 22 of the Constitution which provides *inter alia* that no person who is arrested shall be denied the right to consult and be defended by a legal practitioner of his choice. In cases where these tribunals are given jurisdiction over criminal matters which may result in persons brought up before them being arrested, the accused person will have to be given the right to consult and to be defended by legal practitioners. A provision to this effect is to be found in the Uttar Pradesh Act.

Panchayat courts and the increase of litigation.

34. It has been suggested by some witnesses who appeared before us that the very creation of these courts in the villages has resulted in making the villagers factious so that, with the courts so easily accessible, the most trivial disputes which they would never have dreamt of taking to a court of law are now being taken to these village courts. It is suggested that the very large number of cases disposed of by these courts particularly in the State of Uttar Pradesh support this statement. This view sought to be supported only by the large number of suits

disposed of by these courts is difficult to accept. It may be that previously when courts were far away and difficult of access, villagers—particularly those who were poor and low in the social scale—had not the means and the opportunity to obtain redress of their grievances and suffered them without taking any action. These villagers having now the opportunity, resort to these courts for redressing their wrongs. That is very different from asserting that these courts have actually led to a rise in frivolous or vexatious litigation. On the contrary, the fact that these grievances are now capable of easy remedy in the village itself or nearby is a justification for the creation of these courts. The view we have taken is supported by the evidence of officials who have been supervising the working of the panchayats including the nyaya panchayats.

Panchayats as conciliators.

35. It has been suggested that the function of these panchayats should be purely conciliatory and not adjudicatory; that it could be provided by law that in all disputes of a specified class, the disputants, before going to the ordinary courts of law, should be required to go to the local panchayat court which would exert its influence to bring about an amicable settlement. Such disputes should be entertained by the regular courts only in the event of the failure of the panchayat courts to effect conciliation. If this suggestion were accepted, it appears to us that the panchayat courts would be deprived of their real utility and the small disputes which they now adjudicate would be subjected to the delays and the expense which will arise from first going for conciliation to the panchayat courts and then going for adjudication to the regular courts.

Adjudicatory powers essential.

36. One cannot overlook the importance of the body which is entrusted with the task of bringing about an amicable settlement being clothed with authority to adjudicate upon the dispute in the event of a settlement not being agreed to. It would not be incorrect to state that the large number of settlements which the panchayat courts are able to bring about are due, in a considerable measure, to the authority to adjudicate which they now possess. Nor can we overlook the tendency of litigants to take their matters to higher courts even in small matters and their reluctance to accept a decision as final, if there is the least possibility of canvassing its correctness in a higher court. The mere fact that taking the matter to the regular court would result in delay will induce a large number of litigants to refuse to agree to an amicable settlement of their disputes. Even if penal provisions relating to costs were introduced, it is unlikely that such provisions will prevent litigants from refusing to agree to a reasonable compromise in the hope of delaying the adjudication by letting the matter go to the regular courts. We are, therefore, of the view that these tribunals should be vested with powers of adjudication.

37. We think that the suggestion that the jurisdiction of these tribunals should be made concurrent with that of the ordinary courts and not exclusive is unsound. In the absence of an exclusive jurisdiction, there will be a tendency in the litigant to prefer the ordinary courts. If the plaintiff takes advantage of the village court with its cheap and expeditious procedure, the defendant will, in order to obstruct the plaintiff and delay the litigation, move for a transfer of his case to the regular court. If our purpose is to make these courts efficient, we can do so only by investing them with complete responsibility in the exercise of such jurisdiction as they possess and give them opportunities to acquire knowledge and experience. It is unfair to criticise these courts as inefficient and at the same time deny them exclusive jurisdiction which step alone can lead to their improvement and satisfactory working. Exclusive jurisdiction necessary.

38. Having given full weight to the various criticisms levelled against the panchayat courts, we feel justified in reaching the conclusion that, with safeguards designed to ensure their proper working and improvement, these courts are capable of playing a very necessary and useful part in the administration of justice in the country. We shall now proceed to discuss and outline what needs to be done to ensure the satisfactory and improved working of these courts. Panchayat courts useful.

39. Before we proceed to do so, we may point out that in some of the States like Bombay, Mysore and Orissa a determined effort needs to be made to make these courts popular so that the congestion in the regular courts may be relieved and the villagers may be able to obtain justice in small disputes near their homes. Table IX shows that only an infinitesimal number of suits are filed in these courts in Bombay and Orissa. Evidence given before us indicated that though there is a statutory provision for the establishment of these courts in the State of Mysore, they are not functioning in that State. We have not been able to find the real cause of the situation existing in these three States. If these courts can function so as to dispose of a large mass of suits in States like Madras and Uttar Pradesh, there appears to us to be no reason whatever why they cannot be made to fulfil a similar function in these three States. We, therefore, suggest that a determined effort should be made to establish and popularise these courts in these three States. Their establishment necessary.

40. In regard to their constitution, it is essential that the Panchas should be the elected representatives of the people. The system, which at present prevails in a number of States, of electing them as a part of the administrative or general panchayat elected for the village or villages appears to be satisfactory. In order, however, to ensure that out of the members of the panchayat so elected, persons having some knowledge or experience in matters Nomination out of elected Panchas favoured.

TABLE IX

Statement showing the number and value of suits instituted in the village and Panchayat Court in Certain States

Name of the State and year	Value not exceeding Rs. 10/-	Value not exceeding Rs. 20/-	Value not exceeding Rs. 50/-	Value not exceeding Rs. 100/-	Value not exceeding Rs. 500/-	Total number of suits instituted	Remarks
1	2	3	4	5	6	7	8
Andhra							
1953 . . .	3,554	1,689	6,748	3,858	526	16,375	(*a*) This figure denotes the number of suits valued between Rs. 10/- and Rs. 50/-.
1954 . . .	3,688	2,167	6,402	5,309	589	18,155	
Bombay							
1952 . . .	10	..	(*a*)50	(*b*)4	Nil	64	(*b*) This figure denotes the number of suits valued between Rs. 50/- & Rs. 100/-.
1953 . . .	12	..	(*a*)29	(*b*)7	Nil	48	
1954 . . .	4	..	(*a*)26	(*b*)8	Nil	38	
Madhya Pradesh							
1952 . . .	8	..	(*x*)139	(*y*)149	(*z*)141	437	(*c*) This figure denotes the number of suits valued between Rs. 10/- & Rs. 50/-.
1953 . . .	20	..	(*x*)207	(*y*)224	(*z*)123	514	
1954 . .	8	..	(*x*)200	(*y*)203	(*z*)30	441	
Madras							
1952 . . .	5,594	8,339	21,531	7,270	1,067	43,801	(*d*) This figure denotes the number of suits valued between Rs. 50/- and Rs. 100/-.
1953 . . .	5,084	9,581	19,440	6,479	1,277	41,861	
1954 . .	5,321	6,154	13,195	4,579	1,213	30,462	(*e*) This figure denotes the number of suits valued between Rs. 100/- and Rs. 500/-.

Orissa						
1952 . .	..	(c) 14	(d) 1	(e) —	15	(f) This figure includes the suits instituted in the village courts.
1953 . .	3	(c) 95	(d) 17	(e) 32	147	
1954 . .	Nil.	(c) 48	(d) 13	(e) 12	(f)73	
Travancore-Cochin						
1952-53 . .		(1)813			(2) 1,770	(1) This figure denotes the number of suits valued between Rs. 30 & Rs. 50/-.
1953-54 . .		(1)743			(3)1,678	
1954-55 .		(1)730	(4)79		(5)1,817	(2) This figure includes 957 suits valued below Rs. 30/-.
West Bengal						(3) This figure includes 935 suits valued below Rs. 30/-.
1952 . .	760	(x)2,676	(y)1,013	(z)982	5,431	(4) This figure denotes the number of suits valued between Rs. 50/- to Rs. 100/-
1953 . .	943	(x)6,291	(y) 862	(z)869	4,965	
1954 . .	916	(x)2,803	(y) 1,047	(z)894	5,660	(5) This figure includes 1,008 suits valued below Rs. 30/-.

(x) This figure denotes the number of suits valued between Rs. 10/- and Rs. 50/-.

(y) This figure denotes the number of suits valued between Rs. 50/- and Rs. 100/-.

(z) This figure denotes the number of suits valued between Rs. 100/- and Rs. 500/-.

Grouping villages.

useful to the administration of justice are chosen, the selection of nyaya panchas out of the members of the panchayat elected by the villagers may be left to an outside authority like the Collector.

Outsiders to hear cases.

41. In order to obviate, as far as possible, factional or partisan influence in the functioning of these courts a court may be constituted for a group of villages situated in nearby areas. Where such courts exist, a rule may be made that in disposing of disputes which have arisen in a particular village, the nyaya panchas dealing with it should be those coming from other villages. Another method which has been tried in some States may also serve to achieve this end. Liberty may be given to each party to a dispute to select his pancha and the sarpanch may be one who may be elected as such by the panchayat.

Parties nominate panchas.

Training of Panchas essential.

42. It is essential that the nyaya panchas and particularly, the sarpanchas should be subjected to a short training. Instances have been brought to our notice of outrageous sentences clearly outside their jurisdiction having been ordered to be inflicted in some stray cases by some of these panchayats. This, doubtless, arises from the ignorance of the panchas of the scope and extent of their jurisdiction and powers. The rules framed by some of the States do provide for a short training but there appears to be no uniform practice in this respect. It appears to us that a short training of about two weeks given in the village itself or near the village should be sufficient. Such training may usefully be given either by the officer appointed to supervise the working of the panchayat courts or an officer subordinate to him. They should also be instructed to attend the nearby regular courts of the lowest grade under the guidance of the officer. Panchas should be allowed to exercise judicial functions only after they have undergone the prescribed training.

Special machinery for supervision to be set up.

43. We have noticed that at present, excepting in the State of Kerala, the supervision of these courts is left to the officer in charge of panchayats generally. Many of these officers have no legal training and are preoccupied with administrative work. It appears to us necessary that in each State a special officer or officers should be appointed to supervise the working of these courts. Apart from training, inspection and supervision such an officer or officers would be helpful in guiding the nyaya panchas and giving them advice wherever necessary. In States such as Madras and Andhra Pradesh, the control and supervision of these courts are vested in the District Munsif or the Sub-Divisional Magistrate and the usual procedure is for the President of the panchayat court to produce the records of the court to the District Munsif or the Sub-Divisional Magistrate. It will be more satisfactory to vest such control and supervision in a special officer or officers appointed for the purpose. In this

connection, we may refer to the appointment in Kerala of an officer known as the Registrar of Village Courts whose duties include the inspection of these courts and personal attention to their working.

Terms of Panchas to be staggered.

44. In order to provide a continuity of trained panchas, notwithstanding their recruitment by periodical elections, a provision should be made in the relevant Acts by which the vacation of their offices by the nyaya panchas may be staggered; so that some of the existing trained nyaya panchas would continue to function together with the recruits brought in by the new elections.

Proposed jurisdiction—civil and criminal.

45. In the matter of jurisdiction of these courts, it is necessary to proceed with considerable caution. While we deprecate their pecuniary jurisdiction being restricted to such small amounts as Rs. 10/- or Rs. 25/- we would advocate a maximum limit of Rs. 200/- or Rs. 250/-. In special cases, where particular panchayats have proved themselves to be efficient, their jurisdiction may be enlarged upto Rs. 500/- with the approval of the High Court. Such enhanced jurisdiction must, however, cease with the reconstitution of the panchayat on a re-election. In regard to criminal matters, we do not approve of the panchayats being empowered to inflict a sentence of imprisonment either substantively or in default of the payment of a fine. Nor should they have powers to bind over persons for keeping the peace. Their jurisdiction should be restricted to inflicting punishments by way of fine not exceeding Rs. 50/-. The legislation of some States have conferred powers on State Governments to invest these courts with a much wider jurisdiction in criminal matters. The conferment of such jurisdiction appears to us unwise, at any rate, till these courts have gathered greater experience and justified the smaller powers entrusted to them.

Limits of revisional jurisdiction.

46. We would provide a revision from the decisions of these panchayats in civil and criminal matters to the munsif or the sub-divisional magistrate. A power of revision to the District Judge who would be at a distance from the village and busy with important matters appears to us to be inadvisable. Nor would we recommend an appeal to a Full Bench of the panchayat court being provided as, for example, in the State of Bihar. The powers of revision should be restricted to cases of corruption, gross partiality or misconduct of the panchas, miscarriage of justice or the exercise of jurisdiction not vested in them or to cases where they have acted otherwise illegally. [*See* section 73 of the Madras Village Courts Act, 1888 (I of 1889)]. Power should also be given to the munsif or sub-divisional magistrate to transfer a matter from one panchayat court to another or to the regular court for trial.

Power to District Judge to direct removal of Panchas.

47. It is also necessary to make a provision, as in the Madras Act, for the removal of panchas on the ground of corruption, gross partiality or misconduct. The munsif or the sub-divisional magistrate who comes across a case of such a nature should be obliged to report it to the District Judge who could thereupon write to the Collector requiring him to remove the pancha or panchas concerned. It would also be necessary to provide for appeals against such orders of removal as in the Madras Act (Act I of 1889).

Court Fees and Procedure.

48. In some of the States such as Madras and Andhra Pradesh, no court fees are levied. In some other States such as Uttar Pradesh, the fees tend to be a fairly substantial percentage of the amount claimed. We think that the fees chargeable in these courts should be nominal fees. We suggest the following:—

Suits upto Rs. 100/- upto a maximum of Re. 1/-.

Suits from Rs. 101/- to Rs. 200/- upto a maximum of Rs. 2/-.

Suits from Rs. 201/- to Rs. 300/- upto a maximum of Rs. 3/-.

Suits from Rs. 301/- to Rs. 400/- upto a maximum of Rs. 4/-.

Suits from Rs. 401/- to Rs. 500/- upto a maximum of Rs. 5/-.

The process fees, wherever leviable, should also be nominal.

Most of the Acts constituting these courts provide a simple procedure modelled on the Civil Procedure Code. They also contain provisions making it clear that it is not obligatory on these courts to follow the provisions of the Evidence Act and the Civil Procedure Code and also provisions barring the appearance of lawyers before these courts. We have already indicated above our approval of provisions of this nature.

Execution of decrees by Panchayat and Collector.

49. It is obviously desirable that the decrees and orders of these courts should be capable of prompt execution. Delays would defeat one of the main purposes of the institution of these courts. These courts should have power to distrain and seize movable property in execution of their decrees such as is now conferred on them by a number of Acts constituting them. Provision should, however, be made, wherever these courts are unable to execute their decrees, for the execution to be transferred to the Collector on a certificate being issued by these courts. Provisions such as are contained in the Acts of some States providing for the transfer of execution to the regular courts are clearly unsatisfactory inasmuch as execution delays are one of the most pressing problems in regard to the decrees of the regular courts themselves.

50. We have found considerable difficulty in gathering necessary information about the working of these courts in the different States. Though most of the States have constituted panchayats, very few of them maintain statistical data regarding the working of the panchayat courts. The State of Kerala alone has issued an administration report relating to the working of these courts. In Uttar Pradesh a note on the constitution and working of judicial panchayats specially prepared for the Government was handed over to us. In regard to the other States we had to gather such information as we did from general administration reports or notes prepared for our use. If these tribunals are to be fostered by the States and grow so that they may become live and effective institutions, it is necessary that special officers should be appointed to look after them and that one of the functions of such officers should be to collect and publish all useful information in regard to the work done by these courts. The judicial functions performed by the panchayats should be regarded as being not less important than its functions in regard to the general administration of the village. It is surprising that though numerous officials of the connected departments of Government guide, direct and watch the panchayats' activities in the administrative fields, very few officers are made responsible for the performance of the judicial functions of the panchayats. That perhaps explains the absence of knowledge among the general public of the very useful work done by the nyaya panchayats in some of the States. It is, therefore, vitally necessary that each State should have one or more special officers who may in appropriate cases be judicial officers to look after the panchayati adalats and from time to time publicise the manner of their follows:— Need for more detailed information.

51. We now set out our conclusions under this head as follows:— Conclusions.

(1) Panchayat courts are capable of doing a good deal of useful work by relieving the regular courts of petty civil litigation and criminal cases of the simpler type.

(2) The panchayats are in a position to dispose of simple cases more cheaply and expeditiously and with less inconvenience to all concerned than ordinary courts.

(3) An effort should be made to establish and popularise panchayat courts in States where they are not firmly established.

(4) Wherever possible, a panchayat court should be constituted for a group of villages situated in a nearby area.

(5) Nyaya panchas should be nominated by a suitable authority out of those elected panchas who possess certain prescribed qualifications like literacy.

(6) In order to provide continuity the terms of office of Nyaya panchas should be staggered.

(7) Nyaya panchas should be given training before they are allowed to exercise judicial functions.

(8) To get over the difficulty caused by the existence of factions, the panchas deciding a case might be required to belong to a neighbouring village, or each party to a dispute may be allowed to select his pancha.

(9) The jurisdiction of panchayat courts should be exclusive.

(10) Nature of cases (civil) and the list of offences (criminal) triable by these courts are set out at length in the various State enactments and do not call for any enlargement.

(11) The upper limit of the civil jurisdiction of panchayats should be Rs. 200/- or Rs. 250/-. In special cases with the approval of the High Court their jurisdiction may be increased to Rs. 500/-.

(12) The criminal jurisdiction of panchayat courts should be limited to inflicting a fine of Rs. 50/-. They should not have the power to award sentences of imprisonment either substantively or in default of payment of fine or to bind over parties to keep the peace. Cases in which such action is necessary should be made over to the regular courts.

(13) The court fee, if any, levied by the panchayat courts should be nominal.

(14) Panchayat courts should not be bound by Procedural Codes or by the Law of Evidence.

(15) Panchayat courts should wherever possible seek to effect an amicable settlement between the parties.

(16) Legal practitioners should not be permitted to appear in these courts.

(17) A revision should lie from the decisions of the panchayat courts in civil and criminal matters to the Munsif or Sub-Divisional Magistrate, who should be empowered to transfer a case from one panchayat court to another or to the regular court for trial.

(18) The power of revision should not be given to the District Judge nor should a right of appeal to a larger panchayat be allowed.

(19) The District Judge should be empowered to direct the removal of panchas if he is satisfied upon a report that the pancha in question has been guilty of misconduct in the discharge of his judicial functions

There should be a provision for an appeal against such order of removal.

(20) Panchayat courts should be empowered to distrain or seize movable property in execution of their decrees and to send them if necessary to the Collector for execution.

(21) A special officer or special officers should be appointed for the purpose of imparting training to panchas and to supervise the administration of panchayat courts.

(22) More detailed information should be collected and published regarding the working of the panchayat courts.



44.—ANDHRA PRADESH

1. By the Andhra State Act of 1953, the eleven Andhra Districts that formed part of the State of Madras were constituted as a separate State to which were added, consequent upon the reorganisation of the States by Act XXXVII of 1956, nine districts—popularly known as the Telangana region—of the erstwhile State of Hyderabad; the State thus enlarged has been given the name "Andhra Pradesh".

2. According to the census of 1951, the population of the State is 31,260,133 made up of 20,647,608 inhabitants in the Andhra districts and the rest in Telangana. They contribute roughly a tenth of the total litigation in the regular civil courts of our country.

3. At the apex of the judiciary is the High Court consisting of sixteen judges including the Chief Justice and three additional judges appointed for a period of two years. The territory subject to the jurisdiction of the High Court covers an area of 1,05,963 square miles and has been divided into twenty district judgeships. In 1956, the subordinate civil judiciary consisted of thirty-four district judges including ten additional district judges, one Chief Judge and two additional judges of the City Civil Court, Hyderabad, one Chief Judge of the City Small Causes Court, Hyderabad, thirty-four subordinate judges including one judge of the City Small Causes Court, Hyderabad and one hundred and twenty munsifs. On the criminal side there were forty-nine sessions judges including nineteen assistant sessions judges, eleven district magistrates (Judicial), sixty-two sub-divisional and munsif-magistrates, thirty judicial first class magistrates, seventy judicial second class magistrates, one third class magistrate and five honorary magistrates in addition to executive officers exercising magisterial powers.

Subordinate Judiciary.

Honorary Magistrates.

4. There are two classes of honorary magistrates, namely, (1) special honorary magistrates and (2) honorary bench magistrates. Special honorary magistrates exercise powers of first class magistrates and sit singly. The honorary railway magistrates also sit singly.

5. These honorary magistrates are generally appointed in large municipal towns in order to give relief to the stipendary magistrates. One lady and one member of the Harijan community are generally included in each bench. All the honorary magistrates are under the administrative control of the Judicial District Magistrates.

6. The honorary magistrates usually try offences relating to public health, simple hurt, wrongful restraint, assault, mischief, criminal trespass, intimidation and theft

or receiving stolen property not exceeding Rs. 15 in value under the Indian Penal Code and also offences under the Municipal Acts and conservancy clauses of the Police Act punishable with fine only or with imprisonment for a term not exceeding one month. They also try offences under the Local Boards Acts relating to compulsory vaccination, registration of births and deaths etc. Honorary railway magistrates try offences of ticketless travel and also those under certain other offences under the Indian Railways Act.

7. At present, appointments of honorary magistrates are made by Government on the recommendation of the collector of the district. As separation of the judiciary from the executive has been effected throughout the State, it would be more appropriate to make the selection on the recommendation of District Judge or the Judicial District Magistrate.

Judicial administration in the Andhra area.

8. Two distinct patterns of judicial administration obtain in this State. In the Andhra districts the system of judicial administration existing in the Madras State has been retained with two notable variations, namely:

(i) district judges hear appeals valued upto Rs. 7,500;

(ii) after the coming into force of the Criminal Procedure Code (Amendment) Act (XXVI of 1955), the Government has by an order G.O. M.S. No. 750, dated the 26th March, 1956, which came into force on the 1st April, 1956, abolished the posts of district magistrates (Judicial), sub-divisional magistrates and stationary sub-magistrates and appointed, instead, additional district and sessions judges, judicial first class and second class magistrates respectively.

In Telangana.

9. In the Telangana region, however, the same set of officers exercise civil and criminal jurisdiction; the subordinate judges have been invested with powers of district magistrates and munsifs with those of first class magistrates. There are no judicial second class magistrates nor honorary magistrates.

10. For the speedy dispensation of criminal justice the co-operation of the police is necessary. Delays on the part of the police officials in the submission of charge sheets, service of summons, attendance at courts and the like have to be brought to the notice of superior police officials. Slackness on the part of subordinate magistrates will have to be corrected. All this will be possible only if there is a detailed scrutiny of the periodical returns sent by the subordinate magistracy, and a frequent inspection of magistrates' courts. It is a matter of doubt whether the additional district and sessions judges appointed for this purpose will be in a position to devote sufficient time to the effective supervision of the work of the magistracy because

Appointment of judicial district magistrates.

of their sessions and civil appellate work. These duties can be discharged more efficiently by judicial district magistrates. Appointment of judicial district magistrates will not only add to the efficiency of the magistracy but will also result in a saving to the state exchequer. We would favour the appointment of judicial district magistrates instead of additional district and sessions judges for the purposes of supervision, with powers to hear appeals from the decisions of second and third class magistrates as in Madras and Kerala.

Jurisdiction of civil courts.

11. The following Table shows at a glance the pecuniary jurisdiction of different classes of civil judicial officers in the Andhra and Telangana regions:—



TABLE No. 1

Region of the State	Class of officers	CIVIL		Small Cause	Appellate
		Ordinary	Special		
1	2	3	4	5	6
Andhra	District and Additional District Judge.	Unlimited	Guardians and Wards Act, Indian Succession Act, Land Acquisition Act, Payment of Wages Act, etc.	..	Rs. 7,500
	Subordinate Judge*	Do.	Indian Succession Act, Land Acquisition Act, etc.	Rs. 2,000	Rs. 5,000
	Munsif	Rs. 5,000	Indian Succession Act.	Rs. 500	Nil.
Telangana	District Judge.	Unlimited	Land Acquisition Act, The Indian Succession Act, The Guardian & Wards Act, Payment of Wages Act, etc.	Rs. 300	Rs. 5,000
	Subordinate Judge.**	Upto Rs. 20,000	Nil.	Rs. 200	Nil.
	Munsif***	Upto Rs. 2,000	Nil.	Rs. 50	Nil.

*Subordinate Judges in the Andhra region are also Assistant Sessions Judges.

**Subordinate Judges are also District Magistrates.

***Munsifs are also Sub-Divisional Magistrates.

Volume of litigation.

12. During the triennium 1954—56 on an average about 71,500 suits—regular and small cause—were instituted in civil courts (excluding village and panchayat courts) or one suit per 437·2 persons. The average institution in this period in the Andhra region was 65,304 suits or one suit per 316·1 persons whereas it was about 6,000 suits or one suit per 1,769 persons in the Telangana region.

13. The number and value of suits in different classes of civil courts, according to the statistics furnished by the High Court* are set out below:

*All the statistics given in this chapter have been taken from data furnished by the High Court (The figures shown in the reports on the administration of civil and criminal justice do not always tally with those furnished to us by the High Court).



TABLE NO. 2

Suits of the value	Andhra Districts				Telangana Region			
	Number filed in			Average	Number filed in			Average
	1954	1955	1956		1954	1955	1956	
Not exceeding Rs. 1000/- . .	57561	49764	54076	53800	4957	4102	4504	4521
Exceeding Rs. 1000 but not exceeding Rs. 2000/-	6256	5730	4893	5626	655	814	920	796
Exceeding Rs. 2000 but not exceeding Rs. 5000/-	7830	2524	2680	4345	439	517	553	503
Exceeding Rs. 5000 but not exceeding Rs. 10,000/-	1129	978	784	964	184	191	233	203
Exceeding Rs. 10000 but not exceeding Rs. 20000/-	327	285	237	283	NA	NA	NA	NA
Exceeding Rs. 20000 but not exceeding Rs. 50000/-	208	203	185	199	NA	NA	NA	NA
Exceeding Rs. 50000 . .	101	78	81	87	NA	NA	NA	NA

NOTE :— Suits which are not capable of valuation are not shown.

14. It appears from these figures that in Andhra districts about 95 per cent of the suits are brought to trial before the courts of munsifs.

State of work in munsifs courts.

15. The following table shows the average number of proceedings instituted, disposed of and pending in the courts of Munsifs in the Andhra region during the three years preceding 1957.

TABLE No. 3

Nature of proceeding	Instituted	Disposed of	Pending
Original Suits	324·0	319·7	257·6
Small Cause Suits	614·9	615·5	126·7
Civil Misc. Petns.	2578·0	2558·0	322·5

16. The average duration of original suits disposed of after contest in the year 1955 was 391 days—not very much above the standard time prescribed by us for the disposal of suits in the subordinate courts.

17. On 1st January 1956, 16257 original suits were pending in the courts of Munsifs in the Andhra region out of which 5,400 were a year old—the oldest suit remaining pending having been instituted in 1934 as will be seen from the table given below:

TABLE No. 4

Year							
1934	1941	1943	1944	1945	1946	1947	1948
1	1	4	3	9	31	23	43

Year						
1949	1950	1951	1952	1953	1954	1955
66	115	194	319	1002	3576	10876

18. Though, as is evident from the figures given in Table No. 3, the Munsifs in the Andhra region are able to keep pace with institutions, the heavy pendency is due to the fact that there is an accumulation of old suits. Appointment of temporary Munsifs to wipe out the arrears

seems to be essential to bring the file under control. Raising the cadre strength of Munsifs does not appear to be necessary.

19. There would not appear to be any reason for keeping the pecuniary jurisdiction of Munsifs in the Telangana region as low as Rs. 2,000 in original suits and Rs. 50 in small cause suits, especially as even village courts in the Andhra region have jurisdiction to try suits valued at Rs. 50. We recommend that the Munsifs in the Telangana region should have the same original and small cause jurisdiction as is conferred on their counterparts in the Andhra region. A single civil courts Act for the entire State is also very necessary.

In Subordinate Judges' Courts.

20. Turning to the position in the subordinate judges' courts the accompanying Table (No. 5) will show the institution, disposal and pendency of proceedings of different categories during the three years 1954—56.



TABLE No. 5

Region	Nature of the Proceeding	Instituted			Disposed of			Pending			Pending over a year		
		1954	1955	1956	1954	1955	1956	1954	1955	1956	1954	1955	1956
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Andhra	Civil suits	2140	1488	1409	3222	1784	1704	3026	2730	2525	1634	1610	1463
	Small causes suits	4527	4179	4779	4345	4111	4414	1520	1588	3953	62	142	213
	Misc. Civil cases and petitions	51500	50789	51361	50979	50570	50484	7817	8036	8913	1252	1552	1520
	Civil appeals	2184	1966	1970	2165	2019	1892	6209	2154	2252	431	613	526
	Civil Misc. appeals	N.A.	753	659	669	701	685	289	351	325	16	16	36
	Sessions cases	294	196	184	273	231	180	60	26	31	2	1	..
	Criminal appeals	..	..	1541	..	..	1491	..	..	50	..	..	..
	Criminal Revn.	..	..	20	..	..	20	..	..	..	..	..	..
	Cases under I.P.C.	..	..	2	..	..	2	..	..	..	..	..	..
	Cases under other Acts	8	4	7	13	4	4	1	1	4	..	..	..
Telangana	Civil suits	794	724	878	870	761	787	535	498	663	85	95	177
	Small cause suits	433	503	555	493	466	517	99	136	176	..	10	4
	Misc. Civil cases and petitions	1206	1031	1125	1172	1226	1051	484	289	431	56	34	71
	Criminal appeals	336	220	109	330	221	133	44	43	19	..	..	..
	Criminal Revns.	566	598	568	450	550	464	116	48	104	..	..	3
	Cases under I.P.C	2035	1503	1291	2106	1495	1394	218	226	130	5	3	1
	Other cases	1661	1216	1582	1718	1408	1551	234	142	173	17	3	4

NOTE.—1. 10 officers in 1954 and 1955 and 11 in 1956 worked as subordinate judges and district magistrates in the Telangana Region.

2. 30 officers in 1954, 25 in 1955 and 22 in 1956 worked as subordinate judges out of whom 26, 21 and 19 were vested powers of assistant sessions judges in Andhra Region.

21. The annual average disposal of work by a subordinate judge based on the institutions and disposals during the same period is as under:

TABLE No. 6

Region	Nature of proceeding	Instituted	Disposed of	Pending
1	2	3	4	5
Andhra .	Civil Suits	65·4	87·1	107·5
	Small Cause Suits	175·1	167·1	65·5
	Civil Appeals	79·4	78·9	86·0
	Civil Misc. Appeals	24·7	26·7	12·5
	Civil Misc. Petns. and Cases	1995·4	1974·3	321·6
	Sessions cases	10·2	10·3	1·8
Telangana .	Civil Suits	77·4	78·0	54·7
	Small Cause Suits	48·1	47·6	13·2
	Civil Appeals	..	..	..
	Civil Misc. Petns. and Cases.	108·4	111·2	39·0
	Cases under IPC	156·0	161·0	18·5
	Cases under other Acts	147·0	151·0	17·4
	Criminal Appeals	21·4	22·0	3·4
	Criminal Revision Petitions.	56·0	47·2	8·7

22. Notwithstanding a substantial increase in disposals and a progressive fall in the number of year-old suits one cannot overlook the fact that some suits have remained pending over a decade. The following table shows the number of original suits pending on 1st January, 1956 arranged according to the years of institution in the sub-courts in the Andhra region.

TABLE No. 7

Region	Year							
1939	1942	1943	1944	1945	1946	1947	1948
1	1	2	1	5	8	10	16
1949	1950	1951	1952	1953	1954	1955	1956
20	46	119	186	433	762	1103	2713

23. The file of the subordinate judges is loaded with all kinds of proceedings. In the Andhra districts these judges entertain proceedings under the Land Acquisition Act, the Indian Succession Act, and the like. They are constituted Employees' Insurance Courts under Section 74 of the Employees' Insurance Act, 1948 and are appellate courts under the Rent Control Act. They have also been invested with powers of Assistant Sessions Judges and considerable criminal work is being done by them. Suits filed in these courts are of a complicated nature. It will be seen from the following table that quite a large number—approximately fifty per cent—out of the total institutions are suits requiring adjudication of claims to immovable property.

TABLE No. 8

Year	Total number of suits instituted	Title and other suits	Suits for money or movable properties
1	2	3	4
1953	2334	1125	1109
1954	2007	990	1017
1955	1372	662	710

24. Fifty per cent of the suits brought to trial before the sub-courts are disposed of after contest as will be seen from the table set down below:—

TABLE No. 9

Name of the district and Head Quarter of the court	Pending at the beginning of the year	Instituted	Total for disposal	Total Disposed of	Disposed of after contest	Average duration
1	2	3	4	5	6	7
Anantpur						
Anantpur	130	60	190	108	54	741
Cuddapah	28	11	39	22	10	129
Cuddapah						
East Godavari						
Kakinada	168	108	276	126	67	539
West Godavari						
Eluru	155	81	236	192	123	522
Guntur						
Bapatla	188	63	251	77	44	819
Krishna						
Gudivada	89	36	125	50	31	691
Kurnool						
Kurnool	109	85	194	80	31	459

25. In 1921 the number of a year-old suits in the subordinate judges' courts in the composite State of Madras which comprised of about twenty-six districts was 1793 whereas in 1956 the number in the ten Andhra districts was nearly the same—1463. The Civil Justice Committee considered the pendency in the subordinate judges' courts as "a state of affairs not capable of being easily set right without some scheme for at once getting rid of the incubus of arrears..."[1] This observation applies with greater force to the Andhra districts in its present state of affairs. It has to be noted that work is heavy in some courts and light in others and a redistribution of territorial jurisdiction should be effected wherever necessary. It is a matter for consideration whether in the Telangana region where the nature of litigation is simple and institutions are comparatively small, the territorial jurisdiction of courts can be increased. If the subordinate judges are relieved of their civil appellate work and of some of their sessions work, it will enable them to devote their time mainly to their original civil work and to dispose of the arrears within a reasonable time while disposing of a few sessions cases also. We are of the view that after the arrears are cleared it will be necessary to re-examine and redetermine the strength of the subordinate judges.

Enhancement of jurisdiction in Telangana.

26. We recommend the enhancement of the original and small cause powers of subordinate judges in the Telangana region to that enjoyed by their counterparts in the Andhra region. The number of suits valued below Rs. 2,000/- that are brought to trial before the courts in the Telangana region is large. Enhancement of small cause jurisdiction of subordinate judges in this region to Rs. 2,000/- will, to some extent, relieve the munsifs of the increased institution consequent upon raising their pecuniary jurisdiction to Rs. 5,000/-.

State of work in District Courts.

27. The state of the file in the district and sessions courts during the tri-ennial period 1954-56 is set out in the accompanying Table.

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[1]Report page 553.

TABLE No. 10

District Judges

Region	Year	Number of officers	Civil Suits					Small Cause Suits				
			Pending at the beginning of the year	Instituted	Disposal	Balance		Pending at the beginning of the year	Instituted	Disposal	Balance	
						Below one year	Over one year				Below one year	Over one year
Andhra	1954	11	224	281	311	83	111	..	..	..	..	..
	1955	11	194	275	257	133	79	..	..	..	..	..
	1956	20	212	230	228	106	108	..	..	..	..	..
Telangana	1954	11	506	450	456	276	222	89	190	214	65	..
	1955	12	500	484	490	327	167	65	262	239	82	6
	1956	13	508	526	408	456	170	89	289	245	114	19

NOTE :—The out-turn of work of the Chief Judge, City Small Causes Court who is of the cadre of a District Judge has not been shown in this statement.

Misc. Civil cases & Petitions					Civil Appeals					Civil-Misc. Appeals				
Pending at the beginning of the year	Instituted	Disposal	Balance		Pending at the beginning of the year	Instituted	Disposal	Balance		Pending at the beginning of the year	Instituted	Disposal	Balance	
			Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
1617	10136	9898	1678	177	1798	2498	2779	1267	250	767	N.A.	508	230	29
1855	9432	9272	1773	242	1517	2197	2300	1262	152	664	405	419	222	23
2015	11373	11011	2176	201	1414	2676	2370	1415	305	729	484	442	287	..
1437	1671	1708	1036	364	678	1125	1209	409	185	941	N.A.	664	229	48
1400	1896	1928	1266	102	594	916	1049	405	56	907	630	624	249	34
1382	2222	2172	1301	131	498	920	875	474	69	223	..	126	94	3

Sessions Judges

Regions	Year	Number of officers	Sessions Cases					Criminal Appeals				
			Pending at the beginning of the year	Instituted	Disposal	Balance		Pending at the beginning of the year	Instituted	Disposal	Balance	
						Below one year	Over one year				Below one year	Over one year
Andhra	1954	12	94	526	526	92	2	63	1273	1191	145	..
	1955	12	94	485	487	88	4	145	1352	1417	80	..
	1956	20	92	490	500	74	8	80	3276	3169	187	..
Telangana	1954	9	63	200	229	34	..	208	1539	1573	174	..
	1955	9	34	145	162	17	..	174	1669	1701	142	..
	1956	10	17	193	171	39	..	144	1373	1377	140	..

Criminal Revisions					Cases under I.P.C.					Other Cases				
Pending at the beginning	Instituted	Disposal	Balance		Pending at the beginning	Instituted	Disposal	Balance		Pending at the beginning	Instituted	Disposal	Balance	
			Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
N.A.	260	229	31	..	..	..	..	..	..	..	..	..	..	..
N.A.	31	221	219	33	..	..	..	..	..	..	..	..	..	..
N.A.	321	284	36	1	..	9	8	1	..	..	..	..	..	..
N.A.	645	477	119	49	25	94	105	14	..	14	77	74	17	..
N.A.	418	372	46	..	14	65	76	3	..	17	25	28	14	..
N.A.	338	329	59	..	3	55	49	9	..	14	47	43	18	..

Transfer of work to District Courts.

28. Though there was a substantial increase in the number of district and sessions judges in the Andhra region in 1956, yet surprisingly enough no appreciable increase in disposals barring that in criminal appeals is discernible.

29. In view of the heavy arrears in the High Court we consider it necessary that the appellate jurisdiction of the District Judges shall be raised to Rs. 10,000 and that, all first appeals valued below Rs. 10,000/- now pending in the High Court should be transferred to the district courts for disposal. Temporary district judges will have to be appointed to dispose of the appeals that are so transferred. A certain number may have to be posted at the seat of the High Court to dispose of such transferred appeals as are ready for hearing and in which counsel have been briefed. The burden that will fall on the district judges by reason of this change can be reduced by their being asked to restrict themselves to the trial of sessions cases and disposal of civil and criminal appeals and criminal revisions. All original suits excepting those that are exclusively triable by them should be transferred to the subordinate judges and the latter should send all the appeals pending before them to the district courts. Though the subordinate judges may continue to exercise the powers of assistant sessions judges they should not be called upon to do so much of sessions work as they are doing at present.

30. The following Table shows the annual average institution of each category of proceedings in the district and sessions courts and courts of Assistant Sessions Judges during the three years preceding 1957.

TABLE No. 11

Category of proceeding	Average number instituted
1	2
Sessions Cases	904
Criminal Appeals	3494
Civil Appeals	5451
Civil Miscellaneous Appeals	1136
Criminal Revisions	146

1. The average of criminal revisions is of two years—1954 and 1955.

31. During the years 1954 and 1955 the number of district and sessions judges remained constant in the Andhra region; this will enable us to calculate the annual average institution and disposal per judge.

TABLE No. 12

Category of proceeding	Average institution per judge		Average disposal per judge	
	1954	1955	1954	1955
1	2	3	4	5
Civil Suits	25·5	25·0	28·2	23·4
Civil Appeals	227·0	200·0	253·0	209·0
Civil Miscellaneous Appeals	36·1	37·0	46·2	38·0
Sessions Cases	44·0	40·4	44·0	40·6
Criminal Appeals	106·0	112·7	99·2	118·0
Criminal Revisions	21·7	18·4	19·0	18·2

32. We shall now examine how much extra work will devolve on District Judges as a result of their appellate powers being raised and the subordinate judges relieved of this class of work. The annual average institution of first appeals valued between Rs. 5000/- and Rs. 10,000/- in the High Court during the triennium 1954-56 was 268 while that of appeals valued upto Rs. 5000/- filed in the subordinate judges courts was 2007. Including the present annual average of 3444 instituted in the District Courts, there will be on an average about 5719 appeals instituted in a year. On the basis of the average disposals per district judge during the years 1954 and 1955 (*vide* Table No. 12) there would appear to be adequate work for about twenty-five judges. We should not however be understood as suggesting that the cadre strength of District and Sessions Judges should be fixed at this figure. The approximate number of officers that would be required to keep pace with the institutions has been worked out only in a broad manner.

The following Table (Table No. 13) shows the pendency of the different categories of proceedings triable by District and Sessions Judges as on 1-1-1957.

TABLE No. 13

Category of proceeding	Pending on 1-1-1957
Civil Appeals	4515
Civil Miscellaneous Appeals	709
Sessions Cases	152
Criminal Appeals	377
Criminal Revisions	99

33. Though the number of first appeals valued upto Rs. 10,000/- pending in the High Court is not available, assuming that all first appeals of this value instituted between 1952 and 1956 are pending, approximately 1350 appeals may have to be transferred to the District Courts. Thus the District Judges will have a total of about 5865 appeals to clear off apart from other categories of proceedings. Temporary district judges will have to be appointed and entrusted with the task of disposing of these pending proceedings so as to complete their work within two years. Thereafter, the number of officers that will be required to keep pace with the institutions will have to be finally determined.

Concentration of Courts.

34. Unlike in some other States, too many courts are not concentrated in a number of stations in this State. In 1953, the distribution of courts in the Andhra region was as shown below:

TABLE NO. 14

Strength of Judicial officers in each station	Number of stations
One Munsif only	27
Two Munsifs only	4
One Munsif and one Subordinate Judge	10
One Munsif and two Subordinate Judges	4
Two Munsifs and one Subordinate Judge	2
Two Munsifs and two Subordinate Judges	2
Two Munsifs and three Subordinate Judges	1
Three Munsifs and three Subordinate Judges	1

35. However, there is some scope for further decentralisation. In the Telangana region, almost all the taluqs have got a Munsif *cum* Sub-Divisional Magistrate.

The High Court.

36. The High Court of the erstwhile State of Andhra started functioning from the 5th July, 1954, that is, about ten months after the State was formed. A large volume of work approximately half the pending file was transferred to the High Court from the Madras High Court. The High Court started working with only three judges. It is learnt that for a considerable time due to inadequacy of judges, largely proceedings capable of being heard by single judges were dealt with. The Government, when moved by the High Court to increase the number of judges, finding the number of second appeals, revisions and the like disposed of to be satisfactory, proceeded to assess the requirement of judges on the basis of the quantity of the work done by single judges in these matters. This was an obviously erroneous approach. Delays in the appointment of judges took place and resulted in accumulation of arrears. Only three judges worked from 5-7-1954 to 1-11-1954 when two more judges were appointed. On

21-2-1955 the number of judges was increased to six and on 7-3-1955 to eight. Seven judges worked from 5-9-1955 to 1-11-1956. The addition of five judges of the erstwhile Hyderabad High Court brought the number of judges to twelve. On 19-12-1956 one more judge was appointed. Recently by the appointment of one permanent judge and three additional judges for a period of two years the number of the High Court judges has risen to sixteen.

37. The following table (Table No. 15) shows the pendency of different categories of proceedings in the High Court on 1-1-1957 (including those from the Telangana region).

TABLE No. 15

Category of Proceeding	Number pending on 1-1-1957
First Appeals	3379
Second Appeals	3456
Appeals against orders	1531
Letters Patent Appeals	130
Special Tribunal Appeals	93
Original Side Appeals	4
Writ Appeals]	94
Special Appeals	3
Writs including Tax Revision Cases	1903
Civil Revision Petitions	3577
Civil References	62
Petitions for leave to appeal to Supreme Court]	46
Original Petitions	17
Original Suits	1
Civil Miscellaneous Petitions	7593
Civil Miscellaneous Second Appeals	332
Criminal Appeals	492
Criminal Revision Petitions	829
Referred trials (Confirmation Cases)	16
Reference (other than those under Section 307 Cr. P. C.)	16
Miscellaneous	145

38. As already stated, approximately 1350 first appeals will have to be transferred to the District Judges if our recommendations are accepted. This should give substantial relief to the High Court. Though we do not have the particulars relating to disposals in 1957, yet we are sure that as an increased number of judges have worked throughout the year, there will have resulted a fall in the number of pending matters. There is however need for continuous vigilance, as the accompanying Table (No. 16) shows that certain categories of proceedings have been pending for over a decade. Although the criminal work is not greatly in arrears there is room for improvement in that field also. It is therefore necessary that steps be taken for the appointment of more additional judges to bring the file under control.

Combination of civil and criminal jurisdiction.

39. The judiciary of the State is completely separated from the executive. In the Telangana region, as already stated, the same set of judicial officers exercise both civil and criminal powers, perhaps, due to the small volume of litigation. This method seems to be working fairly satisfactorily though it may occasionally result in officers not being able to dispose of cases *de die in diem*. By judicious posting of cases, we think, this difficulty can be overcome. But if the jurisdiction of Munsifs is raised and the number of civil suits on their files increases, this system of conferring civil and criminal jurisdiction on the same officer may not continue to work satisfactorily. The criminal work in the courts of Session and Magistrates does appear however to be under control; but there is room for greater efficiency in the Magistrates' Courts.

Court fee on writ applications.

40. In this State, a court fee of Rs. 100/- is payable on every application presented to the High Court under Articles 226 and 227 of the Constitution of India other than an application for the issue of a writ of *Habeas Corpus*. It appears to us that the levy of such a high court fee on these applications would amount in many cases to a deprivation of the fundamental rights of the poorer classes of citizens. We may mention in this connection that even in the Supreme Court, the fee levied on an Article 32 petition is only Rs. 10/-.

Touting.

41. A number of witnesses stated that the evil of touting was prevalent particularly in certain parts of the Andhra region. We were told that these "village barristers" employ advocates of their choice to whom they direct the litigants and that these touts "swallow" a considerable portion of the fee payable to the advocates. A very senior member of the Bar stated in unambiguous words that, "there are some people who are engaged as unofficial solicitors. They take money from clients". We trust that the legal profession in Andhra Pradesh will take strong measures to combat this evil.

TABLE No. 16

Nature of Proceedings	Year of Institutions											
	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
Regular First Appeals	..	..	..	1	6	16	76	454	559	512	524	550
Regular Second Appeals	15	7	9	7	3	11	23	57	155	604	879	792
Appeals against Orders	..	..	..	1	1	11	23	32	167	339	384	402
Appeals against Appellate Orders	..	..	..	..	..	1	3	14	34	56	111	113
Letters Patent Appeals	..	..	..	..	1	..	2	4	4	28	21	70
Special Tribunal Appeals	..	..	..	..	..	..	..	..	10	30	33	20
Original Side Appeals	..	..	..	..	..	..	..	..	..	..	11	6
Writ Appeals	..	..	..	..	..	..	..	..	3	2	7	82
Writs	..	..	..	..	..	7	25	14	23	33	541	994
Special Appeals	..	..	..	..	..	..	..	..	..	..	..	3
Civil Revision Petitions	6	..	..	3	5	5	30	62	59	350	1047	1173
Tax Revision Cases	..	..	..	..	..	..	..	..	1	..	8	60
Referred Cases	..	..	..	..	..	..	..	..	1	2	..	23
Leave to Appeal to Supreme Court	..	..	..	..	..	1	..	1	5	1	4	34
Original Petitions	..	..	..	..	..	..	..	..	..	..	11	6
Civil Suits	..	..	..	..	..	..	..	..	..	1	..	..
Civil Miscellaneous Petitions	..	..	..	..	3	13	51	93	190	981	1884	4378
Criminal Appeals	..	..	..	..	..	..	..	..	..	..	32	281
Criminal Revisions	..	..	..	..	..	..	..	..	48	1	66	425
Referred Trials	..	..	..	..	..	..	..	..	..	..	..	11
References u/s 307 Cr. P. C.	..	..	..	..	..	..	..	..	..	..	..	..
Other References	..	..	..	..	..	..	..	..	..	..	2	14
Miscellaneous	..	..	..	..	..	..	..	..	4	..	2	99

45.—ASSAM

The Judicial Service.

1. Although the High Court of Assam was established in 1948, yet until August, 1952, there was no separate judicial service in that State. The civil judiciary was not separated from the executive and judicial duties were discharged by executive officers. By notification No. JJD/50/51/23, dated 25th August, 1952, the State Judicial Service (Senior) was constituted. The State had however to wait for nearly two more years before by notification No. LJJ. 84/54/168, dated 9th April, 1954, the State Judicial Service (Junior) was established—and the process of separating the civil judiciary from the executive was completed.

Senior Branch.

2. The senior branch of the Service is devided into two Grades; Grade I which comprises the Registrar, High Court, Legal Remembrancer and the District Judges and Grade II made up of Additional District Judges. Officers in Grade I are in the time scale of Rs. 850—50—1,500 and those in Grade II in the scale of Rs. 800—50—1,150. The strength of the cadre in 1955 was:

Grade I (Senior)

Registrar, High Court	1
Legal Remembrancer	1
District Judges	2

Grade II (Senior)

Additional District Judges	2

(There were also three temporary posts outside the cadre.)

Under the rules not more than one-third of the posts in Grade I (Senior) may be filled by direct recruitment and the rest by promotion from Grade II (Senior) or from Grade I of the State Judicial Service (Junior).

Junior Branch.

3. The Judicial Service (Junior) is also divided into two grades—Grade I consisting of the Subordinate Judges and the Deputy Registrar, High Court, and Grade II consisting of the Munsifs and the Assistant Registrar, High Court. Officers in Grade I are in the time-scale of Rs. 500—50/2—800 and those in Grade II in the scale of Rs. 250—250—300—25—400—EB—25—650—EB—25—750. In 1955 the strength of the cadre was:

Grade I (Junior)

Subordinate Judges (and Assistant Sessions Judges)	6
Deputy Registrar, High Court	1

Grade II (Junior)

Munsifs (including two leave reserve posts and one Law Assistant to the Legal Remembrancer)	21
Assistant Registrar, High Court	1

Recruitment Rules.

4. The Assam Judicial Service (Junior) Rules, 1954, provide for the absorption of those members of the Assam Civil Service who were recruited for the purpose of the judicial branch and an option was given to the law graduates in the executive civil service to enter the Judicial Service. Subject to the above exceptions, the maximum age-limit for entry into Grade II of the junior cadre of the service is twenty-eight years; the limit may be relaxed in favour of a scheduled caste or scheduled tribe candidate or a lawyer of three years' standing. Practice at the bar is not, however, a necessary qualification for recruitment to the judicial service. It is sufficient if a candidate is a graduate in law or a barrister-at-law. Although the practice of recruiting fresh law graduates as munsifs is to be found in other States also, yet singularly enough unlike the other States where a similar system of recruitment prevails, the rules contain no provision for training the new recruits before they are called upon to try cases. In our view, this position needs to be set right immediately.

Lack of training.

5. For direct appointment in Grade I (Junior) a candidate must be a law graduate or a barrister-at-law with seven years' standing at the Bar. Direct recruitment is limited to one-third of the total strength of the cadre.

Tribal and non-tribal areas.

6. The population of the State according to the census of 1951 is 90,43,707 distributed over an area of 50,043 square miles. The non-tribal areas of the State comprise the two divisions of Lower Assam and Upper Assam, each of which is a district judgeship. The District Judge, Lower Assam Districts, exercises jurisdiction over the districts of Goalpara, Kamrup, Darrung, Nowgong and the area constituting the municipality of Shillong. We were told that considerable difficulty is being experienced by the fact that in the Shillong District two sets of laws are in force—the ordinary civil and criminal laws within the municipal limits of Shillong and the special laws applicable to the tribal areas in the territory outside the municipal limits. This anomaly should be examined and steps taken to alter the territorial jurisdiction of regular courts. The Upper Assam district—judgeship comprises the districts of Sibsagar, Lakhimpur and Cachar. Areas specified in Parts A and B of the table appended to the Sixth Schedule of the Constitution are the tribal areas.

Administration of Justice in the tribal areas.

7. The administration of the tribal areas is regulated by the provisions of the Sixth Schedule to the Constitution. Separate provisions are made for the administration of civil and criminal justice in these areas. All areas in each

of the items of Part A of the table appended to the schedule constitute autonomous districts. If there are different scheduled tribes in an autonomous district, such area or areas in which the scheduled tribes live can be divided by the Governor into autonomous regions. The administration of each autonomous district and autonomous region is vested in what is known as the district council and regional council. The district and regional councils have the power to constitute village councils or courts for the trial of suits and cases between the parties, all of whom belong to scheduled tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of the schedule apply, to the exclusion of any court in the State. They have also the power to appoint suitable persons to be members of such village councils or as presiding officers of such courts. The appellate jurisdiction is vested in the regional or district councils and no other court except the High Court and the Supreme Court has jurisdiction over such suits or cases. The High Court exercises such jurisdiction over the suits and cases to which provisions of sub-para (2) of para 4 apply, as the Governor may from time to time specify. The suits or cases excluded from the jurisdiction of these tribal courts are those arising out of any law in force in the autonomous district or region, being a law specified in that behalf by the Governor or those relating to the trial of offences punishable with death, transportation for life or imprisonment for a term not less than five years under the Indian Penal Code or any other law for the time being applicable to such district or region. For the trial of such suits or cases the Governor is empowered to confer on the district councils or the regional councils or on courts constituted by such district councils or the regional councils or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure or the Code of Criminal Procedure, as the case may be, as he deems appropriate and thereupon the said council or court shall try the suits or cases in exercise of the powers so conferred. Except as aforesaid, the Codes of Civil Procedure and Criminal Procedure do not apply to any autonomous district or region.

8. In all, there are twenty-five councils presided over by hereditary chieftains to dispose of cases which they are empowered to try under the law according to their tribal and local customs having the force of law. A Judicial Officer with knowledge of the work of these courts who gave evidence before us said that the courts presided over by tribal chieftains lacked training and experience in law but added that they should be allowed to continue for some time before the introduction of the regular judicial system in those areas. The litigation in the tribal courts generally relates to land disputes, succession to hereditary rights, customary rights and boundary disputes. There are a few murders and dacoities often committed through drunkenness. It seems that for the trial of cases referred to in

paragraph 5 of the Sixth Schedule to the Constitution, the services of judicial officers in the non-tribal areas are lent to the tribal areas.

9. More and more laws, in force in the non-tribal areas, are by degrees being applied to the autonomous districts and regions of the tribal areas in the State. In the Khasi Hills district, the general criminal law is applicable but in the United Khasi and Jaintia Hills territories the district council laws are applied. Some difficulty, it is stated, is being experienced in applying the excise laws to the areas under the district councils where illicit distillation of liquor goes on a very large scale. The Chief Secretary explained in his evidence that the tribal people were very anxious to bring within the scope of their district or regional councils as large an area as possible. The laws in force in the non-tribal areas have not been extended to the tribal areas because of the policy of the State Government to allow the tribal people to make their own laws under the third paragraph of the Sixth Schedule to the Constitution and to administer those laws with the help of the Deputy Commissioner and his Assistant. In view of the speeal conditions in the tribal areas we refrain from making any recommendations regarding the pattern of judicial administration in these areas.

10. In 1956, the High Court functioned with three judges including the Chief Justice. Though the volume of work in the High Court is small, the disposal has not kept pace with the institutions and the pendency has steadily increased during the last few years as will appear from the Table given below: The High Court pendency.

सत्यमेव जयते

TABLE No. 1

Nature of proceeding	1954			1955			1956			
	Pending at the beginning	Institutions	Disposals	Pending at the beginning	Institutions	Disposals	Pending at the beginning	Institutions	Disposals	Pending on 1-1-1957
Regular First Appeals	74	24	16	82	36	14	104	32	24	112
Regular Second Appeals	179	111	122	168	158	122	204	166	143	227
Appeals against Orders	57	33	34	56	61	40	77	53	34	96
Letters Patent or Special Appeals	..	..	..	..	..	..	..	5	1	4
Writ Petitions	16	118	64	70	85	124	31	121	72	80
Reveiw Petitions	..	..	..	..	..	..	..	..	..	..
Civil Revision Petitions	18	90	94	14	77	70	21	75	64	32
Reference	5	3	2	6	2	2	6	1	3	4
Petitions for leave to appeal to Supreme Court	15	19	25	9	11	13	7	15	16	6
Original Suits	5	42	11	36	4	30	10	8	3	15
Miscellaneous	26	37	41	22	17	18	21	46	30	37
Criminal Appeals	50	111	105	56	111	89	78	194	91	181
Criminal Revisions	50	157	149	58	156	159	55	179	171	63
Confirmation Cases.	5	2	6	1	1	1	1	4	4	1
References under Sec. 307 Cr. P. C.	..	4	..	4	3	4	3	4	2	5
Other references	18	48	34	32	30	34	28	58	47	39
Miscellaneous	2	3	3	2	..	2	..	3	..	2

11. It is necessary in our view to take prompt steps to control the increasing arrears.

12. The following Table shows the pendency of different classes of proceedings according to the year of institution as on 1st January, 1957.

TABLE No. 2

Nature of Proceeding	Year of Institution					
	1951	1952	1953	1954	1955	1956
1	2	3	4	5	6	7
Regular First Appeals	..	3	18	23	36	32
Regular Second Appeals.	..	..	1	5	86	135
Appeals against orders.	..	..	..	13	44	39
Letters Patent Appeals.	..	..	..	..	..	4
Writs . . .	..	..	..	5	31	44
Revisions . .	..	..	..	..	7	25
References . .	..	..	..	..	..	4
Leave to appeal to Supreme Court.	..	..	..	..	..	6
Original Suits . .	1	1	4	7	1	1
Miscellaneous . .	..	..	..	..	3	34
Criminal Appeals .	..	..	..	..	44	137
Criminal Revisions .	..	..	..	..	3	60
Confirmation Cases .	..	..	..	..	..	1
References under Sec. 307 Cr. P. C.	..	..	..	..	1	4
Other References .	..	..	..	..	1	38
Miscellaneous . .	..	..	..	..	..	3

Increasing power of single judge.

13. The Judges and members of the Bar who placed their views before the Commission laid stress upon the need for increasing the strength of the High Court by one judge. It was said that it was not possible for a single division bench to get through all the work that had to be heard by a bench. In our opinion, this difficulty can be met by increasing the powers of a single judge. This will greatly help in reducing the arrears.

14. The powers of a single judge of the High Court are far too low. He cannot hear any civil appeal or revision which is valued over Rs. 2,000 or any criminal matter in which a sentence of imprisonment exceeding one year has been passed. This is anomalous when we remember that District Judges in the State can hear civil appeals below Rs. 5,000 in value, and as Sessions Judges decided appeals from a sentence of imprisonment for four years. If by reason of special local conditions it is not thought desirable to increase the single judge's power to the full extent recommended by us earlier his powers may be enlarged

so as to enable him to dispose of all civil and criminal revisions, all appeals valued below Rs. 5,000 and all criminal matters in which a sentence of seven years' imprisonment has been passed. This will result in a substantial improvement in the state of the file of the High Court. This will be apparent from the two Tables set out below showing the value of the appeals filed in the High Court and the number of days on which it was necessary to constitute division benches to dispose of particular classes of work. It is obvious that at present a division bench has to be constituted to dispose of what is really petty work.

TABLE No. 3

	1954	1955	1956
Regular First Appeals			
Below Rs. 5,000	4	4	4
Between Rs. 5,000 and Rs. 10,000	11	15	16
Above Rs. 10,000	9	17	12
Regular Second Appeals			
Below Rs. 1,000	94	123	127
Between Rs. 1,000 and Rs. 2,000	16	19	21
Between Rs. 2,000 and Rs. 5,000	1	16	18

TABLE No. 4

	Number of days for which Division Benches sat		
	1954	1955	1956
Second Appeals	38	47	51
Appeals Against orders	18	29	28
Civil Revisions	94	70	62
Criminal Appeals	99	83	87
Criminal Revisions	101	32	71

Hours of Work.

15. We were informed when we visited Gauhati that the Judges of the High Court sat in Court for only four hours every day. This practice seems to have started at a time when there was not enough work and there is no warrant for its continuance. By raising the number of working hours to five as in other High Courts there will be an increase of six hundred judge-hours on the basis that all the three Judges work for two hundred days in the year. There will thus be an addition of one hundred and twenty Judge-days in the year. If the enhancement of the powers of single Judges and the increase in the

number of working hours fails to bring the pending file under control, an additional Judge may be appointed for a short term.

Delays in filling vacancies.

16. The inordinate delays that have occurred in filling up vacancies in the High Court constitute yet another major reason for the arrears. A former Registrar of the High Court stated in his evidence that "There were only two Judges for more than eighteen months." According to the information made available to us there has been invariably a gap of about eight or nine months between the retirement of a Judge and the assumption of office by another in his place.

Preparation of paper books.

17. Delays in disposals were said to have also been occasioned by difficulties in getting paper books prepared in time. The Government press in Shillong had to give priority to other work—and typed paper books could not be prepared as the High Court was understaffed. This in our view should not be a ground for delay. The establishment of a branch press at Gauhati, the entrustment of the work to competent private printers, or an increase in the number of typists and other subordinate staff in the High Court are all measures which can be easily taken. The last two have the advantage of being capable of being implemented immediately.

18. The Table below shows the number of district and sessions judges and subordinate judges who worked during the years 1954, 1955 and 1956 and the work turned out by them.

सत्यमेव जयते

TABLE No. 5

Nature of Proceeding		District & Sessions Judges			Subordinate Judges and Assistant Sessions Judges		
		1954	1955	1956	1954	1955	1956
Civil Suits	P	25	41	31	1463	1308	1435
	I	65	67	37	729	1151	718
	D	23	26	25	766	688	708
	B	14	18	24	835	760	584
	A	27	13	11	473	675	644
Civil Misc. Cases and Petitions	P	72	70	143	240	263	283
	I	316	357	284	455	487	498
	D	220	149	159	420	441	463
	B	63	137	210	251	265	186
	A	7	6	1	12	18	22
Civil Appeals	P	379	230	304	723	741	713
	I	243	717	263	511	861	727
	D	229	367	214	409	305	282
	B	117	128	160	638	508	613
	A	113	176	127	103	205	319
Civil Misc. Appeals	P	41	42	55	93	76	100
	I	78	116	121	177	233	231
	D	50	68	102	183	140	152
	B	30	50	68	75	97	105
	A	12	5	3	1	3	3
Sessions Cases	P	152	107	156	48	105	79
	I	446	419	488	..	..	2
	D	197	215	337	237	181	169
	B	105	144	139	99	63	75
	A	2	12	2	6	16	4

Criminal Appeals	P	430	471	378	..	..	..	
	I	978	889	1079	..	..	..	
	D	937	1020	990	..	..	10	
	B	471	345	442	..	..	9	
	A	..	33	..	..	..	..	
Criminal Revisions	P	79	82	127	..	..	..	
	I	231	305	324	..	..	..	
	D	228	221	335	..	..	..	
	B	82	127	110	..	..	..	

NOTE.— (1) The figures shown in the disposals columns do not include disposal by transfers.

(2) There are no criminal revisions pending over a year.

(3) Five officers worked as District & Sessions Judges in 1954.
Seven officers worked as District & Sessions Judges in 1955.
Seven officers worked as District & Sessions Judges in 1956.

(4) Eight officers worked as Subrodinate Judges during the year 1954, 1955 & 1956 and six of them were invested with powers of Assistant Sessions Judges.

(5) 'P' stands for pending at the beginning of the year.
'I' stands for instituted during the year.
'D' stands for disposed of during the year.
'B' stands for pending below one year.
'A' stands for pending over one year.

District Courts. Increase in number of judges necessary.

19. The annual average out-turn of work per district and sessions judge and subordinate and assistant sessions judge during the same period based on the institutions and disposals is as shown in the Table set out below.



TABLE No. 6

Civil Suits			Civil Miscellaneous cases & Petitions			Civil Appeals			Civil Miscellaneous Appeals			Sessions Cases			Criminal Appeals			Criminal Revisions		
Avg. available dis.	Avg. dis.	Avg. pency.	Avg. Available dis.	Avg. dis.	Avg. pency.	Avg. Available dis.	Avg. dis.	Avg. pency.	Avg. available dis.	Avg. dis.	Avg. pency	Avg. available dis.	Avg. dis.	Avg. pency	Avg. available dis.	Avg. dis.	Avg. pency.	Avg. available dis.	Avg. dis.	Avg. pency.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
District Sessions Judges																				
14	4	5·6	65·4	27·8	22·2	112·4	42·6	43·1	24	11·6	9	93	39·4	21·2	222·4	155	68	60·4	41·2	17
Subordinate Judges & Assistant Sessions Judges																				
283·5	90·1	165	93	55·1	31·4	178·1	41·5	99·4	38	19·8	12	..	..	..	..	..	..	..	..	..

NOTE.—(1) Six subordinate judges who were invested with powers of Assistant Sessions Judges disposed of 32·6 Sessions Cases on an average per year per Judge.

(2) The figures shown in the column "Average disposals" do not include disposals by transfer, and this, perhaps, is the reason why the totals of the columns "Average disposal" and "average pendency" of different classes of proceedings do not equal the figures shown in the columns "Average available for disposal".

20. From the foregoing analysis it is apparent that there is considerable congestion in the courts of session. The District and Sessions Judge cannot expect much relief in this matter from the existing number of subordinate judges as they will have to devote themselves almost wholly to their original civil work if their files are not to get out of control. An increase in the number of District and Sessions Judges is in our opinion necessary if the delays in Sessions trials are to be avoided and the arrears of civil appeals are to be cleared. The existing number of subordinate judges should be able to dispose of the arrears within a reasonable time and also to keep pace with the institution of original suits besides disposing of a few sessions cases. With an increase in the number of district and sessions judges it ought not to be difficult not only to clear off the pending appeals in the subordinate courts but also to dispose of sessions cases with reasonable promptness. We, therefore, recommend an increase in the number of district and sessions judges.

Subordinate Judges strength sufficient.

Courts of Munsifs.

21. A quantitative analysis of the work done by Munsifs during the triennial period 1954-56 is given below:



Table No. 7

No. of officers			Civil Suits											
			Institutions			Disposed of			Pending					
									1954		1955		1956	
1954	1955	1956	1954	1955	1956	1954	1955	1956	Below one year	Over one year	Below one year	Over one year	Below one year	Over one year
16	16	16	9383	11844	9813	8275	9702	9983	4588	1562	4934	1330	4815	1196

Civil Miscellaneous Cases and Petitions

Institutions			Disposed of			Pending							
						1954		1955		1956			
1954	1955	1956	1954	1955	1956	Below one year	Over one year	Below one year	Over one year	Below one year	Over one year		
1873	2186	2022	1820	1899	1988	789	99	795	81	836	73		

We also set out the pendency of suits in the courts of munsifs on 1st January 1955, according to the year of institution, and the annual average outturn of work of Munsifs

TABLE No. 8

Prior to 1949	1949	1950	1951	1952	1953	1954	Total
1	2	3	4	5	6	7	8
28	42	30	115	290	1142	4503	6150

TABLE No. 9

Civil Suits

Average available for disposal	Average disposal	Average pendency
1	2	3
1013·1	502·5	507·6

Civil Miscellaneous Cases and Petitions

Average available for disposal	Average disposal	Average pendency
1	2	3
181·6	118·7	55·6

Increase in number necessary.

From these figures it is apparent that while the disposals have steadily increased since 1954 they have not been able to keep pace with institutions. Although the total pendency has increased, it is gratifying to note that the number of year old suits has progressively fallen and in spite of the number of munsifs having remained the same the position with regard to old suits has improved since 1954. But further improvement in disposals under existing conditions of work does not appear possible unless there is some increase in the number of munsifs.

22. The main reasons for the delay in the disposal of civil suits as appears from a perusal of inspection notes and order sheets are as follows:— Reasons for delay in disposal.

(1) Service of summons on the defendant normally takes a much longer time than it should, because of lack of control over the process serving agency. It seems that the process servers receive a very low salary. Travelling conditions in this State are also often difficult. Improvements in this matter could be brought about by strict supervision. However the evil can be radically cured only if adequate remuneration and travelling allowances are paid to the process servers.

(2) Adjournments are frequently granted without reasonable cause and many orders granting adjournments do not state the reasons therefor.

(3) Much time is taken by the parties to file their documentary evidence and summon witnesses. The rules in this regard are often completely ignored and frequent opportunities are given to file documentary evidence and for summoning of witnesses even after the framing of issues. Cases are adjourned a number of times for that purpose.

(4) The provisions relating to the issue of commissions are abused.

23. Supervision of the work of the subordinate courts by regular inspection by the district judges is very rare. Some of the courts have not been inspected for three or four years. A system of regular and systematic inspections should be introduced. Inspection.

24. Difficulties were also caused till recently by the fact that civil judicial officers had to do executive work also. For example, in 1954 the Munsif, Shillong, was also the Assistant to the Deputy Commissioner and Law Assistant to the Legal Remembrancer. As Assistant to the Deputy Commissioner he had to look after the work in tribal areas.

25. Even at present the fact that the magistrates are called upon to do executive work adversely affects their judicial business and contributes considerably to the delay in disposal of cases. As regards the criminal cases we found that investigations were invariably delayed and that police officers failed to produce their witnesses on the dates of hearing. The police officers themselves did not respond to the summons for a number of times and the courts had to wait till it was convenient for the officers to attend. We are constrained to remark that the police themselves have contributed to a large extent to the delay in the disposal of criminal cases. Magistrates were generally found very indulgent in dealing with the witnesses and even with accused persons who were absent on the date of Criminal Courts. Absence of witnesses. Firm action not taken.

hearing. No action was taken against them for deliberate default in appearance. Greater strictness in these matters by presiding officers is essential. Prior to the amendment of the Code cases occurred in which the accused claimed the privilege of *de novo* trial twice or even thrice by reason of frequent transfers of magistrates. Unbusinesslike posting and piecemeal hearing of cases are common. This is one of the worst features of the administration of criminal justice. The following is an illustration of the manner in which criminal cases are handled.

Case No. 863 of 1952 was first disposed of on 8-9-1953 and resulted in conviction. On 2-11-1954 the conviction was set aside and re-trial was ordered. The accused appeared on 3-12-1954 and was enlarged on bail. On 7-1-1955 all prosecution witnesses were absent. On 8-2-1955 two prosecution witnesses were present and were examined. On 4-3-1955 two more witnesses were examined and in April, 1955 the magistrate was transferred. On 4-4-1955 all witnesses were absent and as the magistrate was under orders of transfer, the case was adjourned on 7-6-1955. On that date the witnesses did not turn up and the trial was adjourned to 5-7-1955 on which date one witness was present but was not examined as the magistrate was busy with administrative work. For the next three dates in succession the prosecution witnesses were absent. On 19-10-1955 no witness was present though served with summons. On 15-11-1955 prosecution closed their case after examining one more witness and the case was fixed for further cross examination on 27th December, 1955. On that date the magistrate was out of station. Such a state of affairs is capable of being remedied only by separating the judiciary from the executive and by strict supervision.

सत्यमेव जयते

46.—BIHAR

General.

1. Originally the State of Bihar was a part of the Province of Bengal. In 1912, the Province of Bihar and Orissa was constituted as a separate unit by taking Bihar, Orissa and the Commissionership of Chhota Nagpur out of the old Province of Bengal and the district of Sambalpur out of the Central Provinces. The present State of Bihar came into existence when Orissa was carved out as a separate province in 1936. Prior to the reorganisation of the States, the area of the State was 67,164 square miles and according to the last census it had population of 38,779,562. No substantial changes came about in the State on account of the recent reorganisation, except, that some portions of the two districts of Purnea and Manbhum, were transferred to the State of West Bengal. Administratively, the State is divided into 17 Districts and 1 Sub-District, which are grouped in 4 Divisions namely, Patna, Bhagalpur, Tirhut and Chhota Nagpur.

Organisation of Subordinate Judiciary.

2. There are fourteen judgeships in the State. The Bihar Superior Judicial Service which is composed of District & Sessions Judges, Additional District and Sessions Judges, Registrar High Court, Secretary and Dy. Secretary to the Government, has a sanctioned strength of 41, out of whom 16 are District and Sessions Judges and 25 Additional District and Sessions Judges. The scale of pay of District and Sessions Judges is the same as the senior scale in the Indian Administrative Service, that is, Rs. 800—50—1,000—60—1,300—50—1,800, but the Additional District and Sessions Judges, who perform exactly the same functions as District and Sessions Judges, except that they do not exercise any administrative functions, are in the scale of Rs. 800—50—1,500. This is an anomaly which exists not only in Bihar but also in some other States. In our view the administrative duties of the District Judge do not justify the difference in their scales of pay.

Recruitment to the Superior Judicial Service is made both by promotion and by direct recruitment. Two-thirds of the posts are filled by promotion and one-third by direct recruitment from the Bar.

3. The Bihar Civil Service (Judicial Branch) is composed of Subordinate Judges and Munsifs, with a sanctioned strength of 71 and 232 respectively. Some of the posts are temporary, but it is understood that they are being converted into permanent posts. Subordinate Judges are on the time scale of Rs. 350—15—380—30—770—40—850. Recruitment to the posts of Subordinate Judges is

made by the High Court by promotion of Munsifs who have been confirmed in the service. It is gratifying to notice that in this State in making promotions to higher judicial ranks, the criterion of merit is strictly applied and not merely that of seniority. Likewise, very strict tests are applied in allowing officers to cross the efficiency bar. A number of instances were brought to our notice, in which judicial officers were either stopped at the efficiency bar, or were passed over for promotion and junior officers superseded them.

Various modes of recruiting Munsifs have been adopted from time to time. The existing recruitment rules came into force in September, 1955. Under these rules Munsifs are recruited on the basis of a competitive examination held by the State Public Service Commission. The requisite qualifications are, that the candidate should be a law graduate with at least 2 years practice at the Bar and must be between 25 to 29 years of age; the maximum age limit is however relaxable upto 34 in the case of Scheduled Caste candidates. The syllabus for the written examination which carries 600 marks, comprises four compulsory papers which includes General English, General Knowledge, Elementary General Science and General Hindi and four out of six optional papers in Law, in which the paper on the Law of Evidence and Procedure is compulsory. The *viva voce* test, which carries 200 marks, is conducted by the Public Service Commission, with which a judge of the High Court is associated as an expert. In the last selection, candidates who obtained a minimum of 45% marks in the written test were called for the *viva voce* test.

Munsifs are on the time scale of Rs. 220—25—395-E.B.-25—545—E.B.-25—670—20—750. It may be remarked that in this State, the initial salary of the Munsif is the lowest in the country. In contrast, the officers of the Bihar Civil Service (Executive Branch), who are called Deputy Magistrates and Deputy Collectors, draw pay on the scale of Rs. 220—25—320-E.B.-25—570-E.B.-25—770—30—800.

The anomaly is particularly striking as entrants to the executive branch can enter service at the earlier age of 21 and are not required to have the additional qualification of a law degree. It is therefore not surprising that the judicial service has failed to attract talent. The difficulty of finding suitable recruits has been aggravated by the fact that in recent years due to the increase of work and the separation of the judiciary from the executive it has become necessary to recruit larger numbers. This has compelled the State to recruit inferior personnel. In fact we were told that recently a list of 110 names was made out of 300 candidates for 75 vacancies, but the general level of the candidates was so poor, that but for the need of

filling vacancies the Public Service Commission would not have selected more than 25 or 30 out of those 110 candidates. Higher scales of pay may perhaps go some way towards securing better recruits and more intensive training may make the persons more efficient judicial officers.

4. There is another aspect which deserves mention. There is a considerable over-lapping in the scales of pay of Munsifs and that of Subordinate Judges. Hence, if a Munsif is promoted as a Surordinate Judge, it is likely that all that would probably be done is, to fix his initial salary immediately above his pay in the scale of pay allowed to the Subordinate Judges. If that is so, the promotion of a Munsif would amount merely to a change in the designation and a discharge of functions with a greater responsibility without any commensurate monetary advantage. We have already adverted to this matter and made appropriate recommendations in our chapter on "Subordinate Judiciary".

5. A commendable feature in this State which may with advantage be adopted elsewhere is the comprehensive training given to those recruited as Munsifs, before they are placed in charge of courts. The training is for a period of 2 years, during which the probationer has to work with a Senior Munsif and a Subordinate Judge for 6 months, as a Magistrate for 6 months, and receives training under the District and Sessions Judge for 3 months. He also gets training in the general revenue work in Collectorate for about 4 months, and in survey and settlement for about 3½ months or so. For the next 1½ months he gets training under a Government Pleader in the conduct of cases. During this period of 2 years he has to pass a departmental examination in law, including Tenancy Laws, High Court General Rules and Circular Orders and in Hindi. As there is no shortage of officers, we understand the training of Munsifs is not ordinarily dispensed with in any case. It is however a matter for consideration whether such a lengthy period of training designed for candidates recruited directly from the law college may not be somewhat shortened and intensified now that recruitment is made from practising lawyers.

High Court.

6. The High Court of Patna was established by Letters Patent in 1916. It exercised jurisdiction over Orissa also until a separate High Court was established for that province in 1948.

7. When the court was established in 1916, it started with 7 judges including the Chief Justice. In 1948, after a separate High Court was constituted for Orissa, the strength was 9 judges. The strength has however varied from 12 to 14 judges between 1951 to 1957. At present the strength is 16 judges, two judges having been appointed recently in the beginning of this year. We have referred to the delays in filling up vacancies in this High Court in an

earlier chapter. Such delays in this State have ranged between 2 months to 11 months. The delays in effect amount to depriving the High Court of the services of a judge for a period of 5 years, 8 months and 15 days between 1951 to 1957. In addition, the services of judges have been frequently requisitioned for non-judicial work without a substitute being provided.

8. The following statement shows the state of work in the High Court since the year 1949:—



Statement showing the Appellate work done in the High Court of Patna during the years 1949-1956.

		1949	1950	1951	1952	1953	1954	1955	1956	Remarks
No. of Judges		9	12+1 judge appointed under Art. 224.	12	12	12	13	14	14	
First Appeals against Decrees	I	400	490	574	497	439	552	552	726	
	D	361	216	287	297	300	262	285	401	
	P	1306	1580	1867	2067	2206	2496	2736	3088	
Second Appeals against Decrees	I	2209	2272	1785	1376	1568	1881	2014	1502	
	D	2734	1243	1236	952	848	1333	1958	2289	
	P	2648	3677	4228	4652	5372	5920	5976	5189	
Appeals against Orders	I	383	474	424	405	487	427	418	435	
	D	434	309	323	293	445	359	359	421	
	P	426	591	692	804	846	914	973	987	
Appeals against decisions of a single judge in Appellate jurisdiction.	I	25	28	23	6	20	28	13	35	
	D	24	13	43	7	4	35	6	35	
	P	34	49	29	28	44+6 special appeals.	43	50	50	I— Institution D— Disposal and P—Pendency.
Civil Revisions	I	955	919	859	863	1059	1135	1231	1198	
	D	925	864	878	697	805	1187	1173	961	
	P	343	398	379	545	799	747	805	1042	
Writs	I						413	418	616	
	D						405	761	468	
	P					335	343	373	521	
Criminal Appeals	I	630	616	544	578	743	582	536	654	
	D	564	325	660	481	625	487	622	503	
	P	161	452	330	427	545	640	554	705	
Criminal Revisions	I	1642	1764	1321	1277	1597	1401	1374	1328	
	D	1734	1514	1293	1193	1306	1732	1499	1255	
	P	60	310	338	422	713	382	257	330	

The figures for the years 1949 to 1954 have been taken from the Administration Reports and the figures for the years 1955 & 1956 have been supplied to us by the High Court of Patna.

The congestion of work in the High Court is distressing. Disposals have failed to keep pace with institutions in nearly every branch of work. The number of pending proceedings particularly first and second appeals is staggering. A fair number of criminal appeals are over a year old appeals. The following statement, which indicates the year of the institution of the proceedings pending on 1st January, 1957 gives an idea of the magnitude of the problem.

Statement showing details of the proceedings pending on 1st January, 1957 according to the year of institution.

Year	First appeals	Second appeals	Appeals against orders	Civil revisions	Miscellaneous judicial cases including writs.	Criminal appeals	Criminal revisions
1	2	3	4	5	6	7	8
1944	..	..	..	..	..	..	..
1945	..	..	..	..	..	..	..
1946	1	..	..	..	..	..	..
1947	18	..	..	..	..	..	..
1948	155	1	..	1	..	..	..
1949	219	34	..	..	..	..	..
1950	257	127	2	2	..	..	..
1951	315	284	32	..	1	..	..
1952	301	803	99	4	10	..	..
1953	262	825	129	41	14	..	..
1954	419	943	162	110	33	24	6
1955	452	1085	229	330	150	170	23
1956	689	1087	334	554	533	511	301
Total	3088	5189	987	1042	741	705	330

When we visited Patna in November 1957, we were told that the High Court was then still dealing with First Appeals instituted in the year 1949 and Second Appeals instituted in 1952 and 1953. It is a matter of regret that this progressive accumulation of arrears should have been allowed to continue without any addition to the strength of the court particularly between 1950 and 1954. The highest disposal of First Appeals in any single year was in 1956, when 401 First Appeals were disposed of. Similarly the largest number of Second Appeals disposed of in any one year was 2,734 in 1949. Even if disposals are maintained at these figures, it would take the High Court over seven years to dispose of the First Appeals and nearly two years to dispose of the Second Appeals pending at the end of the year 1956.

We have not got the figures of average duration for the years 1955 and 1956, but the gravity of the problem can be appreciated from the fact, that in 1953 the average duration of a contested First Appeal was 2151 days *i.e.* about 6 years and in 1954 it was 1,877 days, *i.e.*, about 5 years and 2 months. Even uncontested First Appeals take about three years for disposal. The average duration of Second Appeals in 1954 was 1,504 days *i.e.* a little over 4 years. The state of work in this High Court strikingly illustrates the fact that in our country greater delays occur at the appellate stage and particularly in the High Courts. The following Tables clearly bring this out:—

Year	Average duration in days of a contested suit in a Munsif's Court	Average duration in days of Civil Appeal in District Courts	Average duration in days of Second Appeal	Total time taken
1954	504	D. J. 658 S. J. 349	1504	2666=7 years 4 months. 2357=6 years 6 months.

Year	Average duration in days of a contested suit in Subrodinate Judge's Court	Average duration in days of First Appeal	Total time taken
1954	763	1887	2640=7 years.

This sad state of affairs excited strong and naturally better comment. It appears to us that these delays are likely to persist notwithstanding the recent increase in the strength of the court as the increased number will be just enough to enable the court to keep pace with current institutions.

9. When we visited Patna, we were informed that at least 10 Additional Judges for a year or 5 Additional Judges for two years would be necessary to wipe out the accumulated arrears. This estimate was worked out on the basis that on an average, a Judge in Bihar is able to dispose of about 550 cases (Criminal and Civil) per year. The total number of cases pending at the end of 1956 was about 12,317. Of these, about 7,000 would be disposed of by the 14 permanent Judges; the balance of over 5,000 cases would need for their disposal about 10 Judges in one year or 5 Judges in 2 years. It is possible that this might turn out to be an underestimate as over 3,000 first appeals are pending and of these nearly 2,000 must be over two years old. It is uncertain whether a single judge or a Bench could dispose of 500 of these appeals which are all likely to be

contested in a year. It cannot be said that the judges are not alive to the need for expedition. In fact we were told by some members of the Bar that the existence of a large volume of arrears in the High Court had greatly affected the psychology of Judges who tried to dispose of matters without giving a patient hearing to the advocates.

Recently, the High Court has amended the rules, to enable a single Judge to hear all Second Appeals, First Appeals against decrees upto Rs. 10,000 and against orders upto Rs. 20,000, and all civil revisions irrespective of the value. He is also empowered to hear criminal appeals in cases, in which the substantive sentence passed does not exceed 10 years and also writ petitions against the orders of the Panchayat Courts. This step should go a long way in economising judge power and expediting disposal. Although there was not much opposition at the Bar to the enhancement of the powers of a single judge, some senior members of the Bar expressed the view that such work was not unoften assigned to very junior judges and that Benches of junior judges were also common. While there might undoubtedly be difficulty in view of the recent increase in the strength of the High Court in finding a sufficient number of senior judges for all the categories of work in which their services would be desirable, yet we feel that an effort should be made to entrust as far as possible all single judge work to a senior judge and to have at least one experienced judge in each Bench. Another measure which is bound to give immediate relief to the High Court is the enhancement of the appellate jurisdiction of the District Judge to Rs. 10,000 and the transfer of all appeals below that value pending in the High Court to the District Courts. We understand that out of the 3,088 first appeals pending in the High Court about 2,000 are valued below Rs. 10,000. The transfer of these appeals to the District Courts should largely relieve the congestion in the High Court. It is necessary to emphasise that the cadre of District Judges must be strengthened for this purpose and additional District Judges appointed to dispose of the transferred appeals. An increase in the single judges jurisdiction to Rs. 15,000 might also have beneficial results.

Functions of Registrar.

10. We have noticed earlier that the Registrar of this court is empowered to admit Second Appeals and have expressed ourselves against the continuance of this practice.

Paper books.

11. One reason for the delay in the disposal of civil appeals is said to be the extreme slowness with which records of cases are printed by the Government Press. We were told that records of appeals instituted in 1947 had not been printed in 1953. As the Government Press is unable to cope with the work, Government has entered into a contract with a private press for printing the records and large sums are paid annually to that press for the purpose.

At one time, to avoid delay, there was an attempt at getting the paper books printed privately by the parties but the experiment did not prove successful, as a large number of mistakes occurred. We however understand, that the Government has agreed to provide a separate press for the High Court by the end of 1958. We trust that this will solve the difficulty. The suggestions made by us earlier with regard to the preparation of paper books may also be given a trial so that occasion may not arise for the increased number of judges to find themselves without work by reason of paper books not being ready.

Volume and nature of litigation.

12. The following statement shows the number of suits instituted in the subordinate courts during the years 1951—56.

Year	1951	1952	1953	1954	1955	1956
Institutions.	105,897	117,293	119,946	134,123	116,250	90,992

We have not got detailed information for the years 1955 and 1956 but the statistical data available for the years 1951 to 1954 reveals that nearly 68 per cent. of the suits were under the rent laws. It will be noticed that there has been a considerable fall in institutions after the year 1954. This is largely attributed to the land reforms and the abolition of Zamindaris in the State. The rise in institutions in 1954 was partly occasioned by the anxiety of the landlords to realise arrears of rents before the full implementation of Land Reforms.

The administration reports upto 1954 show that nearly 90 per cent of the suits instituted were of value not exceeding Rs. 1,000. Suits below Rs. 2,000 were roughly 93 per cent and about 96 per cent of the total institutions was below Rs. 5,000. In view of the recent changes in the law, the rent suits will disappear and the pattern of work in the civil courts will change.

Pecuniary jurisdiction.

13. Though specially selected Munsifs can be invested with jurisdiction to try suits upto Rs. 4,000, the pecuniary jurisdiction of a Munsif is ordinarily limited to Rs. 1,000. The number of Munsifs with a jurisdiction upto Rs. 2,000 or more is very small. In view of the decline in the number of suits of low valuation, the intensive training given to newly appointed Munsifs and the fall in the value of money, we are of the opinion that the jurisdiction of Munsifs should be raised to Rs. 5,000. This will give substantial relief to the subordinate judges and provide sufficient work to the Munsifs. The small cause jurisdiction of Munsifs is limited to Rs. 250. The ordinary jurisdiction of Subordinate Judges is unlimited, but their small cause jurisdiction is limited to Rs. 500. This also may be raised with advantage.

State of file in courts of Subordinate Judges and Munsifs.

14. The position of regular suits in the courts of Munsifs and Subordinate Judges during the years 1951—1956 is shown separately in the following two statements.

Original suits in the Courts of Munsifs

Year	Institutions during the year	Total disposal during the year	Disposal after full trial	Average duration in days of full trial cases	Pendency at the end of the year	Suits over one year old
1	2	3	4	5	6	7
1951 .	90,584	1,00,650	10,602	451·8	57,276	16,660
1952 .	100,413	1,26,885	14,296	504·6	54,469	14,423
1953 .	101,842	1,21,939	13,845	497·6	51,729	9,818
1954 .	115,745	1,33,045	11,671	503·6	50,809	8,096
1955 .	96,420	1,03,714	..	..	46,635	6,538
1956 .	71,945	83,796	..	..	35,879	7,240

Note.—Institutions do not include cases restored or otherwise received.

Original Suits in the Courts of Subordinate Judges

Year	Institutions during the year	Total disposal during the year	Disposal after full trial	Average duration in days of full trial cases	Total pendency	No. of suits pending for more than one year
1	2	3	4	5	6	7
1951 .	3,346	5,313	1,392	564·4	4,754	2,022
1952 .	3,096	4,725	1,206	629·2	4,855	2,260
1953 .	3,137	4,656	1,020	713·1	5,189	2,651
1954 .	2,939	5,309	1,135	762·6	5,167	2,730
1955 .	2,773	3,605	..	..	4,560	2,380
1956 .	2,699	3,345	..	..	3,963	1,915

Note.—Institutions do not include cases restored or otherwise received.

These statements reveal that the position with regard to the regular suits is on the whole satisfactory. There has in recent years been a gratifying fall in the total number of pending suits as well as in the number of year old suits. It is obvious that the number of judicial officers

is not inadequate and throughout the period, 1951 to 1956, both Munsifs as well as Subordinate Judges have been able to keep pace with the institutions. The proportion of more than one year old cases to the total number of pending suits in a Munsif's court is only 20 per cent, although in Subordinate Judge's courts this proportion is nearly 48 per cent. This however is inevitable, as the percentage of contested suits in the courts of the Subordinate Judges is as high as 38 per cent as against 10 to 12 per cent in the courts of Munsifs. This disparity is accounted for by the large number of uncontested rent suits instituted in the Munsifs' courts. Thus out of a total of 1,19,964 regular suits disposed of by Munsifs during the year 1954, 96,001 were suits under the rent law, and of those only 4,902 were contested suits. The average duration of a contested suit in Munsifs' courts in 1954 was 503 days *i.e.*, about 1 year and 4 months and in the Subordinate Judges' courts 762 days *i.e.*, about 2 years and 1 month. The average duration of a small cause suit in 1954 in Munsifs' courts was 188 days *i.e.*, about 6 months and in a court of a subordinate judge was 210 days *i.e.* about 7 months. Notwithstanding these figures there is, we think, room for considerable improvement particularly in the disposal of small cause suits. The following statements show the average disposal of work of Munsifs and Subordinate Judges during the year 1954.

Munsifs

Civil Suits		Small Cause Suits		Misc. Civil Cases and Petitions	
Total disposal	Average disposal	Total disposal	Average disposal	Total disposal	Average disposal
1	2	3	4	5	6
1,19,694*	809*	11,784	80	16,312	110

*Of these a very large proportion were uncontested suits under the rent law.

Subordinate Judges

Civil Suits		Small Cause Suits		Misc. Civil cases and Petitions		Civil Appeals		Civil Misc. Appeals	
Total disposal	Average disposal	Total disposal	Average disposal	Total disposal	Average disposal	Total disposal	Average disposal	Total disposal	Average disposal
1	2	3	4	5	6	7	8	9	10
3,149	51	3,566	57	2,716	62	4,777	77	708	11

Note.—Figures in columns 2, 4, 6, 8, and 10 include contested and uncontested matters.

The quantity of disposals by munsifs would appear to be capable of improvement as can be seen from the preceding Table. Greater expedition appears to be possible, if the subordinate judicial officers realise the need for despatch in trying cases. Such awareness seems to be lacking at present. One subordinate judge frankly told us that his test of congestion of work was the number of suits pending in his court which required under the rules an explanation to be given. We were told, that although the statistical returns have a column indicating the number of year old cases, nevertheless, the explanation of a judicial officer was called for by the High Court, only in respect of cases which were more than two or three years old. Greater strictness and vigilance with regard to the pendency of old cases and the furnishing of an explanation for every year old case appear to be necessary. However in assessing the work of munsifs it must be remembered that the Rent Control Act has been recently amended and jurisdiction under that Act has been conferred on Munsifs.

State of file in District Courts.

15. The following statement shows the civil and criminal work done by District Judges and Additional District Judges during the years 1954—56.

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DISTRICT AND SESSIONS JUDGES AND ADDITIONAL DISTRICT AND SESSIONS JUDGES & ASSISTANT SESSIONS JUDGES

Criminal Work

Year	Sessions Cases					Criminal Appeals					Civil and Revisions				
	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1954 .	467	1437	1393	505	6	1845	5939	5828	1908	18	N.A.	3403	3313	628	58
1955 .	511	1527	1380	652	6	1926	5365	5699	1560	32	686	3153	3158	776	.37
1956 .	658	1702	1725	622	13	1592	5481	5454	1552	67	813	2719	3434	1066	12

NOTE.—These figures have been supplied by the High Court of Patna. There are however some discrepancies in these figures.

CIVIL WORK

District Judges

Year	Civil Suits					Misc. Civil cases and petitions					Civil Appeals					Civil Misc. Appeals				
	Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
				Below one year	Over one year				Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
1954	145	64	104	43	52	1,281	2294	2143	1109	314	4316	4877	1462	2694	931	654	1376	785	668	53
1955	95	89	97	53	34	1,423	2725	2231	1398	472	3625	4727	1604	2780	517	721	1510	869	622	39
1956	87	91	52	63	56	1,865	2875	2548	1619	499	3533	4178	2009	2455	534	680	1489	967	640	55

It will be seen from this statement that the civil work, is very much in arrears. The average duration of a contested suit in 1954 in the court of a District Judge was 1114 days, that is, a little less than 3 years. This was the highest in India during that year.

The Subordinate Judges share with the District and Additional District judges a great deal of their civil appellate and sessions work. This will appear from the following two statements.

Civil Appeals

Year	Regular Civil Appeals			Misc. Civil Appeals		
	District judges	Sub-judges	Total	District judges	Sub-judges	Total
1954 .	1,462	4,777	6,239	785	708	1,493
1955 .	1,604	4,676	6,280	869	838	1,707
1956 .	2,009	3,330	5,339	967	646	1,613

Sessions Cases

Year	Committed during the year	No. of cases disposed of	Disposed of by District Judges	Disposed of by Assistant Sessions Judges	No. of cases pending at the end of the year	Average duration from the date of Commitment
1951 .	1,447	1,317	830	487	568	127·1
1952 .	1,518	1,473	890	583	608	147·7
1953 .	1,488	1,629	949	680	469	139·9
1954 .	1,459	1,407	812	595	519	124·9

Notwithstanding the fact that a substantial number of civil appeals are disposed of by subordinate judges, there is long delay in the disposal of regular appeals in the courts of District Judges. The average duration of a contested appeal in the district courts in the year 1954 was 658 days, being the highest in India during that year. As against this, the average duration in the courts of subordinate judges was 349 days.

It is quite evident that in spite of the assistance given by the subordinate judges, the existing strength of the higher judiciary is unable to cope with even the current institutions, leaving aside the mass of arrears that have already accumulated both on the civil and the criminal side. The

enhancement of the appellate jurisdiction of district judges suggested by us will therefore necessitate an increase in their numbers.

16. Jurisdiction under special Acts like the Land Acquisition Act, Succession Act etc., which is at present exclusively exercised by the District Judges and Additional District Judges should be conferred on subordinate judges. We were told that on account of the increasing development activities of the State Government, a large number of cases under the Land Acquisition Act had been referred to the courts of District Judges. This class of cases can be advantageously transferred to the subordinate judges. The enhancement of the pecuniary jurisdiction of munsifs to Rs. 5,000 and the increase in their small cause jurisdiction will give considerable relief to subordinate judges. Suggestions.

17. According to the Rules of the High Court, the District Judge is expected to inspect each subordinate court once in a year or if that is not possible, at least once in eighteen months. The High Court also inspects the District Judges' courts once in two years if the state of work permits it. Recently the practice of making surprise visits to the subordinate courts has also been adopted by some of the District Judges. The rule regarding the periodical inspection of subordinate courts is, however, not observed strictly. We found that in some cases Subordinate Courts had not been inspected for three years. Many of the inspection reports were not satisfactory. The impression left upon us was that the supervision of the subordinate courts needs considerable improvement. The inspection reports were all in a stereotyped form and might have well been written by an intelligent ministerial officer. They did not show that any attempt had been made by the inspecting officer to go into the reasons for the accumulated pending cases, to examine the records of old cases and to indicate to the subordiate officials the way in which they could have avoided the unnecessary delays. We also feel that a more effective use can be made of the returns of pending cases sent up by the subordinate courts to the High Court. At present these returns are consolidated by the High Court office which puts up a comprehensive note. The note is repeated with slight variations by the Assistant Registrar incharge of the returns who sets out against the name of each officer the amount of work done by him during the period of review. The Assistant Registrar also notes whether the work of the officer in question is adequate, satisfactory, below average or commendable. The papers are thereafter put up for the orders of the judge incharge of the English Department. Generally the order passed by the judge as appeared from the few returns which we scrutinised is to write 'approved' or 'yes' or merely to affix his signature to the Registrar's note. No attempt whatsoever appears to be made on the part of anyone in the High Court to examine the explanation given by the officer Supervision.

for the delay in the disposal of cases which require explanation under the rules. We are of the view that far more effective supervision is needed and that a personal interest on the part of the Judge entrusted with the task of supervision is essential.

Execuction Munsifs.

18. Wherever there is concentration of Munsifs' courts, Execution Munsifs are appointed to deal exclusively with execution matters arising out of the decrees passed by other Munsifs. Such Munsifs are generally invested with jurisdiction upto Rs. 4,000/- and all the execution matters of other Munsifs are transferred by the District Judge to this court under section 24 of the Civil Procedure Code. We understand that this system is working quite satisfactorily. The principal advantage of the system is, that with the concentration of execution work in one court, other Munsifs are relieved of much of their miscellaneous work, and they are able to devote their time continuously to the regular work in their courts. We recommend the adoption of this system, in places where a large number of Munsifs' courts are concentrated.

Registrar System.

19. Another peculiar feature about the civil courts in Bihar is the adoption of the Registrar system, following the recommendation of the Civil Justice Committee. Under this system a Munsif, generally a senior officer is appointed at the District Headquarters to assist the District Judge and other Judges in their administrative duties, leaving them free to devote their time to judicial business. Some of the principal functions exercised by the Registrar are the effective daily supervision over the work of the ministerial establishment and process-serving staff of the civil courts, and the performance of the duties of attention to miscellaneous business and the supervision and inspection of offices and subordinate courts. Though the Registrar has no power to receive plaints and petitions and deal with suits and cases upto the trial stage, as recommended by the Civil Justice Committee, nevertheless the system as it obtains, relieves the District Judges and other Judges of a good deal of their administrative duties, leaving them free to devote more time to judicial work. The system has been permanently introduced in the judgeships of Patna, Monghyr and Muzaffarpur. It has also been extended on a temporary basis to the judgeships of Saran, Shahabad and Bhagalpur. We understand that the State Government has decided to extend the system to other judgeships also as soon as financial conditions permit and the High Court has already indicated the order of priority of judgeships, to which the scheme is to be extended.

Provision of stenographers.

20. We were informed that a large number of Munsifs have been provided with stenographers. We trust that all officers will be provided with such assistance.

21. The progress of the separation of the judiciary from the executive in this state has been slow. The State has introduced what is called a "partial" scheme of separation of the judiciary from the executive on an experimental basis in the districts of Patna and Shahabad in 1950, in Gaya, Saran and Monghyr in 1951, and in Muzaffarpur in 1952. Recently the scheme has been extended to six more districts namely, Champaran, Darbhanga, Bhagalpur, Saharanpur, Purnea and Hazaribagh. It is now in force in twelve districts in the State. Separation of Judiciary and Executive.

The principal feature of the scheme is that the criminal work is done by munsif magistrates *i.e.* munsifs invested with magisterial powers or by judicial magistrates belonging to the executive service who are lent to the High Court for doing criminal judicial work. While working as judicial magistrates they are under the control of the High Court through the District and Sessions Judges. Their work is supervised and inspected by the District and Sessions Judges who also maintain their confidential records. Their postings are in charge of the Government who act in these matters in consultation with the High Court. Investing them with judicial powers the District and Sessions Judges are consulted.

Judicial Magistrates have no power to take cognizance of cases; they try only those cases which are transferred to them by the sub-divisional magistrates, who receive all the complaints and police charge-sheets. The Sub-Divisional Magistrates are competent to scrutinise complaints and petitions with a view to dismiss summarily such of them as are frivolous. To avoid any practical difficulty that may arise in regulating the transfer of cases, the Sub-Divisional Magistrates are required to transfer cases, according to the schedule drawn up by the Sessions Judge in this respect. Certain types of minor offences in which the accused generally plead guilty, such as offences under the Indian Railways Act, the Motor Vehicles Act, Police Act, and cases under the District Board and Municipal Acts, the Bengal Vaccination Act, the Prevention of Cruelty to Animals Act and the Bengal Irrigation Act, 1876, are tried by the executive magistrates. Cases under Chapters VII, X, XI, XII, XXXVI of Criminal Procedure Code are also heard by executive magistrates. In cases of emergency, the District Magistrate is empowered to assign executive duties to the judicial magistrates with the prior approval of the District and Sessions Judge concerned. Some Subordinate Judges are also vested with powers of special Magistrates to deal with particular types of criminal cases.

This scheme of separation, though it is real so far as it goes, unlike the so called separation that obtains in Uttar Pradesh and the Punjab, is not complete. Owing to a dearth of personnel, the magistracy even in the separation districts consists of executive officers. Although these officers are for the time being placed under the

control of the district judge and the High Court, yet the fact of their belonging to the executive service and the certainty that they will have ultimately to revert to their parent department is apt to deter them from displaying that zeal and independence in their work which is expected of a purely judicial officer. This system of separation is also partial in the sense that the judicial magistrates and the munsif magistrates are not authorised to take cognizance of cases but instead try cases transferred to them by the sub-divisional magistrates who are executive officers. Further a large number of petty cases are tried by the executive officers. If separation is to be effective and complete, it is essential that all trial work should be entirely in the hands of judicial magistrates who should be empowered to take cognizance of cases on complaint or on a police report.

It is also necessary that officers of the executive service now working as judicial magistrates should be replaced as quickly as conditions permit by munsif magistrates or if found suitable be absorbed into the judicial service.

We may also here notice a few of the difficulties experienced in the working of the scheme of separation in this State. It was stated that the less efficient officers of the executive service who had not come up to the required level were transferred as judicial magistrates and that the best men continued to be retained in the executive service. This appears to us to be only a passing phase which will disappear when ultimately munsif magistrates take over of the duties at present discharged by judicial magistrates.

The experience of this State confirms the existence of certain difficulties which we anticipated in our chapter on the separation of the judiciary. It has been found that the district and sessions judges under whom the magistrates are placed under the new regime do not find sufficient time to supervise their work. Such supervision, as we have already noticed, is essential. This difficulty can be met by appointing judicial district magistrates entrusted with supervision work.

It was stated that the munsif magistrates and the judicial magistrates tended to be rather theoretical in their approach to cases and did not show sufficient awareness of the difficulties experienced by the police in investigating crime and maintaining law and order. Magistrates in the separation districts of this State do not appear to have been given training in police work as suggested by us elsewhere. The representatives of the Government and of the police who gave evidence conceded that if the necessary training were given to these magistrates for a month, such difficulties were not likely to arise. We would recommend that training in the police department for a short period be prescribed for all munsif magistrates.

In the non-separation districts, the magistracy consists of Deputy Magistrates and Deputy Collectors who are members of the Bihar Civil Service and Sub-Deputy Collectors who are members of Junior Executive Service. A large majority of them are not law graduates. The bulk of criminal work is done by them, though some munsifs are also invested with magisterial powers.

Magisterial Courts.

22. The total number of magistrates engaged in the trial of cases in April, 1956, were 403, out of whom 77 functioned in the six separation districts and 326 in non-separation districts. The position has however somewhat altered on account of the extension of the separation scheme to six other districts recently. In the non-separation districts, the magistrates also perform executive functions in addition to the judicial work. The following statement shows the work done by the magisterial courts during the years 1951 to 1954.



Year	Pending at the beginning of the year	Instituted during the year	Disposal during the year	Pending at the end of the year	Average duration in days of criminal cases	Cases under I. P. C.	Cases under special and local laws
1	2	3	4	5	6	7	8
1951	17,812	98,324	93,572	22,553	39·4	61·2	24·8
1952	23,840	103,533	103,115	24,224	43·4	63·1	28·6
1953	24,224	105,006	104,329	24,899	51·6	82·3	28·9
1954	24,899	101,858	100,953	25,792	55·8	82·4	35·1

This statement shows that there has been a progressive rise in the number of pending criminal cases. The average duration has also shown an increase. In April, 1956, on an analysis of the pending work in the magisterial courts it was estimated that, while the strength of judicial magistrates was sufficient to cope with current institutions in separation districts, it was necessary to appoint at least 94 more magistrates in the non-separation districts to deal with current institutions. It was also pointed out that it was necessary to appoint 24 more magistrates in separation districts and at least 50 magistrates in non-separation districts for one year to clear off the arrears of criminal cases. We trust that the appropriate authorities will take steps to recruit the necessary personnel as early as possible.

Court of Session.

23. There are large number of cases pending before the Court of Session. The statement given earlier shows that the existing strength of the Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges is just able to cope with the sessions work. The average duration of 139 days for a sessions case in 1953 was the highest in India in that year. There are quite a few magistrates, who are invested with powers under Section 30 Cr.P.C. The increase in the strength of the higher judiciary and the enlargement in the powers of the First Class Magistrates recommended by us should help to get rid of the delays in the Courts of Session.

Non-attendance of witnesses.

24. Judicial officers engaged in the trial of criminal cases, including Sessions Judges, Additional Sessions Judges and Magistrates, pointed out that police officers did not attend the courts on the dates specified in the summons and that large number of cases, including Sessions cases had for this reason to be adjourned from time to time. One of the Additional District Judges stated that the percentage of cases adjourned on account of non-attendance of witnesses was as high as 75 per cent. in his court. It was said that the police officers did not even acknowledge the service of process so that it was not possible to issue coercive processes against defaulters. As regards the sessions cases, the practice was that the summons for appearance in the Court of Session was issued by the Committing Magistrate, but the fact of service or non-service is never intimated to the Court of Session. Thus neither the Public Prosecutor nor the court could be sure of the attendance of the witnesses. This invariably resulted in piece-meal hearings which lead to inordinate delays in the disposal of criminal cases. We were given to understand that the matter had been taken up by the High Court with the Government on several occasions, but without any substantial result.

Although emergent work may sometimes be a valid explanation for not attending court on the specified date, there can be no justification whatsoever for continued and repeated defaults in appearance. This would be particularly

so in sessions cases where the dates of hearing are fixed well in advance. In order that the court of session may know whether processes have been served or not, we would suggest that processes might be issued by the court of session itself or in the alternative that the committing magistrate who summons the witnesses for attendance in the sessions court should send a report of service or non-service to the court before the trial actually commences.

It was conceded that difficulties also arise by reason of the same police officer being required to attend different courts on the same date. This difficulty, in our opinion, can be met by a systematic distribution of work between the courts. At the moment cognizance of cases is taken by the sub-divisional magistrates who thereafter transfer them to other subordinate magistrates for disposal. Such transfer is often made in a haphazard fashion. If sub-divisional magistrates transferred all cases arising from one police station only to a particular magistrate he would be in a position to post cases with the minimum of inconvenience to the police officers concerned. The police officers themselves will also not be faced with the difficulty of being summoned to appear in the court of more than one magistrate on the same day. It would be even simpler if magistrates other than the sub-divisional magistrates were also empowered to taken cognizance of cases on a police report. If this is done, the jurisdiction of the magistrate might be so fixed as to cover the area covered by one or two police stations. All police reports and charge-sheets coming from the particular police stations would be filed in his court.

Even if these measures be adopted difficulties might still arise if a police officer is required to attend both a magistrate's court and the sessions court on the same day. In such a case the officer should attend the sessions court and intimate his inability to attend the other court to the trying magistrate as soon as he can.

Most of these difficulties can, in our opinoin, be settled at the district level itself by the sessions judge, the district magistrate and the superintendent of police getting together and discussing the matter.

Honorary Magistrates.

25. The system of Honorary Magistrates has prevailed in the State for a long time. They are appointed on the recommendation of the District Magistrate and before the State Government finally appoints them, the High Court is also consulted. A similar procedure is adopted when the term of their appointment is extended.

Trial by Jury.

26. The system of trial by jury prevails in ten out of seventeen Districts of the State, in respect of certain specified offences under the Indian Penal Code. Originally trial by jury applied to a very large number of offences owing however to criticisms about its unsatisfactory working a committee was appointed to go into the working of the

system. The committee made a large number of recommendations and some of them have been accepted and the scope of trial by jury has been curtailed. Nevertheless there does not appear to have been any noticeable improvement in the system of jury trials and our recommendation for abolishing jury trials applies to this State also.

27. Panchayat Courts called "Gram Kutcheries" have been constituted under the Bihar Panchayat Raj Act, 1947 (Act VII of 1948). We have earlier set out the powers and jurisdiction of these courts. The following Table indicates their growing popularity and value as instruments of conciliation and adjudication. Panchayat Courts.

ORIGINAL CASES

Year	Total available for disposal	Institutions	Total disposal	No. of cases compromised	No. of cases pending at the end of the year
1	2	3	4	5	6
		Civil			
1951-52 . .	..	4,387	3,345	2,037	1,036
1952-53 . .	9,651	8,475	7,318	4,787	1,176
1953-54 . .	9,857	8,681	6,989	4,204	1,613
1954-55 . .	11,620	10,007	8,630	4,404	1,773
		Criminal			
1951-52 . .	..	17,262	31,089	11,401	3,105
1952-53 . .	22,972	19,867	16,239	11,974	2,887
1953-54 . .	33,647	30,760	25,855	19,285	4,422
1954-55 . .	39,996	35,574	30,229	20,926	5,735

APPEALS

Year	Institutions	Total disposal	Compromised
1	2	3	4
	Civil		
1951-52	363	362	218
1952-53	218	228	73
1953-54	243	267	85
1954-55	506	526	89
	Criminal		
1951-52	1,121	1,363	263
1952-53	1,542	1,612	476
1953-54	1,146	1,068	266
1954-55	1,243	1,243	398

47—BOMBAY

Area and Population.

The territory of this State after reorganization comprises an area of 1,90,872 sq. miles and has a population of roughly 4,82,65,000 persons. In view of the fact that large portions of the territories of other States have been added to this State as a result of the re-organisation of States and the system of judicial administration has not been unified, we shall deal only with the administration of justice as it obtained in the State of Bombay prior to its re-organization.

The Judicial Service.

2. The Judicial Service in the Bombay State consists of distinct cadres of officers in the mofussil and the Bombay City. The rules regulating recruitment to the judicial service divide the Service into two branches, namely, (a) Junior Branch and (b) Senior Branch. The Junior Branch consists of the two following classes, namely:

Class I comprising—

(1) Judges of the Small Cause Courts at Poona and Ahmedabad.

(2) Civil Judges (Senior Division).

(3) Judges of the Small Cause Courts at Bombay and Presidency Magistrates.

Class II comprising—

Civil Judges (Junior Division) and Judicial Magistrates of the First Class.

3. The Senior Branch consists of District Judges, the Principal Judge and the Judges of the Bombay City Civil Court, the Chief Judge of the Presidency Small Causes Court, Bombay, the Chief Presidency Magistrate, Bombay, the Additional Chief Presidency Magistrate, Bombay and Assistant District Judges.

4. Judges of the Small Causes Courts at Poona and Ahmedabad are appointed by the High Court by promotion from Civil Judges (Senior Division). Appointments to the posts of Civil Judges (Senior Division) are also made by the High Court by promotion from Civil Judges (Junior Division) and Judicial Magistrates of the First Class who have worked as Civil Judges (Junior Division). Judges of the Presidency Small Causes Court at Bombay and Presidency Magistrates are appointed

(i) by promotion from Civil Judges of the Senior and Junior Division and Judicial Magistrates, First Class;

(ii) by nomination from members of the Bar and Civil Judges, Senior and Junior Division and Judicial Magistrates of the First Class.

5. Ordinarily, the proportion of posts filled by promotion and by nomination is 50 : 50. Appointment by promotion is made by the High Court while appointment by nomination is made by the Governor in consultation with the State Public Service Commission to which a representative of the High Court is invited at the time of interviews. The representative of the High Court takes part in the discussion of the Commission but is not entitled to vote.

6. Officers in Class II of the Junior Branch who are Civil Judges (Junior Division) and Judicial Magistrates, First Class, are recruited from members of the Bar. The appointment is made by the Governor in consultation with the Public Service Commission who invite a representative of the High Court to be present at the interviews but the representative is not entitled to vote. Candidates for these posts must not be less than 21 and not more than 35 years of age and they must have ordinarily practised as advocates or pleaders for not less than three years and must be certified to have a knowledge of at least one of the regional languages of the State.

7. The appointment of the Principal Judge of the Bombay City Civil Court is made by the Governor in consultation with the High Court from Judges of the City Civil Court or from District Judges. Appointments to the posts of District Judges are made by the Governor (a) in consultation with the High Court by promotion from members of the Junior Branch who have ordinarily served as Assistant Judges and (b) on the recommendation of the High Court from members of the Bar who have practised as advocates or pleaders for not less than seven years in the High Court or Subordinate Courts. A person recruited before attaining the age of forty-five years is first appointed to work as an Assistant Judge for such period as may be decided by the Government on the merits of his case and on the recommendations of the High Court, before appointment as a district judge. The proportion of posts filled in by promotion and by appointment from the Bar is ordinarily 50 : 50.

8. Judges of the City Civil Court, Bombay, are appointed by the Governor (a) on the recommendation of the High Court from practising advocates or pleaders of not less than seven years standing and (b) in consultation with the High Court from the District Judges.

9. The Chief Judge, Presidency Small Causes Court, Bombay the Chief Presidency Magistrate and the Additional Chief Presidency Magistrate, Bombay are appointed by

the Governor in consultation with the High Court by promotion from the officers of Class I of the Junior Branch and working in the respective Courts, or by transfer from the Assistant Judges.

10. Appointments to the posts of Assistant Judges are made by the Governor in consultation with the High Court by promotion of Civil Judges, Junior Division, or Senior Division, of not less than seven years of service and not more than forty-five years in age. In computing this period, any period during which an officer has worked as a Civil Judge-*cum*-Magistrate or as a Resident of Judicial Magistrate of the First Class is to be included provided he was eventually brought on the joint cadre of Civil Judges, Senior Division or Civil Judges, Junior Division and Judicial Magistrates, First Class. Selection to these posts is on merit but seniority is taken into account as far as possible.

11. The scales of pay of the officers in the Junior Branch are:

(1) Judges of the Provincial Small Cause Court at Poona and Ahmedabad—Rs. 900—50—1050.

(2) Judges of the Presidency Small Cause Court and Presidency Magistrates, Bombay—Rs. 1000—30—1300.

(3) Civil Judges, Senior Division—Rs. 695—45—875.

(4) Civil Judges, Junior Division, and Judicial Magistrates—Rs. 300—probation for two years—320—20—500—E.B. 30—650.

and those of the Senior Branch are:

(1) Principal Judge, City Civil Court, Bombay—Rs. 2,500.

(2) Judges of the City Civil Court—Rs. 2,000.

(3) District Judges—Rs. 800—1800*.

(4) Chief Judge, Presidency Small Cause Court, Bombay and Chief Presidency Magistrate, Bombay—Rs. 1600—100—1800.

(5) Assistant Judges—Rs. 700—50—1000.

12. Civil Judges, Junior Division and Judicial Magistrates, First Class, are appointed on probation for the first

*In case of promotees initial pay is fixed in the above scale at a stage next above the officers substantive pay plus increments at the rate of one increment for every three complated years of service in the State Judicial Service subject to a minimum and maximum increase of Rs. 100/- and Rs. 200/- respectively over the substantive pay in the lower post.

two years on the expiry of which the probationer is confirmed in the same grade provided his work has been found satisfactory and has passed an examination in one of the regional languages in the State other than that of which he was certified to have adequate knowledge at the time of his appointment. Candidates are not given any training before being assigned independent judicial work. In our opinion some course of training is necessary.

13. The selection of Assistant Judges from Civil Judges, Senior and Junior Division, is on merit but other things being equal, seniority is respected as far as possible. Every year a select list of Civil Judges who are considered fit for appointment as Assistant Judges is prepared by Government in consultation with the High Court and appointments are made in the order in which the names stand on this list subject to prescribed age limits. These officers are posted to District Courts to render assistance to the District Judges as Assistant Judges. On their first appointment they also exercise the powers of an Assistant Sessions Judge and after gaining experience of criminal work they are invested with the powers of an Additional Sessions Judge on the recommendation of the District and Sessions Judge. Their civil appellate and criminal jurisdiction is co-extensive with that of District and Sessions Judges but they try only such cases as are made over to them by the latter. Their original civil jurisdiction is limited to suits of not more than Rs. 15,000 in value. This is anomalous but in practice neither the District Judge nor the Assistant Judge does any ordinary original civil work which is exclusively done by Civil Judges of the Senior or Junior Division. The District and Assistant Judges devote almost the whole of their time to appellate civil and original and appellate criminal work.

14. The Assistant Judges constitute a grade of judicial officers peculiar to the Bombay State. The advantage of having five classes of officers including Judges of Courts of Small Causes is difficult to appreciate. As the Assistant Judges do almost exactly the same work as District Judges, we feel that they should be designated Additional District Judges and given the same pay.

15. In the rules for the guidance of subordinate courts detailed instructions are given to the subordinate courts for prompt and efficient despatch of judicial business in the appellate and original courts. Instructions have been given to deal with the problem of frequent adjournments sought by pleaders to suit their own or their clients' convenience. The High Court has deprecated this practice and had also directed that no adjournment should ordinarily be granted on the ground that one of the pleaders is engaged in some other court. Further, presiding officers have been directed to be very strict in the matter of granting adjournments even if it has the effect

of making them unpopular with the lawyers or the litigants. The judges are expected to make it clear to the lawyers who take up more work than they can cope with that the court will not delay hearings to suit their convenience. The judges are also directed to control the examination-in-chief, cross-examination and re-examination of witnesses and to check the tendency to prove and over-prove irrelevant allegations so as to prevent much time being wasted in recording unessential particulars to which no reference can usefully be made in arguments. The rules leave to the presiding officer a good deal of discretion for arranging his judicial business with the object of obtaining prompt and effectual disposal.

16. The Judge has to maintain a diary or index of the proceedings called the 'Roznama'. The object of this 'Roznama' is to show in a concise form the steps taken in each suit or proceeding with the dates of taking such steps. In other words it is a history of the suit or proceeding from the date of its institution till the date of disposal. It is drawn up so as to show all the detailed happenings in the case at one view and yet be as concise as possible. It is kept from day to day by the sheristedar or clerk in attendance on the Judge and the daily entries are, in all cases, signed by the Judge or the clerk of the Court. The following is an illustration of the manner in which this case history is maintained.

Roznama

The Court of the Civil Judge of in the District of

Dates on which the suit or miscellaneous matter comes before the Court for any proceeding	No. of exhibit.	Suit No. of 19 wd. Plaintiff vs. wd. Defendant Claim Rs.	Date to which the suit is adjourned
1	2	3	4
2nd June, 1958 .		Before Shri A. B., Civil Judge.	
	1	Plaint presented by Plaintiff's Vakil Shri C. D. (or "plaintiff" or "plaintiff's Mukhtyar" as the case may be) examined and registered.	
	2	Plaintiff's Vakilapatra.	
	3	Plaintiff's list of document produced and others to be produced, together with one promissory note produced.	
		Case adjourned for settlement of issues to ..... (Sd.)	2nd July, 1958.

1	2	3	4
4th June, 1958	4	Summons to defendant (Sd.)	
2nd July, 1958		Vakil Shri E. F. appears for the defendant and applies under Order XI, rule 12, for an order directing the plaintiff to make discovery on oath of documents in his possession or power relating to the matter in suit. The plaintiff's vakil Shri C. D. is present in Court.	
	5	Defendant's Vakilpatra.	
	6	Defendant's application to the above effect.	
	7	Order directing plaintiff to make affidavit as to documents within 10 days from the date of the order. (Sd.)	

17. In addition to the Roznama all Judges including District and Sessions Judges have also to keep memoranda books relating to the work pending before them from day to day and showing the progress of each proceeding on a particular date in certain prescribed forms. These books show at a glance the daily cause list of the Judge and also show what progress was made in each proceeding on any given day.

18. The High Court has not laid down any time limit for the delivery of judgments either in civil or in criminal matters, but the rules provide that judgments should be promptly written and delivered. We would suggest the framing of such a rule, and the submission of returns to ensure compliance with it on the lines suggested by us in the chapter on the Supervision of Subordinate Courts.

19. The efficiency of the subordinate judicial officers is judged by the District Judge and the High Court. The High Court has prescribed certain forms of returns for submission to the higher authorities from month to months. The Civil Judges have to submit returns of original civil work to the District Judge under whose jurisdiction they are stationed not later than the 5th of every month. The District Judge sends to the High Court not later than the 15th of every month a general return of original civil

work for all the courts in the district and also a return of appellate civil work turned out during the previous month. In addition to the monthly returns all Civil Judges are required to submit to the District Judge quarterly returns of cases pending in their courts in which proceedings have been stayed by order of a superior court or cases in which there are no orders of stay of proceedings but the records have been called for in revision against interlocutory orders. District Judges have to submit to the High Court by the 15th April and 15th October of every year a statement of such cases from their districts not being special jurisdiction cases in Courts of Civil Judges, Senior Division pending decision or orders in the High Court and the Civil Judges, Senior Division are also required to submit by the same dates a similar statement in respect of special jurisdiction suits. The object of these returns is obviously to draw the attention of the High Court to proceedings which have been stayed under orders of that Court so that they may be expedited. The aforementioned returns are intended to give a proper idea to the District Judge and to the High Court regarding the adequacy or otherwise of the disposals of the officers serving under them. These returns are scrutinised by the High Court which keeps a watch over the position of the file and over the individual disposal of different Judges. If the disposals of a particular officer are low, he is given a warning, if they are adequate no action is taken and if the disposals are high and show that the officer has worked hard, approbation is expressed of the work put in by him. By these methods the High Court keeps the subordinate courts alert. The District Judges keep confidential notes about the quality of judgments of Civil Judges which come up before them in appeal and on the basis of such notes they are required to submit annual confidential reports. The High Court Judges also record confidential memoranda regarding the quality of judgments coming up before them at the time of the disposal of appeals.

20. As regards superintendence and control, the subordinate courts are inspected by the District Judges who also examine the monthly returns submitted by the Civil Judges and Magistrates. Under Section 9 of the Bombay Civil Courts Act, 1869, the District Judge has general control over all civil courts in his district and over their establishments and in exercise of that control the District Judges are expected to inspect or cause to be inspected by their Assistant Judges every court subordinate to them not less than once in two years.

21. The rules contain detailed instructions as to the points to be noted at the time of these inspections. The report to be submitted by the District Judge to the High Court after the inspection of a court is generally in the following form:—

Inspection Report

Name of the Court Inspected	Duration of inspection	No. of suits examined	No. of Darkhasts examined	No. of Miscellaneous proceedings	State of file]	Remarks about administration by the Civil Judge	Important points to be brought to the notice of the High Court, if any
1	2	3	4	5	6	7	8

The District Judge also periodically convenes a judicial conference of all the judicial officers in the district at which common problems are discussed and ideas exchanged.

22. Each District Judge is required to submit to the High Court a confidential report on all Assistant Judges and Civil Judges serving under him on the following occasions:—

(1) On March 31st each year, on all Assistant Judges and Civil Judges then serving under him.

(2) On his own transfer from the district, on all Assistant Judges and Civil Judges then serving in that district, and

(3) On the transfer of any Assistant Judge or Civil Judge serving under him, on that individual Assistant Judge or Civil Judge.

23. These confidential reports are intended to be of assistance to the High Court who may not have the same opportunity of observing the work and capacity of the Civil Judges as is enjoyed by the District Judge, in considering all matters relating to the discipline and promotion of the subordinate judiciary. The reports are required to contain the considered opinion of the District Judge founded on a real knowledge of the work of the Civil Judge based not merely on appeals coming before him but also on a scrutiny of cases and proceedings which do not come in appeal and also on the Civil Judge's methods of work and administrative capacity. There however appears to be further room for improving the methods of supervision. We have already suggested the laying down of a time limit for the delivery of judgments. The compilation and publication in the administration reports of the number of pending suits classified according to the year of institution will serve a useful purpose. Again the annual administration reports give the average duration of suits in the courts of civil judges generally. This is apt to give a misleading impression, and it would appear to be desirable to give the figures for the courts of senior judges, who exercise unlimited jurisdiction and of junior judges who correspond to munsifs separately. More detailed explanation for the pending old suits may also be obtained.

24. In every court there are generally two superior ministerial officers, namely, a Clerk of the Court and the Nazir. The Clerk of the Court is the chief ministerial officer for the purpose of the court work and the Nazir, the chief ministerial officer for the purpose of execution work, service of processes and accounts.

25. The work of service of summonses, notices and orders and the preparation of processes for execution of decrees and orders is commonly entrusted to a class of process servers who are called "Bailiffs". The methods adopted for apportioning and supervising the duties of the

Bailiffs vary from district to district. The Nazir is directly responsible for supervision over the work of the Bailiffs. It is his duty to see that the processes given to the Bailiffs are accurately drawn up and the proper address of the party on whom service is to be effected given and that the Bailiff is given all papers to be sent with the process. The work done by the Bailiffs is scrutinized and checked by frequent and regular inspection of documents such as the Bailiff's "Kamgiri Book", his diaries and the Patrol Book kept in the office of the village officers of the villages visited by the Bailiffs. The diary to be kept by the Bailiff gives such particulars as the villages visited, and number of processes given for service in each village, the number of processes served, manner of service, reasons for non-service, number of miles travelled daily, the names of the villages in which the Village Officer's Patrol Book is signed by the Bailiff and the Village Officer or any other well-known person in the village. The Patrol Book which is kept at the village Officer's place contains columns for signature of the process server, the dates of arrival and departure at and from the village, a summary of work done and the name of the village to be visited next. It is further provided that whenever a Bailiff visits a village he should ascertain from the Patrol Book the name of the Bailiff who had visited it immediately before him and the date of his visit and should make a note of the same in his diary. These notes are intended to further assist the Nazir in checking the work of the Bailiffs from time to time and to ascertain the correctness of the diaries of the other Bailiffs.

26. In this State the separation of the Judiciary from the Executive was effected by the Separation of Judicial and Executive Functions Act (XXIII of 1951). The separation was actually brought on from 1st July, 1953. Before the separation the magistracy was subordinate to the District Magistrate who in his capacity as the Collector was the executive head of the district and also the head of the police. After the separation the District Magistrate exercises no conrol over the Judicial Magistrates who have been made administratively subordinate to the Sessions Judge and the High Court.

27. The Magistrates fall into two classes (1) Executive Magistrates and (2) Judicial Magistrates. Their respective powers have been given in the Third Schedule to the Code of Criminal Procedure as amended in Bombay by the Separation Act. The District Magistrates, Subdivisional Magistrates and Taluka Magistrates are in the category of Executive Magistrates. The Judicial Magistrates, consist of Magistrates of First, Second and Third Class, but it was decided that there need not be any second or third class Magistrates and that all Judicial Magistrates should be of the first class.

28. Government has issued the necessary notification under Article 237 of the Constitution to enable the High

Court to exercise the same control over Judicial Magistrates as over the Civil Judges under Article 235.

29. The High Court has not prescribed any time limit for delivery of judgments by criminal courts though the courts are directed to hear the arguments and deliver judgments as soon as possible after the evidence is recorded. We are of the opinion that such time limits should be prescribed and enforced.

30. After the separation of the Judiciary from the Executive, the Judicial Magistrates are subordinate to the Sessions Judges who have a general control over all Judicial Magistrates' courts in the district and their establishments. The system of control is largely similar to that which is used in the case of civil courts. The Sessions Judges inspect or cause to be inspected by Additional Sessions Judges every court subordinate to them as far as possible not less than once in two years. At each inspection over and above the work of noting deficiencies, clear instructins are required to be given for the guidance of the Judicial Magistrates and members of the establishment concerned. At the end of the inspection the Sessions Judge has to circulate to all subordinate courts the points of importance. The Sessions Judges are also directed to examine in full detail the records of several pending cases and proceedings taken from the file of a Judicial Magistrate's court. In order to understand the Magistrate's methods and to draw his attention to the instances of failure, to take full advantage of the facilities given by the Criminal Procedure Code for expediting the course of the trial, a report of the inspection is submitted to the High Court in the following form:—

(1) Name of Court.

(2) Duration of inspection.

(3) Number of cases examined.

(4) Number of miscellaneous proceedings.

(5) State of file.

(6) Remarks about administration by the Magistrate.

(7) Important points to be brought to the notice of the High Court, if any.

31. The rules also contain instructions in detail about the points on which attention is to be focussed during the inspection of the Magistrates' courts.

Since expedition is of the utmost importance in criminal cases, a closer control, and more frequent check on the work of the judicial magistrates appear to be necessary. If cases in Magistrates' courts are to be disposed of within two months of the apprehension of the accused as suggested by us biennial inspection would appear to be inadequate. There should be annual inspections of magistrates

courts as in other States and it seems that the calendar statement system can be introduced with advantage.

32. No serious delays occur in the disposal of criminal cases in the courts of session in this State. As an illustration the following statement is given to show the institution, disposal and average duration of criminal work in the Poona District for the years 1953, 1954 and 1955.

Year	Institution	Disposal	Average duration
	Sessions Cases		
1953	139	158	62 days
1954	128	144	75 days
1955	125	112	45 days
	Criminal Appeals		
1953	421	471	58 days
1954	337	374	39 days
1955	430	438	32 days

The same however cannot be said of the magistrates courts where there are pending a fair number of cases older than six months and some over a year. The position seems to be particularly bad in the courts of the Presidency Magistrates where there seems to be heavy congestion. Counsel with experience of these courts complained of over-posting, frequent adjournments and even piecemeal hearing.

So far as magistrates courts in the mofussil are concerned stricter supervision on the lines suggested by us would appear to be necessary. In Greater Bombay apart from increasing the number of magistrates, the appointment of honorary magistrates who would relieve the regular magistrates of the large number of petty cases which take up much of their time would serve a useful purpose. The institution of a mobile court like the one functioning in Calcutta and Madras can be usefully introduced in the city.

33. Section 41(2) of the Bombay Pleaders Act (XVII of 1920) reads as under:—

> "Where a pleader employed in any such proceeding is from indisposition or any other reasonable cause, unable to attend on such day or at the time when the proceeding is called on, he shall notify the same to the court and thereupon the proceeding shall be stayed for such time as the court may deem reasonable".

Though the High Court has time and again issued circulars directing the subordinate courts to be strict in granting adjournments, yet the above statutory provision frequently

nullifies the effect. We have been told that the pleaders not infrequently resort to the afore-mentioned provision when they want an adjournment of a case. "Indisposition" as a ground for adjournment has not been statutorily recognized in any other State in our country. We recommend the early repeal of this provision, which is capable of abuse.

34. Sessions cases are tried with the aid of jury in Greater Bombay only. We have already noticed the reports about its unsatisfactory working and suggested its abolition.

35. At present, the High Court is functioning with seventeen judges including the Chief Justice and three additional judges appointed for a period of one year. Some of the judges hold sittings at Nagpur and Rajkot. The accompanying Tables show the work turned out by the High Court in its original and appellate jurisdiction during the three years 1954—56 and the number of proceedings pending on 1st January, 1957 according to their years of institution. It is evident from the figures given in the Tables (Table Nos. 1, 2 and 3) that the work in the High Court is under control. There is however an accumulation of first and second appeals, a fair number of the first appeals being five years old. The recent increase in the strength of the court should help in reducing their number.

This is the only High Court which does not give the average duration of first and second appeals in the High Court, in the annual administration reports though this used to be done previously. We trust that in this matter the Bombay High Court will fall into line with the other High Courts.

TABLE No. 1

Appellate Side

Nature of Proceeding	1954			1955			1956			Pending on 1st Jan. 1957
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	
Regular First Appeals	2056	790	756	2090	911	633	2368	691	1131	1928
Regular Second Appeals	1125	1375	1010	1490	1596	1430	1656	1372	1804	1224
Appeals against Orders	79	150	141	88	180	186	82	163	135	110
Letters Patent Appeals	44	83	73	54	96	86	64	62	71	55
Writs	46	687	542	191	835	881	145	1413	1184	374
Review	1	21	19	3	10	10	3	23	16	10
Revision	708	2078	1711	1075	2036	2055	1056	1834	2144	746
Reference	8	23	25	6	24	25	5	35	25	15
Miscellaneous, including Leave to appeal to Supreme Court	686	2096	2379	404	2196	2052	549	2171	1742	978
Criminal Appeals	129	1607	1539	197	1540	1542	195	1462	1385	272
Criminal Revision	151	1521	1475	197	1573	1646	124	1590	1568	146
Confirmation cases	3	12	15	..	28	22	6	37	36	7
References under Sec. 307 Cr. P.C.	2	6	7	1	8	7	2	7	9	..
Other references	20	141	118	43	112	136	19	121	115	25
Miscellaneous	..	..	..	..	..	..	..	..	..	..

TABLE No. 1-A

Nature of Proceeding	Year of Institution											
	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	Total
Appellate Side Civil												
1 Letters Patent Appeals	..	..	..	..	..	..	..	..	6	25	24	55
2 First Appeals	1	..	..	1	1	31	200	238	411	591	454	1928
3 Second Appeals	..	..	..	..	..	1	5	22	286	579	331	1224
4 Appeals from Orders	..	..	..	..	..	..	..	1	1	43	65	110
5 Revision Petitions	..	..	..	..	..	1	2	7	28	150	558	746
6 Misc. Petitions—												
(*a*) Civil Applications	..	..	..	..	..	..	5	4	32	151	786	978
(*b*) Special Civil Applns.	..	..	..	..	..	..	2	1	5	34	332	374
7 Others—												
(*a*) Reference	..	..	..	..	..	..	..	..	..	..	18	18
(*b*) Reviews	..	..	..	..	..	..	..	..	..	..	8	8

TABLE No. 2
Original Side

Nature of Proceeding	1954			1955			1956			Pending on 1st Jan. 1957
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	
Appeals :										
(1) Decrees . . .	14	36	31	19	24	25	18	39	32	25
(2) Orders . . .	50	104	99	55	88	98	45	76	70	51
Writs	81	191	150	122	197	179	140	203	255	88
References:										
(1) Income-tax . .	29	58	45	42	55	58	39	72	53	58
(2) Land Acquisition . .	49	23	36	36	14	6	44	18	31	31
Leave to appeal to Supreme Court	14	28	35	7	42	37	12	57	55	14
Original Suits including restored (1) Civil	2520	1382	1553	2349	561	1063	1847	486	879	1454
(2) Testamentary .	22	21	19	24	21	17	28	19	23	24
Reviews	..	..	..	..	..	..	..	..	..	1
Miscellaneous—including Testamentary Petitions . .	..	1338	1338	..	1482	1226	256	1401	1280	377

TABLE No. 2-A

Nature of Proceeding	Year of Institution												
	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
Original Suits	..	2	1	..	6	8	17	49	154	363	426	167	259
Testamentary Suits	..	..	..	..	..	..	..	..	..	..	1	5	18
Appeals	..	..	..	..	..	..	..	..	2	..	2	7	65
Land Acquisition References	..	..	..	..	..	..	..	..	..	..	4	9	18
Parsi Chief Matrimonial Suits	..	..	..	..	..	..	..	..	..	..	..	..	15
Appeal to Supreme Court	..	..	..	..	..	..	..	..	..	..	..	4	10
Income Tax References	..	..	..	..	..	..	..	..	..	1	5	9	43
Writs	..	..	..	..	..	..	..	..	2	1	6	6	83
Income Tax Applications	..	..	..	..	..	..	..	..	..	..	..	1	39
Miscellaneous including testamentary	..	..	..	..	..	..	..	..	..	..	..	156	221
Review	..	..	..	..	..	..	..	..	..	..	..	..	1

TABLE No. 3

Insolvency Jurisdiction

Nature of Proceeding	1954			1955			1956			Pending on 1-7-1957
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	
Insolveney petitions .	778	169	158	789	163	153	799	135	131	803
Insolvency notices . . .	59	430	406	83	457	449	91	439	437	93

TABLE No. 3-A

Nature of Proceeding	Year of Institution												
	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
Insolvency petitions .	2	3	8	8	11	11	10	13	18	29	62	96	118
Insolvency notices .	..	..	..	..	..	..	..	..	..	..	..	..	93

36. The High Court of Bombay exercises ordinary original civil jurisdiction over Greater Bombay as defined in the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. The High Court exercised till 1948 ordinary original civil jurisdiction in all matters irrespective of valuation except those cognizable by the Presidency Small Causes Court. In 1948 the City Civil Court was established by the Bombay City Civil Court Act, 1948 with jurisdiction to try suits valued upto Rs. 10,000; the jurisdiction of that court was raised to Rs. 25,000, with effect from 20th January, 1950. The City Civil Court is also the Court of Session for Greater Bombay. This court started functioning with four judges. Two more judges were appointed in 1951. In 1955 the strength of the judges was raised to nine which number continues till this date. The accompanying table (table No. 4) shows the number of suits instituted and disposed of in the City Civil Court from 1948 to the end of June, 1957 and the average disposal per day.



TABLE No. 4

S. No.	Year	Suits instituted inclusive of transferred suits from the High Court	Suits disposed of	Total number of judge days	Number of working days per year on Civil Side	Average of Judges' sittings	Average disposal per day
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	5
6	1953	2603	2516	492	196	2·5	5
7	1954	3000	2397	584	196	3	4
8	1955	3184	3242	863	193	4·5	4
9	1956	2940	3090	805	193	4·2	4
10	1957	1552	1448	393	88	4·5	4
	Ending June	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.

37. The Principal Judge of the City Civil Court, Bombay stated in his evidence that although there was a sudden rise in the institution of suits since 1951 there was no corresponding increase in the number of judges till 1955 and that the shortage of judges had resulted in accumulation of arrears. Whatever may be the reason for the accumulation there is no doubt that there are considerable arrears in the court and that steps should be taken to clear them, if necessary, by appointing temporary judges for a period.

38. The judicial business transacted by the Presidency Small Causes Court is given in the accompanying Table (Table No. 5). As will be seen from the above table the number of year old suits is high. The Chief Judge of the Presidency Small Causes Court, Bombay attributed the accumulation of arrears *inter alia* to shortage of judges.

39. He also drew our attention to certain defects in the rent control law. To quote him, "in day to day administration of the Rent Control Act, I have found very serious difficulties in the machinery of execution, especially in suits for eviction which have led to very bitter complaints from the landlords. In my opinion, they are absolutely justified... .....The circumstances under which these delays arise are these. After a landlord files a suit for eviction, normally it takes a year and a year-and-half to obtain eviction. If it is a question of rent, it may be disposed of early, but if it is on the ground of personal requirements or purchase of the premises or tenancy or anything under section 13, then it takes a year and a year-and-half, before a suit is disposed of, mostly because there are many suits of this nature that have been filed. The real tribulations of the landlords begin when they seek to execute a decree. Invariably there is obstruction. Landlord has to take up an obstruction notice and it takes some time before this notice reaches the destination because there are several such notices pending. It is our experience that 95 per cent. of the obstruction cases are bogus. They are probably done on the advice of the lawyers and there is no provision in the law by which you can say that obstruction should be removed. Sometimes this process goes on and it takes a landlord five to six years before he gets possession". We feel that the provisions of the Act should be examined and action taken to remedy the defects.

40. The accompanying Table (Table No. 6) shows the judicial business transacted by the District Courts (including Courts of Assistant Judges) and Civil Judges, Junior and Senior Division. It will appear from the figures furnished in the above table that there is a considerable accumulation of year old suits in the courts of Civil Judges and these amount to very nearly a third of the total number of suits pending. It would appear to be necessary to appoint temporary civil judges for some time to dispose of long pending suits but in the absence of adequate data, we are unable to make any definite recommendation in this

TABLE No. 5

Presidency Small Cause Court, Bombay

Year	Civil Suits					Miscellaneous Cases & Petitions				
	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				At the close of the year	Over one year				At the close of the year	Over one year
1	2	3	4	5	6	7	8	9	10	11
1953	13048	19189	26355	15882	3857	771	5534	5399	906	..
1954	15882	19772	20046	15608	5116	906	5581	5737	750	..
1955	15608	20555	21236	14927	3656	750	5098	4831	1017	67

Year	Civil Appeals*					Civil Miscellaneous Appeals*				
	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				Pending at the close of the year	Over one year				Pending at the close of the year	Over one year
	12	13	14	15	16	17	18	19	20	21
1953	96	216	193	119	16	109	394	122	381	3
1954	119	183	144	158	52	381	478	267	592	129
1955	158	141	125	174	40	592	497	856	233	144

*Relates to appeals under special enactments.

TABLE No. 6

Year	Civil Suits					Miscellaneous Civil Cases and Petitions				
	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				At the close of the year	Over one year				At the close of the year	Over one year
1	2	3	4	5	6	7	8	9	10	11
				District Judges						
1953	1429	1975	2251	1153	321	1757	2235	2413	1579	456
1954	1153	1708	1905	956	421	1642	2435	3575	1504	403
1955	956	1425	1682	699	294	1504	2672	2500	1676	391
				Civil Judges						
1953	49593	73677	73474	49796	13368	9930	15818	15650	10098	2369
1954	49796	76768	74925	51639	14112	10098	15922	15345	10675	2652
1955	51639	74922	74846	51715	14350	10675	16552	13864	13363	3482

Year	Civil Appeals					Civil Miscellaneous Appeals				
	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				At the close of the year	Over one year				At the close of the year	Over one year
	12	13	14	15	16	17	18	19	20	21
				District Judges						
1953	10127	3267	7803	10591	3344	5010	5821	5265	5566	1292
1954	10591	7710	8421	9880	3028	5503	4305	4723	5085	1771
1955	9880	7698	8370	9208	2541	5085	3295	4695	3685	1222
				Civil Judges						
1953	..	..	..	..	..	..	..	..	..	..
1954	..	..	..	..	..	..	..	..	..	..
1955	..	..	..	..	..	..	..	..	..	..

behalf. The Civil Judges (Junior Division) who correspond to munsiff elsewhere have jurisdiction to try regular suits upto Rs. 10,000 and small cause suits valued between Rs. 100 and Rs. 500 depending upon the length of their service. Similarly the civil judges, Senior Division who have unlimited pecuniary jurisdiction can try small cause suits valued between Rs. 500 and Rs. 1,500 depending upon the number of years of service put in by the officers. When even a newly appointed civil judge, Junior Division, can try original suits valued upto Rs. 10,000 it is illogical to restrict his small cause powers to suits valued only upto Rs. 100 to start with. We feel that the small cause powers conferred upon the civil judges, Junior and Senior Division, should be enhanced to Rs. 500 and Rs. 2,000 irrespective of the length of service of the officers.

41. There are quite a few places in the State where a number of courts are concentrated at one place. The following table shows the distribution of courts in the year 1953.



Statement showing the strength of Judicial Officers at each Station

	Number of Stations
1	2
Stations with one Civil Judge (J. D.) only	118
Stations with two Civil Judges (J. D.) only	26
Stations with three Civil Judges (J. D.) only	6
Stations with four Civil Judges (J. D.) only	1
Stations with one Civil Judge (J. D.) and one Civil Judge (S.D.) only	5
Stations with two Civil Judges (J. D.) and one Civil Judge (S.D.) only	3
Stations with two Civil Judges (J. D.) and two Civil Judges (S.D.) only	2
Stations with three Civil Judges (J. D.) and one Civil Judge (S.D.) only	3
Stations with three Civil Judges (J. D.) and two Civil Judges (S.D.) only	1
Stations with four Civil Judges (J. D.) and one Civil Judge (S.D.) only	1
Stations with four Civil Judges (J. D.) and two Civil Judges (S.D.) only	1
Stations with five Civil Judges (J. D) and four Civil Judges (S.D.) only	2
Stations with one Civil Judge (S.D.) only	11

J.D.-Junior Division.

S.D.-Senior Division.

42. Although the location of a number of Courts in cities like Poona and Ahmedabad is unavoidable due to the large volume of litigation arising within these cities, there does appear to be scope for further decentralisation of courts in this State.

Very little progress has been made in this State in the direction of establishing and popularising village panchayat courts. It is necessary that early and earnest efforts should be made in this direction.

48.—KERALA

The State of Kerala was brought into existence by the States Reorganisation Act, 1956. It comprises what was previously the State of Travancore-Cochin less some areas transferred to the Madras State, the Malabar District of Madras, excluding the Laccadive and Minicoy islands and the Kasargod Taluq of the South Kanara District.

2. According to the census of 1951, the population of the enlarged State is 1,35,49,118 spread over an area of 15,035 square miles. This State ranks first in the country in respect of the density of population and literacy—the former being roughly 950 persons per square mile and the latter 40·88 per cent. of the population. We have been told that the people of this State are economically backward. As will be seen later, this is reflected by the fact that a large number of suits—roughly 87 per cent.—out of the total number that come up for adjudication before the regular civil courts are valued below Rs. 1,000. Territory and population.

3. Since the last four years, that is, from 1954, the High Court has been functioning with eight judges but for a fall in the number once or twice for short periods due to retirement of judges and the like. The High Court strength

TABLE No. 1

Nature of Proceeding	1954			1955			1956					
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Received from Madras	Transferred to Madras	Disposal	Pending on 1st January 1957
1	2	3	4	5	6	7	8	9	10	11	12	13
Regular First Appeals . . .	1868	745	1142	1471	795	1180	1086	769	304	172	764	1223
Regular Second Appeals . .	2497	1111	1765	1843	1165	1507	1501	1254	559	204	1147	1963
Appeals against orders . .	143	258	284	117	274	251	140	223	73	12	249	175
Letters Patent or Special appeals .	..	..	..	..	..	..	..	..	29	..	..	29
Writs	142	219	261	100	460	259	301	573	106	13	432	535
Review	32	40	34	38	74	63	49	60	..	..	57	52
Revision	285	600	680	205	709	703	211	749	245	22	657	526
Reference	18	25	16	27	26	16	37	11	7	5	8	42
Leave to appeal to Supreme Court .	18	32	43	7	63	64	6	79	..	..	60	25
Original Suits	3	4	4	3	..	3	..	..	..	..	..	..
Miscellaneous	2329	3713	4077	1965	4101	4681	1385	3629	96	142	3587	1381

TABLE No. 2

Nature of Proceedings	Year of institution													
	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
Regular First Appeals	1	..	..	..	1	1	1	7	3	42	84	172	333	578
Regular Second Appeals	..	1	..	..	5	6	5	1	6	21	16	248	608	1046
Appeals against orders	..	..	..	..	..	..	..	..	..	1	2	8	48	116
Letters Patent or Special Appeals	..	..	..	..	..	..	..	..	..	1	3	18	4	3
Writs	..	..	..	..	..	..	..	..	1	3	8	10	79	434
Revision	..	1	..	..	..	..	..	..	2	1	3	27	74	418
Review	..	..	..	..	..	..	..	..	1	1	..	1	12	37
Reference	..	..	..	..	..	..	..	..	..	..	..	9	22	11
Original Suits	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Miscellaneous	..	..	..	..	..	..	..	..	..	..	..	..	27	1354

Pendency.

4. The accompanying tables (Nos. 1 and 2) show at a glance the state of the file and the details of proceedings pending on 1st January, 1957 according to the year of institution. Table No. 3 shows the number of certain classes of proceedings received by transfer from Madras (excluding those that awaited admission before transfer) classified according to the years of their institution in the High Court, Madras.

TABLE No. 3

Nature of Proceeding	1948	1949	1950	1951	1952	1953	1954	1955	1956
First Appeals	1	1	6	2	37	68	81	62	42
Second Appeals	..	..	1	6	19	10	158	204	161
Writs	..	..	..	1	2	5	1	13	84
Letters Patent Appeals	..	..	..	..	1	3	18	4	3

5. A perusal of these Tables would show that the work in the High Court is well under control and that the recent increase in the number of pending proceedings is due to the transfer of a number of old cases from the Madras High Court.

6. It was thought at one time that the recent enhancement of the civil appellate jurisdiction of district judges to Rs. 7,500 would result in a fall in the number of first appeals to the High Court and enable the court to clear off the arrears. However, the Kerala High Court has, in a recent case,[1] decided that the amendment does not apply to suits instituted before the Kerala Civil Courts Act was enacted, *i.e.*, 1957. On this interpretation, as the High Court itself stated in delivering judgment, the provisions raising the appellate jurisdiction of the district judge will remain "a dead letter for some years to come". We would suggest that the law be amended so as to enable all appeals in suits below the value of Rs. 7,500 to be heard by the district judge irrespective of the date on which they were instituted.

Enhancement of the powers of a single judge.

7. It appears to us that the powers of a Judge of the High Court sitting singly should be enlarged so as to enable him to dispose of all second appeals irrespective of valuation. Under Sub-section (4) (C) of Section 20 of the Travancore-Cochin High Court Act (V of 1125) the power extends only to "every appeal valued at one thousand rupees or less from an appellate decree and every appeal from an appellate order where the subject-matter of the original suit is valued at one thousand rupees or less".

[1]Chinna Kunjukunju *v.* Kutty Neelakantan A. I. R. 1958 Kerala, p. 251.

8. Similarly the proviso to clause (iv) of sub-section (4)-A of Section 20 of the High Court Act provides:

> "that a single Judge shall not have the power to dispose of an application to implead the representative of a deceased appellant or respondent, if it is opposed, in which case the application shall be heard and decided by the Bench competent to hear the case".

9. These restrictions are surprising as a District Judge in Kerala has jurisdiction to hear appeals up to Rs. 7,500 and a single judge of the High Court can and does dispose of petitions under Article 226, which involve complicated questions of law.

In our view these restrictions should be removed and the powers of a single judge enhanced to that now obtaining in Madras. If this is done it will enable the court to clear off the old cases which have been transferred to it from Madras and bring its file up to date.

10. The jurisdiction of the Kerala High Court to entertain a second appeal is wider than that of other High Courts by reason of the Travancore-Cochin Act XVII of 1951 which inserted in sub-section 1 of Section 100 C.P.C. the following clause:

> "(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."

Second appellate jurisdiction.

We were told that this provision had developed a tendency in the presiding officers of first appellate Courts to affirm the decisions of the trial Courts.

The subordinate courts.

11. Although the state of work in the High Court is under control and there are no appreciable arrears, the same cannot be said of the subordinate courts. The state of affairs in these courts is truly deplorable. Twenty-five district and sessions judges worked during the years 1953-54 and 1954-55 and twenty-two in 1955-56 including additional district and sessions Judges. The disposal of work of these officers is shown in the following Table:—

TABLE No. 4

Year	Civil Suits			Small Cause Suits			Civil Appeals			Civil Miscellaneous Appeals		
	Total for disposal	Disposed of	Balance	Total for disposal	Disposed of	Balance	Total for disposal	Disposed of	Balance	Total for disposal	Disposed of	Balance
1	2	3	4	5	6	7	8	9	10	11	12	13
1953-54	7742	2256	5486	20	8	12	13589	5445	8144	2288	1312	976
1954-55	7350	2308	5042	22	14	8	13232	5571	7661	2171	1192	979
1955-56	7046	2333	4713	17	14	3	12947	6856	6091	2095	1143	952

Year	Sessions Cases			Criminal Appeals			Criminal revisions			Cases under Acts other than I. P. C		
	Total for disposal	Disposed of	Balance	Total for disposal	Disposed of	Balance	Total for disposal	Disposed of	Balance	Total for disposal	Disposed of	Balance
1	2	3	4	5	6	7	8	9	10	11	12	13
1953-54	315	255	60	340	284	56	125	90	35	1313	1312	1
1954-55	381	308	73	355	258	97	147	81	66	1742	1735	7
1956-55	512	370	142	559	402	157	240	141	99	1596	1588	8

12. It cannot be said that there is an inadequacy of judicial officers. Nevertheless, as is evident from the figures given in the above table, the disposals of these officers are low. From a perusal of the figures given in the following Table, it will appear that the number of old suits and appeals is extraordinarily large. Over twenty per cent. of the pending suits are over five years old and about forty per cent. of the civil appeals more than a year old and a substantial number have been pending for over two years. The need for the disposal of proceedings within a reasonable time does not seem to be present to the minds of the judicial officers concerned. A sense of urgency or a desire for expedition would seem to be totally absent.

TABLE No. 5

Nature of Proceeding	Year	Between 1 & 2 years	Between 2 & 3 years	Between 3 & 4 years	Between 4 & 5 years	Above 5 year
Regular Suits	1953-54	1078	954	669	417	1121
	1954-55	854	782	646	488	1069
	1955-56	863	579	522	470	1058
Regular Appeals	1953-54	2088	1200	521	170	164
	1954-55	2035	1008	599	203	123
	1955-56	1515	771	366	150	97

NOTE.—In 1955-56 some appeals were transferred to the subordinate judges ; hence the sudden fall.

13. It was authoritatively stated by those in a position to know the true position that the delay in the disposal of proceedings in district courts was due to the fact that work is concentrated in the hands of a few lawyers—four or five—and that the judicial officers usually accommodate the advocates by granting adjournments freely. It was remarked: "Nobody wants to become unpopular. Even High Court Judges do not want to become unpopular. How can the district judges do that?" Although some judges attributed the delays in courts to lawyers, it was conceded that if the presiding officers were strict in granting adjournments, much of the delay caused in the subordinate courts could be avoided. We were informed that the recent establishment and decentralisation of subordinate judges courts was intended among other things to combat the delays arising from the concentration of work in the hands of a few advocates and that this measure has had a fair measure of success. Further, steps may be taken in this direction. It is also necessary that judges should learn to face some temporary unpopularity in the interests of

expedition and long range efficiency. Once the subordinate judicial officers realise that laxity in granting adjournments will draw unfavourable comment from the High Court and that firmness will be encouraged and supported, there is bound to be greater despatch in the disposal of civil work. In view of the heavy arrears it will also be necessary to put some senior officers exclusively for the disposal of old suits, and relieve them of all current work.

14. The number of subordinate judges' courts was increased from one to three on 1st November, 1954, and to six on the 18th August, 1955. The following Table shows the disposal of work by these courts.



TABLE No. 6

Year	No. of Officers	Civil Suits				Small Cause Suits				Civil Appeals			
		Total for disposal	Disposed of	Balance		Total for disposal	Disposed of	Balance		Total for disposal	Disposed of	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
1953-54 . . .	1	716	493	146	77	245	212	30	3	..	..	..	..
1954-55 . . .	3	932	595	134	203	184	162	21	1	..	..	..	..
1955-56 . . .	6	1410	813	336	265	192	170	21	1	1499	760	265	

15. The Table set down below shows the number of suits pending over one year and the period for which they had been pending:

TABLE No. 7

Year	Pending				
	Between 1 & 2 years	Between 2 & 3 years	Between 3 & 4 years	Between 4 & 5 years	Above 5 years
1953-54 .	21	15	2	1	38
1954-55 . .	48	42	22	18	73
1955-56 . .	39	38	33	30	125

Subordinate Judges courts.

16. There is considerable congestion in the subordinate Judges' Courts; the average duration of suits disposed of after full trial is high—801 days in the year 1955-56. Obviously, this is due to a large number of old suits received by transfer from the district courts for disposal. As is evident from the figures given in table No. 7 the number of pending old suits is substantially high and warrants the immediate appointment of subordinate Judges for a term to dispose them. All the original suits pending in the district courts other than those exclusively triable by district Judges should be transferred to these officers for disposal. The number of suits valued above Rs. 5,000 is not large as will be seen from the figures given in table No. 8 below. It should, therefore, be possible for the existing number of subordinate judges to keep pace with the institutions. They may be called upon to dispose of a few sessions cases also by being invested with the powers of Assistant Sessions Judges.

Munsifs' courts.

17. Courts presided over by Munsifs are the next lower grade of courts and have jurisdiction to try suits valued upto Rs. 5,000 under the provisions of the Kerala Act (1 of 1957). The following Table shows the number of suits instituted in the regular civil courts of the State during the three financial years 1954-55, 1955-56 and 1956-57, classified according to value.

TABLE No. 8

Year	No. of suits of value not exceeding Rs. 1000/-	No. of suits of the value of Rs. 1000/- and not exceeding Rs. 2000/-	No. of suits of the value of Rs. 2000/- and not exceeding Rs. 5,000/-	No. of suits of the value of Rs. 5000/- and above	No. of suits of the value of which cannot be estimated in money
1953-54 . .	33585	2289	1640	629	280
1954-55 . .	37561	2826	1991	306	239
1955-56 . .	36777	3428	1839	235	179

18. It is evident from the above Table that roughly 98·5 per cent. of the suits instituted are those cognisable by Munsifs.

19. A quantitative analysis of the disposal of work by Munsifs, during the three financial years 1953-54, 1954-55 and 1955-56, given in the following Table will enable us to assess the state of the files in these courts.

TABLE No. 9

Year	No. of Officers	Civil Suits			Small Cause Suits		
		Total for disposal	Disposal	Balance	Total for disposal	Disposal	Balance
1953-54 .	55	64557	31619	32938	15571	12532	3039
1954-55 .	55	61499	30272	31227	14667	11306	3361
1955-56 .	53	58949	28535	30414	14838	11224	3614

20. The following Table sets out the number of original and small cause suits remaining pending at the close of the years 1953-54, 1954-55 and 1955-56 and the periods for which they have been pending.

TABLE No. 10

Nature of proceeding	Year	Pending					
		Below one year	Between 1 & 2 years	Between 2 & 3 years	Between 3 & 4 years	Between 4 & 5 years	above 5 years
Original Suits	1953-54	11796	6794	4877	2910	1676	4885
	1954-55	12731	5457	3649	3136	2138	4116
	1955-56	13109	5288	3289	2591	2039	4097
Small Cause Suits.	1953-54	2747	243	30	5	..	14
	1954-55	3063	235	45	5	2	11
	1955-56	3182	342	71	3	2	14

21. It is most regrettable that the number of year old suits should be more than sixty per cent. of the total pending suits. In fact, we were told that in the Travancore part of the State a suit was treated as 'old' only if it was pending for over five years. The munsifs who gave evidence before the Commission stated frankly that they "were paying more attention" to suits pending over five years. This state of affairs can only be attributed to the rules which prescribe a minimum monthly disposal of work, forty contested original suits per munsif. This has not unnaturally led the judges to concentrate on the lighter and simpler suits and systematically evade the heavier ones. This state of affairs can be set right only if all year old suits are treated as old and explanations for the pendency of every one of them obtained.

22. The following Table shows the average disposal of work of each munsif based on the institution, disposal and pendency of regular and small cause suits for the three financial years preceding 1956-57.

TABLE NO. 11

Regular Suits			Small Cause Suits		
Average available for disposal	Average disposal	Average pendency	Average available for disposal	Average disposal	Average pendency
1135·0	554·7	580·3	276·5	215·1	61·4

23. It will be seen that the number of regular suits on the files of the officers are beyond the officers' capacity for disposal during a year. The annual average disposal of proceedings is fairly high and it may be said that these officers are saddled with heavier work than what they can carry. Therefore, it appears necessary to increase the number of munsifs until the pending old suits, which are likely to be heavy and seriously contested are disposed of.

24. The average duration of original suits disposed of by Munsifs after full trial during the three years 1953-54, 1954-55 and 1955-56 was 856, 747 and 731 days respectively. The reason for this is not far to seek. The larger the volume of work posted per day, the greater will be the average duration. Almost all the Munsifs have a pending file of about 900 to 1000 suits. They have to post roughly forty to fifty suits per day in order that each of the pending suits may find a place in the cause list at least once a month. In view of the rules prescribing minimum monthly disposal, they have to dispose of about two original suits or a number of other matters which can be equated to two original suits or thereabouts so that they

may reach the prescribed minimum of forty contested original suits per month or four hundred such suits a year. Therefore, the presiding officers (in their anxiety to dispose of at least the minimum number) are inclined to take up only light suits keeping the heavier ones in cold-storage. Concentration on old suits will also tend to increase the average duration, and an increase due to this reason is not necessarily to be deprecated.

25. The afore-mentioned state of affairs obtained before the enhancement of the pecuniary jurisdiction of Munsifs to Rs. 5000.

26. The advantages of this enhancement of the pecuniary jurisdiction of munsifs can be realised only if the officers are able to dispose of proceedings that are brought to trial before them expeditiously and satisfactorily. As is apparent from the figures shown in Table No. 10 the number of suits pending over one year has assumed such large proportions that, unless prompt action is taken, it will become well-nigh impossible to bring down the number of pending suits. It, therefore, appears to be essential to appoint temporary officers to dispose of the enormous number of old suits. Unless this is done and arrears are brought under control, a stage may be reached when there may be a break-down in the judicial machinery. It may also be necessary to increase the cadre strength of Munsifs as there will be an increase in the number of suits instituted in these courts of Munsifs by reason of the enhanced pecuniary jurisdiction conferred upon them recently.

27. We have already noticed the untoward consequence of an accumulation of heavy old suits flowing from the rule laying down a quantitative minimum of disposals. The disposal of suits in each court depends upon several factors like the nature of the litigation, the calibre of the presiding officer, the acumen of the Bar and so forth. It is, therefore, unreasonable to fix the same quantitative standard for all courts of a particular class. We think that these standards have been fixed somewhat arbitrarily. It would be better to fix the standard of disposal for each court separately and to insist on cases being normally taken up in the chronological order. Any tendency to depart from this procedure with a view to showing larger quantitative disposals should be definitely discouraged.

28. The pay scales of judicial officers in this State have recently been revised with effect from 1st April 1958. District and Additional District Judges are on the scale of Rs. 850—1300, Subordinate Judges on the scale of Rs. 500—800, while the scale of Munsifs is Rs. 300—500.

It is a matter of regret that in the process of revision the starting salary of District and Sessions Judges has been reduced. The present scales of pay of a District

Judge are lower than those of a Collector who draws pay on the senior scale of the Indian Administrative Service *i.e.* 800—1800. We feel that this disparity in pay scales should not continue.

29. Travancore-Cochin was one of the few States in which Subordinate Judges were directly recruited from the Bar and such appointments were being frequently made. Although no direct recruitment from the Bar to the cadre of Subordinate Judges has been made since reorganization of the State, we understand that it is proposed to continue the practice of direct recruitment at this level. We have elsewhere expressed the opinion that such direct recruitment is inadvisable and in our view conditions in Kerala are not such as to justify a departure from this rule.

Panchayat Courts.

30. At the base of the administration of Civil Justice are courts which may be called the Village Panchayat Courts. Prior to the integration of the Travancore and Cochin States these courts were constituted under the statutes enacted by the respective States. The Registrar of Village Courts, Cochin, who gave evidence before us stated that the courts in the Cochin region (about the working of which alone he had knowledge) were functioning satisfactorily and added that out of an approximate number of 4000 cases decided by these courts every year only about forty or fifty would go in revision. In 1954, an Act was passed defining the set-up, jurisdiction and powers of the Village Courts in the entire Travancore-Cochin State. These courts are not Panchayat Courts in the sense in which the expression is used, for example, in Uttar Pradesh. They appear to be Benches manned by laymen having the power of courts of lower grade Munsifs, as it were, with small and limited jurisdiction, these courts have powers to execute their decrees including the power to detain the judgment-debtors in civil prison. This is the only State in the entire country which permits legal practitioners to appear before these courts; the fee payable to the legal practitioner has been fixed at a maximum of Rs. 3 per case.

Separation of the judiciary.

31. The judiciary in the State has been separated from the executive by administrative orders. The Madras pattern of separation is followed by this State. The Criminal Procedure Code (Act V of 1898) as amended by Act (XXVI of 1955) was amended by Kerala Act (V of 1957) whereby the appellate powers of the District Magistrates as they existed prior to the coming into force of the said Act (XXVI of 1955) were restored. Appeals against the decisions of second and third class Magistrates, therefore, lie to the District Magistrates.

Criminal Courts—state of work.

32. The accompanying Table (No. 12) shows the disposal of work in different classes of criminal courts in the State during the year 1955-56.

TABLE No. 12

Designation of officers	No. of Officers	Sessions cases					Criminal Appeals					Criminal Revision			
		Pending at the beginning of the year	Institution	Disposals	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Institution	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year			Below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
District & Sessions Judges and Addl. Sessions Judges . .	9+13	73	439	370	142	..	97	462	402	157	..	174	141	99	..
District Magistrates . .	4	..	..	..	..	..	29	331	285	75	..	264	307	35	..
Sub-Divisional Magistrates and First Class Magistrates . .	10+25	..	..	..	..	..	118	184	299	3	..	..	..	..	..
Second Class Magistrates . .	32	..	..	..	..	..	..	..	..	..	..	..	..	..	..

Criminal Cases

Cases under I. P. C.					Other Cases				
Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
			Below one year	Over one year				Below one year	Over one year
17	18	19	20	21	22	23	24	25	26
..	..	..	..	..	1	1589	1588	8	..
2	252	199	55	..	..	..	..	..	..
*23510	33084	37564	17012	2018	1312	1047	1570	789	..
*17134	32916	36766	12121	1163	..	..	..	..	..

*2. Second Class Magistrates' Courts were converted into First Class Magistrates' Courts ; hence the difference in the pendency

The position in the criminal courts is also far from satisfactory. There are a large number of year old cases and case properties have not been disposed of in some courts for years. Piecemeal hearings of cases and absence of witness is far too common. There is great scope for improvement in this connection.

33. Closely connected with the problem of delays in the subordinate courts is the insufficiency of supervision exercised by the district judges and the High Court over the subordinate judiciary. No administrative powers to deal with the Munsifs or subordinate judges have been delegated to the district judges; they seem to be merely the agents of the High Court for collection of information in tabular statements for transmission to the High Court. The district and sessions judges are not looked upon as officers on whom rests the responsibility for the efficient administration of justice in the districts. Though they inspect the courts subordinate to them usually once a year they merely send their inspection reports to the High Court without commenting upon the work turned out by the subordinate judicial officers. At the time we visited Kerala all postings including that of inferior and last grade staff seemed to be done only by the High Court, the District Judges being powerless in this regard. Greater delegation of powers and responsibility to the District Judge appears to be necessary. Supervision.

It is true that each Judge of the High Court has been placed in administrative charge of one or two districts, but scrutiny of the periodical returns received from the districts and supervision not so detailed and rigorous as it may well be. There is undoubtedly scope for greater supervision over both the civil and criminal judiciary. We were told that the "Calendar Statement System" whose working has been explained in the chapter on supervision has been dispensed with. The advantages of this system need not be reiterated here. It should be revived. What effective supervision can do in this regard is demonstrated by the fact that the conditions in the Kanya Kumari, District of Madras, which originally formed part of Travancore have undergone a marked improvement after the re-introduction of the system of submission of calendar statements and intensified supervision.

34. It was stated in the evidence before us that the inadequacy of prosecuting officers occasioned delays and an examination of the order sheets in some criminal cases reveals that the complaint is justified.

We also learnt that in this State the budget provision for each criminal court for payment of bata to witnesses is limited—and that once it is exhausted witnesses who attend court are not paid any allowances. This state of affairs should be immediately set right by suitable administrative measures. Prosecuting agency and witnesses.

Reporting of crimes.

35. Delays in the investigation of crime are also said to arise from a defective system of reporting of offences, which obtains in the State except the areas which were originally part of Madras. The revenue villages which are fairly big both in size and population are in charge of village officers who are not headmen in the usual sense of the term. Reports of crimes are not made by the village officers and even the obligation cast on them by Section 45 of the Criminal Procedure Code seems to be ignored. Information of crime has to be carried by the person interested to the police station; there are normally only two station-houses for each taluq. The officer-in-charge of a police out-post is not authorised to register a case and he does not even receive or record any report made to him. He merely refers the complainant to the police station concerned after making an entry in a general diary. In the case of heinous crimes, however, he goes to the scene of the offence and awaits the arrival of the police officials.

36. The need for establishing a better reporting agency in each village should be examined and the proper performance by village officers of their duties under Section 45 of the Criminal Procedure Code should be insisted on.

Legal aid.

37. This State has the distinction of being the only one in India having an organised system of Legal Aid. Details of the scheme will be found in Appendix III to our chapter on Legal Aid.

सत्यमेव जयते

49.—MADHYA PRADESH

General.

1. As a result of the recent reorganisation of States, far reaching territorial changes have taken place in the former State of Madhya Pradesh. The new State is composed of the former Madhya Bharat, (excluding the Sunel enclave of Mandsaur District) Bhopal and Vindhya Pradesh States, together with 17 Hindi Districts of the former Madhya Pradesh called Mahakoshal and Sironj subdivision of Kotah district of Rajasthan. Nagpur, which was originally the capital of the old Madhya Pradesh State, together with other Marathi speaking Districts, called Vidarbha has been transferred to the Bombay State. The new State stretches from the Chambal in the North to the Godavari in the South and with an area of 1,71,300 square miles and is the second largest State in the new map of India. The population of the State is 2,60,71,637. It now consists of 43 districts, which are grouped into 7 Administrative Divisions.

Transitional phase.

2. The new State is passing through a transitional phase. It is faced with several complicated problems arising from the integration of various regions each of which prior to the reorganization was governed by distinct sets of laws administered by different States, one of which was a Part A State, another a Part B State and two Part C States. Different laws relating to the same matter were in operation in those regions. The new State has therefore to establish a uniform pattern of sound and efficient governmental machinery in the executive, and judicial fields, enact a common set of laws applicable to the entire State, and integrate the services of the different regions. Considering the pre-existing differences in the various administrative units, these problems are not easy to solve. Even in the field of the administration of justice, there is considerable dissimilarity in the set-up of courts, their jurisdiction, the pay-scales of judicial officers, the extent of powers they can exercise and the laws they administer in different regions. When we visited the State in November 1957, we were told that a special officer had been appointed to work out a plan to expedite the process of integration in the judicial field which was expected to be completed within about a year's time.

On account of the changes in the composition of the State, our difficulties in attempting an appraisal of the judicial work in the State have been considerable. Much of the statistical information that we received pertained to the old State of Madhya Pradesh, all of which is now out of date and has little relevance to the changed condition

in the new State. It has therefore not been possible for us to assess accurately the true picture of the position that now obtains in the new State.

Constitution of the High Court of Madhya Pradesh.

3. Before the reorganization, the High Court of Madhya Pradesh, then called the High Court of Nagpur was located at Nagpur. This court was established by Letters Patent in January 1936. Prior to that, there was a Court of the Judicial Commissioner in the Central Provinces established under the Central Provinces and Oudh Act XIV of 1865. After the coming into force of the Constitution, a High Court was established for Madhya Bharat and Courts of Judicial Commissioners were constituted for Bhopal and Vindhya Pradesh States. With the emergence of the new State of Madhya Pradesh, the High Court of Madhya Bharat and the Courts of Judicial Commissioners for Bhopal and Vindhya Pradesh have been abolished and a new High Court, called the High Court of Madhya Pradesh, has been constituted for the entire State. As Nagpur has been transferred to Bombay State, the seat of the High Court is Jabalpur and that of the State Government Bhopal.

Strength.

4. Before the reorganization, the former High Court of Nagpur had ten judges, including the Chief Justice. The Madhya Bharat High Court was composed of 6 judges including the Chief Justice. Bhopal and Vindhya Pradesh had one Judicial Commissioner each. The sanctioned strength of the new High Court is 15, 13 permanent judges and two temporary judges. But the actual strength of the court at present is 12 judges, two of whom have been appointed recently.

Benches.

5. The new High Court, however, does not function as a single unit. While the principal seat of the Court is at Jabalpur, two temporary Benches have been established at Gwalior and Indore. These Benches are the survivals of the former Madhya Bharat High Court, which functioned in two divisions one at Indore and the other at Gwalior. Under a notification of the High Court, the earlier territorial jurisdiction of these Benches has been preserved, and in addition, the Indore Bench deals with the cases arising in the former territories of Bhopal while the Gwalior Bench deals with the cases arising in the Sironj Sub-Division of Kotah in the old State of Rajasthan. The Court at Jabalpur deals with the cases arising in Mahakoshal and Vindhya Pradesh.

Seat of the High Court.

6. The principal reason for the division of the High Court into three Benches appears to be largely political; and designed to satisfy the conflicting regional claims of the constituent units. The splitting up of the High Court has created numerous practical difficulties. It was pointed out that the distribution of judges between three different places caused considerable wastage of judge-power,

which greatly affected the despatch of the judicial business of the Court. All judges did not get a chance of sitting in Full Benches or of hearing important cases. While constituting a Full Bench, the Chief Justice is unable to utilise the services of the most suitable judges for the determination of the case in question as they are not all available at the same centre. Apart from these disadvantages, with the division of the Bar at three places, it has not been possible to have a strong Bar and a well-equipped library at each of these three places.

While the evidence given before us largely favoured the location of the High Court at one place, naturally enough divergent views were expressed with regard to the place where it should be located. It was urged by some that the High Court should be located at the capital, as in most States. It was also stated that considerable delays occurred in the disposal of writ matters to which the Government was a party, as the seat of the Government being at a different place, it took a great deal of time for the Government Pleaders to consult the administrative departments and file affidavits in the Court. We have already expressed ourselves against the establishment and continuance of Benches. The location of the High Court is of secondary importance. What is vital is that the High Court should be located only in one place—and that centre should be speedily and finally determined. Delay in reaching a decision makes for uncertainty and serves to create and strengthen vested interests which will subsequently render the establishment of a unified High Court difficult.

Difficulties arising from interpretation of Article 226.

7. Though no specific instances were brought to our notice, it was represented to us that petitions under Article 226 in which the Government of Madhya Pradesh was a party and which were transferred to the High Court of Bombay under the certificate of the Chief Justice of the present High Court of Madhya Pradesh under Section 54 of the States Reorganization Act, were dismissed on the ground that the present Madhya Pradesh Government being outside its territorial jurisdiction, the Bombay High Court could not issue writs to the Madhya Pradesh Government. The States Reorganization Act does not appear to provide any remedy for such matters, nor has the Chief Justice of Madhya Pradesh power under the Act to call back such cases and decide them according to law. This has occasioned considerable hardship. While it is now too late to devise measures to remedy it, this state of affairs emphasises the need for a clarification of the position with regard to the jurisdiction of the High Court, under Article 226 to which we have drawn attention earlier.

State of the file.

8. Table No. 1 below shows the civil and criminal work done by the High Court from 1950 to the 30th October, 1957. The figures relating to the years 1951 to 1956

(30th October, 1956) relate to the old High Court of Nagpur. The figures pertaining to the new High Court relate only to the period of 12 months, from 1st November, 1956 to 1st October, 1957. Table No. 2 shows the year of institution of proceedings pending on 1st January, 1957 in the new High Court.



TABLE No. 1

Statement showing Civil and Criminal work done by the High Court of Madhya Pradesh during the years 1951—1957

Year		1951	1952	1953	1954	1955	1956 upto 30-10-56	1956 From 1-11-56 to 31-12-56				1957 upto 30-10-57
No. of Judges		9	9	10	10	10	10	JBL	Indore	GWL	Total	
First Appeals against Decrees	I	171	189	188	187	198	199	56	14	5	75	122
	D	132	114	114	223	209	117	23	9	2	34	231
	P	904	979	1053	1017	1006	509 (784)	542	195	88	825	716
Second Appeals against Decrees	I	924	971	904	842	1061	966	116	81	56	253	664
	D	948	810	1153	1038	871	746	38	20	19	77	960
	P	2984	3145	2896	2700	2890	1323 (2129)	1401	662	242	2305	2279
Appeals against Orders	I	188	252	203	203	272	215	33	18	6	57	222
	D	272	357	265	237	229	227	12	9	2	23	141
	P	424	315	254	220	263	—115 (285)	136	149	34	319	400
Letters Patent Appeals	I	29	40	65	117	166	217	30	..	..	30	100
	D	32	39	41	59	98	125	18	..	..	18	312
	P	104	105	129	187	255	347 (360)	359	8	5	372	160
Civil Revisions	I	950	811	957	982	1040	907	64	173	37	274	888
	D	1011	774	897	953	1098	833	38	116	17	171	726
	P	434	471	531	560	502	235 (713)	261	464	91	816	978
Writ Petitions	I	270	223	278	534	577	546	47	45	1	93	280
	D	216	216	305	473	407	435	30	15	5	50	227
	P	253	260	233	238	408	217 (350)	234	112	47	393	452
Criminal Appeals	I	N.A.	N.A.	N.A.	348	407	376	79	72	15	166	592
	D	N.A.	N.A.	N.A.	377	402	320	26	58	22	106	552
	P.	N.A.	N.A.	127	138	143	—147 (322)	200	107	75	382	422

Year		1951	1952	1953	1954	1955	1956 upto 30-10-56	1956 From 1-11-56 to 31-12-56			1957 upto 30-10-57	
No. of Judges		9	9	10	10	10	10	JBL	Indore	GWL	Total	
Criminal Revision	I	N.A.	N.A.	N.A.	935	900	767	108	70	41	219	792
	D	N.A.	N.A.	N.A.	784	920	688	50	34	41	145	866
	P	N.A.	N.A.	370	421	401	250 (400)	308	131	35	474	392

(*a*) I=Institution.
D=Disposal.
P=Pendency.
JBL=Jubbelpore.
GWL=Gwalior.

(*b*) The figures shown in brackets against Pendency under the year 1956 show the number of cases pending on 1-11-56, when the new court was constituted.

(*c*) On 1-11-56, the following number of proceedings were transferred to the High Court of Bombay.

(1) First Appeals	579
(2) Second Appeals	1787
(3) Appeals against Orders	136
(4) Letters Patent Appeals	260
(5) Civil Revisions	341
(6) Writ Petitions	302
(7) Criminal Appeals	52
(8) Criminal Revisions	230

These figures have not been included in Disposal or Pendency columns of 1956.

TABLE No. 2

Statement showing the year of institution pending 1-1-57 in the High Court of Madhya Pradesh

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	Total
First Appeals	..	5	2	29	59	87	130	126	145	242	825
Second Appeals	..	..	1	44	237	300	258	203	489	773	2305
Appeals against Order	..	..	1	..	3	9	10	31	107	158	319
Letters Patent or Special Appeals	..	..	..	..	1	1	33	80	90	167	372
Writs	..	..	..	..	..	6	..	12	76	299	393
Civil Revisions	..	..	..	..	..	13	16	30	81	676	816
Criminal Appeals	..	..	..	..	..	..	5	19	28	330	382
Criminal Revisions	..	..	..	..	..	..	..	1	15	257	278

Adequacy of strength.

9. At the time of the reorganization, 6868 matters were pending in the old High Court of Nagpur, out of which 3524 matters were transferred to the High Court of Bombay. With the abolition of the High Court of Madhya Bharat and the Judicial Commissioners' courts for Bhopal and Vindhya Pradesh, 2513 matters pending in these courts were transferred to the new High Court, thus bringing the total pending matters in the High Court to 5857, with which the new Court started on 1st November, 1956. During the period of one year from 1st November, 1956 to 30th October, 1957, a total of 5657 matters were instituted. The disposal during this period was 5215, with the result that at the end of the period of twelve months, the total of pending matters in the High Court rose to 6309, as against 5857 with which it had started. The strength of the High Court during this period was 10 judges. It is still too early to estimate the volume of future institutions, but taking the institutions during this period of twelve months as average, it is evident, that with a strength of ten judges it will not be possible for the High Court to cope with the current institutions. The average disposal per judge works out at about 520 cases per year as against 850 in the High Court of Allahabad. This low average disposal is apparently due to the wastage of judge-power arising out of the High Court working at three different places and the difficulties arising as a consequence of the shifting of the High Court to a new location. Whatever may be the reason on the basis of current disposals it would appear that at least twelve to thirteen judges would be necessary to cope with the current institutions. It was said that one more Judge would be necessary to deal with special matters like Election petitions etc. Some more judges would be necessary to deal with the accumulated arrears. An additional judge or two for a short period seem to be necessary. The situation may be watched for some time and if necessary, temporary judges may be appointed to clear off the arrears.

Congestion of First and Second Appeals.

10. It will appear from Table Nos. 1 and 2 that there is a great deal of congestion of First and Second Appeals which have been pending in the Court for many years. At the current rate of disposal of First and Second Appeals it would appear, that two to three years will be necessary to dispose of the existing accumulation of First and Second Appeals. We have not been able to ascertain the average duration of the First and Second Appeals that were disposed of by the High Court during the years 1956 to 1957, but it may be noticed that in the old High Court of Nagpur, the average duration of First and Second Appeals in 1954 was 2503 days (*i.e.* about 6 years and 10 months) and 1604 days (*i.e.* about 4 years and 5 months) respectively. Special efforts are therefore necessary to bring about a quick disposal of these classes of proceedings.

The appellate jurisdiction of District Judges in the Mahakoshal area was raised to Rs. 10,000 in 1956 but this

change was not given retrospective effect. If such retrospective effect is given throughout the entire state—and is made applicable even to suits instituted prior to the amendment, it should give substantial relief to the High Court.

Powers of Single Judge.

11. Under the High Court rules, a judge sitting singly can hear all Second Appeals, all appeals against orders and revision applications irrespective of value, criminal appeals except those in which a sentence of death or of transportation for life has been passed and all writ matters except that of *habeas corpus*. These powers are ample and are generally in line with the recommendations made by us in an earlier Chapter. In view of the large number of pending First Appeals and the enhancement of the appellate jurisdiction of the district judges to Rs. 10,000 a single judge may also be empowered to hear First Appeals below that value.

Judgment.

12. In the High Court, reserved judgments are not read out in open court. Instead, a rule has been framed to the effect that when a typed script of a judgment or order is prepared and is ready for signature, it is to be laid on the table of the Court Reader and can be inspected by parties and Counsel appearing in the case. The judgment is then signed at the close of the sitting of the court on the date following that on which the judgment or order is placed on the Reader's table. At any time before signature, a party to the case or its Counsel may appear and ask for the correction of clerical mistakes and omissions.

Set up of courts. Subordinate Courts. Mahakoshal.

13. The constitution of subordinate courts is governed by different Acts in different regions. The existing set-up of the courts being the legacy of the old States is rather heterogeneous. Thus in the Mahakoshal area, there are three grades of courts, namely, the courts of District and Sessions Judges, Additional District and Sessions Judges and Civil Judges. This is a peculiar feature of this State. It was introduced in 1956. Prior to that, as in most other States, the Courts below the Additional District Judges, were composed of two grades, Civil Judges Class II, with jurisdiction up to Rs. 5000 and Civil Judges Class I, with jurisdiction up to Rs. 10,000. Now Civil Judges exercise original jurisdiction up to Rs. 10,000 and are invested with small cause jurisdiction up to Rs. 500. Only the District and Additional District Judges exercise unlimited pecuniary jurisdiction. They have small cause jurisdiction up to Rs. 1000 and hear all appeals from civil judges *i.e.* up to Rs. 10,000, try sessions cases and hear criminal appeals.

Madhya Bharat

In the Madhya Bharat region, the subordinate judiciary is divided into District and Sessions Judges, Civil Judges First Class and Civil Judges Second Class. The Civil

Judges Second Class correspond to the Munsifs in other States and exercise pecuniary jurisdiction up to Rs. 3000. Civil Judges Class I have jurisdiction up to Rs. 10,000 and District Judges have unlimited pecuniary jurisdiction. In the Bhopal and Vindhya Pradesh regions, there are Munsif-Magistrates, whose civil jurisdiction extends to Rs. 1000 and they try criminal cases as First Class Magistrates. Subordinate Judges have pecuniary jurisdiction ranging between Rs. 1000 to Rs. 10,000 and District and Additional District Judges exercise jurisdiction above Rs. 10,000.

Bhopal and Vindhya Pradesh.

It would be seen that there is considerable difference in the jurisdiction exercised by various courts in different regions of the State. In order to evolve a uniform set-up of courts, the Legislative Assembly has recently passed a new Act called the Madhya Pradesh Civil Courts Act, 1958 seeking to integrate the subordinate judiciary in the State. This legislation is awaiting the President's assent. Under this Act, it is proposed to establish, as in other States, four classes of courts, namely, the courts of the District Judge, the Additional District Judge, the Civil Judge Class I and the Civil Judge Class II. The Civil Judge Class II will exercise original jurisdiction up to Rs. 2000 and small cause jurisdiction up to Rs. 200. The Civil Judge Class I, will exercise original jurisdiction up to Rs. 10,000 and small cause jurisdiction up to Rs. 500. The Additional District Judge and the District Judge will have unlimited pecuniary jurisdiction. The District Judge will have appellate jurisdiction up to Rs. 10,000. The existing civil judges will be classified into Civil Judges Class I and Class II. Thus Munsifs in Vindhya Pradesh and Bhopal and Civil Judges Class II, in Madhya Bharat will be deemed to be Civil Judges Class II under the new Act, and Civil Judges of Mahakoshal area, Civil Judges Class I of Madhya Bharat and Subordinate Judges of Bhopal will be deemed to be Civil Judges Class I. The pattern of courts contemplated under this Act is generally in line with our recommendations, except for the pecuniary jurisdiction of Civil Judges Class I, which we think, should be unlimited. It would also appear to be desirable to empower the High Court to invest Civil Judges Class II with jurisdiction upto Rs. 5,000.

Judicial divisions.

14. Prior to the reorganization, twenty two districts of the old State were divided into 11 judicial districts. After the reorganisation, the number of judicial districts has been increased to 20, 7 in the Mahakoshal region, 10 in the old Madhya Bharat, 2 in Vindhya Pradesh and one in Bhopal.

Strength.

15. Before reorganization, the old State of Madhya Pradesh had a strength of 14 District Judges, 41 Additional District Judges and 95 Civil Judges. The strength of the Subordinate judiciary has, after the reorganization, been

almost doubled. Thus in the new State, the strength of District and Sessions Judges is 23—10 in Mahakoshal, 10 in Madhya Bharat, 2 in Vindhya Pradesh and 1 in Bhopal. There are 58 Additional District and Sessions Judges among whom are included Civil Judges of old Madhya Pradesh and the Civil Judges of Madhya Bharat who exercise the powers of Additional District and Sessions Judges. Of these 58 officers, 28 are for Mahakoshal region, 21 for Madhya Bharat, 7 for Vindhya Pradesh and 2 for Bhopal. The number of Civil Judges, Grade II, which includes Civil Judges Class I and II of Madhya Bharat and Subordinate Judges of Bhopal is 182, of whom 50 are allocated to Mahakoshal, 122 to Madhya Bharat and 10 to Bhopal. In addition to these officers, there are 30 Munsif-Magistrates in Vindhya Pradesh and 7 in Bhopal. This brings the total number of the judicial officers in the new State to 300 as against 150 in the old State.

Recruitment. Mahakoshal.

16. In old Madhya Pradesh, the Subordinate Judicial Service was reorganised in 1955 when the new recruitment rules came into force. According to the new scheme, there were three distinct cadres of judicial officers namely, District Judges, Additional District Judges and Civil Judges. This corresponds to the present set-up of Subordinate Courts in Mahakoshal. This organization of the subordinate judiciary is somewhat different from that obtaining in the other States, where the subordinate judiciary is divided into two principal classes, the Higher Judicial Service consisting of District Judges and Additional District Judges and the Lower Subordinate Judiciary consisting of Subordinate Judges or Civil Judges Senior Division and Munsifs or Civil Judges Junior Division.

Recruitment to the posts of District Judges is made only by promotion of suitable Additional District Judges. The Additional District Judges are, however, recruited either by promotion of Civil Judges or by District recruitment from the Bar. The number of direct recruits, however, is not to exceed one-fourth of the total number of Additional District Judges. The requisite qualifications for direct recruitment are, seven years' practice at the Bar and age not above 40 years. The selection is made by the High Court Judges who interview the applicants. The Civil Judges on the other hand, are selected by the Public Service Commission and the Governor is empowered to nominate a judge of the High Court to be associated with the Public Service Commission at the time of interviewing the candidates. We understand that at the last selection held in 1956, the Chief Justice himself sat with the Commission as a nominee of the High Court, when 24 candidates were selected out of 700 applicants for 16 vacancies. The requisite qualifications for recruitment as Civil Judges are, a degree in law with 3 years practice at

Madhya Bharat.

the Bar and the age of 25 to 30 years. The rules provide for training being given for a period of one year to Additional District Judges recruited directly, but it is understood that such training was not in fact given.

In the old Madhya Bharat, the judicial service was composed of two cadres, namely, District and Sessions Judges and Civil Judges. The District and Sessions Judges were recruited either by direct recruitment from among the members of the Bar or by the promotion of Civil Judges. The Civil Judges were, however, recruited by a competitive examination with written papers followed by a *viva voce* test, conducted by the Public Service Commission. This mode of recruitment is not now in vogue because the Madhya Bharat Judicial Service Rules, 1951 are no longer operative.

Pay scales.

17. There is a considerable disparity in the pay scales of the various grades of judicial officers in the different regions. Thus the District and Sessions Judges in the Mahakoshal and Vindhya Pradesh regions are in the pay scale of Rs. 800—50—1,000—60—1,300—50—1,800, which corresponds to the senior I.A.S. scale. In Madhya Bharat, the District and Sessions Judges are in the grade of Rs. 800—40—1,000—50—1,200; but some of them are in the selection grade of Rs. 1,250—50—1,500. In Bhopal, however, a District and Sessions Judge is in the scale of Rs. 500—30—590—EB—30—770—40—850, being perhaps the lowest in the country for this class of judicial officers.

Additional District and Sessions Judges in Mahakoshal are in the scale of Rs. 600—50—850. In the Madhya Bharat region they are in the scale of Rs. 250 to 750, plus special pay of Rs. 100 per month. In Vindhya Pradesh their scale is Rs. 500 to 750. In Bhopal they are in the same scale as that of District and Sessions Judges referred to above. The pay scale of Civil Judges in the Mahakoshal region is Rs. 250—250—25—400—EB—20—600—EB—25—750. In the Madhya Bharat region they are in the same scale of pay as Additional District and Sessions Judges, but they do not get any special pay. The Munsif-Magistrates in Vindhya Pradesh are in the scale of Rs. 250 to 500 and in Bhopal they are in the scale of Rs. 200 to 375. Thus there are wide disparities in the pay scales of judicial officers. When we visited Jabalpur we were told that efforts were being made to integrate and reorganise the judicial service by harmonising the diverse pay scales and fixing the seniority of judicial officers in unified cadres.

Work in Subordinate Courts.

18. We have not been able to obtain information about the state of the files in the subordinate courts after the reorganization. Although we have some figures relating to the old Madhya Pradesh and also regarding the former Madhya Bharat region it has not been possible to consoli-

date them so as to form a correct picture of the position in the new State as a whole.

We would however like to draw attention to the fact that in parts of what was Madhya Bharat there is an acute shortage of officers. We were told that in Ratlam for example there was only one judge to cope with a file which required at least three officers and that in the District Court there were civil appeals over five years old and that representations to the authorities had no effect. We trust that this and similar situations will be speedily remedied.

From the earlier administration reports of the Nagpur High Court, it is evident that there was a downward trend in the institution of suits. Thus while in 1951 the total number of suits instituted in the Subordinate Courts was 53,856, the number had declined to 42,268 in 1955. This distinct fall in the institutions was attributed mainly to the functioning of the Nyaya Panchayats and the enactment of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950. A large volume of the litigation was of small value, about 90 per cent. of the total proceeding being of a value below Rs. 1,000 and about 98 per cent. below Rs. 5,000.

In the course of evidence at Jabalpur and from the figures pertaining to earlier years, it became evident that the work in the Civil Courts of Old Madhya Pradesh was generally up to date. Thus in 1954, the average duration of a suit disposed of after full trial in the court of Civil Judge Grade II was only 336 days, as against 747 days in Kerala, 565 days in U.P., 559 days in Bombay, 561 days in Orissa and 504 days in Bihar. The average duration in Madhya Pradesh was the lowest in India during this year. In the Subordinate Courts there were not to be found heavy arrears as in the other States.

Effective supervision.

19. An important reason for the state of the file in the old Madhya Pradesh Civil Courts being definitely better than in the other States was the strict and effective supervision exercised by the District Judges and the High Court over the subordinate courts. We were told that the District Judges took a great deal of personal interest in the problems of subordinate courts and established personal contacts with the judicial officers, discussed with them their difficulties and gave them guidance from time to time. The personal element plays a decisive part in making the work of supervision effective. We have dealt with this aspect of the matter and the methods adopted in old Madhya Pradesh in earlier chapters.

Distribution of Judicial business.

20. A peculiar feature about Madhya Pradesh is that all suits in a judicial district are instituted in the District Court. The Courts of Civil Judges and the Additional District Judges have territorial jurisdiction throughout

the District and the suits are transferred to them in accordance with the instructions of the District Judge who distributes the suits among them according to the seniority and experience of the judicial officer concerned. This however does not mean that a litigant has to come all the way to the headquarters of the judicial district to file a suit, but he can do so in the nearest civil court, which receives it as the agent of the District Court and passes it on to the appropriate court for trial in accordance with the standing orders of the District Judge. In this way, distribution of the work in the entire judicial division is directly controlled by the District Judge, who is always in a position to assess the quantum of work pending before every presiding officer subordinate to him.

Link system of courts.

21. On account of inadequacy of judicial personnel, the High Court of Madhya Pradesh was obliged to establish the link-system of Courts, a sort of circuit system in the lower courts. This system has been in vogue for several years. What is done is, that whenever the file of a court is heavy, that court is linked with another court, with a comparatively lighter file and the judge of the latter court camps at the seat of the former and disposes of suits pending in that court. The principal object of this system is to afford timely relief to a court with a heavy file. In this way courts are frequently grouped and re-grouped with a view to expediting the disposal of cases. This system is not however satisfactory as considerable judicial time is wasted in travelling and day to day hearing often becomes difficult.

Evidence Block.

22. A special feature about the system of trial of civil suits in this State is, the nature of the arrangements made to ensure that the hearing of a civil suit generally takes place from day to day. A certain number of days in a month, say 10 or 15, are earmarked for dealing exclusively with cases that are ready for final hearing. This period is called the "Evidence Block". During these days no other work is taken up and the entire period is devoted to the recording of evidence in the cases. When a suit is ready for final hearing, it is set down in the "Evidence Block" according to its turn. Once it is taken up it is heard continuously until the evidence of all the witnesses, who are present, is recorded. Rules framed by the High Court insist that once a witness is called and he appears, he *must* be examined and discharged. In the case of witnesses who are not present, ordinarily no adjournment of the case is allowed. But if a party insists upon an adjournment for this purpose he is required to satisfy the court that the witness is not present for a valid reason; he must also furnish the court with a memorandum of what the witness will state. The witness is when called strictly confined to the memorandum and is not allowed to travel beyond though he may be cross-examined in regard to matters outside it. The trial is adjourned only after all the witnesses

who are present have been examined and discharged. The principal advantage of this system is, that there are no piecemeal hearings, adjournments are infrequent and witnesses are seldom sent away on the ground that the court is busy doing something else. The litigant is not harassed by having to appear every fortnight or every month as in some other States. We have earlier quoted a former Chief Justice of this State on the working and merits of this system. This State has long had an enviable record for the expeditious trial of suits in subordinate courts. This earned the commendation of the Rankin Committee.

We trust that this tradition of expeditiousness will extend from the Mahakoshal area to the whole of Madhya Pradesh as reconstituted.

Another special feature is that subordinate appellate courts are enjoined to make full use of the provisions of Order XLI Rule 11 and dispose of appeals even at the stage of admission. Delay in delivering judgments is controlled by a salutary rule that the arguments have to be heard and judgments delivered within fourteen days of the close of evidence and explanations for delay are not accepted easily.

Separation of judiciary and executive.

Madhya Bharat.

Criminal Court.

Bhopal and Vindhya Pradesh.

Mahakoshal.

23. There is a complete separation of the judiciary from the executive in the Madhya Bharat, Vindhya Pradesh and Bhopal regions of the new State of Madhya Pradesh. In the Madhya Bharat region, the magistracy is divided into two classes, namely, the judicial magistrates and the executive magistrates; the latter deal with cases arising under the Criminal Procedure Code. Judicial Magistrates function under the administrative control of the High Court. In the regions of Bhopal and Vindhya Pradesh, the civil and magisterial work is done by the same judicial officer called the "Munsif-Magistrate". These officers are also under the administrative control of the High Court. In the Mahakoshal region, however, there is no separation of the judiciary from the executive. We were told that a proposal for separation came up for consideration before the Government in 1950, but it was decided not to introduce complete separation at that time. It was later decided to divide the scheme into several stages and only the first stage of the scheme has been implemented in that in some districts judicial officers doing criminal work have been separated from the executive officers. They continue to be controlled by the District Magistrates. We were, however, told that the Government was contemplating the introduction of a scheme for complete separation on the same pattern as in Madhya Bharat. It was stated that the powers of District Magistrate were to be conferred on the Additional District Judge who would function as an Additional District Magistrate within the framework of the Criminal Procedure Code.

Large Number of acquittals.

24. There was general comment in this State on the large number of acquittals in criminal cases. We find from the administration report for the year 1952 that the percentage of acquittals in cases in the Court of session was 56·3 and in appeals to the High Court 17·5. It was stated that the high percentage of acquittals in such cases was mainly due to faulty investigation by the Police.

Delays in criminal cases.

25. In marked contrast to the civil courts the working of the magistrates courts is characterised by delays, an accumulation of old cases, frequent adjournments and piecemeal hearing. At the end of 1956, about 20,000 cases under I.P.C. were pending in the magisterial courts, of which about 3000 were more than one year old. The average duration of a criminal case (including cases under minor enactments) in Magistrates court was 48·2 days. We have not been able to appreciate the real causes of such a state of affairs. If private parties are able to produce their witnesses on the specified date in a civil case and the civil judges are able to examine the witnesses present, and hear the case from day to day there is no reason why the State as prosecutor should not show the same diligence as ordinary litigants, and magistrates work as methodically as civil judges.

Recently rules have been framed empowering the District and Sessions Judges to inspect the Courts of Magistrates, but this by itself is not sufficient. The utility of an inspection by an officer who has no administrative control over the offices whose work is inspected is limited.

A possible reason for these delays may be the combination of judicial and executive duties in the same officer. The irregular calls of executive work which takes precedence over court work is in a great measure responsible for piecemeal hearings. But this cannot be the only reason for delays which must in a large measure be attributable to the indifference of the executive magistrates to their court work and the neglect of the duties of supervision of the magisterial courts by the district magistrates and other superior executive authorities.

The speedy separation of the judiciary from the executive, the assigning of a certain number of magistrates exclusively for the trial of cases till separation is effected and a more intensive supervision of magisterial work are the remedial measures.

Honorary Magistrates.

26. The institution of Honorary Magistrates has been abolished in the State since the year 1947.

We also learn from the Administration reports that the trial of sessions cases is sometimes delayed due to the non-receipt of the report of the chemical examiner who is said to be stationed in Agra. If the delays persist it would be necessary for the State to have its own chemical examiner

with the necessary staff. A useful system in vogue in the old Madhya Pradesh which may usefully be adopted elsewhere is that of requiring civil judges to undergo training in magisterial work before being invested with sessions powers. Before a civil judge is promoted and begins to work as an Additional Sessions Judge, he is invested with the powers of a magistrate and is required to try a certain number of cases. His magisterial judgments are scrutinised by the Sessions Judge and appropriate instructions given to him. Sessions powers are conferred on him only if his work as a magistrate shows him to be suitable for his proposed new duties.

Panchayat Courts.

27. Nyaya Panchayats were constituted in the Mahakoshal area under the Central Provinces and Berar Panchayats Act, 1946 (1 of 1947). Panchayat courts existed in Madhya Bharat and Vindhya Pradesh also prior to reorganization. In Mahakoshal, the members of the Nyaya Panchayat (which consists of 3 to 5 members), are nominated by the Collector from the members of the Gram Panchayat who are elected on the basis of adult franchise. There is one Nyaya Panchayat for about 30 to 40 villages or for a population of 10,000. In the Madhya Bharat region, the members of the Nyaya Panchayat—their number varies from 5 to 11—are elected by the panches of the Gram Panchayats from amongst themselves. In Vindhya Pradesh, a Nyaya Panchayat has within its circle about 3 to 5 Gram Sabhas, each Sabha electing 5 panches to form a panel of 20 or 25 people for the trial of petty civil and criminal cases.

Mahakoshal.

Madhya Bharat.

Vindhya Pradesh.

In all these regions, the Panchayat Courts have practically the same powers. They are competent to try suits of a simple nature up to Rs. 100/-. In suitable cases their jurisdiction may be enhanced to Rs. 500/- by the State Government. Their criminal jurisdiction extends to the trial of petty offences under the Indian Penal Code and other minor enactments. They cannot award a substantive sentence of imprisonment, but can impose a fine up to Rs. 100. There is no provision for an appeal against the decisions of the Panchayat Courts, but a revision lies to the District Judge. The following statement shows the criminal and civil work done by the Panchayat Courts in the old State of Madhya Pradesh during the years 1954-1956.

Statement showing the work done by Panchayat Courts during the years 1954-1956

Year	Pending at the beginning of the year	Disposal	Balance
1	2	3	4
	Civil		
1954	33087	43264	34034
1955	34034	40726	28196
1956	28196	38341	16907

1	2	3	4
	Criminal		
1954	19099	27484	20022
1955	20022	28242	18456
1956	18456	27741	11677

It will be seen that quite a large number of civil and criminal cases are disposed of by Panchayat Courts. From the figures given to us by Divisional Welfare Officer, we gathered that in about 31 per cent cases the orders of the Nyaya Panchayats were quashed by District Judges. This is very unsatisfactory and points to the need for giving a relatively small jurisdiction to these courts in the first instance and subjecting the members thereof to a proper system of training.



50.—MADRAS

Area and population.

The former presidency of Madras which at one time consisted of twenty-six districts, as reorganised on 1st November, 1956, comprises thirteen districts (including the city of Madras) covering an area of 50,170 square miles with a population of 29,975,357 persons according to the 1951 census.

Judicial Districts.

2. For purposes of administration of justice the State, excluding the presidency town is divided into twelve judicial districts having a district and sessions judge each. Coimbatore has a permanent additional district and sessions judge. Ever since the State of Pudukkottah was merged with the Tiruchirapalli district, a temporary additional district and sessions judge has been functioning at Tiruchirapalli. The revenue district of Tanjore has been divided into two judicial districts—West Tanjore and East Tanjore—with a district and sessions judge for each. The Nilgiris district is amalgamated with the Coimbatore district for judicial administration. The revenue district of Madras which comprises the territory within the limits of the municipal corporation of the city is the area over which the City Civil Court, the Presidency Small Cause Court and the High Court exercise jurisdiction.

The Judicial Services.

3. The judiciary of the State is composed of three cadres:—

(1) the Higher Judicial Service consisting of the district judges, the Chief Presidency Magistrate, the Principal Judge, City Civil Court, the Chief Judge, Presidency Small Causes Court and the Administrator General and Official Trustee;

(2) the Judicial Service consisting of subordinate judges and district munsifs; district magistrates and sub-divisional magistrates are also borne on this cadre; and

(3) the State Judicial Subordinate Service consisting of Additional First Class Magistrates and Second Class Magistrates.

Honorary Magistrates.

4. In addition to the officers in the three cadres above-mentioned, honorary magistrates are appointed by Government in some of the districts of the State. They dispose of cases of a petty nature transferred to them by the district Magisrates. Generally, the powers of a second class magistrate are conferred on honorary magistrates who usually sit in Benches.

Recruitment. 5. Different methods of recruitment are employed for the three cadres. Appointments to the Higher Judicial Service are made by promotion from the category of subordinate judges, which includes district magistrates or by direct recruitment from Bar; the latter is restricted to six posts out of nineteen.

6. Recruitment to the State Judicial Service is made by the Public Service Commission the members of which with the help of a judge of the High Court deputed *ad hoc* interview candidates and prepare a list of persons considered fit for appointment. However, the judge has not the predominating voice in making the selections as a system of marking is adopted which enables the view of the members to prevail over the judge's view as to the fitness of a candidate. A special feature of the system of recruitment in this State is that a certain number of vacancies in the cadre of munsifs is reserved for Sub-Assistant Registrars of the High Court and members of the ministerial staff of the High Court and the subordinate courts provided they possess a law degree and satisfy certain other conditions laid down in the Judicial Service (Recruitment) Rules. Members of the Judicial Subordinate Service such as Additional First Class Magistrates, Stationary Sub-Magistrates and Assistant Public Prosecutors and Superintendents in the Law Department of the Secretariat are also eligible for recruitment as Munsifs. A further reservation is made for the Scheduled Castes and Scheduled Tribes and other backward classes. It may be mentioned that consequent on the separation of the judiciary from the Executive, Munsifs and Sub-Divisional Magistrates are interchangeable in the sense that an officer who has been working as a Munsif on the civil side can be posted as a Sub-Divisional Magistrate to do criminal work and *vice versa*. This system has the advantage that a Judicial Officer, by the time he acquires seniority and is promoted to be a subordinate judge upon whom the powers of an Assistant Sessions Judge will be conferred, would have experience of both civil and criminal work.

7. The Stationary Sub-Magistrates (Second Class Magistrates) are directly recruited to a large extent. Three out of twenty posts are reserved for recruitment by transfer from amongst the Assistant Public Prosecutors, Official Receivers and the ministerial staff of courts. Additional First Class Magistrates are appointed by promotion from amongst the Second Class Magistrates.

8. All recruits to the Judicial Service in this State are trained for six months with some modifications in the case of those recruited by transfer. We have set out the details of the training elsewhere. At the end of the period of training, the District Judges are required to report to the High Court with reference to each candidate deputed for training whether he was benefited by such training.

Pay scales 9. It is important to refer to the scales of pay of officers of the lower judiciary. Munsifs and Sub-Divisional

Magistrates are in the time scale of Rs. 300-50/2-500-EB-50/2-700 and subordinate judges in that of Rs. 500-50/2-700. The District Magistrate (Judicial) draws his grade pay as a subordinate judge plus a special pay. Additional First Class Magistrates are in the time scale of Rs. 300-20-400 and Second Class Magistrates in that of Rs. 200-10-300. We have already commented on the biennial increments granted to civil judicial officers in the States of Madras and Andhra Pradesh which appears to be an ingenious device of the authorities to effect economy. We feel that it is necessary to raise the status and pay of First and Second Class Magistrates. In passing we may refer to the pay scales of Amins (Bailiffs) and the process servers. The latter who are generally entrusted with the service of summons, notices etc. are in the scale of Rs. 18-1-25, while Amins who are entrusted with arrest warrants and attachment warrants are in the scale of Rs. 25-1-45. These salaries also appear to need revision.

Separation: Delays in criminal courts.

10. The judiciary of this State has been completely separated from the executive by means of executive orders. Together with continuous and systematic supervision this has considerably reduced the number of pending criminal cases and also their duration. The result has been that by the end of 1956 very few cases over two months old were awaiting disposal in the State. The average duration of criminal appeals in Magistrates Courts and Sessions Courts was as low as 16 and 22 days respectively in 1956. We have earlier set out in detail the methods of supervision adopted in this State and particularly the system of submitting calendar statements. Two other features of criminal judicial administration in this State need mention.

Even under the scheme of separation the judicial magistrates retain the power to issue orders under s. 144 Cr. P.C. and in emergent situations they are required to assist the police and act as if they are the executive magistrates in charge pending the arrival of the regular executive magistrates on the scene.

Further, by Madras Act XXXI of 1956, section 407 of the Cr. P.C. has been restored to the form in which it was prior to the Central Amendment of 1955 so that the District Magistrate (Judicial) continues to entertain appeals from the decisions of second and third class magistrates.

Supervision of civil courts.

11. The same detailed supervision does not however exist in respect of the civil work. It is true that district judges regularly inspect courts subordinate to them once a year and reports based on their inspections are submitted to the High Court. A judge of the High Court also inspects the district court once in two years. But it cannot be said that these inspections have the same kind of effectiveness as the supervision on the criminal side.

12. The periodical returns submitted by the subordinate civil judiciary are scrutinised by the district judges.

Small cause suits over three months old, regular civil appeals over six months old, miscellaneous appeals over three months old and all regular suits pending over one year are classified as "long pending cases" and the reasons for their pendency have to be explained. The returns also show the number of old suits pending according to their years of institution. Only quarterly returns are sent to the High Court. In the High Court these returns are examined only by the judge in administrative charge of the district. Due to heavy work or lack of interest or aptitude for administrative work, the nature of the scrutiny by the different High Court Judges of the civil returns varies considerably. No one judge is responsible for an over-all scrutiny of civil returns as is the case of criminal returns. The High Court does not appear to have given as great attention to the supervision of civil work as in the case of criminal work. Nor has it insisted upon the District Judges paying as much attention to the supervision of civil work as on the District Magistrates in regard to the criminal side. We are of the view that the supervision at present exercised over the civil courts can be far more vigilant and that there is room for considerable improvement in this direction.

13. In this State, there is a rule that judgments in civil cases have to be delivered within fourteen days from the date on which the arguments are concluded and the case reserved for judgment. In the returns the judicial officers have to explain cases where this period has been exceeded. This return has a generally salutary effect. A special feature of these returns is that the average duration of cases disposed of after full trial is furnished separately in respect of *each* court in the administration reports. In all other States except Andhra Pradesh such average duration is given only in respect of a class of courts. That does not reveal the state of things in the different courts. By following the system of furnishing returns, obtaining in this State and in Andhra Pradesh, attention would at once be drawn to those courts where cases have remained pending for a longer time and this would lead to a closer examination of the state of file in those courts.

14. Including the Chief Justice and two additional judges appointed recently for a period of two years, the High Court has a strength of eleven judges. This is one of the three High Courts in the country which exercises Ordinary Original Civil Jurisdiction. The accompanying Table (No. 1) shows at a glance the disposal of work by the High Court during the triennial period 1954-56.

Pendency in the High Court.

15. The pending cases in the High Court on 1st January, 1957 comprises the proceedings of different categories the number of which is shown in Table (No. 2) according to their year of institution. The Table discloses that while there are no arrears of criminal proceedings, there is considerable congestion on the Civil appellate side, notwithstanding the transfer recently of a number of pending

TABLE No. I

Nature of Proceeding	1954				1955				1956					Pending on 1-1-57
	Pending at the beginning	Institutions	Disposals		Pending at the beginning	Institutions	Disposals		Pending at the beginning	Received from T. C. High Court by Transfer			By Transfer to High Courts of Kerala & Mysore	
				By Transfer to Andhra High Court				By Transfer to City Civil Court						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Regular First Appeals	3987	818	500	2054	2251	606 +3R	547	..	2313	614	158	610	427	2048
City Civil Court Appeals	327	169	146	..	350	186	382	46	154	62 +4R	..	105	..	115
Regular Second Appeals.	7065	1555 +6R	1656	3089	3881	1372 +2R	1829	..	3426	1130 +3R	178	1917	653	2167
Appeals against Orders.	1920	553	767	754	952	320 +2R	724	64	486	400	11	353	105	439
Appeals against Appellate Orders.	598	138 +11R	214	224	309	106 +2R	177	..	240	102 +2R	..	161	43	140
Letters Patent OR Special Appeals.	323	240	206	135	222	135 +9R	112	..	254	102 +4R	..	121	36	203
Original Side Appeals.	286	168	165	6	283	142	100	..	325	75 +2R	..	158	..	244
Writ Appeals	44	161	104	17	84	133	112	..	105	158	..	150	7	106

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Revisions (Civil Revision Petitions)	3103	1801 +1R	1826	1447	1632	1399 +5R	1630	..	1406	1766	21	1538	295	1310
Tax Revision Cases	339	127	299	42	125	161	100	..	186	246	..	278	23	131
References (Referred Cases).	188	100	30	25	233	107	73	..	267	139	6	92	11	309
Leave to Appeal to Supreme Court.	16	188	191	..	13	107	89	..	31	151	..	83	..	99
Miscellaneous														
Writ Petitions .	1601	805 +22R	1101	711	616	1010 +1R	792	..	835	1541 +2R	14	1267	125	1000
Original Side														
Civil Suits .	998	426	438	..	986	239	921*	..	304	122	..	155	.	271
Matrimonial Suits	12	7	11	..	8	12	8	..	12	11	..	13	..	10
Testamentary Suits	17	8	14	..	11	11	4	..	18	10	..	10	..	18
Original Petitions .	107	373	372	..	108	353	286	..	175	363	..	393	..	145
Criminal														
Criminal Appeals .	635	781	1112	..	208	770	753	..	225	838	..	744	..	319
Criminal Revision Cases	564	1055	1335	..	165	1010	971	..	204	1168	..	1157	..	215
Confirmation Cases	49	145	159	..	29	121	118	..	32	161	..	153	..	40
Reference under Section 307 Cr. P.C.	Nil													
Other References .	Nil													
Miscellaneous .	51	1628	1639	..	35	1444	1417	..	64	1588	..	1586	..	64

*This includes 616 Cases that were transferred to City Civil Court, Madras.

TABLE No. 2

Statement showing details of the Proceedings pending on 1-1-57 in the High Court of Madras according to the year of Institution of the Pending Proceedings

Nature of Proceeding	Year of Institution													
	1939	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
First Appeals	..	..	..	..	..	1	1	5	10	59	401	371	497	703
Original Side Appeals.	..	..	..	..	..	..	..	..	..	12	63	52	52	65
City Civil Court Appeals.	..	..	..	..	..	..	2R	..	..	4	4	12	35	58
Letters Patent Appeals.	..	..	..	..	..	..	..	..	..	4	43	61	46	49
Writ Appeals	..	..	..	..	..	..	..	..	..	..	5	25	22	54
Referred Appeals	..	..	..	..	..	..	..	..	..	5	29	59	84	132
Second Appeals	..	..	..	..	..	..	1	2 (1R)	26	33	43 (1R)	281	837	944 (2R)
Civil Miscellaneous Appeals.	..	..	..	..	..	..	..	..	..	6	13	28	93	298
Civil Miscellaneous Second Appeals.	..	..	..	..	..	..	..	..	1	..	4	3 (1R)	53	79
Civil Revision Petitions.	..	..	..	..	..	..	..	3	1	8	19	52	312	955
Tax Revision Cases	..	..	..	..	..	..	..	..	..	..	5	21	28	77
Writ Petitions	..	..	..	..	..	..	..	..	3	54	4	22	92	325
Civil Suits	2	1	..	1	4	6	13	14	12	10	21	45	69	73

सत्यमेव जयते

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Matrimonial Suits	..	..	..	..	..	..	..	..	..	..	..	..	3	7
Testamentary Suits	..	..	..	..	..	..	..	..	..	..	..	6	4	8
Original Petitions	..	..	..	..	..	..	..	..	..	..	..	2	18	125
Criminal Appeals .	..	..	..	..	..	..	..	..	..	..	..	..	3	316
Criminal Revision Cases.	..	..	..	..	..	..	..	..	..	..	..	..	7	208
Confirmation Cases	..	..	..	..	..	..	..	..	..	..	..	..	..	40
Reference under Section 307 Cr. P. C.	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Other Reference .	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Miscellaneous .	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Applications for leave to Appeal Supreme Court.	..	..	..	..	..	..	..	..	..	..	..	..	..	64
Reveiw Applications	..	..	..	..	..	..	..	..	..	..	..	8	8	83

TABLE No. 3

S. No.	Nature of Proceedings	Number of Judges engaged		
		1954	1955	1956
	1	2	3	4
1	First Appeals and City Civil Court Appeals.	One Bench for the year and one single judge for the year	One Bench for 8 months and one single Judge for 8 months.	One Bench for 7 months and one single Judge for 5 months.
2	Second Appeals . . .	One Judge for the year and one Judge for 3 months.	One Judge for one year and another Judge for 2 months.	One Judge for one year.
3	Letters Patent Appeals, Original Side Appeals and Writ Appeals	One Bench for 7 months	One Bench for 7 months.	One Bench for 7 months.
4	Writ and Tax Revision Cases & Referred Cases (Bench).	One Bench for 4 months	One Bench for 3 months	One Bench for 4 months.
5	Writs (Single Judge) .	One Judge for the year	One Judge for 7 months	One Judge for 6 months.
6	Appeals Against Orders and Appeals Against Appellate Orders.	One Bench for 2 months and one single Judge for 5 months	One Bench for one month and one single Judge for 5 months	One Bench for one month and one single Judge for 2 months.
7	Revisions	One Judge for 8 months.	One Judge for 7 months	One Judge for 6 months.
8	Miscellaneous and Admission Work	One Judge for the year.	One Judge for the year	One Judge for 8 months.
9	Original Side work . . .	Two Judges for the year	One Judge for the year and one Judge for 4 months.	One Judge for the year.
10	Sessions Work . . .	One Judge for 5 months	One Judge for 6 months	Nil.
11	Referred Trials and Bench Criminal Work.	One Bench for 4 months	One Bench for 3 months	One Bench for 4 months.
12	Criminal Appeals and Criminal Revision Cases (Single Judge).	One Judge for 4 months	One Judge for 4 months	One Judge for 4 months.

proceedings to the High Courts of Andhra Pradesh and Kerala. The number of pending original suits is staggering. We trust that with the recent increase in the number of judges the rate of disposals will be accelerated and that the arrears will soon be brought under control.

16. The accompanying Table (No. 3) shows the categories of proceedings for the disposal of which Benches had to be constituted and the periods for which those Benches worked. A judge of this High Court sitting singly has powers to dispose of first appeals valued upto Rs. 7500/-, second appeals irrespective of valuation, criminal appeals other than those involving sentences of death or transportation for life, all petitions under section 115 C.P.C. and other matters. It would be worth considering whether the pecuniary limit upto which a single judge can hear and dispose of first appeals from decrees can be raised to Rs. 15,000/- and those from orders to Rs. 20,000/-. By enhancing the jurisdiction of a single judge to the aforementioned limits, we think, on an average about hundred judge-days can be saved every year.

The appellate jurisdiction of District Judges in this State has already been raised to Rs. 10,000 and appeals below that value are now filed only in the District Courts. Some relief can be given to the High Court by the transfer of pending appeals below this value. The accumulated first appeals which constitute the largest portion of the arrears in this court, will at the present rate of disposals require for their disposal at least two Benches sitting for this purpose throughout the year for two years.

The City Civil Court and the original side.

17. The Madras City Civil Court was established in 1892 "with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding two thousand five hundred rupees in value and arising within the City of Madras except suits or proceedings which are cognisable (a) by the High Court as a Court of Admiralty or Vice Admiralty or as a court having testamentary, intestate or matrimonial jurisdiction or (b) by the court for the relief of insolvent debtors or (c) by the small cause court". (Section 3 of the Madras City Civil Court Act, 1892). The pecuniary jurisdiction of the City Civil Court has been progressively enlarged; by the Madras Act X of 1955 the Court was empowered to take cognizance of proceedings valued upto Rs. 50,000/- with effect from 1st July, 1955.

18. The following Table (No. 4) shows the institution, disposal and pendency of regular suits in the City Civil Court during the triennium 1954-56:—

TABLE No. 4

Year	No. of Officers	Pending at the beginning of the year	Institution	Disposed of	Pending		Average duration of suits disposed of after full trial
					Below one year	Above one year	
1	2	3	4	5	6	7	8
1954	4	2163	2125	2390	1196	852	613
1955	8	2048	2400	2685	1533	946	601
1956	8	2479	2232	2707	1359	802	N.A.

NOTE.— In 1955, 616 original suits were received by transfer from the High Court and 2400 original suits were actually instituted in the City Civil Court.

Out of the total number of suits dealt with by four Judges in 1954 and by eight in 1955, 643 and 762 suits respectively were disposed of after full trial whereas a single judge of the High Court dealt with 438 suits in 1954 out of which 249 were disposed of after full trial and in 1955 one judge sitting throughout the year and another for four months disposed of 305 suits out of which 124 were after full trial. The average duration of original suits disposed of by the High Court in 1954 and in 1955 was 822 and 1863 days respectively. According to the figures for 1954, four judges of the City Civil Court, who had no sessions or appellate work and had to deal with simpler suits and had shorter vacations disposed of 643 contested suits *i.e.* 160·75 per judge, whereas one High Court Judge disposed of 249 contested suits. It is true that the corresponding figures for 1954 are 95.25 and 93—but in 1955 out of the 1 1/3rd High Court Judges who worked on the original side—the time of one judge was almost wholly taken up by company, testamentary, insolvency and other matters. In 1954, there was a separate judge for these matters and chamber applications. Hence the apparent fall in disposals in the High Court in 1955.

The argument that cases take a longer time in the High Court based on average duration of cases has no weight, as the older cases are taken up in the High Court, in the absence of any temptation to show disposals and a low duration by taking up new and easier cases.

The figures would seem to indicate that work on the original side is more quickly disposed of. There can be no doubt that the original side needs to be strengthened. Putting one judge in charge of all the original side proceedings—including company and insolvency work as was done in 1956 (*vide* Table 4.) must inevitably lead to the piling up of arrears.

At least two judges would seem to be necessary on the original side throughout the year if the arrears are to be cleared.

19. According to the provisions contained in Section 15 of the Madras Act (X of 1955) an appeal against a decision of the City Civil Court in any suit or proceeding where the amount or value of the subject-matter exceeds Rs. 5000/- lies to the High Court. However appeals against the decisions of assistant judges of the City Civil Court in suits or other proceedings valued below Rs. 5000/- lie to the Principal Judge. Although till recently all appeals from the City Civil Court lay to the High Court, now that the power to hear appeals from decisions of Assistant Judges (who are sub-judges) has been given to the principal judge (a District Judge) there is no reason why the value of such appeals should be limited to Rs. 5,000 and not raised to Rs. 10,000 as has since been done in the mofusil. If the limit of the jurisdiction of this court is to remain at the present

figure and not reduced as recommended elsewhere, it would become necessary to increase the number of judges. Suits instituted in this court can be disposed of within the time-limit envisaged by us for the disposal of original suits in subordinate courts only by the adoption of such a course. The fact that the City Civil Court is also the court of session for the city of Madras would also appear to warrant an increase in the number of judges.

Presidency Small Cause Court.

20. The Presidency Small Cause Court functioned during the years 1954—56 with five judges including the Chief Judge. The average institution of suits for the quinquennium ending with 1954 was 9149. The average duration of cases disposed of after full trial was 252 days in 1955 as against 190 in 1954. According to the statistics furnished by the High Court, 3612 suits were pending at the close of the year 1956 out of which 69 were over a year old. Although the judges particularly the Chief Judge have to do other classes of work also, greater expedition in the trial of suits seems to be possible. The time taken for disposal in the mofussil courts is less. Attempts must be made to reach the target time of ninety days for the disposal of small cause suits.

21. The number of suits of different valuations instituted in the Civil Courts other than the village courts is furnished in the following table (No. 5)

TABLE No. 5

year	No. of suits of the value not exceeding Rs. 1,000/-	No. of suits of the value of Rs. 1,000/- and not exceeding Rs. 5,000/-	No. of suits of the value of Rs. 5,000/- and not exceeding Rs. 10,000/-	No. of suits of the value of Rs. 10,000/- and above
1	2	3	4	5
1954 . . .	52,352	5,106	760	608
1955 . . .	1,63,627	15,065	1,306	735
1956 . . .	86,456	11,523	1,139	522

Position in District and Subordinate Judges' courts.

It can fairly be estimated that out of the total number of suits about ten per cent would be those cognisable by the district courts and subordinate judges' courts. Roughly about half of the ten per cent would be suits triable under the ordinary procedure. Ordinarily district judges try only suits of a special nature. Mostly, proceedings under special enactments such as the Hindu Marriage Act, Patents and Designs Act, the Payment of Wages Act and the like come up for adjudication before these courts.

The subordinate judges who exercise unlimited original jurisdiction are also invested with powers to entertain proceedings under certain special enactments such as the Guardians and Wards Act, the Indian Succession Act and the like. Further, these officers are constituted Employees Insurance Courts under the Employees Insurance Act. Approximately fifty per cent of the proceedings brought to trial before the District Courts and Subordinate Judges' Courts relate to claims for immovable property and are disposed of after full trial. The following Table (No. 6) shows the number of original suits instituted, disposed of and pending in both these classes of courts during the three years preceding 1957.

TABLE No. 6

Year	No. of Officers	Civil Suits				
		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one year	Over one year
		District Judges				
1954 .	17	204	136	132	101	80
1955 .	16	181	140	146	92	57
1956 .	15	149	144	132	99	146
		Sub-Judges				
1954 .	38	4940	2410	3037	1841	2813
1955 .	36	4654	2675	3426	1670	1838
1956 .	30	3508	1815	2200	1206	1101

22. The average duration of suits disposed of after full trial by the district courts in 1954 and in 1955 was 437 and 460 days respectively and that of suits disposed of by the subordinate judges' courts after full trial was 725 and 703 days. Although there has been a progressive fall both in the total number of pending suits and the number of year old suits from the figures furnished above it would appear that there is still heavy congestion in the courts of subordinate judges. An increase in the number of subordinate judges for a limited period is necessary if the arrears are to be cleared within a reasonable period and the file brought under control. Thereafter it ought not to be difficult for the existing number of officers to cope with the work unless there is a large increase in the institutions.

In Munsifs courts.

23. Consequent upon the replacement of the Madras Act (V of 1954) by the Madras Act (1 of 1955) and also the enforcement of Act (XVI of 1951) raising the pecuniary jurisdiction of the district munsifs' courts from 19th May, 1955 to Rs. 5,000/- there was an appreciable increase in the number of original suits instituted in those courts in the

year 1955 as will be seen from the figures given in the Table (No. 7) below:—

TABLE No. 7

Civil Suits

Year	No. of Officers	Pending at the begining of the year	Institution	Disposal	Pending	
					Total	Over one year
1954 .	98	52176	29189	34457	49036	43116
1955 .	96	49036	55701	63177	44361	15390
1956 .	72	44361	51818	57689	41007	13427

24. The average duration of the suits disposed of after full trial was 721 days in the year 1955 as against 491 in 1954. In 1956 it had come down to 305 days. It is regrettable that a fair number of suits instituted in the year 1946 were still pending at the close of 1956 in courts of munsifs. It is difficult to appreciate the wisdom of enhancing the pecuniary jurisdiction of munsifs without making adequate arrangements for the expeditious disposal of proceedings.

Senior lawyers of the District Bar complained of the delays caused by the indiscriminate passing of stay orders and the difficulty of executing decrees. Defective drafting and frequent amendments of important laws like Debt Relief Acts was also stated to be responsible for protracted litigation. A senior lawyer who practised at Mangalore in the South Kanara District before it was integrated with the Mysore State, speaking of his experience about the administration of civil justice in the subordinate courts of the Madras State, gave certain examples to illustrate how freely stay orders were obtained. Referring to Section 9-A of the Madras Agriculturists Relief Act (IV of 1938) he said that in actual practice a party obtaining a decree would ordinarily not get possession of the properties even after three or four years, for the very next day after the proceeding was decided in the trial court, an appeal would be preferred and a stay order obtained—a stay order very often without the imposition of any terms. The appeal would last for about two years. Soon after the disposal of the appeal the matter would again be taken in appeal to the High Court where a stay order would again be obtained which may be in force for another two or three years. If this depicts the true state of affairs, we feel that the High Court should examine in great detail the periodical returns with a view to ascertain in which cases the proceedings of the lower courts were stayed, and whether there were sufficient reasons for passing the stay orders.

Grant of stays.

One of the causes of the increase in litigation was stated to be the bad drafting of the laws. It was stated that the ambiguities in the several provisions of Madras Agriculturists Relief Act, 1938 had resulted in a good deal of protracted litigation. The Act had to be amended on several occasions and sometimes even the definitions had to be altered. Various other instances of ill-drafted legislation were pointed out. It was stated that "the responsibility of the Legislatures in giving rise to such avoidable litigation by tinkering with laws again and again and upsetting decisions of Courts is very great". We hope that our recommendations made elsewhere for improved methods of drafting legislation will put an end to this most undesirable state of affairs.

Panchayat courts.

25. The Panchayat Courts have been constituted in the State under the provisions of the Madras Village Panchayats Act of 1950 (X of 1950). In the year 1957 about 6088 Panchayat Courts functioned in the State. The Panchayat Courts have powers to try civil cases valued upto Rs. 100/-. They can try even cases valued upto Rs. 200/-, if both the parties consent to it. These courts can impose fines upto Rs. 15/- except in cases of damage to property when the fine may be double the value of the property. The Regional Inspector of Municipal Councils and Local Boards, who gave evidence before us stated that sometimes the Courts in practice did not meet for months together and that rules should be framed to ensure that they meet periodically and that Panchayat Courts should be given clerical assistance in doing their work. The following Table (No. 8) shows the number of civil and criminal proceedings instituted in and disposed of by the Panchayat Courts during the years 1954 55. It is apparent that in this State the Panchayat courts afford substantial relief to the regular courts.

TABLE No. 8

	Civil			Criminal		
Year	Pending at the beginning of the year	Disposals	Balance	Pending at the beginning of the year	Disposals	Balance
1954	5938	24,191	6122	2331	1565	766
1955	4774	22,194	7451	598	463	135
	(Figures from 5 districts not received)			(The figures relate only to five Districts)		

Criminal courts in the Presidency Town.

26. The city of Madras has been divided into five police ranges for the purpose of investigation of crimes and maintenance of law and order. Crimes committed within the City limits are brought to trial before the Courts of Presidency Magistrates of whom eight including the Chief

Presidency Magistrate are stipendiary. A comparative table (No. 9) of work done by the Presidency Magistrates' Courts is given below:

TABLE No. 9

Year	No. of officers	Criminal cases			
		Cases under I.P.C. and other cases.			
		Pending at the beginning of the year	Institution	Disposals	Balance
1954 . . .	8	3005	169697	169745	2699
1955 . . .	8	2699	129812	128733	3040
1956 . . .	8	3040	176520	173120	2816

27. The bulk of petty cases arising in the city limits is disposed of by the honorary Presidency Magistrates. There is a mobile court which sits in different centres outside the normal court hours and disposes of minor offences under the City Police Act and the like soon after they are reported.

28. The Commissioner of Police, Madras City is invested with powers of Presidency Magistrate; he can enlarge an accused on bail; under section 167 Cr. P.C. he can remand an accused to custody.

सत्यमेव जयते

51.—MYSORE

Area and population.

1. Mysore was one of the two princely States that was retained as a separate entity after the country attained Independence. During the short span of about nine years—between August 1947 and November 1956—the territory of the State has grown in area. Seven taluqs of the Bellary District were added to it in 1953. As a result of the reorganisation of States by Act (XXXVII of 1956), certain parts of the Bombay, Madras and erstwhile Hyderabad States and the entire State of Coorg were added to Mysore. The area of the reorganised State is 72,730 square miles with a population of 1,94,01,477 persons according to the 1951 census.

Scope of enquiry.

At the time of our visit to the State several distinct patterns of judicial administration obtained in that State. The areas transferred to Mysore from Bombay, Hyderabad and Madras continued to be administered in the same way as prior to the reorganisation of States. The subordinate judiciary had also not been integrated. Our attention was therefore focussed mainly on the administration of justice in what was the old state of Mysore—and the subsequent observations unless otherwise stated apply only to that area.

Organisation of courts.

2. The Subordinate Civil Judiciary of the State is composed of four cadres:—

(1) District Judges,

(2) Civil Judges,

(3) Subordinate Judges, and

(4) Munsifs.

3. Prior to the reorganisation of the State, the cadre strength of District Judges was eight including the posts of Registrar, High Court, Secretary to the Government, Law Department and that of Civil Judges, Subordinate Judges and Munsifs, eleven, fourteen and forty-two respectively.

Recruitment—Promotions.

4. No rules have been framed with regard to the number of posts of District Judges to be filled by direct recruitment and by promotion. Although at one time subordinate judges were recruited only by promotion, yet recently there appears to have been some direct recruitment at that level in spite of the opposition of the High Court. Posts of Civil Judges are filled by promotion of officers in the cadre of Subordinate Judges. We were also reliably informed that promotions were only on the basis of seniority and that the confidential reports on subordinate judicial officers were seldom considered. All this seems to call for a change.

Selection of munsifs.

5. The manner of recruitment and the conditions of service of munsifs are found in the Mysore Munsifs (Recruitment and Promotion) Rules, 1954. Rule 11 of the said Rules states that a candidate "must be a graduate in arts or science or commerce *and* in Law—and must be an Advocate or Pleader who has practised in the Courts in the Mysore State for not less than four years immediately before the date of his application; or must be employed in the Judicial Department of the State, the total period of his service in that department together with the period of practice at the Bar, if any, being not less than five years immediately before the date of his application". Rule 16 provides for reservation of not more than one out of every six appointments to be made to the service, for promotion of candidates from out of a list of qualified candidates to be prepared by the Public Service Commission from out of an eligibility list received from the High Court from among the Ministerial Service of the Judicial Department and Public Prosecutors and Government Pleaders. The maximum age limit for direct recruitment to this service is 35 years and for promotees 40 years. Rule 17 of the said Rules reads as under:—

"(17)(i) After examination, the Commission shall make a list of candidates who are eligible for being appointed as Munsifs for the remaining five appointments out of the six referred to in rule 16 above in the following manner:

(a) One out of these five appointments to be reserved for scheduled castes and tribes.

(b) The Commission will prepare a list for the remaining four appointments having regard to the representation of backward classes and the ranks of candidates as a result of the selection examination. In making the list of candidates of backward classes for appointments preference may be shown by the Commission to communities not adequately represented in Judicial Service."

Appointments are made by the Government from these two lists. Provision has also been made for the relaxation of the rules in the case of backward communities and scheduled castes and tribes.

Unsatisfactory methods.

6. Severe criticism was directed against the method of recruitment to the judiciary that had obtained in the State prior to reorganisation. It was stated that the methods of selection to the subordinate judiciary were extremely unsatisfactory. We were told that as many as twenty five vacancies in the subordinate judiciary had remained unfilled by reason of differences of opinion between the Government and the High Court as to the method of selection and the persons to be appointed. It was also learnt that the High Court had declined to depute one of its judges to be associated with the Public Service Commission for the recruitment of Munsifs, and a retired judge of the High

Court remunerated *ad hoc* was chosen to assist the Commission in selecting munsifs on one occasion. We were also given an account of a selective examination held for appointing munsifs, and of the allotment of vacancies between the different communities on the basis of a quota system by which posts seem to be allotted to particular communities. About ninety-six per cent of the population was stated to belong to classes for whom specified quotas were reserved. The method seemed to reduce the competitive examination to a mere method of selection on a communal basis. As the validity of this method of selection is said to have been challenged in an appeal pending in the Supreme Court, we refrain from making any comment on it.

The rules however clearly appear to need revision on the lines indicated by us to ensure selection of proper candidates and to avoid delays in filling vacancies.

7. At one time the District Judges of this State were placed in the same pay scale as the Deputy Commissioners (or Collectors) in charge of Revenue Districts. The position is now different as the Deputy Commissioners are paid on the senior time scale of the Indian Administrative Service *i.e.* 800—1800, whereas the District Judges are still in the old scale of Rs. 900—50—1300. The matter needs to be set right so that the pay of the head of the district judicial administration is not less than that of his executive counterpart.

The High Court.

8. Originally, the head of the judicial administration in Mysore was the Judicial Commissioner. Some time in 1881, the Judicial Commissioner was designated as the Chief Judge and his court the Chief Court of Mysore. About the year 1930 the Chief Court was given the designation of the High Court of Mysore. The territorial jurisdiction of the High Court has been extended to the areas which were added to the State from time to time.

9. The Chief Court exercised ordinary original civil jurisdiction till this jurisdiction was abolished in 1903. From 1908 to 1911 it also exercised ordinary original criminal jurisdiction. It is interesting to note that till 1st December, 1927, it was hearing appeals from the decisions of First Class Magistrates.

10. From 1884 to 1934 the Chief Court and later the High Court had three judges except during two short periods. On 2nd January, 1935, the number of the High Court Judges was permanently increased to four. On 15th February, 1940, two more judges were appointed. The maximum number was fixed at six judges but the actual number continued to be five till December, 1954. Thereafter, the number was reduced to two during the period 10th April, 1955 and 10th June, 1955. Two more judges were appointed on 11th June, 1955. Thereafter three permanent and one additional judge were appointed in 1957. With the appointment of one

permanent and one additional judge recently, the number of High Court judges now is nine. Considerable delays seem to have occurred in filling vacancies in the High Court due to differences of opinion between the Chief Justice and the State Government, with the unfortunate result that the number of pending suits has increased considerably.

11. The accompanying Tables (Nos. 1 and 2) show the institution and disposal of different categories of proceedings in the High Court and the number of different categories of proceedings pending in the Court on 1st January, 1957, according to the years of their institution (excluding those received by transfer as a result of the reorganisation of States).

12. Although the arrears in the High Court are not so heavy as in certain other courts, there is considerable room for improvement. The position has been aggravated by the fact that though a number of appeals were received by transfer from the other High Courts the strength of the judges was increased only much later.

13. Under section 15 of the Mysore High Court Act (1 of 1884) all appeals, civil and criminal, are required to be heard by a Bench of two judges, except second appeals arising out of any suit or proceeding, the amount or value of the subject-matter of which does not exceed Rs. 3000 which are required to be heard and disposed of by a Judge of the High Court sitting singly, unless he refers it to a Bench, being satisfied that it involves a substantial question of law. This section appears to restrict unduly the powers of a single judge and would appear to need alteration especially as District Judges are empowered to hear first appeals valued up to Rs. 10,000. A general enhancement of the powers of a single judge so as to bring them in line with those conferred upon him in neighbouring states will do much to achieve expedition.

Jurisdiction of subordinate courts.

14. Courts of district judges are the principal civil courts of original jurisdiction in the districts and have jurisdiction to try suits valued above Rs. 20,000. The lower judiciary apart from the munsifs has been divided into subordinate judges and civil judges, the former exercising original jurisdiction in suits valued upto Rs. 10,000 and small cause jurisdiction in suits valued upto Rs. 500 (in the case of selected judges) and the latter having original jurisdiction upto Rs. 20,000 (which may be raised upto Rs. 50,000) and appellate jurisdiction upto Rs. 3000. This new cadre of civil judges was created by the Mysore Civil Courts (Amendment) Act (XXIII of 1955). The Civil Judges have also been invested with the powers of the district magistrates under the scheme of the separation of the judiciary from the executive.

The new cadre of civil judges which is peculiar to this State does not appear to be necessary. A less complicated court structure can be established by abolishing this class

TABLE No. 1

Nature of Proceedings	1953-1954			1954-1955			1955-56			*Pending on 1-1-1957
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	
1	2	3	4	5	6	7	8	9	10	11
Civil										
First Appeals	570	357	103	824	356	46	1134	210	620	868
Second Appeals	879	688	657	910	614	502	1022	560	301	1503
Miscellaneous Appeals	37	92	86	43	75	61	57	80	88	70
Civil Revision Petitions	300	751	704	347	629	529	447	751	437	1036
Civil Petitions	62	186	167	81	155	146	90	159	140	134
Writ Petitions	19	129	76	72	173	114	131	257	169	182
Civil Referred Cases	..	2	1	1	31	31	1	1	..	1
Income-tax Referred Cases	..	..	..	..	..	..	..	4	..	5
Criminal										
Criminal Appeals	47	104	86	65	95	54	106	92	139	135
Criminal Revision Cases	9	17	25	1	30	23	8	21	23	9
Criminal Revision Petitions	72	332	349	55	405	316	144	423	448	147
Criminal Petitions	2	258	241	19	299	293	25	400	348	34
Criminal Referred Cases	2	10	10	2	9	4	7	3	8	4
Contempt of Court Cases	1	15	2	14	3	15	2	11	6	8
Miscellaneous Appeals	..	..	..	..	..	..	..	..	..	1

*Does not include the appeals and other matters received by transfer under Sec. 62 of the S. R. Act from the High Courts of Bombay, Madras and Hyderabad.

TABLE No. 2

Nature of proceeding	Year of institution							Total	Remarks
	1950-51	1951-52	1952-53	1953	1954	1955	1956		
1	2	3	4	5	6	7	8	9	10
Civil									
First Appeals	8	37	57	73	180	106	107	568	Does not include the appeals and other matters received by transfer under Sec. 62 of the S. R. Act from the High Courts of Bombay, Madras and Hyderabad.
Second Appeals	..	40	101	232	347	295	488	1503	
Miscellaneous Appeals	..	..	1	2	4	7	56	70	
Civil Revision Petitions	..	1	1	8	96	300	630	1036	
Civil Petitions	..	..	2	1	15	17	99	134	
Writ Petitions	..	..	..	..	7	41	134	182	
Civil referred cases	..	..	..	..	1	..	..	1	
Income tax referred cases	..	..	..	..	..	2	3	5	
Criminal									
Criminal Appeals	..	..	..	4	..	1	130	135	
Criminal Revision cases	..	..	..	..	..	1	8	9	
Criminal Revision petitions	..	..	..	..	5	11	131	147	
Criminal petitions	..	..	..	..	2	4	28	34	
Criminal referred cases	..	..	..	..	1	..	3	4	
Contempt of Court cases	..	..	..	..	..	6	2	8	
Criminal Misc. Appeals	..	..	..	..	..	..	1	1	

of judges—and conferring unlimited pecuniary jurisdiction on subordinate judges. A subordinate judge can also be posted as judicial district magistrate. A common Civil Courts Act for the entire State as reorganised also appears to be necessary.

There is also room for raising the small cause jurisdiction of munsifs and subordinate judges particularly in commercial centres like Bangalore and Bellary.

State of work.

15. The total number of suits instituted during the three financial years immediately preceding 1956-57 arranged according to valuation is set down in the following Table:

TABLE NO. 3

Year	Number of suits of the value not exceeding Rs. 1000/-	Number of suits of the value of Rs. 1000 and not exceeding Rs. 5000/-	Number of suits of the value of Rs. 5000 and not exceeding Rs. 10,000/-	Number of suits of the value of Rs. 10,000 and above	Number of suits the value of which cannot be estimated in money
1953-54	24,949	2028	161	182	1402
1954-55	24,922	2098	248	138	1627
1955-56	25,222	2111	218	146	1230

16. It will appear from the figures given in the above Table (Table No. 3) that the volume of original civil litigation in the courts of district judges, civil judges and subordinate judges was not high. The following Tables (Tables 4 and 5) show the disposal of work by these officers during the same period. It will appear from these tables that the arrears in these courts are not heavy because the institutions of the different categories of proceedings are comparatively small.

Though the state of work in the District and Subordinate Judges courts is not as satisfactory as the position in the munsifs courts, an increase in their number does not appear to be necessary. If the institutions do not increase, with better supervision, the existing strength of officers should be able to keep pace with the work.

17. At the lowest rung in the heirarchy of civil courts are courts of munsifs exercising pecuniary jurisdiction upto Rs. 3,000. Their small cause jurisdiction is limited to Rs. 100. Ever since the judiciary was completely separated from the executive on the Madras pattern on 1st June 1956, the munsifs have been doing criminal work also. Even prior to that date some munsifs exercised the powers of magistrates. The accompanying Table No. 6 shows the disposal of civil work by the munsifs during the three financial years preceding 1956-57. Table No. 7 shows the average number of suits available for disposal, the average disposal and the average number of pending suits per munsif per year. The figures appearing in these Tables would seem to

TABLE No. 4

District Judges

Year	Number of officers	Original Suits					Small Cause Suits				
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year
1953-54 . .	6	383	321	290	213	201	119	537	442	214	..
1954-55 . .	6	414	190	210	165	229	214	291	396	109	..
1955-56 . .	6	394	232	169	198	259	109	97	206	..	..

Miscellaneous cases					Regular Appeals					Miscellaneous Appeals				
Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
			Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
439	1249	1127	504	57	413	231	274	310	60	58	118	108	65	3
561	626	793	318	76	370	295	208	402	55	68	106	116	54	4
394	729	664	350	107	457	213	156	391	123	58	126	102	81	1

Year	Number of officers	Sessions Cases					Criminal Appeals				
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year
1953-54 . .	10	45	168	173	40	..	108	577	573	112	..
1954-55 . .	10	40	147	154	33	..	112	480	404	184	..
1955-56 . .	10	33	171	158	46	..	184	634	624	194	..

Criminal Revision					Cases under I. P. C. & other Cases				
Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
			Below one year	Over one year				Below one year	Over one year
19	92	91	20	..	..	..	..	..	..
20	85	58	47	..	..	..	..	..	..
47	119	111	55	..	..	..	..	..	..

TABLE No. 5

Subordinate Judges

Year	Number of Officers	Original Suits					Small Cause Suits				
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year
1953-54 . .	14	705	788	768	484	241	1336	5128	5282	1175	7
1954-55 . .	14	725	856	801	514	266	1182	4616	4650	1113	35
1955-56 . .	14	780	804	849	543	192	1148	5360	5181	1317	10

Miscellaneous Cases					Regular Appeals					Miscellaneous Appeals				
Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
			Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
698	1218	1341	518	57	1302	1627	1654	1129	146	140	228	253	108	7
575	1331	1187	636	83	1275	1586	1460	1244	157	115	218	208	118	7
719	1636	1587	678	90	1401	1795	1591	1390	215	125	263	273	114	1

TABLE No. 6

Year	Number of Officers	Original Suits					Small Cause Suits					Miscellaneous Cases				
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one yeor	Over one year				Below one year	Over one year				Below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1953-54 .	28	7597	18697	18390	7376	528	798	4613	4553	853	5	2009	3830	4118	1607	114
1954-55 .	28	7904	20046	19462	7852	636	858	4245	4254	840	9	1721	3820	4039	1416	86
1955-56 .	30	8488	19187	19802	7406	467	849	4354	4388	812	3	1502	3944	3879	1515	52

TABLE No. 7

Designation of Officers	Number of Officers	Original Suits			Small Cause Suits			Miscellaneous Cases		
		Average available for disposal	Average disposal	Average pendency	Average available for disposal	Average disposal	Average pendency	Average available for disposal	Average disposal	Average pendency
1	2	3	4	5	6	7	8	9	10	11
Munsifs	86	952·5	670·4	282·1	182·7	153·4	29·4	195·6	139·9	55·7

show that the work in these courts is under control. The number of year old suits in the courts of munsifs is gratifyingly low. An enhancement of small cause powers of munsifs to Rs. 500 will help them to dispose of proceedings more quickly. It was stated to us however that the munsifs were generally inclined to postpone the trial of suits till cases were about to become a year old. Piecemeal hearings were also said to be common. We are of the view that a resumption of the rigid system of supervision which was said to be in force some years ago and which is said to have yielded gratifying results should be reintroduced—and day to day hearings insisted upon.

Disposal of *ex parte* suits.

18. A practice appears to prevail in this State of passing ex parte decrees on verifications in the plaints without oral evidence being recorded. We have elsewhere expressed doubts about the correctness of this practice, and suggested that plaints should be verified on oath so that courts may be enabled to pass decrees on the statements on oath contained in the plaint without having to record oral evidence.

Panchayat Courts.

19. We were informed that though village courts were constituted under the Mysore Village Courts Act of 1913, the Courts were not availed of only one suit having been filed in these courts. The Mysore Village Panchayats and District Boards Act which provides for the establishment of village panchayats confers no judicial powers on them. We have dealt elsewhere in detail with the importance of establishing Panchayat Courts. We would urge the speedy establishment of these courts in this State.

20. In the reorganised State about four thousand five hundred and forty-one persons practise the profession of the law. Two thousand seven hundred and fifty-nine persons out of the total number are advocates. It is noteworthy that the fee for enrolement as an advocate is the lowest—Rs. 300 in this State compared with that charged in other States.

Criminal courts.

21. The accompanying Table (Table No. 8) shows the disposal of District and other Magistrates during the three financial years 1953-54, 1954-55 and 1955-56. It appears that there has been a fall in the number of cases under the Indian Panel Code pending for over a year. But a good deal remains to be done for bringing the work in the criminal courts up to date. The existing state of affairs seems to be partly due to the fact that the Civil Judges who are District Magistrates do not seem to appreciate that their duties are not confined to court work, and that they have also to perform the important duty of supervising the work of criminal courts—and seeing that it is kept up-to-date.

TABLE No. 8

District Magistrates & other Magistrates

Year	Number of Officers	Pending Criminal Appeals					Criminal Revsion					Cases under I.P.C. & other cases				
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
1953-54	51	157	305	290	172	..	68	149	171	46	..	7429	89502	90229	5522	1150
1954-55	51	172	287	322	137	..	46	131	130	47	..	6702	85762	85572	5982	910
1955-56	50	137	105	212	130	..	47	98	85	60	..	6892	84597	86461	4280	748

22. Sessions cases do not seem to receive the proper attention of Sessions and Assistant Sessions Judges. The following summary of Order Sheets in sessions case No. 6 of 1956 on the file of the District and Sessions Judge, Mysore, indicates what happens. Delays in sessions cases.

The case was committed on 28th April, 1956, registered on 1st May, 1956 and an order transferring the case to the court of the Assistant Sessions Judge was passed. A memo filed on 5th May, 1956, by the Public Prosecutor was taken up on 14th May, 1956 and the hearing was adjourned to 17th May, 1956. On 30th May, 1956, orders were passed retaining the case on the file of the Sessions Judge. Thereafter, the case was posted to 31st May, 1956 on which date it was adjourned to 2nd June, 1956 and again to 4th June, 1956 and a third time to 16th July, 1956. The case was not taken up on 16th July, 1956. The date of hearing was advanced to 2nd July, 1956 and at the request of the Public Prosecutor who stated that a criminal revision petition was pending before the District Magistrate it was adjourned and posted to 21st August, 1956 on which date it was again adjourned to 11th September, 1956. From 11th September, 1956 to 24th November, 1956, the case was adjourned seven times and posted to 7th January, 1957 for trial. On 5th December, 1956, orders were passed transferring the case to the Additional Sessions Judge for disposal. Thus the trial of the case did not commence even after seven months.

Similarly, sessions case No. 5 of 1956 on the file of the Sessions Judge, Shimoga, was committed on 13th April, 1956 and registered on 14th May, 1956. Fourteen adjournments extending over a period of six months were granted and the case was posted to 1st December, 1956, for trial.

This is a lamentable state of affairs. It undoubtedly results from a complete want of responsibility in the judges concerned and a total lack of supervision. Extreme vigilance on the part of the High Court—and swift and severe disciplinary action in all cases of slackness are imperatively needed to set matters right.

23. A regrettable feature about the administration of criminal justice in this State is that the prosecution witnesses are not given travelling and subsistence allowance for attendance in Courts. We have been told that as a consequence police officials find it difficult to obtain the presence of witnesses in courts, and adjournments become necessary. We recommend that immediate steps be taken to enable payment of *bata* to be made to witnesses. Considerations of justice and efficiency alike demand it. Payment of witnesses.

52.—ORISSA

Area and population.

Orissa was originally a part of Bihar. It was carved out as a separate province in 1936 with the addition of parts of Ganjam District of Madras. After Independence, twenty-four Eastern States were merged in the State, bringing its area to 60,136 sq. miles. The territory of the State has not been affected by the recent reorganisation of States. According to the last census, its population was 14,645,946. The State is divided into seventeen revenue districts, but for administrative purposes some of the districts are grouped together, so that the State has now thirteen composite administrative districts.

The High Court.

2. The Orissa High Court was constituted under the Orissa High Court Order, 1948 and started functioning with effect from the 26th July, 1948. Till then, the High Court of Patna exercised jurisdiction over that State. The strength of the Court has been usually four judges, except in 1951, when it had three judges and in 1954 when it had five judges. The strength at present is, however, five judges, the fifth judge having been appointed recently.

Subordinate Judiciary.

3. There are six district judgeships in the State. Prior to 1948, the State had only two judgeships, excluding the Agency tracts, where the District Magistrate under the designation of Agent exercised the powers of a district judge. Between 1948 and 1952 there were five judgeships. The sixth judgeship was created permanently in 1953 when normal administration was introduced in the district of Koraput and in the agency areas of Ganjam District. All the judicial divisions, except Koraput are composite judgeships, consisting of two or three districts with several circuits. The population under each judgeship varies considerably. Thus, according to the last census, the population in the judgeship of Cuttack-Dhenkanal is 3,835,380 but at the other extreme, the population of the judgeship of Koraput is only 1,269,534.

Recruitment.

4. The sanctioned strength of the district and additional district judges is thirteen. They form the Orissa Superior Judicial Service. Recruitment to these posts is made either directly from the Bar or by promotion of subordinate judges. According to the rules, recruitment by promotion should not be less than 33-1/3 per cent. and not more than 50 per cent. of the vacancies; we were however told, that during the last few years no direct appointment has been made from the Bar and all the posts had been filled by promotion. The subordinate judges and the munsifs belong to the Orissa Judicial Service, class I and class II, respectively. The sanctioned strength of subordinate judges

is 15 and of munsifs 46, but the actual strength has never reached this figure. The number of subordinate judges has varied from twelve to fourteen and of the munsifs from twenty-nine to thirty-seven during the years 1951—56.

The pay scale of district judges and additional district judges is the same as the senior scale in the Indian Administrative Service. The scale of pay of a subordinate judge is Rs. 300—860; a munsif is appointed on an initial salary of Rs. 230 in the scale of Rs. 200—15—260—25—435—EB—25—610—EB—30—700. As compared to other States, the initial salary of a munsif in Orissa is very low.

The recruitment of subordinate judges is made by promotion from among the munsifs. We were however told, that the State Government had under consideration a proposal to recruit subordinate judges directly from the Bar. For the reasons given in our chapter on the Subordinate Judiciary we are against the adoption of such a course.

The munsifs are recruited directly from the Bar on the recommendation of the State Public Service Commission. The requisite qualifications for appointment as a munsif are, that the age of the candidate should be between 26 and 32 years and he should be a graduate in law with at least three years practice at the Bar. A peculiar feature of the recruitment rules is, that the Public Service Commission is required to send to the Government twice the number of names as there are vacancies and appointments are made by the Government from that list. We are not aware, if there has been any instance, when a candidate placed higher in the list has been overlooked in favour of a person placed lower by the Commission, but the fact that the rule empowers the Government to do so is itself open to criticism.

We understand that recently the Government was constrained to reject all the selections made by the State Service Commission assisted by a district judge and to order a fresh selection as the fairness of the first test was impunged. This does not speak well of the existing system and the institution of a competitive examination of a practical character, as suggested by us earlier would effectively prevent such situations.

Promotions.

5. We may here draw attention to the manner in which promotions are made in the judicial service in this State. It was learnt that the promotion from munsif to subordinate judge and from subordinate judge to district judge is almost automatic and is made on the basis of seniority. We were told that ever since the High Court came into existence in 1948, there has not been a single instance, when a subordinate judge has been passed over for promotion as district judge. Such automatic promotions as we have noticed earlier not only do not make for efficiency but go far to undermine it. It is for the High Court and

the Government to examine this aspect of the matter and to effect suitable changes in the present system of making appointments to selection posts.

Civil work in subordinate courts.

6. The following statement shows the total number of suits instituted in the subordinate courts during the years 1951—56:

Year	1951	1952	1953	1954	1955	1956
No. of suits instituted in subordinate courts.	16,840	14,534	15,028	14,376	12,848	12,920

It would be evident, that during the recent years there has been a downward trend in the number of the institutions. The fall in institutions is attributed to several factors, such as, the imposition in 1951 of a surcharge on court fees, the abolition of Zamindaris, the introduction of new tenancy laws, the establishment of Panchayats Adalati in which the smaller suits are filed; and a deterioration in the general economic condition of the people. The bulk of the litigation in the State is of small value. An analysis of the statistics of the last few years reveals, that nearly 98 per cent. of the litigation relates to suits below Rs. 5000. Suits below Rs. 2000 are about 94 per cent. and those below Rs. 1000 are about 88 per cent. of the total institutions. In 1956, out of a total of 12,920 suits, the suits valued above Rs. 10,000 were only 91.

7. The civil courts in Orissa are constituted under the Bengal and Assam Civil Courts Act, 1887. The pecuniary jurisdiction of munsifs is Rs. 1000, but selected munsifs may be vested with jurisdiction to try suits upto the value of Rs. 4000. Subordinate judges have unlimited pecuniary jurisdiction. The small cause jurisdiction of munsifs is limited to Rs. 250 and of subordinate judges to Rs. 500.

8. The state of the file of regular suits in the courts of munsifs and subordinate judges during the years 1951 to 1956 is shown separately in the following two statements:

Regular suits in the courts of Munsifs

Year	No. of Munsifs	Institutions	Total Disposal	Disposal after full trial	Average duration of full trial cases in days	Pendency at the end of the year	Over one year old cases.
1	2	3	4	5	6	7	8
1951	31	10,342	10,556	2377	384·4	7296	1742
1952	32	8,890	9,555	2197	440·2	7213	2243
1953	29	9,626	9,552	2017	489·0	8803	3127
1954	33	9,007	9,069	1873	561·5	9299	3802
1955	32	8,011	8,719	1878	526·0	8957	4077
1956	37	7,828	8,412	..	..	8990	3940

NOTE.—Institutions do not include cases restored or recieved by transfer.

Regular suits in the Courts of Subordinate Judges

Year	No. of Subordinate Judges	Institutions	Total Disposal	Disposal after full trial	Average duration of full trial cases in days	Total pendency	Pending for more than one year
1	2	3	4	5	6	7	8
1951	14	943	1028	342	371·6	1141	334
1952	14	710	820	206	466·3	1020	421
1953	13	821	781	245	565·6	1128	509
1954	11	751	702	224	677·2	1230	679
1955	13	603	896	333	755·2	1227	728
1956	14	590	1034	..	..	1089	642

NOTE.—Institutions do not include cases restored or received by transfer etc.

9. The figures present a disheartening picture. Notwithstanding the progressive fall in institutions there has been a steady increase in the total number of pending suits, the number of a year old suits and the average duration. The position appears to have been continuously deteriorating, though the number of the judiciary cannot be said to be inadequate. An important feature revealed by these statements is that a very large proportion of the pending suits are more than one year old suits, being as high as 44 per cent. in the courts of munsifs and 60 per cent. in the courts of subordinate judges. The following statement shows the year of institution of the suits (including miscellaneous cases).



Class of court	Over 10 years	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	Total
Munsif's courts	54	5	8	13	24	43	126	412	1185	2295	5908	10053
Superior courts	2	4	5	3	7	11	28	71	191	467	1264	2053

Such a large proportion of old suits carried over year after year during the last many years clearly shows, that the judicial officers have not been devoting the required attention to the disposal of the more difficult and old suits, and instead, have preferred to dispose of comparatively lighter suits.

10. The percentage of suits disposed of after full trial is very small. In 1955, it was about 23 per cent. in the courts of munsifs and about 37 per cent. in the courts of subordinate judges. As uncontested suits are generally disposed of within one year, old suits would be with negligible exceptions, contested suits. The magnitude of the problem can be realised, if we take into account the capacity of the judicial officers to dispose of contested suits in a year and the number of old suits (*i.e.*, more than one year old)—which are likely to be contested suits—that are pending and are required to be disposed of. It would be noticed, that the figure of suits pending for over one year (column 8) except in 1951 far exceeds the contested disposal (column 5) in any particular year. We have not got the exact figures of the contested disposal for the year 1956, but taking the average for the years 1951—55, it appears that at the present rate of disposal the existing strength of munsifs will take about 1½ years and of subordinate judges about 2½ years to finish the suits pending at the end of 1956, and if attention is given exclusively to old suits, fresh suits will have scarcely any chance of disposal in the immediate future. It appears that the situation has become very nearly unmanageable. We do not suggest that the existing strength of judicial officers is insufficient. On the basis of disposals of similar officers in other States the strength would seem to be adequate for current work. In fact a former Chief Justice of Orissa has attributed the arrears to the "incompetency" of judicial officers and not to the inadequacy of personnel. We do not feel competent to express any opinion on this point. But until increased efficiency is brought about by better surpervision, training and more business-like methods of work, on the basis of the current rate of disposals, the appointment of additional munsifs and subordinate judges for clearing off arrears appears to us to be unavoidable. It is not practicable to reduce and wipe out the huge volume of arrears except by the employment of additional personnel. We therefore recommend that some additional munsifs and subordinate judges may be appointed on temporary basis, exclusively for the purpose of disposing of the old cases.

11. The average duration of suits decided after full trial in 1955 was 596 days *i.e.* one year and 8 months in the courts of munsifs and 755 days *i.e.* a little more than two years in the courts of subordinate judges. These exceed the time limits suggested by us. It would be noticed, that the average duration has progressively increased

since the year 1951. This increase in average duration, without any corresponding decrease in the number of pending old suits clearly suggests a slackness in the work of the judicial officers. This view derives support from the following two statements, which show the average disposal of munsifs and subordinate judges during the years 1954 to 1956.



Average output of work per year of a Munsif

Year	Average disposal of regular suits (contested and uncontested) per head	Average disposal of small cause suits (contested and uncontested) per head	Average disposal of miscellaneous civil cases and petitions per head
1	2	3	4
1954	275	84	104
1955	271	87	109
1956	290	82	140

Average output of work per year of a Subordinate Judge

Year	No. of sub-judges doing civil work	Averege disposal of regular suits per head	Average disposal of small cause suits per head	Average disposal of miscellaneous civil cases and petitions	Average disposal of civil appeals per head	Average disposal of civil miscellaneous appeals	No. of Sub-judges doing criminal work	Average disposal of sessions cases per head	Average disposal of criminal appeals per head
1	2	3	4	5	6	7	8	9	10
1954	11	64	146	103	42	6	11	13	Nil
1955	13	68	122	100	42	5	12	8	Nil
1956	14	74	110	102	42	5	9	10	10

NOTE.—Columns 3, 4, 6 & 7 include contested and uncontested matters.

It is evident that the average disposal of judicial officers is very low in this State. It is true that some of the munsifs have also been doing criminal work, but that would to some extent be more or less offset by the civil work done by some executive officers. In any case, it is quite apparent that the civil work calls for much greater attention.

12. There are indeed many reasons for the accumulation of arrears in this State. According to latest available Administration Report, 1955 issued by the High Court, the delay of long pending suits is attributable among other causes to the "inadequacy of staff and adjournments necessitated by pressure of work or allowed at the instance of the parties."

13. In considering the need for appointing additional officers it must be remembered that the subordinate civil judiciary has never functioned at its full strength, since 1951, when the permanent strength of the subordinate judiciary was fixed at 46 munsifs and 15 subordinate judges. Even in 1956, the strength of munsifs was only 37, and of subordinate judges only 14. We think that this situation is partly due to the failure on the part of those concerned to appreciate in time the need for the adequacy of judicial strength. Had this been done earlier, much of the present congestion of work could have been easily avoided. It is therefore necessary that the existing vacancies should be filled up quickly so that the arrears may be cleared.

Supervision.

14. It appears to us, that the low average disposal of the judicial officers, the high average duration of cases and the large pendency of old suits are due in part to the lack of effective supervision on the part of the High Court and the district judges. According to the General Rules and Circular Orders of the High Court, the subordinate courts have to submit periodical returns of the work done by them to the High Court through the district judges and an explanation given for every case pending for more than a year. Every district judge is also required to inspect annually if possible, but if not, at least once in every 18 months, each of the subordinate civil courts in his district. We find from the administration reports, that quite a fair number of Courts are inspected every year. However rules by themselves are ineffective to ensure efficiency unless they are enforced. There is no point in calling for an explanation unless it is scrutinised and appropriate instructions given. There would appear to be considerable scope for improvement in this direction.

15. Another feature which calls for comment is, that there is no systematic distribution of judicial business in the subordinate courts. Ordinarily a munsif should not be expected to handle more than 300 to 400 regular suits at a time, but in Orissa some of the munsifs have to handle

700 to 900 cases at a time. In order to achieve optimum results, we think it necessary that the number of cases, a presiding officer is asked to handle, should be fixed within reasonable limits. We recommend that the work may be redistributed in this manner, by the creation, if necessary, of additional posts so that no judicial officer is overburdened.

16. The congestion is apparently greater in the courts of subordinate judges, who have to do not only original civil work but have also to deal with a large number of civil appeals transferred to them by the district judges for disposal. They have also to try sessions cases and hear appeals against the orders of second class and third class magistrates as assistant sessions judges. The following statement shows that subordinate judges do a substantial proportion of work of the district and sessions judges.

Year	Disposal of regular civil appeals		Disposal of Sessions cases	
	District Judge	Subordinate Judge	District Judge	Subordinate Judge
1954	472	462	255	143
1955	704	545	282	96
1956	823	657	310	91

It is necessary that subordinate judges be given some relief from their civil appellate and sessions work if they are to dispose of civil suits within a reasonable time. We have already noticed that munsifs generally exercise jurisdiction upto Rs. 1000 and some selected munsifs are invested with powers to try suits upto Rs. 4000. But, as nearly 88 per cent. of the litigation in the subordinate courts relates to suits below Rs. 1000 and 94 per cent. below Rs. 2000, a mere increase in the jurisdiction of munsifs is not likely to give much relief to the subordinate judges.

17. The position with regard to small cause suits in the courts of munsifs and subordinate judges for the tri-ennial periods 1951—53 and 1954—56 is given below:

	Courts of Munsifs		Courts of Subordinate Judges	
	1951-53	1954-56	1951-53	1954-56
Institution	9,316	8,622	5,687	4,618
Disposal	9,589	8,592	5,432	4,744
Pendency at the end of the Period.	840	998	852	702

It will be noticed, that these suits also like original suits, show decreasing institutions and decreasing disposals. The average duration of a contested small cause suit in 1955 was 8 to 9 months in the courts of munsifs and about 12 months in the courts of subordinate judges. This is more than the standard time-limits suggested by us for the disposal of small cause suits, and has to be brought down to the suggested standards.

Courts of district and sessions judges.

18. The following two statements show the civil and criminal work done by the district and sessions judges (including the additional district and sessions judges) during the years 1954—56.



Civil work

Year	Civil Suits					Misc. Civil Cases & Petition					Civil Appeals					Civil Misc. Appeals				
	Pending at the beginning of year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				Below one year	Over one year				Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
District Judges & Additional District Judges																				
1954	59	21	30	21	31	258	389	385	172	83	1064	660	472	550	494	160	356	314	175	20
1955	52	26	23	24	32	255	445	362	221	110	1044	768	704	651	455	195	366	382	157	18
1956	56	67	36	50	40	331	480	392	203	185	1106	906	823	662	469	175	413	324	238	24

Criminal work

Year	Sessions cases					Criminal Appeals					Criminal Revisions				
	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
						District & Sessions Judges and Additional District & Sessions Judges									
1954 .	113	248	255	104	2	615	1029	1271	353	20	83	306	279	109	1
1955 .	106	318	282	141	1	373	938	1066	241	4	110	228	291	47	..
1956 .	142	328	310	156	4	245	1380	1075	543	7	47	279	229	97	4
						Assistant Sessions Judges									
1954 .	47	130	143	31	3	..	..	..	..	..	..	..	..	..	..
1955 .	34	88	96	25	1	..	2	1	1	..	..	..	..	..	..
1956 .	26	100	91	34	1	1	134	90	45	..	..	..	..	..	..

The above-mentioned figures have been supplied by the High Court of Orissa.
There are however some slight discrepancies, which cannot be avoided.

It will be noticed, that the work of district and sessions judges is heavily in arrears, particularly on the civil side. On the criminal side, the existing strength of the higher judiciary is just able to keep pace with the current institutions. The original suits tried by district judges are generally of a special nature. Although the number of suits is not very large, nevertheless, the rate of disposal has been low. In 1955, the average duration of cases disposed of after full trial was as high as 770 days *i.e.* over 2 years. A large number of civil appeals are also pending, out of which nearly 42 per cent. were more than one year old in 1956. The average duration of a contested civil appeal was 656 days *i.e.* about 1 year and 10 months, being the highest in India in that year. The administration reports also show, that the average duration of original suits, civil appeals and sessions cases has been progressively rising since 1951. All these factors clearly indicate, that the existing strength of the higher judiciary is incapable of controlling the files. The work on the civil side seems to suffer greatly as district and sessions judges are apparently unable to devote sufficient time and attention to this part of their work. We have noticed earlier, that quite a substantial part of their work is shared by subordinate judges, who deal with civil and criminal appeals and also dispose of sessions cases. If relief is given to subordinate judges, by relieving them of much of their civil appellate and session work as suggested by us, a still heavier burden will be thrown on district and additional district judges. The district judges will also have to devote more time to their supervisory duties. In view of these facts, we are of the view that the strength of the Higher judiciary needs to be augmented.

19. The work done in the High Court, since it came into existence in 1948, is shown in the following statement: High Court.

Statement showing the institution and disposal of proceedings in the High Court of Orissa during the years 1948—1956

		1948	1949	1950	1951	1952	1953	1954	1955	1956
Number of Judges		4	4	4	3	4	4	5	4	4
First Appeals against decrees	I	62	108	74	89	78	59	31	49	68
	D	33	55	55	41	31	62	81	69	34
	P	168	221	240	288	335	313	263	243	277
Second Appeals against decrees	I	568	536	709	575	474	339	314	296	335
	D	264	551	455	301	204	350	867	901	386
	P	1120	1105	1359	1633	1903	1892	1339	734	683
Appeals against orders	I	94	93	75	114	84	86	78	87	103
	D	70	72	60	114	109	99	132	80	60
	P	150	171	186	186	161	148	94	103	146
Letters Patent Appeals	I	4	6	10	1	2	2	4	7	4
	D	..	3	..	2	8	9	1	9	1
	P	4	7	17	16	10	3	6	4	7
Civil Revisions (including Small Cause Revisions).	I	288	370	317	295	255	215	213	268	284
	D	178	318	340	248	322	291	254	229	216
	P	233	285	262	309	242	166	125	164	232

Criminal Appeals . . .	I	92	121	106	113	N.A.	132	208	174	205
	D	66	128	80	81	N.A.	143	106	114	168
	P	41	34	60	92	101	90	192	252	289
Criminal Revisions . . .	I	406	690	670	742	N.A.	480	424	361	283
	D	361	711	617	643	N.A.	647	448	334	280
	P	198	177	230	329	283	116	92	119	122
Writs	I	..	..	..	..	71	100	406	400	472
	D	..	..	..	..	81	92	100	173	582
	P	..	..	..	..	53	61	367	594	484

NOTE.—I=Institution—also include matters restored and otherwise received.

D=Disposal.

P=Pendency at the end of the year.

N.A.=Not available.

20. This statement reveals, that the work of the High Court is very much in arrears. A large number of first appeals, second appeals, criminal appeals and writ matters are pending. On the basis of the average disposals for the last six years, 1951 to 1956, it may take the court over 5 years to dispose of the first appeals and about 2½ years to dispose of the second appeals, criminal appeals and writ matters pending at the end of 1956. The average duration of a contested first appeal in 1955 was 1518 days *i.e.* 4·3 years and of contested second appeals was 1088 *i.e.* about 3 years. Even the criminal work in the High Court is somewhat in arrears. The following statement shows that there is great need for improvement in the state of the file of the High Court.



Statement showing details of the proceedings pending on 1-1-57 according to the year of institution

Year	First Appeals against decrees	Second Appeals against decrees	Appeals against orders	Writs	Civil revisions	Criminal appeals	Criminal revisions
1	2	3	4	5	6	7	8
1943	1	..	..	..	..	..	..
1944	..	..	..	..	..	..	..
1945	1	..	..	..	..	..	..
1946	..	..	..	..	..	..	..
1947	1	..	..	..	..	..	..
1948	4	1	..	..	..	..	..
1949	9	1	..	..	1	..	..
1950	15	1	..	..	..	..	..
1951	42	5	2	..	..	..	..
1952	44	18	3	6	..	..	..
1953	36	69	6	..	..	..	..
1954	22	114	19	98	9	15	..
1955	40	188	39	151	63	99	5
1956	62	286	77	229	159	175	117
Total	277	683	146	484	232	289	122

21. Although we have suggested in the Chapter on "Civil Appeals" that the appellate jurisdiction of District Judges may be raised to Rs. 10,000, the immediate adoption of such a course does not appear to be advisable in this State as the number of suits valued below Rs. 5,000 are very few, and its adoption will result in practically abolishing the first appellate jurisdiction of the High Court as will be shown by the table below:

Year	Total No. of suits	Suits below Rs. 5,000	No. of Suits between Rs. 5,000/- to Rs. 10,000	No. of Suits above Rs. 10,000	No. of Suits of which value cannot be estimated
1954 . .	14,376	14,092	153	129	2
1955 . . .	12,848	12,613	123	111	1
1956 . . .	12,920	12,696	98	91	35

22. According to the rules of the High Court, a single judge has no power to hear first appeals. He can hear second appeals only upto the value of Rs. 2,000 and criminal appeals where the substantive sentence does not exceed imprisonment for one year. Even if for special local reasons, it is not possible to enhance the power of a single judge to the full extent recommended by us, we are of the view that the powers of a single judge should be enlarged to enable him to hear all first appeals upto Rs. 10,000, all second appeals and criminal appeals where the sentence of imprisonment does not exceed seven years. This will result in a considerable saving of judge-power and there will be greater expedition in the disposal of proceedings. It is true that members of the Cuttack Bar in their evidence before us expressed themselves against any increase in the powers of a single judge. We are, however, confident that the opposition which really stems from a disinclination to change, will disappear as soon as its working demonstrates its advantages which have been appreciated in other States.

23. The chief difficulty felt by the High Court has been, that in the past, with the strength of only four judges, it was not practicable to form the requisite number of Benches. With the recent appointment of a fifth judge, this difficulty should now disappear. It will appear from the statement of work done by the High Court that in 1954, when the High Court had five judges, its disposals showed an appreciable increase. With five judges the court can function with at least three benches sitting continuously, one division Bench doing civil work, another division Bench criminal work and a single bench doing other work.

24. The High Court rules provide that writ matters can be normally heard only by a Division Bench presided over by the Chief Justice. Whatever may have been the reasons for enacting the rule, it appears to have led to a large number of writ petitions remaining pending for over a year. We would, therefore, suggest the abrogation or modification of the rule.

Criminal work in subordinate courts.

25. Separation of the judiciary from the executive has not yet been effected in this State although detailed schemes for this purpose have been worked out by an expert committee. It is learnt that the State Government has decided to introduce separation in some of the coastal districts, as an experimental measure.

The bulk of the criminal work at district and sub-divisional headquarters is done by deputy magistrates and sub-deputy magistrates borne on Orissa Administrative Service and Orissa Subordinate Administrative Service respectively. Some munsifs have also been invested with magisterial powers.

26. The following statement shows the work done by magistrates during the years 1953-55.



Year	No. of magis-trates	Insti-tutions	Disposal	Average duration in days for cases under IPC	Average duration in days for cases under special laws	General average in days	Pendency
1953	..	40,134	52,316	N.A.	N.A.	29·1	9,419
1954	302 St. plus 22 munsifs	45,737	45,403	50·7	15·7	31·1	9,753
1955	302 St. plus 16 munsifs	47,739	43,005	49·9	17·3	32·0	14,483

St. = Stipendiary Magistrates
N.A. = Not available

It will be noticed that in 1955, the last year for which the statistical data was made available to us, while the number of institution was 47,739, the disposal amounted only to 43,900. The average duration of cases under the Indian Penal Code is high. There are also a number of a year old cases. The position in 1955 was thus described by the High Court in its Report on the administration of Criminal Justice in the State of Orissa for the year 1955:—

"The pendency of cases before the Magistrates has considerably gone up at the end of the year under report in comparison with that of the preceding year. The duration in the trial of cases by them including commitment proceedings, also has increased when compared with the corresponding figures of the preceding year. As in the previous year, many of the subordinate judges and munsifs continued to lend assistance in the disposal of criminal cases during the year. The unsatisfactory state of the criminal file was more conspicuous in the districts of Ganjam, Puri, Cuttack, Balasore, Sambalpur and Koraput as was in the last year. Long duration in the disposal of cases in the courts of Magistrates is noticed in the districts of Ganjam, Balasore, Kenonjhar and Boudh. It is reported that this long duration is partly due to frequent transfer of magistrates resulting in *de-novo* trial of the cases and partly due to their engagement in the numerous executive functions or absence on leave. The District Magistrate, Ganjam reports that delay in service of processes also contributed much towards delay in disposal of cases and he suggests that in order to effectively prevent such delay the existing system of getting the summons served through police agency should be discontinued and the North Orissa system of Nazarat be immediately established.

In spite of the special drive undertaken for the disposal of the year-old cases, the Court finds that the unsatisfactory state of the criminal file specially in the coastal districts of the State and also in Koraput still persists and they observe that the only solution that can be thought of in the matter is the immediate implementation of the scheme for separation of the Judiciary from the Executive."

27. We were also told that on account of the uncertainty with regard to the implementation of separation of the executive and the judiciary, the executive magistrates display a lack of interest in their court work. A feeling seems to be prevalent among them that their judicial work is of little consequence and is not taken into account in determining their fitness for promotion. This unhealthy trend must be controlled. If such a feeling is allowed to continue, till separation is introduced, the judicial magistrates will have a legacy of heavy arrears, which will affect their efficiency and even undermine the success of the scheme. It is therefore imperative that pending the introduction of separation,

Government should make it clear to the executive magistrates that slackness in their judicial work will not be tolerated and that neglect of this part of their duties will be visited with as serious consequences as neglect of their administrative duties.

28. Prosecutions in magistrate's Courts are conducted by trained police officers, except in the Districts of Cuttack and Ganjam, where as an experimental measure, assistant public prosecutors recruited from the bar have been appointed. They start on a salary of Rs. 250 p.m. and have a status equivalent to that of a deputy superintendent of police. The appointments are made temporarily for a period of five years. The Assistant public prosecutors function under the administrative control of the police department. It was stated that if the experiment proved successful, it would be extended to other districts.

Honorary Magistrates.

29. There are no honorary magistrates in this State.

Registrar system.

30. In the Cuttack judgeship, there is a Registrar attached to the District Judge's Court. He looks after the working of the Nizarat, Record room, copying department, accounts and receives plaints, execution petitions, memoranda of appeals etc. Affidavits for all the civil courts of Cuttack are sworn before him. He also attends to the ordinary correspondence of the district judge *e.g.*, proposals of expenditure in the judgeship, annual increments of the staff, leave applications of the ministerial officers, preparation of budgets, scrutiny of indents for forms and stationery, scrutiny of monthly and quarterly returns and administrative reports of the courts etc. This system is reported to have worked quite satisfactorily. The High Court has recommended its extension also to Berhampur where there is a fairly heavy concentration of courts.

Concentration of courts

31. The pattern is different in North and South Orissa. Revenue districts in south Orissa districts follow the Madras pattern of being divided into Taluks but in North Orissa the districts are divided on the Bengal pattern and there is no taluka system. Criminal courts have been decentralised and established in all taluka headquarters in south Orissa, but in north Orissa all courts, civil and criminal are concentrated at district and sub-divisional headquarters. This renders any attempt to decentralise courts in this area difficult. The bar is also likely to resist efforts in this direction but nevertheless some steps should be taken to effect decentralisation even if the progress made is gradual.

Court Fees.

32. There were wide-spread complaints that the court fees levied in the State were exorbitant. In 1947, a surcharge of 4 annas per rupee was imposed on the fees leviable under the Court Fees Act, 1870. This rate was doubled in 1951. The court fees on suits of small value in

this State are the highest in India and the burden is particularly great as about 94 per cent. of the suits in this State are valued below Rs. 2,000. We were told that the increase in the court fee has greatly hit the poorer litigants, with the result that the doors of the courts have been closed to many of them and there has been an appreciable fall in institutions of civil suits since 1951.

33. Panchayat courts have been established under the Grama Panchayat Act, 1948 throughout the State with the exception of the District of Koraput. Details regarding their constitution and powers will be found in the Tables in our chapter on Panchayats. Panchayat courts.

The following statement of the number of cases disposed of by the Panchayat Courts for the years 1954—56 shows that they are doing progressively increasing work. There appears, however, to be scope for popularising these courts, increasing their number and enhancing their pecuniary jurisdiction to civil matters which is now limited to Rs. 25.

Year	Pending at the beginning of the year	Institution	Disposal	Balance
1	2	3	4	5
1954				
Civil	374	987	948	413
Criminal	246	1787	1730	303
1955				
Civil	413	1815	1684	544
Criminal	303	3165	2929	539
1956				
Civil*	345	973	907	411
Criminal*	164	1200	1127	237

*The figures pertaining to the year 1956 are not complete.

Considering the work done by the Panchayat Courts during the year 1955, it is evident that they have great future potentialities and are bound to be increasingly useful in relieving the subordinate courts of their petty civil and criminal work.

53.—PUNJAB

Area and population.

*The territory subject to the jurisdiction of the High Court of Punjab (India) including the Union Territory of Delhi comprises an area of 48,075 square miles inhabited by a population of about 17,878,962 persons.

High Court strength.

2. The High Court, the principal seat of which is in Chandigarh, has a strength of fifteen judges including the Chief Justice and four additional judges appointed for a period of two years. This High Court was constituted after the partition of the country in 1947 and started functioning in Simla with seven judges including the Chief Justice. About three thousand pending cases were transferred to it from Lahore.

Pendency.

3. It must be pointed out that due to the failure on the part of those concerned to increase the number of judges in time, in spite of the requests of successive Chief Justices the arrears have accumulated steadily. In our chapter on the High Courts we have already referred to the great delays in filling up vacancies in this High Court. The following Table (Table No. 1) shows the progressive increase in arrears.

TABLE No. 1

Cases pending on 1st January	1948, 2955.
Cases pending on 1st January	1949, 3114.
Cases pending on 1st January	1950, 4804.
Cases pending on 1st January	1951, 4821.
Cases pending on 1st January	1952, 4578.
Cases pending on 1st January	1953, 5096.
Cases pending on 1st January	1954, 5560.
Cases pending on 1st January	1955, 6191.
Cases pending on 1st January	1956, 7503.
Cases pending on 1st January	1957, 11493.

Need for additional judges.

4. The position in 1956 was described as follows by a Judge of that court:

> "..... Towards the end of 1950, we discovered that the work of this Court was going out of control and we accordingly provided for the appointment of an eighth Judge in the budget estimates for the year 1951-52. Unfortunately, Government were unable to agree to the appointment of this additional Judge and were unable or unwilling to assign any reasons for their refusal." In May, 1953, a communication was sent to the Punjab Government

by the Chief Justice "strongly advocating the appointment of an additional Judge. This communication was unable to elicit a favourable response from the Punjab Government. In February, 1954, the Chief Justice of India expressed the view that unless two more Judges were appointed it would not be possible to tackle the arrears". On the 14th October, 1954, the Chief Justice of the State asked urgently for the appointment of two more Judges. "It is unfortunate that no reply has been received from Government so far although eighteen months have gone by.....

"It may, perhaps, be mentioned that we have only seven Judges to cope with a pending file of about 7,500 cases whereas immediately before partition the Lahore High Court had as many as fourteen Judges to deal with a pending file of 7175 cases. Even the appointment of two more Judges will not afford us much relief.

"We have several regular first appeals which were instituted as long ago as the year 1949. If justice delayed is justice denied I am certain we are denying justice to a very large number of litigants. We are certainly lowering the dignity of the Courts and bringing Government into hatred and contempt."

5. The executive seems to have failed to realise that it is as much its duty and responsibility as that of the head of the State Judiciary to see that justice is promptly dispensed. We have not been able to discover the reasons for the failure to add to the number of Judges in time, although it appears that the Chief Justice of India had expressed himself in favour of such a course. The representative of the Punjab Government stated in reply to a question about the reasons for inordinate delays in the appointments of the High Court Judges that he would not risk an answer; an answer which we found it difficult to understand. According to the figures worked out by us during the years in which the executive showed this woeful neglect in complying with the legitimate demand for an addition to the High Court Judiciary the State earned a surplus of Rs. 13,82,126, Rs. 36,08,368 and Rs. 41,19,574 respectively from the administration of justice.

Two additional judges were appointed on 10th October 1957 only after the rise in pendency consequent on the merger of Pepsu and two more were appointed in August, 1958. The accompanying Tables (Tables Nos. 2 and 3) show the judicial business transacted by the High Court during the triennium ending with 1956, the different categories of proceedings pending on 1-1-1957 and the years of institutions of the pending proceedings. Though the appointment of four additional judges will give some relief we doubt whether even with this added strength it will be possible to bring the file under control within a reasonable time—say, two years.

TABLE No. 2

Statement showing the institution and disposal of Civil and Criminal Proceedings in the Punjab High Court

S. No.	Nature of proceedings	1954			1955			1956				Pending on 1-1-57
		Pending at the beginning	Institution	Disposal	Pending at the beginning	Institution	Disposal	Pending at the beginning	Institution	Received from PEPSU	Disposal	
1	2	3	4	5	6	7	8	9	10	11	12	13
1	Regular First Appeals	941	309	174	1076	272	99	1249	251	204	98	1606
2	Regular Second Appeals	2280	1198	1233	2245	1080	913	2412	1076	852	537	3803
3	Appeals against Orders and Execution Appeals	189	472	373	288	557	350	495	567	31	366	727
4	Letters Patent/ Special Appeals	121	155	97	179	170	99	250	196	60	143	363
5	Civil/Criminal Writs	260	852	805	307	740	648	399	887	105	660	736
6	Reviews	Figures relating to this item are included in item No. 11 below.										
7	Civil Revisions	337	848	840	345	946	735	556	1019	207	793	987
8	Civil References	Figures relating to these items are included in item No. 11 below.										
9	Leave to appeal to Supreme Court.											

10	Original Suits .	256	138	131	263	112	105	270	134	4	119	289
11	Miscellaneous .	628	3732	3451	909	4798	4397	1310	5326	108	4621	2123
12	Criminal Appeals	245	718	724	239	604	604	239	817	111	729	438
13	Criminal Revisions . .	286	1611	1569	328	1468	1491	305	1674	23	1596	406
14	Confirmation Cases . .	17	79	84	12	85	79	18	88	1	94	13
15	References U/S 307 Cr. P. C.	Figures relating to these items are included in item No. 11 above.										
16	Other References											
17	Miscellaneous .											
	TOTAL .	5561	10112	9481	6191	10832	9520	7503	12040	1706	9756	11493

TABLE No. 3

Statement showing details of the proceedings pending on 1-1-1957 in the Punjab High Court according to the year of institution of pending proceedings.

Description of cases	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	Total
Regular First appeals	1	1	23	123	134	229	216	311	282	286	1606
Regular Second appeals		1	32	70	147	417	647	825	737	927	3803
Miscellaneous appeals				3	2	7	32	161	236	286	727
Civil Revisions .					3	34	140	267	206	339	989
Letters Patent appeals					6	13	38	75	89	142	363
Civil Writs .							9	29	230	384	652
Original Suits .				18	6	14	15	59	73	104	289
Criminal appeals .					2	2	..	7	61	366	438
Criminal revisions								2	20	384	406
Murder References										13	13
Misc. Cases . .						23	29	189	882	1084	2207
TOTAL .	1	2	55	214	300	739	1126	1925	2816	4315	11493

6. At present, a judge of the High Court sitting singly cannot hear and dispose of first appeals against decrees. A single judge can dispose of all second appeals valued upto Rs. 2,000 in land suits and Rs. 5,000 in other suits including cross-objections. This, perhaps, accounts for the low disposal of first and second appeals in the High Court. Enhancement of powers of a single judge.

Litigation in this State except perhaps in matters of customary law is not more complicated than in other States and we recommend that a judge of the High Court sitting singly should be empowered to hear and dispose of all first appeals valued upto Rs. 10,000 and all second appeals irrespective of valuation. We are confident that the enhancement of single judge's powers to the limits aforementioned will without affecting in any manner the soundness of the administration of justice contribute to the expeditious disposal of cases.

The following Table (Table No. 4) shows the institution of regular first appeals of different valuations during the triennium 1954-56. It will be clear from the statement that the institution of first appeals in the High Court can be reduced by about fifty per cent. if the appellate powers of the District Judges were to be enhanced to Rs. 10,000. This may be done and pending proceedings below that value transferred to the district courts to relieve pressure on the High Court. Enhancement of jurisdiction of district judges.

TABLE NO. 4

	1954	1955	1956
Regular First Appeals Below Rs. 5000/-	29	23	32
Between Rs. 5000 and Rs. 10,000	125	106	103
Above Rs. 10,000/- . . .	155	143	116

7. A Bench of the High Court popularly known as the Circuit Bench has been sitting in Delhi since 1952 under the provisions of the Letters Patent of the Lahore High Court. Originally, the judges of the High Court used in turn to go in circuit to Delhi in batches of two to dispose of the proceedings arising within the Delhi area. But, for some time past, this system has been changed and two judges have been sitting in Delhi throughout the year the roster in Delhi being changed only at the end of a year. Apart from the arguments generally advanced in favour of establishing Benches, it was also urged that the Delhi Bench made for the convenience of litigants from different parts of India who had to seek redress in the Punjab High Court in view of the decision of the Supreme Court in Saka Venkata Rao's case. But the number of such cases would Circuit Bench.

be small. Some witnesses however expressed the view that the Circuit Bench had been established not because the circumstances warranted it but because the persons in authority had to yield to political pressure and advocated abolition of the Bench. We do not find any sufficient reason for not adhering in this case to the views expressed by us in our chapter on the High Courts.

Subordinate courts.

8. Section 18 of the Punjab Courts Act, 1918, provides for the establishment of three classes of courts in addition to the courts of small causes established under the provisions of the Provincial Small Cause Courts Act, 1887; they are the Courts of District Judges, the Courts of Additional District Judges and Courts of Subordinate Judges. The Courts of Subordinate Judges have been divided into four classes, namely, First Class, Second Class, Third Class and Fourth Class. The pecuniary jurisdiction exercised by the different classes of subordinate judges and judges of small cause courts is set down in the following Table (Table No. 5).

TABLE NO. 5

In Reguar Suits

1. Sub-Judge 4th Class, Not exceeding Rs. 1,000.
2. Sub-Judge 3rd Class, Not exceeding Rs. 2,000.
3. Sub-Judge 2nd Class, Not exceeding Rs. 5,000.
4. Sub-Judge 1st Class, Unlimited.

In Small Cause Suits

1. Judge, Small Cause Court, Delhi, upto Rs. 1,000.
2. Judge, Small Cause Court, Amritsar and Simla, upto Rs. 500.

Some Sub-Judges are invested with Small Cause Court powers to try suits valued between Rs. 50 and Rs. 250, where necessary.

Pecuniary Jurisdiction of Sub-Judges in the erstwhile State of Pepsu

1. Sub-Judge 3rd Class upto Rs. 2,000.
2. Sub-Judge 2nd Class upto Rs. 5,000.
3. Sub-Judge 1st Class upto Rs. 10,000.
4. District Judge Unlimited.

It is very necessary that the jurisdiction of the officers is rendered uniform and a common civil courts Act be made applicable to the entire State.

9. Before we proceed to deal with the judicial business transacted by the different classes of civil courts enumerated above, we shall give a brief account of the method of recruitment to the subordinate judiciary in this State.

10. The subordinate judiciary is divided into two cadres—(1) the Punjab Civil Service (Judicial Branch); and (2) the Superior Judicial Service. The permanent strength of the cadre of the Judicial Branch of the Punjab Civil Service after the merger of PEPSU is 123 including two posts in the selection grade. Officers in this service are recruited as subordinate judges in the scale of Rs. 300—30—510—E. B.—30—600—40—720—E. B.—40—800—850. The scale of pay of the two posts in the selection grade is Rs. 900—50—1,200. Subordinate Judiciary : Organisation and recruitment.

11. Rules for appointment to this service have been made by the Government of Punjab after consultation with the State Public Service Commission and the High Court. Recruitment is from two sources:—

(1) Law Graduates of not less than 23 and not more than 27 years of age who are not practising lawyers, and

(2) practising lawyers or law graduates serving under the Punjab Government or High Court of not less than 4 years standing in each case and who have not attained the age of 37 years on the date of appointment. The age limit may be relaxed in favour of any candidate to the extent to which he was prevented from practising at the Bar in consequence of his being appointed a Subordinate Judge in a temporary capacity.

Candidates are required to enroll themselves on registers maintained by the District Judges of persons suitable for appointment as subordinate judges, and have to pass a competitive examination in which they are required to answer three papers in law, one in English composition and one in one of the regional languages of the State. The names of the successful candidates are entered in a register and kept there for a period of two years during which they are required to pass the higher standard departmental examination.

Although it is theoretically possible for a successful candidate who has qualified in the departmental examinations to be rejected as being over-aged we were told that such contingencies did not arise and that the number of candidates entered on the register was limited to those who could be absorbed.

The procedure relating to the maintenance of rolls by the district judge and a register of selected candidates by the High Courts appears to be somewhat complicated and can be simplified with advantage.

12. The subjects included in the departmental examination are Civil, Criminal and Revenue law, accounts and languages (Hindi, Punjabi and Urdu). On completing the departmental examination the candidate has to undergo Training.

a period of training before he is appointed as a Sub-Judge. This period is generally of six months duration and besides training in judicial work under senior judicial officers, and with the Nazir and the Clerk of the Court, the candidate is also trained in revenue administration, such as, field work, mutation, registration etc. But this training and sometimes even the departmental examinations are dispensed with if there is a shortage of officers. This does not appear to be advisable particularly in the case of law graduates who have not been practising lawyers.

Honorary Sub-Judges.

13. While section 28 of the Punjab Courts Act provides for the appointment of honorary subordinate judges, we understand that such appointments have not been made in recent times. We recommend the repeal of this provision as the work of untrained and legally unqualified subordinate judges working on a part-time basis is not likely to be satisfactory.

Superior Judical Service.

14. The Superior Judicial Service consists of twenty-one district and sessions judges including four additional district and sessions judges and two officers in the deputation reserve. The scale of pay of officers in this cadre is Rs. 800—50—1000—60—1300—50—1800 with one post of Rs. 3000/- in the selection grade. The Registrar of the High Court may or may not be a District Judge. The rules for recruitment of these officers are said to be still under consideration of the Government.

Nature of litigation.

15. It may be mentioned that about fifty per cent of the total number of suits instituted in the State during any one year relate to immovable property. Disposal of suits relating to immovable property undoubtedly takes more time than that required for disposal of money suits. Nevertheless, as will be seen from the figures given in the accompanying Tables (Table Nos. 6 and 7), the courts have been not only able to keep pace with the institutions but also cleared off the past arrears.

State of civil work.

The number of a year old suits as well as the average duration of contested suits is fairly low.

16. The judicial business transacted by the Courts of district judges, subordinate judges and small cause judges and the number of original suits pending in their courts on 1-1-1956 according to the years of institution of the pending suits are shown in the accompanying Tables (Table Nos. 7 and 8). The average duration in days of original suits disposed of by district judges and subordinate judges in 1953, 1954 and 1955 after full trial is shown below:—

Year	District Judges	Subordinate Judges
1	2	3
1953	301	285
1954	195	238
1955	252	224

TABLE No. 6

Year	Original Suits			Miscellaneous Suits		
	Instituted	Disposed of		Instituted	Disposed of	
		Total	After contest of the total disposed shown in column 3		Total	After contest of the total disposed shown in column 6
1	2	3	4	5	6	7
1951 . .	20,978	20,622	7,402	15,218	15,683	8,329
1952 . .	19,873	20,747	7,508	16,867	15,791	7,256
1953 . .	19,585	21,698	8,179	16,201	17,510	8,391
1954 . .	22,010	22,383	7,845	17,936	18,439	9,362
1955 . .	21,810	21,216	7,396	16,686	15,993	8,072

	Regular Appeals			Miscellaneous Appeals		
	Instituted	Disposed of		Instituted	Disposed of	
		Total	After contest of the total disposed shown in column 9		Total	After contest of the total disposed shown in column 9
	8	9	10	11	12	13
	4,519	4,401	3,865	1,482	1,480	1,264
	4,430	3,738	3,325	1,440	1,489	1,317
	4,852	5,032	4,532	1,542	1,629	1,378
	5,358	5,353	4,753	1,863	1,701	1,478
	4,863	4,592	4,006	1,857	1,383	1,613

TABLE No. 7

Year	Civil Suits						Civil Miscellaneous Cases					
	Pending at the beginning of the year	Institution	Disposal	After full trial	Pending		Pending at the beginning of the year	Institution	Disposal	After full trial	Pending	
					At the close of the year	For more than a year					At the close of the year	For more than a year
1	2	3	4	5	6	7	8	9	10	11	12	13
					District Courts							
1953 .	36	37	44	36	29	11	271	804	954	848	121	8
1954 .	31	62	52	35	41	7	122	833	865	751	90	4
1955 .	44	95	83	51	56	7	90	832	710	588	212	4
					Courts of Subordinate Judges							
1953 .	11322	17772	19692	7797	9402	1210	6174	15297	16452	7523	5019	461
1954 .	9400	20005	20392	7369	9013	481	5016	17011	17483	8568	4544	181
1955 .	9010	19987	10471	6938	9516	466	4544	15741	15180	7425	5105	263
					Small Cause Courts							
1953 .	355	1670	1629	272	396	2	5	98	93	12	10	..
1954 .	396	1797	1799	342	394	..	10	79	80	34	9	..
1955 .	393	1593	1135	311	458	1	9	105	82	48	22	..

Civil Appeals					Civil Miscellaneous Appeals				
Pending at the beginning of the year	Institution	Disposal	Pending		Pending at the beginning of the year	Institution	Disposal	Pending	
			At the close of the year	For more than a year				At the close of the year	For more than a year
14	15	16	17	18	19	20	21	22	23
			District Courts						
1455	1651	2082	1024	159	401	764	934	231	23
1051	1703	1841	913	47	231	1018	945	304	3
946	1568	1659	855	87	304	930	897	337	16
			Courts of Subordinate Judges						
993	1899	1987	905	7	100	340	336	104	..
878	1993	2008	863	7	104	373	383	94	1
830	1773	1822	781	18	94	370	366	98	1

TABLE No. 8

Statement showing the number of suits pending in the various subordinate courts on the first January 1956, classified according to the year of institution

Class of Courts	Total No. of suits Pending	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
1	2	3	4	5	6	7	8	9	10	11	12	13	14
District Courts . .	56	..	..	..	1	1	1	..	..	..	2	2	49
Subordinate Courts .	9516	1	2	1	3	14	12	16	30	34	63	270	9070
Small Cause Courts .	458	..	..	..	..	..	..	..	..	..	..	1	457
TOTAL . .	10,033	1	2	1	4	15	13	16	30	34	65	273	3573

It is, thus, evident that there has been no delay in the disposal of original suits in this State. Efforts should, nevertheless, be made to expedite the disposal of the few old suits pending in the courts of subordinate judges. From the statistical data made available to us, the cadre of District Judges does not appear to be inadequate. We were told that normally each district judge will have on an average about 40 sessions cases per year, besides, about 150 civil appeals, about the same number of criminal appeals, about 60 civil miscellaneous appeals and about five or six original suits. The disposal of sessions cases is satisfactory. The number of sessions cases pending for more than two months on 1st March, 1956 in the various sessions divisions was as below:—

(1) Ambala	1
(2) Ferozepore	3
(3) Hoshiarpur	1
(4) Delhi	9

[In 7 out of 9 cases (pending in the Delhi division) accused are reported to be absconding while in the remaining two accused are said to be of unsound mind.]

As stated earlier we recommend the enhancement of the appellate jurisdiction of District Judges to Rs. 10,000 to avoid the congestion in the High Court. The small cause powers, at present, conferred upon the subordinate judges should also be upto Rs. 2,000 at least in business centres like Delhi and Amritsar.

Panchayat courts.

17. Panchayat Courts constituted under the provisions of the Punjab Gram Panchayat Act (IV of 1953) are at the base of the administration of civil and criminal justice. It was stated that the Panchayats also function as Conciliation Boards. The accompanying Table (Table No. 9) shows the number of Nyaya Panchayats and the number of cases instituted and disposed of together with the number of revisions preferred against the decisions of the Panchayat Courts, and their result during the quinquennium ending with 1955-56. From a perusal of the figures given in the table aforementioned, it is evident that the Panchayat Courts have been gradually proving to be useful institutions. No doubt, some witnesses emphatically asserted that the Panchayat Courts in this State were not at all functioning satisfactorily, but it is doubtful whether these witnesses spoke from personal knowledge.

Supervision.

18. Under section 33 of the Punjab Courts Act the power of controlling the civil courts of each district is vested in the district judge. The High Court has made rules for the inspection of subordinate civil courts and for supervision of their working. Detailed instructions as to the points to be looked into by the inspection officers have been given. The

TABLE No. 9

Year	Total No. of Nyaya Panchayats which exercised Judicial powers	Total No. of Panchayats which actually heard and decided the civil & revenue suits	Cases instituted	Cases decided	Cases compromised	Cases decreed	Cases dismissed	Decretal amount	No. of appeals of revisions before superior court against the decisions of the Nyaya Panchayats	Number of cases in which decrees or orders of the Panchayats courts were set aside in revision of appeal
1	2	3	4	5	6	7	8	9	10	11
				Civil and Revenue Powers				Rs.		
1951-52	5,738	3,496	12,929	12,170	6,562	3,365	2,243	3,26,023 0 0	77	17
1952-53	6,918	4,372	18,000	16,893	9,067	4,966	2,000	4,86,384 13 6	137	48
1953-54	9,188	5,960	26,832	24,431	13,794	6,484	4,153	5,40,611 13 0	149	41
1954-55	9,194	6,524	29,086	28,277	14,671	8,396	5,210	6,32,615 5 0	550	172
1955-56	9,196	6,555	22,797	22,467	11,260	7,254	3,953	6,78,634 3 0	389	132

Year	Total No. of Nyaya Panchayats which exercised Judicial powers	Total No. of Panchayats which actually heard & decided criminal cases	Cases instituted	Cases decided	Cases compounded	Cases in which the accused were convicted	Cases dismissed	Fine imposed	Number of appeals and revisions before superior courts againt the decisions of the Nyaya Panchayats	Number of cases in which the decrees or orders of the Panchayats courts were set aside in revision of appeals
1	2	3	4	5	6	7	8	9	10	11
								Rs.		
1951-52 .	5,738	3,758	15,407	15,293	9,662	2,456	3,175	46,004 1 0	148	49
1952-53 .	6,918	4,580	19,173	18,813	12,008	2,883	3,922	5,298 7 0	252	110
1953-54 .	9,188	6,155	33,201	31,213	20,152	4,928	6,133	74,864 11 0	281	118
1954-55 .	9,194	6,739	34,086	33,661	21,227	5,667	6,767	1,10,130 0 0	885	364
1955-56 .	9,196	6,771	22,649	23,473	14,187	4,007	5,279	64,690 0 0	435	197

rules also provide for inspection of subordinate criminal courts by the district magistrate. The inspecting officers are required, so far as the circumstances permit, to keep themselves acquainted with the working of the courts subordinate to them and to comment on any irregularities that may come to their notice. They are required, particularly, to note the number of adjournments granted in any case, and the reasons for them; if it is found that adjournments are granted unnecessarily, the presiding officer of the concerned court is to be warned at once; if the practice continues, a report has to be made to the High Court. The inspection notes prepared by the district magistrate are forwarded to the district and sessions judge of the district who will in turn forward them with his remarks to the High Court. It may be mentioned that in this State the courts of magistrates even in the non-separation districts are sometimes inspected by a High Court Judge.

19. We were told that there is not much delay in the service of processes in this State. The process-serving establishment is under the control of the Civil Nazir who is the ministerial head of the department working under the instructions of the senior subordinate judge of the place. The establishment consists of process servers, bailiffs, 'Madad Naib Nazirs' and Nazir; the work of process-serving is checked by the senior subordinate judge or the administrative subordinate judge in districts where there is an administrative sub-judge. The Civil Nazir is responsible for the efficiency of the process-serving establishment and prepares and submits statistics and reports from time to time to the senior sub-judge or the administrative sub-judge. It is learnt that in order to encourage and improve the efficiency of the service of processes in Amritsar and Simla, the process servers are given a special bonus if they effect the service of processes above a certain percentage of the processes entrusted to them. This experiment is said to have been successful and the question of extending it to other courts is under consideration. It is also said that although complaints of corruption against the process-serving establishment are heard, they are not very frequent and that in such cases as are detected serious action is taken.

Language.

20. The language of the subordinate courts in this State is Urdu. The judgments are, however, delivered in English. As regards the court records, in the courts of subordinate judges of the second, third and fourth class, a single record of evidence is maintained. The judge himself takes down the deposition in Urdu. In the courts of first class subordinate judges in cases where the first appeal lies to the High Court, the system of a double recording of the evidence prevails so that the deposition is taken down in the language of the witness and also in English.

Separation.

21. The subordinate criminal judiciary of this State has not been separated from the executive except in the Pepsu region where the subordinate judges exercise the powers of

magistrates and the senior subordinate judge is an additional district magistrate. However, in the districts of Gurgaon, Ambala, Simla, Jullundur and Hoshiarpur, there is in force a system which is called separation under which some of the magistrates are entrusted exclusively with judicial work. But promotions, transfers, and other matters relating to the judicial magistrates functioning in these districts are dealt with by the Government. The sessions judge merely sanctions casual leave and makes remarks on the work turned out by the magistrates. Though no calendars of criminal cases disposed of by the magistrates are sent to the sessions judge, yet every month they submit a list of cases that are four months old. It is obvious that this so-called separation does not have the substance of separation. Even this limited separation however appears to have yielded beneficial results. We are of the view that a genuine system of separation needs to be introduced in the whole State as speedily as possible.

Touting.

22. The evil of touting which the Indian Bar Committee found to be very prevalent in Lahore in the twenties of the present century, appears to have followed the High Court to Chandigarh and seems to have become even more accentuated. A senior practitioner stated to us that since the time the High Court moved to Chandigarh the evil had taken such an ugly form that honest members of the profession were finding it difficult to survive. According to him "some people have an understudy; he goes to the districts on tour, contacts the local lawyers, settles the percentages. Every month he will go on tour to square up the accounts and make payments just like a commercial traveller". It was also stated that even some senior members of the profession were parties to such undesirable practices. It is for the legal profession in this State to take steps to set right this serious blot on its reputation.

54.—RAJASTHAN

General.

1. Eighteen princely States were integrated and constituted as the State of Rajasthan. The territory of this State as reorganised in accordance with the provisions contained in Section 10 of Act XXXVII of 1956 is 1,32,300 square miles in area and is inhabited by 15,959,596 persons according to the 1951 census.

Subordinate Judiciary.

2. The judiciary of the State is composed of two cadres:

(1) the Higher Judicial Service consisting of eighteen District and Sessions Judges (including the Law Secretary, the Registrar, High Court, and the Joint Legal Remembrancer) and twenty Civil and Sessions Judges (including a leave and deputation reserve of three posts);

(2) the Judicial Service consisting of thirty Civil Judges (including three Small Cause Court Judges, two Deputy Registrars, High Court, and one Assistant Legal Remembrancer) and eighty Munsifs (including a leave and deputation reserve of eighteen posts).

Method of recruitment to the Higher Judicial Service.

3. Recruitment to the Higher Judicial Service is made by promotion from amongst the members of the Judicial Service or directly from the Bar. The number of vacancies to be filled by direct recruitment is subject to a maximum of twenty-five per cent of the total strength of the service and the number of persons so appointed during any one period of recruitment is not to exceed one-fourth of the total number of vacancies during that period. It is provided that if the number of vacancies occurring during any period of recruitment is less than four, the proportion of direct recruits during that period of recruitment may be increased so as not to exceed one-half of the total number of vacancies subject to the condition that the total number of persons appointed to the service by direct recruitment does not at any time exceed one-fourth of the total sanctioned strength of the service. Another rule provides that if at any recruitment the number of selected direct recruits available for appointment is less than the number of recruits decided to be taken from that source, the number to be taken by promotion from the Judicial Service may be correspondingly increased. No member of the Judicial Service is eligible for promotion to the Higher Judicial Service unless he has completed seven years of service therein.

Recruitment to the judicial Service.

4. Recruitment to the Judicial Service is made by the Public Service Commission on the basis of a competitive examination followed by a *viva voce* test at which a judge of the High Court is associated with the Commission. A

candidate for recruitment to this Service must not have attained twenty-seven years of age. It is provided that if a candidate entitled in respect of his age to appear at an examination in any year, is unable to do so for the reason that no such examination was held, he shall be deemed to be entitled to appear at the next following examination in spite of his exceeding the age limit. It is further provided that a candidate must have two years' practice at the Bar in the State and that every candidate shall submit along with his application a certificate from the district judge concerned with regard to such practice.

Reservations of posts in the Judicial Service.

5. Twelve and a half per cent of the vacancies in the Judicial Service and in the Higher Judicial Service are reserved for members of scheduled castes and scheduled tribes.

Pay scales.

6. The scale of pay admissible to the District and Sessions Judges is Rs. 800-50-1000-60-1300-50-1800. The Civil and Additional Sessions Judges are in the scale of Rs. 500-30-740-EB-30-800-50-900. The posts of Registrar, High Court, Law Secretary, and Joint Legal Remembrancer carry a special pay of Rs. 150, Rs. 250 and Rs. 200 per mensem respectively. The Ajmer Officers draw their salaries in their unit scales.

7. The Munsifs and Civil Judges are in the scale of Rs. 250-25-500-EB-25-750. The Deputy Registrar of the High Court who is borne on this cadre gets a special pay of Rs. 100 per month.

Magistracy—strength of.

8. As the judiciary of the State has not been separated from the executive, the criminal judiciary consists of the executive officers. Nevertheless, as an "experimental measure", twenty-three Munsifs have been invested with magisterial powers. The strength of the magistracy is 414 made up of twenty-nine District Magistrates including four Additional District Magistrates, 111 Sub-Divisional Magistrates, 53 First Class Magistrates and 221 other Magistrates.

Integration of the Judicial Services of the Covenanting States and the working of magistracy.

9. The conglomeration of the several princely States resulted in the integration of the judicial machineries of the different covenanting units. Some officers who were used to the "traditions" that obtained in the former "native Indian States" had to be absorbed. The Advocate-General stated in his evidence before us that "their knowledge of law and methods of working are very low and absolutely archaic. That is why with that inheritance we are passing under not a very good period." Statements were made by several responsible witnesses including some law officers of the State that a large proportion of the magistrates could not be trusted in the matter of their integrity. We feel convinced that this evidence reflects in a considerable measure the true state of affairs which requires the immediate attention of the authorities. Persons at the helm of the administration should appreciate the elementary need of an honest administration of justice and take prompt

measures to restore the confidence of the public in the integrity and impartiality of the magistracy.

The witnesses who gave evidence before us were of the view that the magistracy required to be controlled very strictly, if the integrity of this branch of the judiciary was to be maintained. Unfortunately, however, the failure of the State Government to give effect to the principle of the separation of judiciary from the executive and the continued control of the executive over the magistracy, has rendered ineffective any control that could be exercised over it by the High Court. We were informed that some time ago, the High Court, in reply to a request by the State Government to devise ways and means for reducing the arrears in the magistrates court, expressed its unwillingness to do so, unless separation was introduced, and the magistracy brought under the administrative control of the High Court. We may however state that though the separation of the judiciary from the executive is a necessary reform its absence should not deter the High Court in its capacity as the head of the judiciary in the State from laying down standards and rules for the guidance of the magistrates' courts provided the State Government is willing to enforce them. In fact this was regularly done in what was British India at a time when separation was only an ideal.

Delays in criminal courts and the manner of conducting criminal cases.

10. It was stated that criminal cases were not being disposed of expeditiously. Public Prosecutors and the prosecuting staff attached to magistrates' courts are under the administrative control of the Collectors and the Police Department. The prosecuting officers attached to the courts are transferred frequently. According to an experienced Advocate, "very often a case is handled by a number of Prosecuting Sub-Inspectors—one case sometimes will be handled by eight to ten Prosecuting Sub-Inspectors. One Prosecuting Sub-Inspector who may be in charge of the case for some time may not know what the case is. That has resulted in acquittal in some cases because certain ingredients were not proved. Sometimes the Prosecuting Sub-Inspector was never aware that a particular question was required to be put to the witness." It was also stated that the prosecuting staff, being under the control of the Police Officials, did not feel free to express their true opinion about the facts of a case. A Government Advocate stated that about eighty-two per cent of the criminal cases ultimately ended in acquittals and that in the trial courts the percentage was slightly less. It was said that investigations were perfunctory and that considerable delays occurred in the disposal of criminal cases due to improper investigations and like causes. The City Magistrate, Ajmer, stated in his evidence that out of a total file of 175 cases in his court, 14 or 15 were over a year old and about 50 more than six months old. The following Table shows the number of criminal cases pending at the end of each quarter of the

year 1955 and the duration of their pendency in the courts of magistrates:

TABLE No. 1

S. No.	Quarter ending	No. of cases pending at the close of the quarter	No. of cases pending for more than		
			3 months	6 months	1 year
1	2	3	4	5	6
1	31st March 1955 .	18,416	6,079	4,118	2,297
2	30th June 1955 .	18,721	5,783	3,992	1,956
3	30th Sept. 1955 .	18,731	5,743	3,836	2,144
4	31st Dec. 1955 .	17,629	4,372	3,247	2,204

It would appear from the figures given in the above Table that at the close of each quarter roughly about sixty per cent of the cases brought to trial were pending for over three months. This state of affairs can be attributed to the fact that the magistrates bestow a step-motherly attention to the criminal cases, being engaged in executive work; the lack of proper and effective supervision over the magistracy would appear to be another cause. Supervision in this State over magistrates' courts is almost non-existent. In no district do the subordinate magistrates even send in time the returns due from them. Even when they are received the returns are not looked at so that they may serve the intended purpose. With one solitary exception, the District Magistrates did not pass a single remark on the condition of work of the subordinate courts, leaving aside the taking of any action against those guilty of neglect of or indifference to their duties. In this state of affairs it is surprising that arrears are not heavier than what they are. In the absence of separation no improvement is possible, unless Government makes it clear to the District Magistrates that they will be held responsible for the working of the criminal courts in the district. Intensive and sustained supervision on the lines set out by us earlier is an imperative necessity.

11. Inordinate delays have been noticed even in the trial of sessions cases. No sessions trial appears to proceed *de die in diem*. Long adjournments are granted on insufficient grounds and invariably adjournments are granted for arguments. This is a matter which is capable of being immediately set right by the High Court. We give below a few examples of delays in the trial of sessions cases. Four accused charged with an offence under section 302 I.P.C. were committed to the Court of Additional Sessions Judge, Baran, wherein the case was registered on 12-10-1955; trial

of this case was spread over a year; it was ultimately reserved for delivery of judgment on 30-11-1956. Sessions case No. 53 of 1955 on the file of the Sessions Court, Udaipur was registered on 16-12-1955. On 8-11-1956 the defence evidence was closed and the case posted to 6-12-1956 for examination of a court witness on which date it was adjourned to 20-12-1956 as the witness did not attend the court. Out of a total of 333 sessions cases pending at the close of the year 1955, 166 were pending for over three months. The number of year old cases was 34 or roughly ten per cent of the total pendency. We are unable to comprehend how such a state of affairs is allowed to continue. If the elementary precaution of binding over witnesses to appear in the court of session is taken, and coercive processes are promptly issued against defaulting witnesses and they are severely dealt with whatever their position there should be no difficulty in hearing sessions cases from day to day as in most States.

Delays in civil courts.

12. Though the position in the civil courts was comparatively better, there were delays in the civil matters also. Witnesses attributed these delays to the inefficiency of the presiding officers of most courts and to lack of devotion to duty on their part and also to the dilatory tactics of the lawyers and the litigants.

13. The process-serving staff attached to courts, it was said, besides being inadequate in strength and amenable to corruption and other undesirable practices are mostly illiterate and cannot submit reports as to the manner of service, the reasons for non-service and similar matters. Very often, trial of suits is delayed on account of the fact that either the defendant is not served properly or, if served, service of summons has not been effected on witnesses.

14. The disposal of civil suits is frequently delayed because when the trial starts the presiding officer does not know what the case is about. The case is not opened and the presiding officers do not previously go through the pleadings and are not seized of the facts of the case. According to a Senior Advocate, very few officers follow the case during the trial. We have not been able to obtain statistics to show the periods for which different categories of proceedings have been pending in the subordinate civil courts. Nevertheless, the accompanying Table (Table No. 2) setting out the year of institution, the date of framing issues, the date of the final disposal and the duration of trial of certain proceedings selected at random shows the delays that occur. An instance was brought to our notice where a preliminary decree was passed for a sum of Rs. 700/- in 1941 and the final decree in 1955. We have been told that interlocutory applications are kept pending for long periods. Most of these delays could be prevented by a stricter and methodical supervision by the High Court and the District

TABLE No. 2

Suit No.	Date and year of institution	Date of framing issues	Date of final disposal of final stage	Duration of trial
1	2	3	4	5
				years
11 of 1949 (Balotra)	1-3-1949	22-12-49	20-11-56 (Pending)	7½
9 of 1954 (Banswara)	26-8-1954	7-2-55	31-8-56	2
10 of 1953 (Bharatpur)	9-10-1953	17-3-54	27-3-57 (Pending)	3½
4 of 1946 (Sikar)	13-2-1946	6-7-46	19-12-56 (Pending)	10
155 of 1953 (Sikar)	10-2-1953	16-3-55	20-12-56 (Pending)	3½
24 of 1951 (Ajmer)	5-11-1951	19-8-52	31-12-56	5
24 of 1946 (Alwar)	30-11-1946	6-5-47	5-6-54	8
366 of 1949 (Jaipur City)	5-9-1949	7-1-50	22-10-56	7
22 of 1953 (Pali)	4-6-1953	8-1-54	24-11-56 (Pending)	3½
9 of 1951 (Jaipur)	31-8-1951	4-3-52	5-12-56 (Pending)	5
14 of 1947 (Kotah)	26-11-1947	6-1-49	14-11-56 (Pending)	9
4 of 1952 (Bhilwara)	5-4-1952	14-7-53	18-12-56 (Pending)	4½
16 of 1951 (Bikaner)	10-8-1951	20-12-51	4-2-57 (Pending)	5½
16 of 1953 (Merta)	23-2-1953	13-1-55	26-10-56 (Pending)	3½

1	2	3	4	5
16 of 1952 (Udaipur) . .	29-8-1952	28-7-53	27-10-56	4
71 of 1944-45 (Jodhpur) . .	28-7-1945	24-1-46	26-2-57 (Pending)	11½
1 of 1951 (Ganganagar) . .	2-1-1951	4-3-52	6-12-56 (Pending)	6
238 of 1946 (Jodhpur) . . .	15-5-1946	23-10-47	30-11-50	10
503/48-49 (Sojat)	8-2-1949	2-11-50	13-11-56 (Pending)	7
763 of 1952 (Ajmer)	8-10-1952	31-3-53	17-1-57	4½
495 of 1946 (Jaipur) . . .	28-9-1946	12-1-48	13-9-55	9
34 of 1952 (Bharatpur) . . .	9-2-1952	9-2-53	3-1-57 (Pending)	5
14/521/65 of 43 (Baran) . . .	20-12-1943	16-5-44	18-12-56 (Pending)	13
2 of 1955 (Hanumangarh) . .	4-1-1955	(No issues yet)	6-11-56 (Pending)	2
123 of 1952 (Partabgarh) . .	13-12-1952	4-7-53	1-12-56 (Pending)	4
140 of 1955 (Bhilwara) . .	20-10-1955	25-1-56	30-8-56	1
230 of 1953 (Neem Ka Thana) .	29-10-1953	22-7-53	29-10-56	3
211 of 1952 (Udaipur) . . .	21-11-1944	19-7-46	20-2-57 (Pending)	13

Courts. No effective system of inspection seems to prevail at present. A district judge admitted that lack of effective control and supervision by the District Judges was the primary cause for delays in the subordinate courts. The Advocate-General stated that the District Judges do not adhere to the rules prescribed for purpose of inspection of the subordinate courts.

15. Our attention was drawn to a rule framed by the High Court to the effect that if a witness summons handed over to a party at his request for service was not served, fresh service would not be ordered a second time. Criticism was also directed against another rule which disallowed from the taxed costs the travelling and subsistence allowance of witnesses attending courts at the request of a party without a summons. Both these rules naturally tend to make parties averse to bringing witnesses without a summons or to serve them themselves;—measures which we have earlier recommended to speed up the trial of suits. We recommend the repeal of these rules.

High Court.

16. The High Court started functioning on the 29th August, 1949 with twelve judges "replacing several High Courts of the integrating States that continued to exist upto that date. The seat of the High Court was fixed at Jodhpur but Benches of the Court continued to sit in the first instance at Jaipur, Udaipur, Bikaner and Kotah also. The Benches at Udaipur, Bikaner and Kotah were subsequently abolished....."[1]

Number of Judges.

17. The strength of the High Court was reduced to six in 1951; but, for the greater part of that year only four judges worked. In 1952, one more judge was appointed. The number of judges was increased to six in 1953 and to seven in the latter half of 1955. On the 20th January, 1958, an Additional Judge was appointed for a period of two years.

18. The accompanying Tables (Table Nos. 3 and 4) show the number of civil and criminal proceedings of different categories instituted, disposed of and pending at the close of each of the years 1954, 1955 and 1956 and the number of proceedings pending on 1-1-1957 according to their years of institution in the High Court.

19. It will appear from these Tables (Table Nos. 3 and 4) that though the work of the High Court on the criminal side is under control, the same cannot be said of its civil work. The disposal of first appeals, second appeals, appeals from orders and civil revisions has consistently failed to keep pace with institutions and the total of pending matters has steadily increased. Unless immediate steps are taken, if necessary by appointing more judges to bring the file under control the position will become nearly

[1]Report on the Administration of Justice for the year 1951.

TABLE No. 3

Nature of proceeding	1954 Number of Judges working—5			1955 Number of Judges working—7			1956 Number of Judges working—7			
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending on 1-1-1957
Regular First Appeals	353	180	103	430	167	73	524	135	110	549
Regular Second appeals	1658	671	465	1864	613	481	1996	579	493	2082
Appeal against orders	142	83	74	151	94	58	187	122	69	240
Letters Patent or Special Appeals	6	8	4	10	3	6	7	2	3	6
Writs	977	692	1257	412	365	476	301	471	423	349
Reviews	12	17	20	9	23	20	12	28	26	14
Revisions	640	512	495	647	511	349	809	561	434	936
References	64	51	90	25	32	19	38	44	53	29
Leave to appeal to Supreme Court	77	99	160	16	19	27	8	34	26	16
Original Suits	..	..	..	..	..	..	..	..	..	..
Miscellaneous	285	252	265	272	243	228	287	234	217	304
Criminal appeals	329	433	386	376	378	420	334	388	432	290
Criminal Revisions	366	439	470	335	424	486	273	435	529	179
Confirmation Cases	6	9	15	..	6	3	3	8	6	5
References	122	209	269	62	222	225	59	187	210	36
Miscellaneous	62	227	262	27	198	190	35	228	217	46

Table No. 4

Nature of proceeding	Year of Institution												
	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
Regular First Appeals	..	..	..	..	..	1	6	26	39	64	141	146	126
Regular Second appeals	..	..	..	..	..	5	20	123	243	278	458	488	467
Appeals against orders	..	..	..	..	..	1	..	4	11	23	44	59	98
Letters Patent or Special appeals	..	..	..	..	..	..	..	..	..	1	2	2	1
Writs	..	..	..	..	..	..	..	..	2	3	15	53	276
Reviews	..	..	..	..	..	..	1	..	..	..	1	4	8
Revisions	..	..	..	..	..	..	2	8	23	99	182	246	376
References	..	..	..	..	..	3	..	..	1	..	..	4	21
Leave to appeal to Supreme Court	..	..	..	..	..	..	..	..				2	2
Original Suits	..	..	..	..	..	..	..	..	..	..	..	..	..
Miscellaneous	..	..	..	..	..	..	4	5	15	24	67	71	128
Criminal appeals	..	..	..	..	..	3	1	2	12	4	7	52	209
Criminal revisions	..	..	..	..	..	..	..	..	1	..	2	15	161
Confirmation cases	..	..	..	..	..	..	..	..	..	..	..	..	5
References	..	..	..	..	..	..	..	..	..	..	..	6	30
Miscellaneous	..	..	..	..	..	..	..	..	..	..	..	1	45

unmanageable in a few years. We would suggest that the powers of a single judge may be enhanced so as to enable nim to dispose of first appeals below Rs. 10,000.

Even the criminal work is not uptodate. On 1-1-1957 some three and four year old criminal appeals were pending although their number was not large.

Our attention was also drawn to the difficulties arising from the fact that the High Court sat at two centres. We nave already expressed ourselves in a previous report against the establishment of Benches.

Courts of District and Sessions Judges and Civil and Additional Sessions Judges.

20. For the purpose of the administration of justice the State which comprises twenty-five districts has been divided into fifteen judgeships. Besides fifteen District and Sessions Judges stationed at the headquarters of each of the judgeships, seventeen Civil and Additional Sessions Judges having civil and criminal jurisdiction co-extensive with that of district and sessions judges functioned during tne three years immediately preceding 1957 apart from tne officers stationed at Ajmer and Abu Road; out of them eight were stationed at the headquarters of districts other than those where district courts were located, five at the headquarters of the district judges and the rest at other places. The cadre of Civil and Additional Sessions Judges seems to have been modelled on the system obtaining in Uttar Pradesh, and seems to be a device by which officers who are really doing the work of Additional District and Sessions Judges may be placed on a lower pay scale.

सत्यमेव जयते

21. The judicial business transacted by the courts of district and sessions judges and civil and additional sessions judges in the triennium ending with 1956 is shown in the accompanying Table (Table No. 5). The average duration of original suits disposed of by the district judges and civil and additional sessions judges during the years 1954 and 1955 is given in Table No. 6.



TABLE No. 5

Year	No. of Officers	Civil Suits					Small Cause Suits					Miscellaneous Civil Cases and Petitions				
		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
							District Judges									
1954	15	392	112	204	76	224	..	..	..	..	..	475	883	918	315	125
1955	15	300	139	136	99	204	..	..	..	..	..	440	1031	954	393	124
1956*	16	308	135	127	95	221	..	..	..	..	..	597	1308	1218	507	180
							Civil and Additional Sessions Judges									
1954	17	1171	1247	1264	705	449	941	2786	2923	742	62	235	681	588	261	67
1955	17	1154	1429	1376	804	403	804	3086	3064	803	23	328	799	773	288	66
1956	17	1207	1404	1286	795	530	826	2871	2933	740	24	354	834	791	326	71

*Includes the work turned out by the District and Sessions Judge, Ajmer in 1956.

Civil Appeals					Civil Miscellaneous Appeals				
Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
			Below one year	Over one year				Below one year	Over one year
18	19	20	21	22	23	24	25	26	27
				District Judges					
1637	2379	2462	1201	353	365	686	704	299	48
1554	2118	2213	1103	356	347	681	697	275	56
1684	2729	2487	1477	449	415	805	748	372	100
				Civil and Additional Sessions Judges					
536	1108	1014	548	82	96	244	232	97	11
630	1035	1102	491	72	108	207	224	84	7
563	876	1010	375	54	91	215	227	74	5

Year	No. of Officers	Session Cases						Criminal Appeals						Criminal Revisions				
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
							District and Sessions Judges									
1954	15	234	525	567	177	15	321	1648	1611	341	17	353	762	872	209	34
1955	15	192	502	517	171	6	358	1490	1504	333	11	243	844	812	254	21
1956*	16	120	709	631	240	18	388	1737	1719	391	15	313	1197	1124	362	24
							Civil and Additional Sessions Judges									
1954	17	239	391	454	146	30	126	994	480	140	..	61	388	375	70	4
1955	17	176	349	354	146	25	140	807	822	124	1	74	356	354	76	..
1956	17	171	477	460	181	7	125	906	843	188	..	76	394	396	74	..

*NOTE. Includes the work turned out by the District and Sessions Judge, Ajmer in 1956.

TABLE No. 6

Class of courts	1954		1955	
	After contest	Without contest	After contest	Without contest
1	2	3	4	5
District Judges' Courts	921	713	905	524
Civil and Additional Sessions Judges Courts	512	202	587	170

22. The file in these courts is not heavy; yet, the number of a year old suits and the average duration of suits disposed of after contest are high. Even uncontested suits seem to have taken a long time. Nor is the file on the criminal side heavy. On an average, each judge has only about thirty to thirty-five sessions cases for disposal every year; the average duration of sessions cases disposed was between 190 and 200 days during any one of the five years preceding 1956. It is necessary to reduce the average duration of the different categories of proceedings disposed of by these courts.

23. We feel that this can be achieved by investing the civil judges with unlimited jurisdiction and by transferring to them all the original suits other than those exclusively triable by district judges. The appeals pending before the courts of civil judges may be transferred to district courts. If this is done, perhaps, it would not be necessary to retain the existing strength of officers, namely, fifteen District Judges and seventeen Civil and Additional Sessions Judges. The latter cadre of posts may be abolished and the number of District and Sessions Judges raised so as to enable them to cope with the sessions cases and civil and criminal appellate work. By degrees, the appellate jurisdiction of these officers should be raised to Rs. 10,000.

Courts of civil judges.

24. We may next consider courts presided over by civil judges with jurisdiction to try regular and small cause suits valued upto Rs. 10,000/- and Rs. 500/- respectively. Some of the civil judges have been empowered to entertain appeals valued upto Rs. 2000/-. Further, Section 22(1) of the Rajasthan Civil Courts Ordinance (VII of 1950) provides that a district judge may transfer to any civil judge under his administrative control any appeal pending before him against the decrees or orders of Munsifs. The following Table (Table No. 7) shows the original suits, small cause suits, civil regular and miscellaneous appeals instituted in and disposed of by the Courts of Civil Judges during the three years 1954-56 together with the total number of proceedings pending at the close of each year.

TABLE NO. 7

Year	No. of Officers	Civil Suits					Small Cause Suits				
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
					Below one year	Over one year				Below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12
1954 . . .	24	4733	5894	6291	2740	1596	1232	5973	5759	1412	34
1955 . . .	24	4336	6543	5971	3078	1830	1446	6005	5928	1445	78
1956 . . .	33	7320	8655	8077	4573	3335	3961	7713	7966	2878	830

Year	Civil Appeals					Civil Miscellaneous Appeals				
	Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
				Below one year	Over one year				Below one year	Over one year
1	13	14	15	16	17	18	19	20	21	22
1954	170	570	581	134	24	40	125	114	43	8
1955	159	488	433	111	103	51	121	106	60	6
1956	257	497	606	86	62	74	103	144	25	8

25. The number of officers remained constant during the two years 1954-55. This enables us to arrive at the annual average disposal of work by each civil judge as set down below:—

TABLE No. 8

Nature of proceedings	Average available for disposal	Average disposal	Average pendency
1	2	3	4
Civil Suits . .	448·0	255·4	192·6
Small Cause . . .	305·3	264·3	61·8

26. Nearly seventy-five per cent of the suits brought to trial before these courts are those for money or movable property and out of these roughly half relate to claims valued below Rs. 5,000/-. The nature of litigation in these courts cannot be said to be complicated. Nevertheless, the average duration of suits disposed of after contest was 421 and 398 days in 1954 and 1955 respectively. The number of the year old suits pending at the close of any one of the three years 1954—56 was roughly thirty-five per cent of the total number of suits pending at the close of each of those years. The number of a year old suits has steadily increased. No doubt, some of the civil judges disposed of civil appeals also. However, the nature of work in these courts is not such as is expected to be handled by officers of this cadre. As we have already suggested these officers should be invested with powers to try all original suits irrespective of valuation other than those exclusively triable by district judges. These judges may be invested with the powers of Assistant Sessions Judges and their small cause jurisdiction may be gradually raised to at least Rs. 1,000. This may involve an increase in their number but this will be partly offset by a reduction in the number of Civil and Sessions Judges.

Courts of Munsifs.

27. At the lowest rung in the hierarchy of the regular civil courts are courts presided over by Munsifs with jurisdiction to try regular suits valued upto Rs. 2000/- and small cause suits valued upto Rs. 100/-. The number of original and small cause suits instituted, disposed of and pending in the courts of Munsifs in the years 1954 to 1956 is set down below (Table No. 9). Curiously, the progressive increase in the number of officers has resulted in a fall in disposals. The fact that some of them are called upon to do criminal work also may partly account for this fall.

TABLE No. 9

Year	No. of Officers	Civil Suits					Small Cause Suits	
		Pending at the beginning of the year	Institutions	Disposal	Balance		Pending at the beginning of the year	Institutions
					Below one year	Over one year		
1	2	3	4	5	6	7	8	9
1954	60	12267	25043	25110	9755	2445	936	3644
1955	61	12200	25059	24708	9790	2761	798	3093
1 56	62	12551	25299	24132	10625	3093	647	[2161

Year	Small Cause Suits			Miscellaneous Civil Cases and Petitions				
	Disposal	Balance		Pending at the beginning of the year	Institutions	Disposal	Balance	
		Below one year	Over one year				Below one year	Over one year
1	10	11	12	13	14	15	16	17
1954 .	3782	794	4	1683	4892	4565	1756	254
1955 .	3244	624	23	2010	4820	4874	1680	276
1956 .	2274	513	21	1956	4640	4381	1842	373

28. Based on the figures furnished in the Table (Table No. 9) the annual average disposal of a Munsif is given in the following Table (Table No. 10).

TABLE No. 10

Designation of Officers	No. of Officers	Civil Suits								
		Average available for disposal	Average disposed of	Average pendency	Small Cause Suits			Miscellaneous Civil Cases and Petitions		
					Average available for disposal	Average disposed of	Average pendency	Average available for disposal	Average disposed of	Average pendency
1	2	3	4	5	6	7	8	9	10	11
Munsifs	..	614·3	404·1	210·2	61·6	50·8	10·5	109·8	75·5	33·7

It cannot be said that the disposals in these courts are low. The average duration of suits disposed of by these officers after full trial was 311 and 257 days in 1954 and 1955 respectively. Nevertheless, the total number of pending suits and pending year old suits was on the increase. In order to bring down the number of pending year old suits, and increase the number of officers at least for a temporary period might become necessary.

29. The total number of suits classified according to their valuations instituted in the regular civil courts during the triennium 1954—56 in the State is given in the accompanying Table (Table No. 11).

Pecuniary jurisdiction of Munsifs Courts. Enhancement of.

30. A careful examination of the data furnished by the High Court has led us to the conclusion that changes in the existing jurisdiction of courts presided over by Munsifs will bring about a speedier dispensation of justice. As will be seen from the figures furnished in the Table below (Table No. 11), a large majority of suits are those cognisable by Munsifs; most of these officers are stationed

TABLE NO. 11

Year	No. of suits of the value of not exceeding Rs. 1000	No. of suits of the value of Rs. 1000 and not exceeding Rs. 2000	No. of suits of the value of Rs. 1000 and not exceeding Rs. 5000	No. of suits of the value of Rs. 5000 and not exceeding Rs.10,000	No. of suits of the value of Rs. 10,000 and above	Value of which cannot be estimated in money
1	2	3	4	5	6	7
1954	39316	Separate figures are not available	3412	332	241	352
1955	39118	Do.	3411	326	286	358
1956	38462	2491	1151	289	263	354
Ajmer						
1956	3383	151	51	24	20	31
Abu Road						
1956	149	6	..	..	..	..

at taluq headquarters. Keeping in view, the nature of the terrain of the State, we would suggest that in order that the litigants and witnesses may not have to travel long distances the pecuniary jurisdiction of Munsifs may be enhanced to Rs. 5,000 and Rs. 500 in original and small cause suits respectively. The number of officers required to keep pace with institutions may be determined after so raising the jurisdiction.

Panchayats—constitution and working cf.

31. At the base of the administration of justice are the Panchayats constituted under the Rajasthan Panchayats Act (XXI of 1953). A peculiar feature of this Act is that it does not provide for a separate Panchayat Court for a village or a group of villages. The Panchayat which conducts the administrative business also discharges the functions of the Nyaya Panchayat. These Panchayats have jurisdiction concurrent with that of Civil Courts for the trial of certain categories of suits enumerated in the Act provided the value of the claim does not exceed Rs. 100. Though the jurisdiction is concurrent, yet a large number of suits are filed before the Panchayats. A decree or order passed by the Panchayat can be executed by it. Jurisdiction concurrent with that of criminal Courts has been conferred upon the Panchayats to take cognizance of certain offences under the Indian Penal Code, the Cattle Trespass Act and some minor Acts. No substantive sentence of imprisonment can be inflicted by a Panchayat; they can impose a fine upto a maximum of Rs. 50. This Act also constitutes what are known as Tehsil Panchayats elected by an electoral college consisting of the electors of the Panchas and the Sarpanchas. Appeals against the decisions of the Panchayats in civil and criminal matters lie to the Tehsil Panchayats. District and Sessions Judges exercise revisional jurisdiction over the decisions of the Tehsil Panchayats. The Chief Panchayat Officer to the Rajasthan Government stated in his evidence that not more than ten per cent of the cases decided by the Tehsil Panchayats are taken in revision. The following Table shows the number of civil and criminal proceedings instituted, disposed of and pending in the Panchayats during the three years preceding 1957.

TABLE No. 12

	1954			1955		
	Total No. of cases before the courts	Disposal	Balance	Total No. of cases before the courts	Disposal	Balance
1	2	3	4	5	6	7
Civil	57,559	47,364	10,195	48,112	33,205	14,907
Criminal	66,044	54,380	11,664	53,909	43,598	10,311

	1956		
	Total No. of cases before the courts	Disposal	Balance
1	8	9	10
Civil . . .	70,182	54,875	15,307
Criminal . .	76,455	62,195	14,260

32. Though some witnesses expressed the view that the Panchayats were the hot-bed of factions, yet many were of the contrary view. The fact that only about ten per cent of the cases decided by the Panchayats are taken in revision would seem to show that the litigants have confidence in their working. There is, therefore, no reason why the jurisdiction conferred upon these Panchayats should not be made exclusive.

Rajasthan Act 1 of 1951. Removal of certain defects in the provisions of—suggested.

33. A number of witnesses expressed the view that the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (I of 1951) has given rise to considerable litigation. It would appear that there is no strict demarcation of the powers between the revenue and civil courts with regard to the nature of proceedings entertainable by them and that in the absence of such a demarcation the litigant is very often directed by the revenue courts to go to the civil courts and *vice versa*. We trust that appropriate measures will be adopted in this connection by the authorities concerned.

सत्यमेव जयते

55.—UTTAR PRADESH

General.

1. The State of Uttar Pradesh consists of 51 Districts. The area of the State is 113,409 square miles. No territorial changes were made in the State on account of the recent reorganisation of States. Uttar Pradesh is the most populous State with a total population of 63,215,742 according to the 1951 census.

Set up of civil courts.

Jurisdiction.

2. The State is divided into 34 judgeships. The constitution of the subordinate civil courts (except in Oudh) is governed by the Bengal (Agra) and Assam Civil Courts Act, 1887. Courts in Oudh, which had a separate Chief Court until 1948, are governed by the Oudh Civil Courts Act, 1925. The set-up of the courts, generally follows the pattern of subordinate courts in other States. The pecuniary jurisdiction of Munsifs ordinarily extends upto Rs. 2,000, but may be extended upto Rs. 5,000. They may be invested with small cause court powers upto Rs. 250. Civil Judges exercise unlimited pecuniary jurisdiction and are invested with small cause jurisdiction upto Rs. 500. At the head of the subordinate judiciary is the District Judge, who exercises unlimited pecuniary jurisdiction and tries original suits under special enactments, like Guardians and Wards Act, Succession Act, Insolvency Act, Indian Companies Act, Land Acquisition Act, Divorce Act etc. The appellate jurisdiction of District Judges has been recently raised from Rs. 5,000 to Rs. 10,000 but it does not apply to suits instituted prior to the amendment. In some District headquarters, where there are no District Judges, Senior Civil Judges are appointed as Civil and Sessions Judges. On the civil side they have unlimited pecuniary jurisdiction, and try all such cases under the miscellaneous enactments as may have been specially entrusted to them under various notifications. On the criminal side, they exercise the powers of a Sessions Judge. They perform practically the same functions as District and Sessions Judges, except that they do not perform any administrative duties which are exercised only by the District Judge in charge of the Division. In some big towns, separate Small Cause Courts have been created. These courts are presided over by Senior Civil Judges who have jurisdiction to try small cause suits upto Rs. 1,000.

Strength.

3. The subordinate judiciary is divided into two classes, the U.P. Civil Service (Judicial Branch), consisting of Munsifs and Civil Judges with a sanctioned strength of 163 Munsifs and 59 Civil Judges and the U.P. Higher Judicial Service, the members of which are either Civil and Sessions Judges or District and Sessions Judges with a

sanctioned strength of 39 and 45 respectively. Recently the strength of the Civil Service (Judicial Branch) has been raised by 44, bringing the total strength to 266.

Mode of recruitment and pay scales.

4. Recruitment to the U.P. Civil Service (Judicial Branch) is made by a written competitive examination in four papers, two law papers, one language paper and another called "Present Day" carrying 850 marks in all. Candidates who secure a certain percentage of marks are called for a *viva voce* test, carrying 150 marks, conducted by the Public Service Commission, with which a nominee of the High Court, generally the Registrar, is associated as an expert. At the written examination the candidates are allowed the use of bare texts of the Acts when answering law papers. The requisite qualifications are a degree in law followed by at least two years' practice at the Bar and age below 28 years. Knowledge of Hindi is compulsory. It is, however, understood that the question of dispensing with the requirement of the practice at the Bar, is under the consideration of the Government. Munsifs and Civil Judges are borne on the scale of pay of Rs. 350—350—375—25—400—E.B.—30—700—E.B.—50—850. A few posts of civil judges are borne on the selection grade in the scale of Rs. 1,000—50—1,200.

Recruitment to the Higher Judicial Service is made at the level of Civil and Sessions Judges. Seventy-five per cent. of the posts in the Higher Judicial Service are filled by promotion and 25 per cent. by direct recruitment. Direct recruits are selected after an interview by a selection committee consisting of two judges of the High Court and the Judicial Secretary to the Government. Advocates of at least 7 years standing and legally qualified judicial officers with the same length of service are eligible for direct recruitment as Civil and Sessions Judges. Promotee—recruits to the Higher Judicial Service should have put in service of not less than 7 years or whose salary is not less than Rs. 700. They are appointed as Civil and Sessions Judges, who are in the pay scale of Rs. 600—50—800—50—1,200. District Judges are borne on the scale of Rs. 800—50—1,000—75—1,750—50—1,800. This scale is somewhat different from and better than the senior scale in the I.A.S.

Anomalies in pay scales.

A peculiar feature about the pay scales is that both Munsifs and Civil Judges, who do different types of work are borne on the same scale of pay. But Civil and Sessions Judges and District and Sessions Judges, who also do practically the same type of work (except that the latter also perform some administrative duties) are borne on widely different scales of pay. When a Munsif is promoted as Civil Judge, all that happens is merely a change of designation and assignment of heavier and more difficult judicial work without any corresponding increase in

remuneration. This is unsatisfactory and we suggest that the scales of pay of Civil Judges should be different from and higher than that of Munsifs. The scales of pay for District Judges and Civil and Sessions Judges are also anomalous. The work of the Civil and Sessions Judges is not different from that of the District and Sessions Judges; they also hear appeals from District Magistrates and Assistant Sessions Judges. The only difference in their work is that Civil and Sessions Judges have no administrative duties to preform. The U.P. Judicial Reforms Committee therefore recommended that the two cadres, of Civil and Sessions Judges and District Judges, should be integrated but this recommendation has not been implemented. We have also recommended earlier that the Higher Judicial Service should be composed of only one cadre with a uniform scale of pay.

Retirement age.

In an earlier chapter we have recommended that the retirement age of the members of judiciary should be raised from 55 to 58. U.P. is the only State in India, where this has already been done by raising the retirement age of all gazetted officers to 58.

Promotion.

5. The promotion of judicial officers is almost automatic according to seniority. We were told that during the last many years there has been only one instance when the promotion of a judicial officer was stopped on account of poor quality of work.

Executive interference in the promotion of Civil and Sessions Judges.

6. We think it necessary to call attention to an important matter with regard to the promotion of judicial officers. It appears that some time ago the High Court recommended the promotion of certain Civil and Sessions Judges for the grade of District and Sessions Judges and at the same time pointed out that the case of three particular officers had to be kept over for consideration. These three officers had not sufficient experience of criminal work, having been taken out of regular judicial work and employed in the Secretariat, for a number of years. It was therefore stated that their capacity in this regard could not be assessed and their fitness for promotion determined. But nevertheless these officers were promoted. This is far from satisfactory and tending as it does to transfer the allegiance of judicial officers from the High Court to the Secretariat deserves to be deprecated. We have earlier made appropriate recommendation to prevent such contingencies.

Training.

7. The High Court has laid down that directly recruited Munsifs, who are kept on probation for two years, should on first appointment undergo a course of training in court work, departmental rules and office routine for a period of 4 to 6 weeks. During this period, the candidate is required to watch the proceedings in the courts of Senior Munsifs and Civil Judges to gain experience of the actual procedure followed in the trial of cases and should take notes of cases

attended by him, frame issues, take down evidence and write draft judgments. These are required to be persued by the District Judge who has to comment on them for the guidance of the Munsif. The District Judge is also obliged to examine the probationers in financial and account rules. The Circular Orders also provide that before a Civil Judge is asked to do criminal work, he should watch the work of the Sessions Judge for a certain number of days. These instructions are, however, not followed. We understand that on account of an acute shortage of officers, training has been dispensed with in all cases. This seems to be a short-sighted measure. A properly trained munsif is likely to do more and better work than one who has to be trained while doing his work. In the long run, the time spent on training would be of more value in keeping down the arrears than the work that a raw hand can turn out by being in charge of a court during the training period.

Establishment of High Court.

8. The High Court of Allahabad, originally known as the High Court of the North-Western Provinces, was established under a Chapter in 1866 and was located at Agra. It was shifted to Allahabad in 1875 and came to be known as the High Court of Judicature at Allahabad. In Oudh which was a non-regulation province, a separate Judicial Commissioner's Court was constituted. It was raised to the status of a Chief Court in 1925. This court was, however, amalgamated with the High Court of Allahabad with effect from the 26th of July 1948 and the entire State was brought within the territorial jurisdiction of a single High Court.

Strength.

9. The sanctioned strength of the High Court was only 20 judges including the Chief Justice until October 1951, when it was raised to 22. It was further increased to 23 in March, 1955. The present sanctioned strength is 24 permanent judges and two additional judges. But as against the sanctioned strength of 26 judges, the actual strength of the High Court at present is 25, 23 permanent judges and two temporary additional judges appointed for two years recently.

Bench at Lucknow.

10. Since the amalgamation of the Oudh Chief Court with the Allahabad High Court, a Bench has been functioning at Lucknow, where four judges of the High Court are posted to dispose of cases arising in ten districts of the State. The judges on the Lucknow Bench are changed from time to time so as to ensure that the two Benches maintain a unity and do not develop into two different High Courts. These frequent changes in Benches have sometimes resulted in part heard matters having to be reheard by a different Bench.

11. The following statement shows the civil and criminal work done in the High Court during the years 1948—1956.

TABLE No. 1

Statement showing the work done in the High Court of Allahabad during the years 1948—1956

Year		1948	1949	1950	1951	1952	1953	1954	1955	1956	Remarks
No. of Judges		20	20	20	20	20	19	21	23	24	
First Appeals	I	529	338	468	549	533	417	602	552	731	
	D	454	305	269	363	342	352	373	283	426	
	P	2407	2440	2639	2825	3016	3081	3310	3579	3884	
Second Appeals	I	2673	2016	2773	2862	2793	2915	2682	2967	3010	I—Institution
	D	1625	2502	3398	1788	2073	1670	1738	2570	2378	D—Disposal
	P	7195	6709	6084	7158	7878	9123	10067	10464	11096	P—Pendency
Appeals	I	425	509	457	214	405	389	412	436	440	
	D	441	621	396	190	230	294	307	424	407	
	P	927	815	876	900	1075	1170	1284	1296	1329	
Letters Patent Appeals	I	20	41	46	102	56	90	221	509	344	
	D	26	56	38	33	43	64	125	222	300	
	P	136	121	129	227	240	266	362	649	693	
Civil Revisions	I	1189	1408	1700	1858	1701	1742	1663	1807	1899	
	D	1259	1864	1129	848	4928	1072	1427	1681	1601	
	P	2042	1586	2187	3167	3940	4610	4854	4980	5278	

TABLE No. 1—*contd.*

Satement showing the work done in the High Court of Allahabad during the Year 1948—1956

Year		1948	1949	1950	1951	1952	1953	1954	1955	1956	Remarks
No. of Judges		20	20	20	20	20	19	21	23	24	
Writ Petitions	I	..	..	384	8876	776	1175	1564	1461	5025	
	D	..	..	232	7571	1313	622	1477	2476	2277	
	P	..	..	152	1457	920	1473	1561	546	3294	
Criminal Appeals	I	1062	1474	1486	1433	1889	2385	2438	2392	2453	
	D	1046	1294	1147	842	1131	1609	1724	2177	3127	
	P	828	1008	1347	1938	2696	3472	4186	4401	3727	
Confirmation Cases	I	147	149	142	166	185	211	241	246	244	
	D	119	139	124	176	200	185	240	239	289	
	P	61	71	89	79	64	90	108	115	70	
Criminal Revisions	I	1807	2278	2442	2918	2752	3093	2655	2878	2094	
	D	1743	2334	2055	2186	2234	2654	2771	3251	1931	
	P	731	675	1062	1794	2312	2756	2640	2267	2031	

Inadequacy of judicial strength.

This statement shows the very heavy congestion of work in the High Court. There has actually been an enormous increase in the institutions during the past four decades. In 1930, the total number of proceedings instituted in the Allahabad High Court and Chief Court of Oudh was 7,449, in 1940 the number rose to 9591, in 1950 to 19,131 and in 1957 to 24,980. In every class of proceeding, whether it be First Appeals, or Second Appeals, Writ Petitions or Criminal Appeals, there has been a gradual but unmistakable rise in the quantum of work the institutions always exceeding the disposals. But unfortunately, in spite of the rising institutions, there has been no correspondingly adequate increase in the strength of the High Court. Thus, while the institutions in 1950 were twice the volume in 1940, the strength of the High Court was raised only by 3 judges, from 17 in 1940 to 20 in 1950. It is obvious, therefore, that one major factor responsible for the alarming accumulation of arrears, carried over from year to year, during the past many years, is the continuous shortage of judges in the High Court.

It is quite apparent, that with the present strength of 25 judges, it will be impossible for the High Court to control its file. The magnitude of the problem of arrears can be best appreciated, by estimating the period of time which will be required to clear the existing accumulations. Taking the disposal in the year 1956 as the basis, when with the maximum strength of judges available in the High Court the disposing capacity of the High Court was perhaps the greatest, it would roughly take the High Court more than 9 years to finish the regular First Appeals, 4½ years for the regular Second Appeals, 3 years for appeals against orders and civil revisions, 2 years for Letters Patent Appeals and more than one year for criminal appeals and criminal revisions, on the hypothesis that all the judges are employed exclusively to the work of clearing the existing arrears. The gravity of the problem will be perceived from the statement (Table No. 2) which indicates the year in which the matters pending at the close of 1956 were instituted.

These colossal arrears did not show any sign of abatement even during the last year, that is, 1957; actually the number of pending matters further rose from 37,686 to 41,512. This picture of the Court's struggling year after year with swelling arrears is distressing. When we visited Allahabad in December 1956, we were informed that the First Appeals instituted in 1944-45 were still awaiting decision. An instance was also brought to our notice when a criminal revision was heard and the accused was acquitted after he had served out a sentence of 18 months imprisonment. It is difficult to describe the disposal of cases after such delays as the administration of justice.

TABLE No. 2

Nature of proceeding	Year of institutions													
	1944 & earlier	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	Total
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1. Regular First Appeals.	28	100	195	173	248	188	343	381	363	361	396	513	595	3884
2. Regular Second Appeals.	..	2	1	10	26	92	843	1372	1527	1565	1536	1968	2154	13096
3. Appeals against Orders.	6	..	4	2	5	17	24	34	152	167	257	313	346	1327
4. Letters Patent Appeals.	1	..	1	2	..	5	11	50	42	62	70	71	44	359
5. Civil Revisions	1	1	5	4	11	21	118	703	715	778	786	913	1222	5278
6. Writ Petitions	..	..	..	..	..	..	..	1	..	1	28	143	3121	3294
7. Criminal Revisions.	..	..	..	..	..	..	..	..	3	40	295	1408	1981	3727
8. Criminal Revisions	..	..	..	..	..	..	..	..	..	2	23	877	1129	2031

12. The magnitude of the problem can also be appreciated if we take into consideration the average duration of time taken to dispose of the proceedings in the High Court. Thus the average duration of a contested First Appeal rose from 1393 days in 1950 to 2145 days (*i.e.* 5 years—11 months) in 1955. Even uncontested First Appeals took 1511 days (*i.e.* more than 4 years) to be disposed of. The average duration of a contested 2nd appeal in 1955 was 1276 days *i.e.* 3½ years. The figures speak for themselves. Average duration.

13. The chief malaise of the High Court is undoubtedly the shortage of judges. This was pointed out by the Uttar Pradesh Judicial Reforms Committee, as early as in 1950. The Committee stated:

> "It is the unanimous opinion of all of us as also of those who have replied to the questionnaire, that the main cause of delay in the disposal of appeals in the High Court is the shortage of judges. At least 21 judges are necessary for disposing of the cases coming up from day to day. It will not be possible for them to touch the arrears and at least three more judges are absolutely necessary in order that the arrears may be cleared off within a reasonable time."[1]

We may only add that the position has been seriously aggravated since that Committee made its Report. The total number of pending proceedings of all classes in the High Court at the end of 1949 was only 15,604, but this has since swollen to 41,512 in 1957. It is a matter of regret that in spite of timely warnings the gravity of the problem should not have been fully realised by the concerned authorities.

14. It is apparent from the figures relating to 1956 as well the year 1957, that the existing strength of 25 judges will be unable even to keep pace with the current institutions. It is accordingly necessary, that the normal strength of the High Court Judiciary should be raised without any delay to prevent a further deterioration in the situation. If this is not done, further increase in the arrears is inevitable. It is not easy to calculate the minimum number of judges, required to deal with the current institutions. We have on the basis of figures for the years 1954 to 1957, computed that the average judge-disposal per year is about 850 cases. In making this calculation we have taken all classes of judicial proceedings in the High Court together. On this basis, the normal strength of the High Court will have to be at least 30 judges, to be able to cope with the current institutions. More judges would be required to clear the large accumulation of arrears. We have already noticed that at the end of the year 1957 the total number of proceedings, civil and criminal, pending in the High Court were 41,512. Deducting therefrom 21,250 cases, which would normally be disposed of by the existing strength of 25 judges during the current year, the balance of 20,262 Raising of strength necessary.

[1] Report, page 72.

cases, *i.e.* the arrears will require for their disposal 24 more judges required for one year or 12 judges for two years. Such a large addition to the strength of the High Court is of course not feasible. Other measures are necessary and we have indicated some of them in earlier chapters. We shall suggest some other measures in this chapter.

Delay in filling vacancies.

15. The malaise is the direct result of the complacent attitude of the Government and their failure to appreciate the seriousness of the problem. The apathy of the executive is evident from the long delays in the appointment of judges, to fill the vacancies which have occurred in the High Court from time to time. We have dealt with this question at some length in our chapter on the "High Court". The instances of delay which occurred in the case of the appointments of the 17 judges during the period beginning from December, 1950 to March, 1955 show that for a period of 142½ months, *i.e.*, 11 years and 10½ months, the post of one judge or the other was allowed to remain vacant on account of delay in filling up the vacancies. This is equivalent to the loss of 12 judges for one year. Had these delays not occurred, probably, half the existing arrears would not have come into being.

Powers of Single Judge.

16. One of the methods which we recommend for increasing the disposals is the increase of the powers of a single judge. The rules of the High Court were amended in 1954 with this end in view. Prior to the amendment, the power of a single judge in civil appeals and revisions was restricted to cases where the value of appeal and the cross-objection if any, did not together exceed Rs. 2,000. All writ applications had also to be dealt with by a Division Bench. As a result of the aforesaid amendment, the jurisdiction of a single judge has been increased to Rs. 5,000 in civil appeals and civil revisions. Writ petitions other than for Habeas Corpus or those challenging the decisions of the Board of Revenue, Election Tribunals and Labour Tribunals are now finally disposed of by a Single Judge, who has also jurisdiction to hear all criminal appeals except those where sentence of death or transportation for life has been imposed. The enlargement of the powers of a single judge has undoubtedly added to the judicial output. This is evident from the figures of disposal for the years 1953—56 in Table No. I. Thus the number of Second Appeals disposed of in 1955 were 2570 as against 1670 in 1953. Civil revisions disposed of in 1955 were 1681 as against 1072 in 1953; the disposal of writ petitions also substantially increased after 1953. The impact of the amendment of these rules on the judicial output is, therefore, obvious. But a further increase in the powers of a Single Judge appears to be imperative if even the current work of the court is to be brought under control. An enlargement of the jurisdiction of a single judge to enable him to hear all first appeals below Rs. 15,000, or even Rs. 20,000—all Second Appeals and all civil revisions should be made.

Appellate jurisdiction of District Judges.

17. Following the recommendations of the High Court Arrears Committee, the appellate jurisdiction of District Judges has been raised from Rs. 5,000 to Rs. 10,000, by an amendment of the Bengal, Agra and Assam Civil Courts Act, 1887. This amendment came into force in November, 1954. The High Court has however held,[1] that the amendment has no retrospective effect and has no application to decrees in suits instituted prior to the amendment of the Act. If the amendment is to serve a useful purpose it is necessary that it should immediately by suitable legislation be given retrospective effect and be made to apply to all suits, whenever instituted. It is also necessary to transfer all appeals pending in the High Courts, below the value of Rs. 10,000 from officers other than District Judges to the District Court for disposal. From the available figures, we find, that out of a total of 2800 First Appeals instituted during the period 1952—1956, 982 (*i.e.* about 35 per cent.) are of a valuation between Rs. 5,000 and Rs. 10,000. Taking this proportion as the average, it would mean that roughly about 1360 of the pending First Appeals would be of a valuation between Rs. 5,000 and Rs. 10,000. If these pending appeals are transferred to the District Courts it should give substantial relief to the High Court. Our general recommendations with regard to increasing the number of district judges and the mode of such transfer will have to be kept in mind.

Second Appeals.

18. Following the recommendation of the High Court Arrears Committee, reiterated by the U.P. Judicial Reforms Committee, Section 102 of the Civil Procedure Code was amended in 1954, raising the limit of non-appealability from Rs. 500 (as it was then) to Rs. 2,000. This amendment is in accordance with our recommendation. We have however gone further and suggested that the right of Second Appeal should be barred in all suits below Rs. 2,000 where rights to immovable property are not involved.

Paper books.

19. The U.P. Judicial Reforms Committee in their Report suggested that one of the causes of delay in the High Court was the printing and translation of records.[2] This, however, does not seem to be correct, at any rate at the present time. The truth is that even cases, in which paper books are ready, cannot be heard because there are many earlier cases to be heard and disposed of. We were told that the printing of paper books in civil cases was temporarily stopped, as there was no room in which the records could be stored and the cases in which paper books were ready were sufficient to occupy the time of the judges. Under the rules prescribed by the High Court printing of paper books is necessary in capital cases, appeals under sections 411 A(2), and 417 Cr. P.C., and cases where notice

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[1] Cyril Austin Spencer *v.* M. H. Spencer, A. I. R. 1955 N.U.C. Allahabad) 3546.

[2] Report, page 72.

is given to show cause why the sentence should not be enhanced to that of death and civil cases where the valuation of the appeal is Rs. 10,000 or more. Parties are, however, permitted with the leave of the court either to file type-written paper book or to get it printed privately. The U.P. Judicial Reforms Committee suggested that printing and translation of records may be restricted only to those cases which have a valuation of Rs. 20,000 or above. In cases with a valuation of less than Rs. 20,000, paper books may not be printed or translated but may be type-written only when a case is to be heard by a Bench of two judges. It is understood that these recommendations have been accepted by the High Court and the rules have been amended accordingly.

There is, however, considerable delay in the printing of records in criminal cases. We learnt that even in cases where the death penalty was imposed, the Government press was unable to get the paper books ready in time with the result, that the work had to be entrusted to a private press. It seems that the situation has somewhat improved recently after the work of printing has been entrusted to private presses.

Our general recommendations with regard to preparation of paper books are equally applicable to this State.

In our chapter on "Civil Appellate Procedure" we have already referred to the peculiar rule which obtains in this State regarding the levy of extra charges for the translation and printing of papers in an appeal out of turn and have recommended its abrogation.

Distribution of work.

20. We have recommended elsewhere that the distribution of work should be so arranged, that judges are assigned the work in which they can excel. This is easily possible in the High Courts like Allahabad, which have a large number of judges. We were told that in 1955 the total number of income-tax references, agricultural income-tax cases and sales tax cases before the court were 879, out of which only 63 cases could be disposed of during the year. If judges with an aptitude for this branch of law are continuously put on this type of work, greater expedition would be possible.

It is necessary to refer to the manner and quantum of disposal of work in the High Court. The figures examined by us seemed to indicate that the speed of disposal generally in all matters in this High Court compared unfavourably with that in some other High Courts. In view, however, of the different methods of maintaining statistics in different centres we were unable to demonstrate this disparity by comparative statements. It must not be forgotten that appointments of persons without adequate experience must necessarily result in smaller disposals. We have dealt with this subject at some length elsewhere. If perchance the Court happens to have such judges it should be the duty

of the Chief Justice of the Court to place them in Benches with competent judges so that they may not impede the progress of the work.

Delegation of Powers to Registrar etc.

21. We have earlier referred to the delegation of powers to the Registrar in this State to admit Second Appeals and have expressed our disapproval of this practice. We were also informed that it was not the general practice of the judges to read the case papers at home. We feel that the system of reading case papers at home can be introduced with advantage in this High Court.

Increase in the volume of work.

Sub ordinate Courts.

22. During the last few years, there has been a considerable rise in the number of suits instituted in the subordinate courts. In 1951, the number of suits instituted in subordinate courts was 102,788, but in 1955 it had risen to 157,299 *i.e.* by nearly 50 per cent. This enormous rise in institution of suits of all kinds, including suits relating to immovable property, is principally due to the institution of a large number of suits under the Zamindari Abolition and Land Reforms Act, 1950. Suits relating to immovable property form nearly one-third of the litigation in the State. A large proportion of the litigation is, however, of small value. Nearly 92 per cent. of the total litigation relates to suits below Rs. 1,000. Roughly, only about 2 per cent. of the total volume of litigation is above Rs. 5,000 valuation.

State of files of regular Suits in the courts of Munsifs and Civil Judges.

23. The following two statements show the state of the files of regular suits in the courts of Munsifs and Civil Judges during the years 1951—56.

TABLE NO. 3

Regular Suits in the Courts of Munsifs

Year	Institutions during the year	Total disposal during the year	Disposal after full trial	Average duration in days of full trial cases	Pendency at the end of the year	No. of more than year old suits
1	2	3	4	5	6	7
1951 .	83,051	80,063	21,129	327	61,985	22,794
1952 .	87,090	86,036	20,445	392	63,039	22,209
1953 .	1,21,262	99,625	22,582	477	84,676	24,351
1954 .	1,35,027	1,09,862	22,561	565	1,09,841	34,314
1955 .	1,41,095	1,24,200	23,758	537	1,26,786	51,029
1956 .	1,39,602	1,46,988	..	..	1,19,414	60,223

NOTE.—Institutions include suits revived during the year and otherwise received.

TABLE NO. 4

Regular Suits in the Courts of Civil Judges

Year	Institutions during the year #	Total disposal during the year	Disposal after full trial	Average duration in days of full trial cases	Pendency at the end of the year	No. of more than one year old suits
	1	2	3	4	5	6	7
1951 .	11,837	12,229	2,334	354	6,883	2,815
1952 .	12,500	11,674	2,265	340	7,709	3,468
1953 .	4,811	7,354	1,041	502	5,166	2,743
1954 .	4,995	4,692	1,085	541	5,469	3,059
1955 .	5,037	4,717	1,103	618	5,789	3,338
1956 .	4,909	5,499	..	..	4,509	2,719

NOTE—Institutions include suits revived during the year and otherwise received.

It will appear from these statements that the problem of arrears is very acute in the subordinate courts. The number of pending cases rose in Munsif's Courts from 61,985 in 1951 to 1,19,414 in 1956 that is nearly twice the number in 1951. It is true, that both Munsifs and Civil Judges, were able to cope with the current institutions during the year 1956, but the real problem in the subordinate courts is not so much the capacity of the existing judicial strength to deal with the current institutions, as the huge mass of arrears accumulated year after year awaiting disposal. The rising average duration of cases disposed of after full trial and the large proportion of more than one year old pending suits are matters of grave concern. The average duration of contested suits rose from 327 days in 1951 to 537 days (*i.e.* one year and about 6 months) in 1955 in Munsif's Courts and from 354 days in 1951 to 618 days (*i.e.* 1 year and 8½ months) in 1955 in Civil Judge's Courts. The percentage of more than one year old suits in Munsif's Courts rose from 32 in 1954 to 55 in 1956. In Civil Judge's Courts, the percentage of more than one year old suits was 42 in 1956. The rise in the average duration of cases without a corresponding decrease in old suits clearly shows that the judicial officers have not devoted the required attention to the disposal of old suits and have instead preferred to dispose of comparatively lighter suits. The gravity of the problem of arrears can be

appreciated further from the fact that the percentage of contested suits in the courts is really very small, that is, about 19 to 20 per cent. in the courts of Munsifs and about 23 per cent in the courts of Civil Judges. Taking into account the average capacity of the existing judicial strength to dispose of the contested cases, and assuming as we have done in earlier chapters, that more than one year old cases are likely to be contested suits, we have calculated, that it would take the Munsifs roughly about 2¼ years and the Civil Judges about 2 years to dispose of the old cases pending at the end of 1956, provided the entire strength of the judicial officers is exclusively assigned to the task of disposing of these cases. The position in October 1957 has been described by the High Court as follows:

> "The largest numbers of pending suits triable by a Civil Judge are 617 in Kanpur, 412 in Agra (out of which 90 are pending for three years and 78 for four years), 387 in Varanasi, 375 in Meerut (out of which 70 are pending for three years) 260 in Moradabad, 258 in Lucknow, 255 in Farrukhabad and 141 in Mathura (out of which 51 are pending for two years and 28 for three years). Through Circular Letter No. 22/VIIIh-13. dated 18th March, 1949 the Court has ordered that Civil Judges and Munsifs should not fix a date more than three months ahead for final hearing of a regular suit. In many courts of Civil Judges and Munsifs there are so many regular suits ready for final hearing that dates for disposal cannot be fixed in all of them within the next three months and some of them have to be adjourned *sine die*. There are 174 suits lying in courts of Civil Judge, Meerut, without a date for final hearing being fixed, 90 suits in Aligarh, 88 in Ballia and 57 in Mathura."

> ".....it appears that very heavy arrears of regular suits are pending in Munsif's Courts all over the State. Among the heaviest arrears are 7536 suits in Azamgarh, 5589 in Gonda, 5232 in Faizabad, 4880 in Kanpur, 4776 in Deoria, 4076 in Allahabad, 3861 in Jaunpur, 3851 in Sultanpur and 3583 in Meerut. Cause lists of some Munsifs are so congested that no dates for final hearing are available within the next three months and some of them have to be adjourned *sine die*. There are large numbers of such suits lying without a date for final hearing being fixed; for instance 1569 suits in Meerut, 1370 in Ghaziabad, 1291 in Pratapgarh, 1100 in Mathura, 1087 in Sultanpur, 750 in Jaunpur, 638 in Agra and 503 in Aligarh."

A large number of the pending suits are three to four years old.

Courts of District Judges, Civil & Sessions Judges and Civil Judges.

24. The situation is no better in the courts of District Judges and Civil and Sessions Judges as would be apparent from the accompanying Tables (Nos. 5 & 6), showing their civil and criminal work during the years 1954—1956. In these statements the civil appellate work done by the Civil Judges and the criminal work done by them in their capacity as Assistant Sessions Judges has also been indicated.

Regular suits.

It will be seen that there are huge arrears of civil suits, civil and criminal appeals and sessions cases in these courts. The number of pending civil suits in the courts of District Judges rose from 234 in 1954 to 526 in 1956; the average duration of contested suits in these courts also rose from 417 days in 1954 to 708 days in 1956. In the court of Civil and Sessions judges, the proportion of more than one year old suits is nearly 50 per cent. of the pending cases.

Civil appeals.

The arrears of civil appeals are staggering. It would appear that the number of pending regular civil appeals rose from 20,518 in 1954 to 26,922 at the end of the year 1956. Of these, nearly 43 per cent. were more than one year old. A large proportion of the civil appeals as many as 8459 is pending in the courts of Civil judges, out of which nearly 62 per cent. are appeals pending for more than one year. In this connection, the High Court has observed:—

"There are huge arrears of civil appeals (including revenue and miscellaneous appeals) in many districts and there is hardly any regular or planned disposal of them for want of time, the District and Sessions Judges being occupied with criminal work and Civil Judges, with regular suits and sessions trials. There is very little disposal of civil appeals in a majority of courts of District and Sessions Judges; most of the disposal is in courts of Civil Judges, but even they have no time to dispose of them systematically." The High Court has also stated that in most of the Districts, more than 2 to 3 years old appeals were also pending.

Sessions Cases.

On the criminal side, a large number of sessions cases are awaiting disposal. It would appear from the figures that the courts of session, including the Civil Judges who are empowered as Assistant Sessions Judges, have been unable to deal with even the current institutions, resulting in progressive accumulation of sessions cases. What is even more shocking is the large number of a year old sessions cases. Thus, the number of pending sessions cases rose from 3145 in 1954 to 4253 in 1956. In this connection, the High Court observed:—

"There are no less than 16 districts in which more than 100 sessions trials are pending; three districts have more than 200 sessions trials pending, namely Jhansi (227), Meerut (226) and Unnao (215). Under Circular Letter No. 73/VIII-a-14, dated 29th October, 1948..... the District and Sessions Judges and Civil and Sessions

TABLE No. 5

Statement showing the civil work done by District Judges, Civil and Sessions Judges and Civil Judges during the years 1954-56

Year	Civil Suits					Small Cause Suits					Miscellaneous Civil Cases				
	Pending at the beginning of the year	Institutions	Disposals	Balance		Pending at the beginning of the year	Institutions	Disposals	Balance		Pending at the beginning of the year	Institutions	Disposals	Balance	
				Below one year	Over one year				Below one year	Over one year				Below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
						District Judges									
1954	230	234	230	102	132	..	..	..	..	..	1440	5550	5340	1477	173
1955	234	459	334	248	111	..	..	..	..	..	1650	6287	6051	1585	301
1956	359	974	807	336	190	..	..	..	..	..	1886	6827	6620	1695	398
						Civil and Sessions Judges & Other Corresponding Judges									
1954	614	621	674	371	190	1159	4425	3911	1467	206	575	1855	1620	645	165
1955	561	767	648	339	341	1673	4246	3914	1573	432	810	2238	1990	781	277
1956	680	518	755	226	217	2005	3801	4521	878	407	1058	2303	2564	610	187
						Civil Judges									
1954						3034	8821	8611	2954	260	2419	6404	5808	2452	563
1955						3214	9084	9523	2485	290	3015	7022	7202	2261	574
1956						2775	11217	10352	3356	284	2835	7423	7428	1248	582

Civil Appeals					Civil Miscellaneous Appeals				
Pending at the beginning of the year	Institutions	Disposals	Balance		Pending at the beginning of the year	Institutions	Disposals	Balance	
			Below one year	Over one year				Below one year	Over one year
17	18	19	20	21	22	23	24	25	26
				District Judges					
8616	13295	12179	6981	2751	1234	2900	2757	1202	176
9732	13693	12491	8608	3075	1377	2806	2709	1239	235
11683	15300	13660	8862	4461	1474	3118	2736	1486	370
				Civil and Sessions Judges & Other Corresponding Judges					
2614	4878	3660	2511	1321	209	686	501	366	28
3832	5797	4114	2130	3385	394	839	667	402	164
5515	4783	5158	3191	1949	566	707	756	370	147
				Civil Judges					
6804	9448	9228	2713	4241	530	1328	1336	444	78
6954	9307	9604	3092	3565	522	911	928	384	121
6657	11975	10173	3176	5283	505	1085	1025	361	204

NOTE.—These figures have been supplied to us by the High Court of Allahabad.

TABLE No. 6

Statement showing the Criminal work done by the Courts of Session during the years 1954-56

Year	Sessions Cases					Criminal Apppeals					Criminal Revisions				
	Pending at the beginning of the year	Institutions	Disposals	Balance		Pending at the beginning of the year	Institutions	Disposals	Balance		Pending at the beginning of the year	Institutions	Disposals	Balance	
				Below one year	Over one year				Below one year	Over one year				below one year	Over one year
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
						District and Sessions Judges									
1954 .	953	3960	3273	1535	105	3758	15021	13952	4343	484	1245	3743	3907	1063	18
1955 .	1640	3955	3729	1661	205	4827	14364	13795	4814	582	1081	3470	3642	841	68
1956 .	1910	4332	4023	1978	241	5479	14421	13601	5485	814	943	3345	3155	974	159
						Civil and Sessions Judges									
1954 .	857	2,941	2,642	1,003	153	2,550	8,447	7,932	2746	319	617	2,311	1,995	883	50
1955 .	1,156	3,222	3,107	1,049	222	3,065	9,178	9426	2529	288	933	2,343	2,310	876	90
1956 .	1,271	3,024	2,947	1,085	263	2817	8,684	8,612	2,344	545	966	1,649	1,898	617	100
						Civil and Assistant Sessions Judges									
1954 .	413	983	1,047	301	48	213	952	952	196	17	..	..	..	..	..
1955 .	349	1,078	1,024	363	40	213	767	826	152	2	..	..	..	..	..
1956 .	403	1,563	1,280	530	156	154	740	757	136	1	..	..	..	..	..

NOTE.—These figures have been supplied to us by the High Court of Allahabad.

Judges are required not to fix a date more than two months ahead for disposal of a sessions trial not punishable with death; consequently in every judgeship there are some sessions trials pending without a date for disposal being fixed. In many judgeships large number of sessions trials are lying without a date for disposal being fixed;.....In capital sentence cases dates for disposal are generally fixed within the next two months and on account of this priority being given to them disposal of other cases is considerably delayed. There are many sessions trials including those for offences punishable under sections 304, 395 or 397 I.P.C. in which no date for disposal can be fixed for at least a year."

Likewise, there is also a very large number of criminal appeals and criminal revisions.

The principal reason for this disheartening state of affairs is undoubtedly the shortage of judicial officers. It would be interesting to compare the judicial strength of Bihar with Uttar Pradesh. The sanctioned strength of subordinate judiciary in Bihar, which has only 17 Districts, is nearly equal to that of U.P., which has 51 districts with a population and area almost twice that of Bihar. Thus the sanctioned strength of Civil judiciary in Bihar is 344 Judicial officers (16 District Judges, 25 Additional District Judges, 71 Subordinate Judges and 232 Munsifs), whereas Uttar Pradesh has a sanctioned strength of 340 Judicial officers (45 District Judges, 39 Civil and Sessions Judges and 266 Munsifs and Civil Judges). The total number of suits filed in the subordinate courts of Bihar in 1954 was only 1,34,123 a large number of which were simple rent suits, whereas in U.P. the number was 1,50,713 one third of which related to immovable property. In addition the number of sessions cases in U.P. was also much larger. There is one civil judicial officer for every 1,12,731 persons in Bihar as against 1,85,928 persons in Uttar Pradesh. Is it not abundantly clear that the concerned authorities who have time and again failed to raise the strength of judicial officers in spite of demands are directly responsible for the sad plight of the administration of justice in the State?

Inadequacy of judicial strength—a long standing problem.

25. The acute shortage of judicial officers is not a new feature in Uttar Pradesh. In fact, shortage of personnel has persisted for a very long time, resulting as we have seen earlier, in the progressive accumulation of pending cases year after year. The High Court has repeatedly drawn attention of the State Government to it in their Administration Reports as well as in official correspondence. We have earlier quoted the observations of the Uttar Pradesh Judicial Reforms Committee on this subject.

The High Court in its reply to our Questionnaire stated that in a large number of cases, the period actually taken for disposal of civil and criminal proceedings exceeded what

may be considered reasonable. They, however, pointed out that:

> "the overriding cause for this is the great inadequacy of Judges, Munsifs and Magistrates. The work has increased greatly in recent years but there has been no corresponding increase in the number of officers."

The High Court in their letter addressed to the State Government in October 1957 observed:

> "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 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."

In the end, the Court stated:

> "No less than 275 officers would be required if the existing arrears were to be cleared off in two years, the number of officers required would be 137 if they were to be cleared off in three years, the number would be 92 if they were to be cleared off in four years, the number would be 69 if they were to be cleared off in five years.....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."

From the fore-going, it is quite obvious that the root of the trouble in U.P. is the acute shortage of judicial personnel at all levels and unless this aspect of the matter is faced and the deficiency made good, any other measures

Increasing the strength-chief remedy.

taken will be of but little use. It is not possible for us to estimate the required strength of the subordinate judiciary as that requires a more detailed knowledge of local conditions than we possess. That is a matter for the High Court and the State Government, but we wish to emphasise that nothing substantial can be done in the way of reducing the arrears unless the judicial personnel is raised to the adequate strength.

Delays in filling up vacancies.

26. It has also been stated that whenever the High Court asks for an increased number of judicial officers, there has been considerable delay on the part of the Government in sanctioning the posts. For instance we understand that the High Court sent proposals to the State Government for increasing the cadre of Civil Judges by 33 and of Munsifs by 152 as early as November 1952. No reply was received by the High Court to this communication till 4-3-1954 when a reminder and further proposals for increase in the strength of the judiciary were submitted to the Government. In the meanwhile the requirements of the judiciary had become altered and a much larger number of judicial officers were found necessary. At that stage the Government wrote back to say that the letter of 1952 was not traceable and a copy of the original proposal might be sent. The Government was reminded by the High Court on 6-8-1954 when the High Court was informed that the matter had been taken up in right earnest. When the officers of the Commission visited Allahabad in February, 1956, it was learnt that the matter was still being "actively" considered at Government level. When we visited Allahabad in December, 1956, we were told that the strength of the subordinate judiciary had been increased by 44 as against the demand for 185 officers made by the High Court. This sorry tale reflects little credit on those responsible for the administration of justice. The High Court also may to some extent be blamed for not pursuing the matter with Government and for not reminding them more frequently. It is no part of our enquiry to allocate the responsibility for this or to apportion blame. The litigant in this State has a just cause for complaint. Notwithstanding the levy of a heavy court fee, the State does not provide the litigant with a court which can take up the trial of his case in a reasonable time. With the fullest appreciation of the financial obligations of the State, a state of affairs in which session cases cannot be taken up for a year, and civil cases have to be repeatedly adjourned to a fresh date for giving a date is without parallel anywhere else in India. If this state of affairs is allowed to continue the time is not far distant when the administration of justice may well break down. There is no excuse for not establishing necessary number of courts in a State where the fees paid by suitors for having their cases "heard" contribute a handsome surplus to the general revenues.

If necessary an emergency recruitment may be resorted to fill up the vacancies at different levels.

27. An important matter brought to our notice was that the services of a large number of judicial officers are requisitioned by the State Government from time to time for Secretariat and other non-judicial or quasi-judicial work. We were informed that some time ago about 33 judicial officers were on deputation to the State Government as against the deputation reserve of only 8. This naturally resulted in a large number of permanent courts lying vacant without presiding officers and cases not being heard. We recommend that in fixing the strength of the judiciary the requirements of the State Government in regard to deputation to non-judicial posts should be taken into consideration and the strength of the cadre fixed on that basis. Further, under no circumstances should the number of officers sent on deputation exceed the deputation reserve or otherwise result in a shortage of judicial officers to preside over the courts. Deputation of judicial officers.

28. In addition to increasing the strength of the judiciary, it may also be possible to quicken the pace of disposal by certain adjustments. Thus if the small cause jurisdiction of Munsifs is raised to Rs. 500 and of Civil Judges to Rs. 2,000/- as recommended by us, a large number of cases can be disposed of by them under the simpler procedure. If the pecuniary jurisdiction of Munsifs is raised to Rs. 5,000/- it would enable the Munsifs to deal with a larger number of suits and to that extent relief can be afforded to the Civil Judges. But in view of the shortage of munsifs this might only result in transferring arears from one class of courts to another. However, it is easier and less expensive to appoint more munsifs than civil judges. Other adjustments.

The main reason for the congestion in the Civil Judges' courts is that they have to deal with a large variety of work. They have to try not only original suits, but also Session cases and hear civil and criminal appeals. Thus, in addition to their normal work, nearly 55 per cent of regular civil appeals are disposed of by Civil Judges and about 15 per cent of the sessions cases are heard and tried by them. Such a conglomeration of various types of proceedings, inevitably results in delay in the disposal of civil suits. Apart from increasing their number and enhancing their small cause jurisdiction some improvement can be effected by assigning particular officers to a given type of work, for example the trial of old suits and appellate work for limited periods of time. The Civil Judges in this State hear succession certificate cases but the jurisdiction in guardianship, probate and land acquisition matters has been conferred only upon the Civil and Sessions Judges who function at places other than headquarters of the division. Delegation of powers in these matters also to the civil judges will ease the strain on the District and Civil and Sessions Judges and perhaps even reduce the number of extra officers to be appointed to this cadre.

Some relief can also be given to the District Judges by relieving them of their non-judicial duties as for example Registrars under the Indian Registration Act, with which we were told they had been entrusted. We are doubtful of the wisdom of the circular prohibiting the posting of sessions cases other than capital cases to a period beyond two months. In many other States there is no such limitation, but cases are posted for a period of three months or even more. If however in any station cases have to be posted in the court of session to a date more than three months in advance, an additional sessions judge is promptly appointed and posted.

Minimum standards of out-turn of work.

29. Certain minimum standards as regards the quantum of work that should be done by a judicial officer during a particular period of time have been laid down by the High Court. Credit for one day's work is given for a civil suit up to Rs. 2,000/-, 2 days for a suit between Rs. 2,000 and Rs. 5,000 and 3 days for suits above Rs. 5000. Credit is given only for suits disposed of after full trial which is explained as a suit finally decided after real contest between the parties. No credit is given if a suit is compromised even after evidence is recorded and arguments are heard. Suits decreed *ex parte* or dismissed for default or decided after reference to arbitration irrespective as to whether objections to the award are filed or not, do not count for disposal. In the case of small cause suits credit of one day is given for 10 contested suits or 40 decided otherwise.

As regards criminal matters, credit of 3½ days is given for trial of serious offences like murder, rioting and dacoity; one day for cases falling under section 75 I.P.C., two days for other sessions trials. As regards appeals, three represented appeals or six jail appeals or six criminal revisions or two regular civil appeals or four civil miscellaneous appeals are expected to be done per day. We understand that the quantum of work of a judicial officer estimated by these standards is commented upon in the annual report and it is accordingly remarked that Shri A or B has done X days' work in Y days' time.

It is generally felt that the standards laid down by the High Court are very liberal and that in general, the judicial officers are able to turn out more work than required by the prescribed standard, whereas the previous standards in force upto 1935 were very high. With rare exceptions we discovered that the standards were generally exceeded. It was stated that in assessing the ability of a judicial officer, note is taken of the generous nature of the present standard. Therefore, the High Court while laying down the principle that merit of an officer will be judged primarily from the quality of his work has also made it clear in its instructions, that the judicial officer of

average ability doing his work with proper care and discretion, should be able not only to reach the standard but also show disposals above the prescribed standard, and that an officer who cannot attain even this standard will in the absence of a satisfactory explanation, be marked down as below average. In our view these instructions themselves demonstrate the futility of laying down such standards. A standard which an average officer is consistently expected to surpass, ceases to serve any purpose and merely tends to mislead. It also tends to create a feeling of complacency in the minds of both the judicial officers and their superiors. There is also the very real danger that such arbitrary standards will induce judicial officers to pick and choose light work and carefully avoid the heavier suits. It tends to make for window-dressing in disposals and relegates supervision to a routine mechanical task which it should not be. The need for alteration in the system in its present form should be considered by the High Court.

Scrutiny of returns and inspection.

30. The judicial officers submit periodical returns of their work to the High Court. The subordinate courts are also expected to be inspected by the District judge once in every two years. The Administrative Judge also inspects the Courts of District Judges and other subordinate courts. The returns submitted by the judicial officers are scrutinised by the Registrar and are put up before the Administrative Judge. It may be pointed out that in the High Court, there is only one Administrative Judge who is expected to look after the judicial work of all the 51 districts in the State. We are convinced that it is impossible for a single individual to exercise effective or even the necessary minimum supervision over so many judicial officers, either by scrutiny of statements or by inspections, particularly when his administrative duties are merely part-time.

Administrative Judge.

Opinion was, however, divided as to whether administrative work should be assigned to one or more than one Judge of the High Court. One of the Judges whom we examined while conceding that a single administrative Judge cannot possibly look after his own judicial work as a Judge of the High Court and also do the supervision work, objected to the distribution of administrative work among more than one Judge on the ground that there would be no proper and uniform standard of comparison of the work turned out by different sets of judicial officers.

One of the Judges, however, suggested that the State may be divided into groups of 10 districts, each group being placed in charge of one Judge of the High Court. The five Judges of the High Court may constitute the administrative committee of the Court and the uniformity of standard in assessing the work of the judicial officers can be established by them by laying down proper standards.

The Administrative Judge himself admitted, that while the existence of a single administrative judge tended to make for uniformity, yet it was difficult for a single individual to control and effectively supervise all the judicial officers of the State. In our view it is possible to pay too high a price for uniformity. The present system may merely ensure a uniform lack of supervision and that is what we noticed was happening. While the criminal returns are fairly closely scrutinised as several judges are entrusted with that task, that did not appear to be the case with regard to the civil returns judging by the few samples that we examined. They merely seemed to be filed without any attempt being made to examine them.

It is physically impossible for any one judge to inspect and keep a watch on the work in all courts in the fifty one districts and division of administrative work is essential if it is to be done at all. In fact in several High Courts there is more than one administrative judge. At least two High Courts go even further and distribute the administrative work on the basis of subjects and districts among all the judges. We trust that the Allahabad High Court will speedily undertake a division of the responsibilities of supervision and inspection among the judges to give relief to the administrative judge and ensure the better supervision which the courts in Uttar Pradesh need.

Slip system.

31. Another method of assessing the work of the judicial officers in Uttar Pradesh is called the "slip system". It appears that when High Court Judges hear matters in appeal or otherwise, they give their comments about the quality of the work of the judicial officers on certain printed slips and these slips are collected and at the end of the year are referred to for the purpose of giving confidential reports on the work of individual judicial officers.

Overposting of cases.

32. There seems to prevail a very undesirable practice of posting too many cases in all the courts. A Civil and Sessions Judge told us that he fixed as many as 40 to 50 cases per day for hearing and that this was done solely for the reason that requests for adjournments may be met. This naturally leads to cases being heard piecemeal. It was stated that sometimes even sessions cases are not heard from day to day.

Judgments.

33. Some rules have been laid down by the High Court to ensure that the lower courts do not delay delivery of the judgments for a long time. It has been laid down that judgments in sessions cases should be delivered within 14 days of the conclusion of the trial and in civil cases within a month. But we were informed that sometimes in civil cases judgments, were often delayed and in order to circumvent the rule, there was a practice among the judicial officers of giving a date for re-hearing arguments so as to postpone the date for delivery of judgments. Such a practice should be sternly controlled. This can easily be

done if superior officers care to apply their minds to the task of supervision. The period allowed for delivery of judgment particularly in sessions cases is far too long and should be curtailed. A limit of fourteen days from the date when evidence is concluded should be laid down for delivery of judgment in all civil cases. Our general recommendations with regard to the delivery of judgment in civil and criminal cases are equally applicable to this State.

Concentration of courts.

34. A peculiar feature of this State is that civil courts are generally located at the district headquarters. There are in all 51 district headquarters and 227 tehsil headquarters; but all the courts of Civil Judges and Civil and Sessions Judges are located in 49 towns (all District Headquarters) and 139 courts of munsifs are located in 85 towns out of which 51 are district headquarters.[1] There is a considerable volume of opinion in favour of decentralization of courts. It was stated that on account of long distances the courts are not easily accessible to the litigants save at considerable cost and inconvenience and that concentration of courts results in the concentration of work in the hands of a few lawyers with consequent adjournments and delays. While there was opposition to the proposal for the dispersal of courts particularly by lawyers on the ground of lack of buildings, the absence of a Bar and the fear that a single judge in an isolated station may become a "dictator", we feel that the difficulties are overstated. Decentralisation of courts has been carried out successfully in all the Southern States where even courts of subordinate judges are located outside district headquarters and also in West Bengal. There is no reason why it should not work satisfactorily in Uttar Pradesh. Once a beginning is made and courts are moved to sub-divisional headquarters the necessary facilities will spring up. If a tehsil can provide sufficient work to keep a munsif fully occupied, they can be posted to tehsil headquarters also. The extra munsifs whose appointment is necessary to clear off arrears can be asked to sit at outlying stations. When the judiciary is separated from the executive it may be possible to carry the process of decentralisation further by conferring in suitable cases civil and criminal jurisdiction on one person.

It is a matter for regret that though such decentralisation was recommended by the Uttar Pradesh Judicial Reforms Committee, nothing has been done in this direction so far.

Separation of judiciary and executive.

35. The scheme of separation now in force was introduced under executive orders in eight Districts in 1949, and was later extended to twelve more districts. Under this scheme, the officers of the Revenue Department were divided into two classes, Judicial Magistrates-*cum*-Assistant Collectors and Executive Magistrates-*cum*-Assistant

[1]Based on the Administration Report for the year 1955.

Collectors. The Judicial Magistrates-*cum*-Assistant Collectors were later designated as "Judicial Officers". These officers hear all cases under the Indian Penal Code, which are triable by a First Class Magistrate. They also hear all suits and proceedings under the U.P. Tenancy Act, certain cases under the U.P. Zamindari Abolition and Land Reforms Act and under other miscellaneous Acts. Executive Magistrates on the other hand hear cases arising under Cr. P.C., all suits and proceedings under the U.P. Land Revenue Act, and other miscellaneous local and special Acts. They are also empowered to hold enquiries. record dying declarations, confessions and statements under Section 174. There are also Tahsildar Magistrates.

The Judicial Officers are under the control not of the District Magistrate but of the Commissioner of the Division through an Additional District Magistrate (Judicial) who supervises their work. He scrutinises the fortnightly and monthly returns submitted by the judicial officers and is enjoined to inspect their Courts at least once a month. He is also empowered to call for the records of the judicial officers. Confidential reports about the quality of the work of judicial officers are written by the Sessions Judges, a copy of which is forwarded to the Additional Magistrate (Judicial), who in turn comments on the quantum of the work done by the Magistrate and the manner in which he handles his cases. His reports are forwarded to the Commissioner.

A separate cadre of judicial officers has now been constituted. Recruitment is made on the basis of a competitive examination on the same lines as in the case of recruitment to the judicial or the executive service. Their scale of pay is the same as that of an officer in the State Civil Executive Service, but they cannot be transferred to the Executive Service. The field of promotion for these officers, is however, very much restricted. They can aspire only to be promoted as A.D.M. (Judicial). Their prospects, postings and promotion are entirely in the hands of the Government, whose discretion in these matters is unfettered.

Separation only in form.

36. It is evident that all that has happened in these so-called separation Districts is that the trial work is no longer in the hands of the same officers who have executive duties. The High Court has no control whatsoever over these Judicial Officers. They continue to be under the executive Government; and the Commissioner of the division—an executive officer. It is thus clear that the system as it prevails in this State, while it may be a step towards separation, is not real separation for it lacks the essential feature of separation, which is a criminal judiciary independent of executive control. The sooner this pseudo system of separation is replaced by a genuine one, the better.

37. Leaving out of consideration special classes of Magistrates like the Canal and Railway Magistrates we find at the bottom of hierarchy, Tehsildar Magistrates and Sub-Registrar Magistrates. These Magistrates have only second class powers and as they have heavy departmental duties, the amount of time which they are able to devote to their magisterial work is very little. Above the Tehsildar Magistrates are the Sub-Divisional Magistrates, who in non-separation Districts try cases under the Indian Penal Code and deal with other criminal judicial work. In separation districts, their judicial work is limited to cases arising under the Criminal Procedure Code. But both in the separation and non-separation districts, Tehsildars function as second-class magistrates under the control of the District Magistrate through the Sub-Divisional Magistrate. Pending the introduction of separation they may be replaced by full time magistrates drawn if necessary from the revenue department, or from judicial officers. **Other criminal courts.**

38. Committal proceedings are invariably done by First Class Magistrates and not by Magistrates of the Second Class. This would seem to unnecessarily take up the time of a higher class of officers. So long as the class of Second Class magistrates exists there is no reason why suitable officers of that cadre should not be empowered to commit cases to the court of session as has been done in other States. **Committal Proceedings.**

39. A special feature about the magistracy in U.P. is abolition of Third Class Magistrates following the recommendation of the U. P. Committee. **Abolition of Third Class Magistrates.**

40. The system of Honorary Magistrates has been in existence in this State for a very long time. Their number at present is 357. We were told that the honorary magistrates disposed of nearly 25 per cent of criminal case work in the State. **Honorary Magistrates.**

41. The magistracy unlike the civil judiciary does not appear to be inadequate in strength. Though there is scope for improvement, the delay in the magistrates courts is not so great as to cause alarm. Our attention was, however, drawn to delays in investigation. The following statement indicates the work done by the magisterial courts during 1954—56. **State of file in magisterial courts.**

TABLE No. 7

Statement showing the criminal work done by Magistrates in Uttar Pradesh

Year	Cases under I. P. C.					Other Cases				
	Pending at the beginning of the year	Institutions	Disposal	Pending at the end of the year	Cases more than one year old	Pending at the beginning of the year	Institutions	Disposal	Pending at the end of the year	Cases more than one year old
1954	20,672	98,878	97,443	22,107	244	30,442	2,80,480	2,82,560	28,362	335
1955	22,107	99,546	99,187	22,466	354	28,362	3,10,443	3,05,587	33,218	526
1956	22,453*	99,981	1,00,846	21,588	286	33,218	3,03,434	3,07,071	29,481	174

*There is a slight Discrepancy. These figures have been supplied by the High Court.

It will appear from this Statement, that the magisterial courts are able to cope with the current institutions and that the total number of pending matters is generally one-fifth of the disposing capacity of the Magistrates. We have not got the figures of the average duration of cases under the I. P. C., but that there has been some improvement in the criminal judicial work is evident from the fact, that the average duration of a criminal case in the court of stipendiary magistrates decreased from 27 days in 1951 to 17 days in 1955. Further, the number of cases pending over 6 weeks decreased from 1619 in 1951 to 1287 in 1955.

Panchayat Courts Constitution.

42. Panchayat courts, called "Nyaya Panchayats" are constituted under the Uttar Pradesh Panchayat Raj Act, 1947. For the purpose of jurisdiction every district is divided into Panchayat circles, each circle consisting of about 5 Gaon Sabha. Originally, each gaon sabha was asked to elect 5 persons to act as panchas for the court. The panel of 20 to 25 members thus elected to every Nyaya Panchayat elected one amongst them as Sarpanch. Five of them formed the quorum. This mode of constituting the Nyaya Panchayat was however considered unsatisfactory and later the law was amended so as to introduce the element of selection in the Nyaya Panchayats. The panchayat courts as constituted at present consist of five persons who are appointed by the prescribed authority from amongst those who are elected for the purpose by gaon sabhas. This method is an improvement on the old mode of constituting the panchayat courts. The term of every panch is five years from the date of his appointment.

Jurisdiction.

43. The Nyaya Panchayat exercises civil jurisdiction in certain specified classes of cases upto the value of Rs. 100/- but the State Government may in suitable cases raise the jurisdiction to Rs. 500/-. The decision of the court is by majority. The court also exercises criminal jurisdiction in respect of certain specified offences of simple nature under the Indian Penal Code and some other minor Acts. The court is not competent to inflict substantive sentence of imprisonment but it may impose fine not exceeding Rs. 100/-. No imprisonment can be awarded in default of payment of fine. The court can also bind over a person for keeping the peace for a period not exceeding 15 days. There is no provision for an appeal against the decisions of the panchayat courts but, revision lies to the Munsif in civil cases and to the Sub-Divisional Magistrate in criminal cases.

Cases before Panchayat Courts.

44. The following statement shows the civil and criminal work done by the panchayat courts from the years 1953 to 1956:

Statement showing the institution of Civil and Criminal Proceedings in the Panchayat Courts during the years 1953 to 1956

Year	Pending at the beginning of the year	Institution	Disposal	Balance at the ending of the year
	Civil			
1953 . . .	27,332	97,590	1,10,101	14,821
1954 . . .	14,821	88,242	90,624	12,439
1955 . . .	12,439	61,402	61,976	11,865
1956(*a*) . .	11,865	15,934	13,447	14,352
	Criminal			
1954 . . .	21,935	1,11,042	1,21,496	11,481
1955 . . .	12,550 (*b*)	67,368	63,457	16,461
1956(*a*) . . .	16,461	21,229	19,021	18,669

NOTE—(*a*) Figures for the year 1956 are not complete.
(*b*) It seems there is some discrepancy in figures.

It would appear from the above statement that a very large number of cases, both civil and criminal, have been disposed of by the panchayat courts. We understand that people are ordinarily satisfied with the decisions of the panchayat courts. This is evident from the fact that in only about 5 per cent of the cases revision applications are filed in the regular courts against their decisions. We have not got up-to-date figures with regard to the writ applications in the High Court against the decisions of the Nyaya panchayats but during the three years from 1950 to 1952, the High Court disposed of 295 such writ applications out of which in 253 cases (*i.e.* 79 per cent) the decisions of the panchayats were upheld.[1] Our general recommendations in regard to Panchayat courts are applicable to this State also.

Control over ministrial establishment.

45. Another feature which needs mention is that in this State even in respect of disciplinary action taken against a member of the ministerial establishment by the District Judge an appeal lies to the Government only. We would suggest that in the case of disciplinary action against members of the staff of subordinate courts by the District Judge, the High Court as the head of the judiciary should be the appellate authority.

[1]Village Panchayats in India, by H. D. Malaviya, page 308.

56.—WEST BENGAL

Area—Population.

1. Bengal was one of the two provinces that was divided into two as a result of the partition of the country in 1947. The French possession of Chandernagore was merged with the Hoogly district of the State by the Chandernagore (Merger) Act (XXXVI of 1954) and with certain areas transferred from Bihar by virtue of the Bihar and West Bengal (Transfer of Territories) Act (XI of 1956), the territory of this State extends over an area of 33,945 square miles spread over sixteen districts. The State has a population of 26,301,992 persons according to the last census.

Administration of justice in Calcutta.

2. Until the establishment of the City Civil Court and the City Sessions Court by West Bengal Acts XXI and XX of 1953 which came into force on the 23rd February 1957, only the High Court was exercising original civil and criminal jurisdiction in respect of all causes other than those cognizable by the Presidency Small Causes Court and the Courts of Presidency Magistrates. One of the terms of reference to the Judicial Reforms Committee for the State of West Bengal was, "whether the original side of the Calcutta High Court should have concurrent jurisdiction either (i) generally or (ii) in suits above a certain value."[1]

Original Side.

The Committee was unanimous in recommending the retention of the original side and the establishment of a City Civil Court but they were not agreed as to the limits of its jurisdiction.

The state of work on the original side of the High Court prior to the establishment of the City Civil Court will appear from the following statement.

TABLE No. 1

Year	Pending at the beginning	Instituted	Disposed of	Pending at the close of the year
1948	7636	4592	3089	9139
1949	9139	5368	4637	9870
1951	10549	5355	4864	11040
1952	11122	5241	4566	11797
1953	11875	4588	3419	13042
1954	13042	4247	3691	13598
1955	13598	3702	3562	13738
1956	13738	3600	3570	13768

[1]Report, 1951, page 1.

The suits instituted in the High Court, during the aforementioned years were those that were not triable by the Presidency Small Causes Court.

City Civil and Sessions Court.

3. Since 23rd February 1957, the original civil and criminal jurisdiction of the High Court has been curtailed by West Bengal Acts XXI and XX of 1953. Section 5 of the former Act provides that the High Court shall not have jurisdiction to try suits and proceedings of a civil nature not exceeding Rs. 10,000 in value, subject to the provisions contained in sub-sections (3) and (4) of that section and also of section 9. According to sub-section (4), suits and proceedings specified in the first schedule to the Act shall not be triable by the City Civil Court. Entries 2 to 9, 11, 12, and 15 of the first schedule read as under:—

2. Suits and proceedings relating to or arising out of shipping or navigation (including in particular carriage by sea, ships, cargo, freight, collisions, salvage, average, maritime lien, bottomry, respondentia, wages of seamen or master, and disbursements) not otherwise triable under entry 1.

3. Suits and proceedings relating to or arising out of carriage by air.

4. Subject to entry 1 and entry 2, suits and proceedings exceeding five thousand rupees in value,—

(i) relating to or arising out of import or export of merchandise, or

(ii) relating to or arising out of stock exchange transactions or futures markets, or

(iii) relating to or arising out of documents of title to goods as defined in the Indian Sale of Goods Act, 1930, or

(iv) arising out of transactions of merchants and traders relating to the buying or the selling of goods or relating to the construction of mercantile documents, or

(v) relating to or arising out of transaction of mercantile agents as defined in the Indian Sale of Goods Act, 1930.

5. Suits and proceedings exceeding five thousand rupees in value relating to or arising out of bills of exchange, hundies or other negotiable securities for money, letters of credit or letters of advice, but not suits and proceedings relating to or arising out of cheques, promissory notes or currency notes.

6. Suits and proceedings exceeding five thousand rupees in value for dissolution of partnership and for an account of partnership transactions.

7. Suits and proceedings relating to or arising out of mortgages of, or charges or lien on, immovable property.

8. Suits and proceedings for the administration of assets of deceased persons.

9. Suits and proceedings relating to or arising out of trusts or endowments.

11. Suits and proceedings under the Arbitration Act, 1940, other than suits and proceedings under Chapter IV of that Act.

12. Proceedings for the relief of insolvent debtors triable by the High Court.

15. Suits and proceedings triable by the High Court as a Court of matrimonial jurisdiction.

In effect therefore the jurisdiction of the City Civil Court is limited to Rs. 10,000 in value, excepting commercial causes in which its jurisdiction is limited to Rs. 5,000 and mortgage suits which it cannot entertain.

4. We may next examine the judge-power that is needed to cope with the work on the original side. We were told that usually six judges sit singly to dispose of the suits and proceedings arising on the original side. In 1956, one judge sat for six days to hear suits, matters, applications and other matters, three judges sat separately but simultaneously for five days, four judges for thirty days, five judges for ninety-five days, six judges for fifty-two days and seven judges for four days. For the rest of the period, they were engaged in hearing insolvency cases, original side appeals, cases reported under chapter V, Rules 2 and 3 of the Original Side Rules and criminal cases, criminal appeals and other matters arising on the Original Side. In spite of the fairly large number of judges employed for the determination of civil and criminal matters on the Original Side, the arrears have been progressively on the increase, as is evident from the figures given in the Table No. 1 above and in the Table set out below:—

TABLE No. 2

Nature of proceedings	1954			1955			1956			Pending on 1-1-57
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	
1. Appeals from Original Side including Letters Patent Appeals and Writ Appeals .	288	175	139	324	182	102	404	208	155	457
2. Leave to appeal to Supreme Court	..	13	13	..	15	15	..	20	20	..
3. Original Suits . . .	13042	4247	3691	13598	3702	3562	13738	3600	3570	13768
4. Miscellaneous . . .	426	398	351	473	509	428	554	424	440	538
1. Criminal Appeals . .	2	24	24	2	35	26	11	25	30	6
2. Criminal Sessions . .	51	72	69	54	63	72	45	62	54	53

The establishment of the City Civil Court in 1957 had not the effect of reducing the number of pending proceedings in the High Court on its Original Side as section 20 of the Act XXI of 1953 specifically prohibits the transfer of any suit or proceeding pending in the High Court to the City Civil Court.

5. As in a few other States petitions under Article 226 of the Constitution of India are in this State laid before a Judge of the High Court sitting singly both for admission and later for final disposal. We were informed that in many cases long delays had occurred in the disposal of these petitions after rules had been issued and that in many cases the relief prayed for had become infructuous when the matters came up for hearing. During the three years preceding 1957 the writ business transacted by the High Court was as under:—



TABLE No. 3

1954			1955			1956			
Pending at the begiqning	Institu-tions	Disposed of	Pending at the beginning	Institutions	Disposed of	Pending at the beginnng	Institutions	Disposed of	Pending at the close of the year
353	701	459	595	647	585	657	1067	513	1211

We were further informed that quite a number of writ petitions pending on 1-1-1957 were more than two years old. Such delays in the disposal of these petitions defeat the very purpose of this extraordinary remedy and are a negation of the administration of justice. Measures must be immediately devised to scrutinize these petitions at the admission stage so that the obviously unsustainable ones may be weeded out at that stage, to quicken the pace of their hearing which at the moment appears to be a very leisurely pace and if necessary to make available for their disposal more judge-power. In this respect the High Court of this State may well follow the example of some other High Courts.

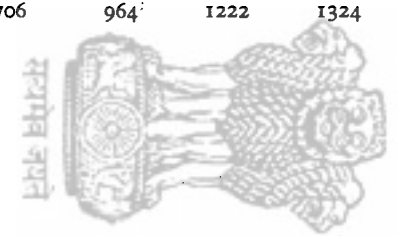
It appears that approximately only 15 to 20% of the judgments pronounced on writ petitions are taken in appeal. The fact that the number of judgments in writ matters that go up in appeal is small, would appear to show that the litigants are satisfied with the pronouncements made by a judge sitting singly. To minimise delays at the appellate stage the advisability of introducing the practice obtaining in Madras of posting writ appeals for admission may be considered.

6. There are inordinate delays in the disposal of suits on the Original Side. The year of the institution of the 13768 original suits pending on 1-1-1957 is given below:— High Court.

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TABLE NO. 4

1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	Total
91	167	259	470	715	706	964	1222	1324	1433	1615	1854	2722	13542



NOTE.—There is a difference of 226 between the actual number pending and the total given in this statement which cannot be explained.

It appears that the time of the judges on the Original Side is largely occupied in hearing what are really "Small Causes" for a High Court. Before 23rd February, 1957, the day on which the City Civil Court started functioning—all the commercial causes valued above Rs. 2,000 were tried by the High Court. The creation of the City Civil Court with its existing jurisdiction has not substantially relieved the congestion in the Original Side. According to the Chief Justice of the High Court the considerable congestion of suits and other proceedings on the Original Side is in some measure due to the fact that "the Attorneys take no steps to bring the commercial causes to a stage of hearing, but allow them to remain on the file of the court as a useless load to be carried from year to year." Delays in the disposal of proceedings are, also in some measure attributable to the procedural rules of the court which have been described as archaic and cumbrous. The main reasons for the accumulation of arrears in the High Court would however appear to be the increase in the volume of litigation, and the inadequacy of the judge-strength. Though the territorial jurisdiction of the Court has considerably shrunk since the partition, the actual institution of certain categories of proceedings has instead of diminishing, increased substantially, and the number of institutions of other categories of proceedings has remained nearly the same as before the partition. This will appear from the Table given below:— Increase of work.

TABLE NO. 5

Nature of Pending	Number instituted in		
	1945	1950	1955
1	2	3	4
First Appeals from decrees	378	339	345
Second Appeals from decrees	1860	1012	1650
Letters Patent Appeals	25	21	9
Civil Revision Petitions	916	1098	2909
Appeals against orders including against appellate orders	476	204	420
Original Suits	1910	5203	3702
Appeals			
Under Section 410 Cr. P. C.	842	259	390
Under Section 417 Cr. P. C.	22	6	13
References			
Under Section 307 Cr. P. C.	33	9	11
Under Section 341 Cr. P. C.	..	..	6
Under Section 374 Cr. P. C.	13	6	3
Under Section 432 Cr. P. C.	1	..	11
Revisions			
Under Section 435 Cr. P. C.	1703	1187	1634
Under Section 438 Cr. P. C.	214	94	94
Under Section 476 Cr. P. C.	6	2	3
Under Section 526 Cr. P. C.	133	50	104

NOTE.—The figures relating to the Criminal proceedings shown under the year 1950 relate to the year 1949. In 1945, the jurisdiction of the High Court extended to Assam, and what is now East Bengal.

In addition to the above, 23 sessions cases were disposed of in 1946, 76 in 1949 and 72 in 1955, in the High Court.

The factors which have contributed to the increase in the volume of litigation and the consequent accumulation of arrears are thus described by the Chief Justice of West Bengal. "Numerous Acts have been passed in recent years, creating more and more work for the High Court of such variety and volume that the Court has been fully extended in dealing with that new work alone, with the result that its normal work, which had previously lain in suits, appeals and other proceedings under the general laws, had to a considerable extent to be put aside. The Bengal Agricultural Debtors' Act brought in a volume of work which almost overwhelmed the Court; soon followed the Bengal Money Lenders' Act, the contribution of which was equally voluminous; and then came a succession of Rent Control Orders and Acts, giving rise to an enormous number of appeals and revisions. In the sum, five judges of the Court have remained continuously occupied with work arising out of these special legislative Acts. There was again the Banking Companies Act which had the effect of transferring to the Court all proceedings, pending anywhere in India, with which any of the over 70 Banking Companies which had gone into liquidation and which had their head-offices in Calcutta was concerned. Misfeasance summonses taken out in connection with these liquidations have been so many in number that a Judge, in addition to the Company Judge, had to be particularly assigned for their disposal and sanction for a special staff had to be obtained. The scale on which those summonses are being prosecuted is vast, the charges involving crores of rupees and the evidence comprising not only the oral testimony of hundreds of witnesses, but also books of account and correspondence running into thousands of pages in each case. One of the reasons why company matters and commercial causes have to a large extent been held up during the last two years has been the sudden emergence of Misfeasance Summonses which had to be taken up at once. Then again, Income-tax References have increased from 30 to 40 a year to over 200 a year; the number of References under the Chartered Accountants Act is steadily growing and the same is the case with appeals under the Workmen's Compensation Act. On the criminal side, commitments have grown so much in number that not only has one Judge to preside over the Sessions throughout the year without any break, but at times a second judge has had to be provided for dealing with specially big cases which could not be heard by the Judge, taking the ordinary list, without the hearing of the rest of the cases being indefinitely postponed. Criminal appellate work has also increased considerably, not only because of the rise in the number of cases of the ordinary type, but also because of new work being thrown on the Court by new legislations. The several Criminal Law Amendment Acts have on the one

hand provided for the hearing of criminal cases of unusual gravity and complexity and on the other hand they have provided for appeals to the High Court on facts. It has been a common experience to find cases, heard before a Special Judge or Tribunal for two or three years in the course of which evidence, sufficient to fill 20 or 30 volumes of paper book, was admitted and the case then coming up with all that evidence to the High Court on appeal."

The accompanying Tables (Tables Nos. 6 and 7) will clearly show that arrears have been progressively increasing and that certain categories of proceedings have been pending for over a decade.

In spite of the increase in the number of judges since the partition, the arrears have not been brought under control. We doubt whether even the recent appointment of four additional judges for a term of two years, will result in reducing the arrears and bringing the file under control. In our view the real remedy lies in relieving the High Court of certain categories of proceedings, which can, with confidence, be entrusted to the City Civil and Sessions Court, and the District Courts.

City Civil and Sessions Court.

7. We shall first consider how the constitution and set-up of the City Civil Court and the City Sessions Court can be altered so as to afford greater relief to the Original Side of the High Court. The City Civil Court started functioning with four judges including the chief judge with powers to try, as already stated, commercial causes valued upto Rs. 5,000 and other causes valued upto Rs. 10,000, subject to certain exceptions. From 23rd February, 1957 to 28th March, 1957, eighteen title suits, ten money suits, four commercial suits, seventeen applications for succession certificates and two petitions under the Guardian and Wards Act were filed in this Court. We do not have complete statistics to show whether there has been adequate work for the judges of this Court or not; but, if the average monthly institution were to be approximately what it was during the period of about one month (figures for which are given above) we should think that the work of the Court is light. Even if the work were to considerably increase in view of what we propose to recommend, it can be satisfactorily and expeditiously dealt with by increasing the number of judges.

The West Bengal Judicial Reforms Committee recommended *inter alia* that mortgage suits were to be cognizable only by the High Court on the ground that they could be tried cheaply and expeditiously on the Original Side. The reason underlying the recommendations appears to be the fact that as many mortgage suits are uncontested, the mortgagee can without paying an *ad valorem* court fee get relief cheaply. There would appear to be no particular

TABLE No. 6

Nature of Proceeding	1954			1955			1956			
	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending at the beginning	Institutions	Disposal	Pending on 1-1-1957
1	2	3	4	5	6	7	8	9	10	11
Regular First Appeals . .	970	280	197	1,053	345	193	1,205	345	270	1,280
Regular Second Appeals . .	4,638	1,430	1,679	4,389	1,650	1,401	4,638	1,021	765	4,894
Appeals against orders . .	625	477	436	666	420	568	518	420	355	583
Letters Patent or Special Appeals	4	12	3	13	9	7	15	8	10	13
Writs	353	701	459	595	647	585	657	1,067	513	1,211
Reviews	..	6	6	..	4	4	..	4	4	..
Revisions	2,450	3,118	2,816	2,752	2,909	2,529	3,132	3,225	2,690	3,667
References	3	6	5	4	5	6	3	6	6	3
Petitions for leave to appeal to the Supreme Court . .	11	32	30	13	37	28	22	58	57	23
Miscellaneous . . .	8	13	15	6	12	13	5	9	11	3
Criminal appeals . . .	186	350	338	198	403	374	227	708	509	426
Criminal revisions . .	631	1,505	1,699	437	1,745	1,609	573	1,723	1,617	679

Confirmation Cases . . .	..	4	3	1	3	4	..	11	6	5
References under Sec. 307 Cr. P.C.	3	19	15	7	11	15	3	17	13	7
Other references	..	1	1	..	3	1	2	2	1	3
Miscellaneous	28	211	219	20	253	251	22	159	164	17

Table No. 7

Nature of Proceeding	Year of Institution												
	1944 & earlier	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
Regular First Appeals	..	..	1	1	4	10	18	51	146	193	205	315	336
Regular Second Appeals	8	2	..	7	66	23	61	558	539	875	841	1044	870
Appeals against Orders	..	..	..	..	..	..	3	3	3	10	67	207	290
Letters Patent Appeals	..	..	..	..	..	..	1	1	..	..	3	2	6
Revisions	..	..	..	1	..	5	4	5	30	88	352	679	2,503
References	..	..	..	..	..	..	..	..	..	..	..	..	3
Miscellaneous Cases	..	..	..	..	..	..	..	..	..	..	..	..	3
Criminal Appeals	..	..	..	..	..	..	..	..	..	..	..	95	331
Criminal Revisions	..	..	..	..	..	..	..	..	..	..	2	47	630
Confirmation Cases	..	..	..	..	..	..	..	..	..	..	..	..	5
References under Sec. 307 Cr. P.C.	..	..	..	..	..	..	..	..	..	..	..	..	7
Other References	..	..	..	..	..	..	..	..	..	..	..	1	2
Miscellaneous	..	..	..	..	..	..	..	..	..	..	..	1	16

Original Civil Suits .	91	167	259	470	715	706	964	1222	1324	1433	1615	1854	2722
Appeals from Original Side including Letters Patent Appeals and Writ Appeals .	..	..	..	..	..	..	7	8	23	54	60	113	192
Criminal Appeals .	..	..	..	1	..	..	..	..	..	..	..	1	4
Others including Insolvency cases, Company Matters and Criminal Sessions .	1	2	1	Nil.	1	2	4	6	11	6	38	60	146

reason why a money-lender residing within the limits of the ordinary original jurisdiction of the High Court should be placed in a privileged position as compared with other money-lenders. In our view, mortgage suits should be excluded from the jurisdiction of the High Court, provided the value of such a suit is Rs. 10,000 or less in view of our recommendations in the chapter on "Original Side of the High Court" that the City Civil Courts should have a pecuniary jurisdiction to try suits valued upto Rs. 10,000. We, therefore, recommend that entry 7 in the first schedule of the West Bengal Act XXI of 1953 should be deleted. Subject to the pecuniary limit suggested by us, suits of the nature specified in entries 2 to 6, 8, 9, 11 to 13 and 15 should also be instituted in the City Civil Court in order that the High Court may be left with time to adjudicate upon really complicated matters. Therefore, we also recommend the repeal of the said entries in the first schedule. Section 10 of the Act provides for the retrial of a suit or proceeding in certain circumstances. There would appear to be no parallel provisions any where in India so far as civil suits are concerned. Such a provision is bound to affect the expeditious disposal of suits and proceedings and should in our opinion, be repealed. In brief we recommend that the jurisdiction of the City Civil Court be raised to Rs. 10,000 in all matters and that all suits below that value now pending in the High Court be transferred to that court. If necessary the city civil court may be suitably strengthened.

A perusal of the figures given in Tables 6 and 7, will show that the criminal judicial work is also in considerable arrears. Section 4 of the West Bengal Act XX of 1953 provides for the appointment of the Chief Judge and the other judges of the City Civil Court as Chief Judge and judges of the City Sessions Court also. The first schedule to the City Sessions Courts Act, 1953, setting out the cases that the court cannot try contains the following eight entries:—

1. An offence punishable under section 131, section 132, section 133 or section 134 of the Indian Penal Code.

2. An offence punishable under section 302 of the Indian Penal Code.

3. An offence punishable under section 396 of the Indian Penal Code.

4. An offence punishable under section 468 or section 477A of the Indian Penal Code.

5. Any criminal conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clauses (3) and (4).

6. Any criminal conspiracy to commit or any abetment of the offence specified in clause (2).

7. An offence punishable under section 307 of the Indian Penal Code.

8. Any criminal conspiracy to commit any of the offences specified in clause (1).

In our opinion the schedule is full of anomalies. For example, whereas an offence under section 302 I.P.C. for which the court can impose a sentence of death or imprisonment for life is exclusively triable by the High Court, an offence under section 303 for which the only penalty is the sentence of death is triable by the City Sessions Court.

The jurisdiction of the court is more limited than even that contemplated by the West Bengal Judicial Reforms Committee which recommended[1] that "the ordinary criminal work arising within the limits of the ordinary original jurisdiction of this Court should be done by a City Sessions Court". This recommendation was, it appears, not accepted.

The City Sessions Courts in Bombay and Madras which have been established much earlier than the Calcutta Court possess all the powers which the High Court did in the respective States in exercise of its Ordinary Original Criminal Jurisdiction. The evidence given before us revealed that the City Sessions Courts in those States were functioning efficiently. There is no reason why the court should not be able to deal with these matters in Calcutta. We therefore recommend that the City Sessions Court be given exclusive jurisdiction and the Ordinary Original Criminal jurisdiction of the High Court be abolished. This will result in a substantial saving of the judge power in the High Court.

Powers of a Single Judge.

8. We are also of the view that the powers of a judge of the High Court sitting singly should be increased. Under the rules in force at present, a single judge cannot hear first appeals of any valuation and second appeals valued above Rs. 2,000. On the criminal side, a judge of the High Court sitting singly can hear all appeals, references or revisions other than those against sentences of death, transportation for life, penal servitude, forfeiture of property or of imprisonment not being a sentence of imprisonment in default of payment of fine. He cannot hear an appeal under section 476B nor an application under section 526 Cr. P.C. Again, on the civil side, a single judge cannot admit or otherwise dispose of an application under section 115 C.P.C., if the amount or value of subject matter exceeds Rs. 2,000 nor can he deal with an appeal under section 29(a) of the West Bengal Premises Tenancy Act (XII of 1956) if the appeal is valued above Rs. 2,000. We recommend the enlargement of the powers of a single judge so as to include first appeals and cross objections valued upto Rs. 10,000 and all second appeals and cross objections irrespective of valuation. We also recommend the enlargement of the criminal jurisdiction of a single judge so as to embrace all types of matters

[1]Report, page 20.

other than those involving sentences of death or transportation for life. The following Table will show the number of first and second appeals of different valuations instituted in the High Court during the triennium ending with the year 1956.

TABLE No. 8

	1954	1955	1956
REGULAR FIRST APPEALS			
Below Rs. 5,000 . .	69	85	93
Between Rs. 5,000 and Rs. 10,000 . .	101	131	138
Above Rs. 10,000 . .	110	129	114
REGULAR SECOND APPEALS			
Below Rs. 1,000 . .	1,131	1,255	757
Between Rs. 1,000 and Rs. 2,000 . . .	157	188	154
Between Rs. 2,000 and Rs. 5,000 . . .	142	207	110

It will be clear from the above statement that assuming that about 120 second appeals valued above Rs. 2,000 are posted for disposal in a year and that about three such appeals are disposed of per day, by the proposed enlargement of powers of a single judge forty judge days can be saved per year in the time occupied in the disposal of second appeals. Similarly very substantial saving in judge days will also result in the disposal of first appeals and criminal appeals and revisions. We have dealt elsewhere with views expressed against the enhancement of the powers of a single judge of the High Court. Strong views were expressed against such enhancement by some members of the Bar and Bench. It is true that a Bench of two judges is in some ways better than one. A reluctance to a change in a long established practice is also natural and appreciated. The matter however needs a more realistic approach in view of our changed and changing conditions. The administration of justice has to function in the present setting. In a number of ways established methods which may be ideal have to yield to practical considerations. We have to face the increased volume of new types of litigation and the accumulated arrears which cannot be dealt with by the old methods even if the strength of the High Court were doubled. Other established High Courts have enhanced the powers of single judges in various directions and the measure has in no way worked any injustice and caused any dissatisfaction. There is no reason to expect that the method which has worked successfully in Madras and Bombay should not work equally well in Calcutta.

9. The appellate jurisdiction of a District Judge in this State has recently been enhanced to Rs. 10,000 but the amendment does not apply to suits instituted prior to its coming into force. It appears to us to be necessary to make the amendment retrospective if the appellate work coming to the High Court is to be reduced. As the number of such appeals pending in the High Court is substantial, we recommend accordingly.

10. We feel compelled to draw attention to some matters which we think have considerably affected the prestige and efficiency of what was once the premier High Court in the country. We could not fail to notice that the selection of the personnel of the Court had suffered owing to adoption of methods which made a number of senior members of the Bar look askance at the judicial office. There would appear also to be a want of cohesion and harmony in the court itself which makes it difficult for its judiciary to work as a united team putting forward its best effort. "A want of a sense of responsibility" was the expression used by one of the judges themselves to describe the way in which the functions of the court were discharged. Absence of a control of proceedings and unlimited latitude to senior counsel were some of the features brought to our notice. The Court has also the disadvantage of functioning under some archaic rules and procedures. Finally, it appears that there is a complete want of co-operation in administrative and other matters between the court and the State executive. We bring these facts to the notice of the authorities concerned so that measures may be taken which may lead the High Court to function as a High Court should.

Presidency Small Causes Court.

11. A Court of Small Causes established under the provisions of the Presidency Small Causes Court, 1882, functions within the limits of the Ordinary Original Jurisdiction of the High Court. There is also a Small Causes Court established under the Provincial Small Cause Courts Act at Sealdah in the City of Calcutta. It exercises jurisdiction over the territory comprising the Municipal Corporation of Calcutta excluding the area under the territorial jurisdiction of the Presidency Small Causes Court.

The Presidency Small Causes Court is presided over by six judges including the Chief Judge; the latter is of the rank of a District Judge while the former are of the rank of Subordinate Judges. This Court, among other matters deals with litigation arising within its territorial jurisdiction for the ejectment of tenants under the Rent Control Act in the case of non-payment of rent upto a maximum of Rs. 5,000 and also hears appeals against the decisions of the Rent Controller. The judges of this Court are also Controllers under the Calcutta Tikha Tenancy Act, 1949.

The High Court has concurrent jurisdiction to entertain Small Cause Suits valued between Rs. 1,000 and Rs. 2,000 and, under section 39 of the Presidency Small Cause Courts

Act, can transfer such suits to its file. We understand that this section as suggested by us earlier has now been repealed in West Bengal.

In the year 1956, 7,673 suits (2,172 for ejectment and 5,501 Small Cause Suits) were instituted in the Presidency Small Causes Court. The total number of suits available for disposal was 14,199. During the same year, 2,592 ejectment suits and 6,174 small cause suits were disposed of leaving a balance of 5,424 made up of 2,129 suits for ejectment the remaining small cause suits. The file of Court appears to be under control. At the beginning of 1955, the total number of the pending suits was 6,174 whereas at the beginning of 1956 it was 5,424. Nevertheless, the existing arrears some of which relate to suits pending for over a year need to be cleared. For this purpose, in the opinion of the Chief Judge of the Court, one more judge is required for a period of about a year.

Courts of Presidency Majistrates.

12. The magisterial work in the city of Calcutta is carried out by the Chief Presidency Magistrate assisted by an Additional Chief Presidency Magistrate, 8 Stipendiary Magistrates and Honorary Magistrates whose number varies from time to time. There are also municipal magistrates who deal with municipal cases. In 1957, in addition to the Stipendiary Magistrates, there were 13 Honorary Magistrates. Out of the 8 Stipendiary Magistrates one is a Deputy Collector. The Stipendiary Presidency Magistrates get the grade pay of Munsifs plus a special pay of Rs. 100 per mensem. The system of mobile courts obtaining in Madras has been introduced in the city of Calcutta, though not so extensively as in Madras. The Chief Presidency Magistrate who gave evidence before us stated that once a week a Magistrate goes round the city holding Court at different places and that the system had worked well though the percentage of convictions was less. He favoured the extension of the system of Magistrates going in circuits and added that it could not be done on account of dearth of hands.

There has been a considerable increase in the volume of work brought before the courts of Presidency Magistrates as will appear from the Table given below:—

TABLE NO. 9

Nature of proceeding	1945		1951		1955		1956	
	Instituted	Disposed of	Instituted	Disposed of	Instituted	Disposed of	Instituted	Disposed of
Cases under the I.P.C. .	5073	N.A.	7582	N.A.	6608	N.A.	5753	N.A.
Cases under the special and local laws .	69958	74223	133127	133306	123187	127797	150458	130818
In the Courts of Municipal Magistrates .	17612	17607	30767	30791	N.A.	N.A.	N.A.	N.A.

The arrears are however not such as to call for particular comment. The Chief Presidency Magistrate told us in his evidence that the Presidency Magistrates "have the cleanest record of all criminal courts in the State." He said also that in case the number of mobile courts was to be increased, the existing strength would not be sufficient to preside over the stationary courts.

The State Government, in consultation with the High Court, has prescribed the qualifications for honorary Magistrates and honorary Presidency Magistrates under section 14 of the Criminal Procedure Code. Appointments to the posts of honorary Magistrates are made from amongst the following classes of persons: (1) retired stipendiary Magistrates or judges who are willing to serve in an honorary capacity; (2) former Honorary Magistrates particularly those with a high standard of education and good record of judicial work, and (3) other suitable persons with high educational qualifications and adequate means of livelihood. Ordinarily, a person who is not a graduate is not considered suitable. In the case of women, however, the educational standards are relaxed where they have considerable experience of social work.

A panel of eligible persons is prepared for each district and appointments are made from among persons enlisted in it.

Honorary Magistrates are ordinarily given simple cases, but able and experienced persons are given important cases also. The following Table (Table No. 10) will show that the Honorary Magistrates other than the Honorary Presidency Magistrates have disposed of a substantial amount of work:

TABLE NO. 10

Year	Total number of cases disposed of by magistrates	Number of cases disposed of by the honorary magistrates out of the total shown in column 2
1951 .	1,72,411	25,874
1952 .	1,67,724	20,545
1953 .	1,99,833	11,257
1954 .	2,07,087	15,055
1955 .	2,10,389	14,427

Calcutta City.

13. We cannot but advert to the anomalous situation which divides the City of Calcutta into as it were three areas falling into three distinct jurisdictions. The High Court functions within the limits of its ordinary original civil jurisdiction. The jurisdiction of the City Civil Court would appear to extend also within the same limits.

Outside these limits the city is on the one side covered by the District of 24 Parganas and on the other by the District of Howrah with their separate judicial set-up and machinery. We are of the view that the question whether the whole city should not be under one cohesive judicial administration, like greater Bombay, needs consideration by the authorities concerned.

14. The Subordinate judiciary in the State is divided into two services—the West Bengal Higher Judicial Service and the West Bengal Civil Service (Judicial). The District and Sessions Judges and Additional District and Sessions Judges are in the former service while the Subordinate Judges (most of whom work as Assistant Sessions Judges) and Munsifs are in the latter service. The cadre strength of the West Bengal Higher Judicial Service was originally fixed at 36 but was recently raised to 44 and that of the West Bengal Civil Service (Judicial) was 170 before being raised to 185 in 1956 with the recruitment of 15 probationary Munsifs.

The recruitment to the West Bengal Civil Service (Judicial) is by a competitive examination conducted by the State Public Service Commission. The candidates are required to have a degree in law and must be below 27 years of age. The applicants have to sit for a written examination in which law and allied subjects have preponderence. The candidates also have to appear for a *viva voce* test before the Commission. The High Court is represented, usually by the Registrar, Appellate Side, at the interviews held by the Public Service Commission. There is no bar to members of the ministerial staff of the High Court and the subordinate courts appearing at the examination but the prescribed age limit stands in their way. There is no system of promotion to the posts of Munsifs from among members of the ministerial staff of any service; the cadre strength of the service is filled solely on the basis of the results of the competitive examination.

The posts in the West Bengal Higher Judicial Service were formerly filled entirely by promotion of members of the West Bengal Civil Service (Judicial). It appears that recently some recruitment has been made directly from the Bar.

District and Sessions Judges and Additional District and Sessions Judges are in the time scale of Rs. 800—50—1,000—60—1,300—50—1,800 and Subordinate Judges in the time scale of Rs. 750—25—850. The latter class of officers are all promoted from the cadre of Munsifs, there being no provision for direct recruitment. Originally two posts were included in the selection grade—one of Rs. 1,000 and the other of Rs. 1,200, and only officers appointed before 1931 could be promoted to those selection grade posts. The selection grades which were discontinued for some time were revived in 1950 consequent upon the revision of pay

scales and it was provided that three per cent of the cadre strength of those posts should be included in the selection grade upto Rs. 1,000. Munsifs are in the scale of Rs. 250—700.

It has been stated by quite a number of witnesses including the judges that considerable difficulty is being experienced in the matter of selecting capable youngmen to the judicial service in view of the fact that the majority of intelligent young men seek other professions that are more lucrative. We have earlier referred to the opinion of a responsible person in regard to the standard of recent recruits to the West Bengal Civil Service (Judicial). At this juncture it will be useful to compare the pay scales of the judicial and executive branches of the State Civil Service so as to have an idea whether the scales applicable to the members of the State Judicial Service are sufficiently attractive to bring in the best men.

The Deputy Magistrates and Deputy Collectors in the West Bengal Civil Service (Executive Branch) are in the pay scale of Rs. 250—25—850 (E.B. at the 10th and 18th stages) whereas Munsifs as already observed are in the scale of Rs. 250—700. The maximum age limit for entrants to the executive branch is 25 and the requisite qualification is only a degree, whereas an entrant to the judicial service must have a law degree in addition which means that a candidate will be able to enter the judicial service about two or three years later than a candidate could enter the executive service. The members of the judicial service who take up their appointments at a later age have to be content not only with the same initial start at a higher age but as Munsifs their pay ends at Rs. 700. By the time these officers expect to be promoted as subordinate judges (which will usually happen after they have put in about sixteen years' service), an officer in the executive branch will generally have been promoted to a senior executive post. It is not surprising therefore that the better type of candidates do not enter the judicial service but prefer the executive service or other avenues of employment.

Inadequacy of officers.

15. Several judicial officers and advocates commented on the great inadequacy of officers to preside over courts and expressed dissatisfaction at the posting of probationary munsifs to a large number of courts. An instance was given of a particular munsif being placed in charge of two Munsifs' Courts and in addition being invested with the powers of a First-class Magistrate with a direction to do magisterial work for two days in a week. It was stated that additional judges were posted only when the arrears went beyond control and not when the accumulation of work started. These criticisms appear to be well-founded for, according to the information made available to us, a number of Courts were kept vacant during the period 1955-56 and for three months in 1957 as will appear from the Table set out below (Table No. 11):—

Table No. 11

Names of Courts	1955			1956			1957		
	No. of days vacant	From	to	No. of days vacant	From	to	No. of days vacant	From	to
1	2	3	4	5	6	7	8	9	10
Addl. Dist. Judge, 3rd Extra Court	..	..	..	304	4-2-56	4-12-56	..	..	..
Subordinate Judge, 3rd Court	..	..	..	11	19-7-56	29-7-56	..	..	..
Do. 4th Court	17	14-5-55	30-5-55	5	19-4-56	23-4-56	..	..	..
Do. 5th Court	11	2-9-55 10-10-55	7-9-55 14-10-55	8	17-4-56	24-4-56	..	..	..
Do. 6th Court	..	..	..	88	19-2-56 3-4-56 9-9-56 5-11-56	1-4-56 18-4-56 1-10-56 11-11-56	..	..	..
Do. 7th Court	19	17-4-55	6-5-55	..	..	..	40	18-2-57	29-3-57
Do. 8th Court	3	18-4-55	20-4-55	3	8-12-56	10-12-56	35	23-2-57	29-3-57
Do. 10th Court	..	..	..	2	4-12-56	5-12-56	23	6-3-57	29-3-57
Do. 1st Addl. Court	..	..	..	34	15-1-56	17-2-56	..	..	..
Total	50			455			98		

TABLE No. 11—*contd.*

1	2	3	4	5	6	7	8	9	10
1st Addl. Munsif, Alipore .	..	..	..	6	24-4-56	29-4-56	..	..	..
1st Addl. Munsif, Sealdah .	..	..	..	7	26-5-56	1-6-56	..	..	..
2nd Munsif, Baraset .	172	21-1-55	10-7-55	39	2-1-56	9-2-56	..	..	..
1st Munsif, Basirhat .	379	2-12-54	15-12-55	9	9-12-56	16-12-56	..	..	..
2nd Munsif, Basirhat . .	20	4-5-55	22-5-55	..	..	..	..	..	..
3rd Munsif, Basirhat . .	..	..	..	29	2-11-56	30-11-56	..	..	..
2nd Munsif, Baruipore .	..	..	..	10	4-5-56	13-5-56	..	..	..
1st Munsif, D. Harbour .	12	19-6-55	30-6-55	..	..	..	..	..	..
2nd Munsif, D. Harbour .	6	12-7-55	17-7-55	9	18-8-56	26-8-56	..	..	..
3rd Munsif, D. Harbour .	15	22-5-55	5-6-55	15	5-8-56	19-8-56	9	26-1-57	3-2-57
TOTAL . .	604			123			9		

During the period from 5-11-56 to 29-3-57 *i.e.* the time of the present District Judge, 4 Asstt. Sessions Judges' Courts were vacant for 110 days.

16. A comprenensive scheme for training Munsifs after recruitment is in operation. The candidates remain on probation for two years during which period they are required to undergo training in various departments in the offices of the District and Sessions Judge and the Collector and pass certain departmental examinations. After he receives certificates from the District and Sessions Judge and the Collector to whom he is attached for training that he has diligently and successfully completed the course of training and after he passes the departmental examinations a Munsif is confirmed on his post. During the period of training the probationer has to sit with a Munsif and a Subordinate Judge for about 4 months, watch the proceedings in Court, prepare the case records and also study the working of the various administrative departments under the charge of the Munsif and the Subordinate Judge. Thereafter, he is placed under the Collector of the District for receiving training in general revenue work and magisterial work for about three months. He is then invested with the powers of a Magistrate of the Second Class, and actually tries cases and then reverts to the office of the District and Sessions Judge to receive training in civil and sessions work and to study the working of the various departments of the district court. He submits case records prepared by him to the District Judge for scrutiny. He has also to undergo survey and settlement training for a definite period. Training is also imparted in the conduct of cases by the Government Pleader and the Public Prosecutor. During the probationary period of two years, the candidate has to appear for departmental tests in tenancy laws and other laws both civil and criminal, High Court Civil Rules and Orders and accounts rules as contained in the High Court Civil Rules and Orders. He has also to pass a written and oral test in Hindustani by the higher standard. Training.

No doubt the system of training is comprehensive. But very often due to shortage of officers probationary Munsifs are straightaway and without their training being completed posted to courts to try cases. We were told that due to a shortage of officers the period of training has very often been curtailed; and it has even been dispensed with in some cases. We were told that of the munsifs recruited in 1955 none had completed his training and of the fifteen recruited in 1956 eleven had been withdrawn from training after periods ranging from one week to five months and posted to courts. This is very unsatisfactory as it is not necessary in this State for those recruited as munsifs to have had any practice at the Bar. We feel that the leaving of courts without officers is a lesser evil than posting raw and untrained persons as judges as they are more likely to do harm by their inexperience than to do good by disposing of cases. If it becomes necessary to dispense with training that should be done only in the case of candidates who have had experience at the Bar.

There is, however, no scheme for training Subordinate Judges in sessions work before they are vested with the powers of an Assistant Sessions Judge. Only a few selected senior Munsifs are vested with powers of the First-Class Magistrate and given training in criminal work for a period of two years. We consider that training is essential, so that persons who will ultimately be sessions judges, will have obtained a sufficient background of criminal law—and a knowledge of the working of magistrates' courts.

Munsifs' courts.

17. The regular Civil Courts in this State are constituted under the provisions of the Bengal, Agra and Assam Civil Courts Act (XII of 1887). Some years ago the pecuniary jurisdiction of all Munsifs was raised to Rs. 2,000. The High Court has powers, however, to confer upon Munsifs powers to try suits valued upto Rs. 3,000 and even upto Rs. 5,000 depending upon the length of service of the officer upon whom such enlarged powers are conferred. In view of the fall in the value of money we recommend that all munsifs should be empowered to try suits upto Rs. 5,000 provided that they have completed the requisite training.

It will appear from the accompanying Table (Table No. 12) that about 90 per cent of the suits are triable by Munsifs. Table No. 13 shows the judicial business transacted by these officers during the triennium preceding 1957.

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TABLE NO. 12

Year	Number of suits of value					Remarks
	Not exceeding Rs. 1,000/-	Exceeding Rs. 1,000 but not exceeding Rs. 2,000	Exceeding Rs. 2000 but not exceeding Rs. 5,000	Exceeding Rs. 5,000 but not exceeding Rs. 10,000	Exceeding Rs. 10,000	
1	2	3	4	5	6	7
1954	179964	4331	2749	916	839	
1955	167380	4357	2842	891	783	
1956	125912	4027	2742	904	814	

Table No. 13

Year	Original suits						Small cause suits	
	No. of Officers	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution
					Below one year	Above one year		
1954	82	51,521	1,57,383	1,56,994	42,288	12,908	3,978	13,412
1955	83	55,374	1,46,059	1,50,999	38,976	14,518	4,303	12,031
1956	87	53,664	1,06,899	1,13,151	33,709	17,840	3,706	10,007

Year	Civil Miscellaneous Cases & Petitions						
	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
		Below one year	Above one year				Below one year	Above one year
1954	13,186	4,244	235	8,149	18,978	19,008	7,468	920
1955	12,769	3,426	389	8,386	18,587	18,413	7,398	1,373
1956	9,996	3,396	470	8,769	17,832	17,458	7,787	1,726

From the figures given in the above Table it will be seen that though the total number of pending suits has not increased and has even fallen the number of suits and other proceedings pending for over a year has been steadily rising. This is due in part at least to a shortage of officers, the recruitment of inferior personnel, and the absence of training. This state of affairs in which about one-third of the pending suits are over a year old can be set right only by an increase in the number of munsifs. Such a measure is in our view immediately needed to prevent even a more difficult state of affairs supervening.

Courts of Subordinate Judges.

18. The situation in the Courts of Subordinate Judges is no better as will be seen from the figures given in the following Table (Table No. 14). Although the total number of pending suits has remained almost constant, the number of year old suits has increased. The figures given in the Table No. 13, will show that the Subordinate Judges have disposed of a substantial number of civil regular and miscellaneous appeals. If they are relieved of their civil appellate work, the work in these courts can be brought under control.

District Courts.

19. The highest court of Original Jurisdiction in the District is the one presided over by District Judge. Besides exercising administrative control over the subordinate judiciary in the District and disposing of civil appeals valued upto Rs. 10,000 and also sessions cases and criminal appeals against the judgments of First-Class Magistrates and Assistant Sessions Judges, the District Judge is called upon to try matters arising out of a number of special enactments such as are enumerated below:

(i) Under the Land Alienation Act, the District Judge has been vested with exclusive revisional jurisdiction against the orders passed by Revenue and other officers under the Act.

(ii) Under the Estates Acquisition Act, the District Judge has been given summary revisional jurisdiction against orders passed during cadestral survey. (There are about 500 such cases pending in Alipore District Court).

(iii) Divorce cases under the Special Marriage Act, 1954. Such cases are exclusively triable by the District Judge.

(iv) Divorce suits under the Hindu Marriage Act. These are to be heard by the District Judge or any other court notified. But as yet no other court has been so authorised.

(v) Railway Compensation cases under the Railways Act.

(vi) Transfer petitions to the Sessions Judge under section 528 Criminal Procedure Code.

TABLE No. 14

Year	Regular Civil Suits					Small Cause Suits				
	No. of officers	Pending at the beginning of the year	Institution	Disposal	Balance	Pending at the beginning of the year	Institution	Disposal	Balance	
					Below one year / Above one year				Below one year	Above one year
1954 . . .	39	6,532	3,234	3,964	2,700 / 3,942	901	2,109	2,239	847	86
1955 . . .	35	6,642	3,144	3,557	2,618 / 4,105	933	2,446	2,231	1,232	75
1956 . . .	36	6,723	3,224	3,291	2,781 / 4,496	1,307	2,909	2,465	1,786	189

Year	Civil Miscellaneous Cases & Petitions					Civil Appeals					Civil Miscellaneous Appeals				
	Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
				Below one year	Above one year				Below one year	Above one year				Below one year	Above one year
1954 .	1,535	3,841	3,947	1,250	224	2,235	158	3,365	923	1,287	352	73	1,161	295	80
1955 .	1,474	3,268	3,773	1,304	195	2,209	205	2,892	1.065	1,364	376	98	1,730	287	46
1956 .	1,499	3,926	3,591	1,614	278	2,429	175	2,766	962	1,673	332	79	1,739	428	99

(vii) Revisional jurisdiction against orders passed by Panchayat Courts.

(viii) Appeals against orders not recognising trade unions under the Trade Unions Act.

(ix) Matters under the Payment of Wages Act.

(x) Special Revisional jurisdiction under the Indian Oil Seeds Act.

(xi) The Criminal Law (Amendment) Act which provides for the trial of offences under the Prevention of Corruption Act by a Special Judge, takes away much of Sessions Judge's time as generally he acts as the Special Judge. Of course, where there is an Additional Sessions Judge, he is invariably empowered to deal with such cases. Experience has shown that generally petty corruption cases, which would ordinarily have been tried by magistrates as offences under the Penal Code are sent up to the Special Judge for trial in view of the procedural advantages available under the Prevention of Corruption Act.

The proceedings under the following Acts have normally to be initiated in the Court of the District Judge:—

(i) Land Acquisition Act.

(ii) Guardians and Wards Act.

(iii) Under Section 92, Civil Procedure Code.

The High Court has not authorised the District Judge to transfer cases under the Guardians and Wards Act to Subordinate Judges nor has it authorised any officer subordinate to District Judge to deal with these matters. We would suggest that powers to try and determine cases under special enactments be more widely conferred on subordinate judges.

The Subordinate Judges and Munsifs have been invested with powers to issue succession certificates within their pecuniary and territorial jurisdiction.

A perusal of the figures given in the accompanying Table (Table No. 15) shows that the total number of pending regular suits and appeals in the district courts has been progressively increasing. Immediate steps will have to be taken to bring down the arrears by appointing additional district judges at least for a term. This will be all the more necessary in view of the recent enhancement of the appellate jurisdiction of the District Judge which we have suggested should be given retrospective effect.

We have earlier noticed the chaotic conditions that obtained in the Alipore courts at one time with regard to civil appellate work as revealed in an inspection note and made suggestions in that behalf.

Table No. 15

Year	No. of Officers	Civil Suits					Small Cause Suits					Miscellaneous Civil Cases		
		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal
					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
1954	27	231	195	114	155	103	..	..	..	..	..	3,193	2,913	2,621
1955	29	258	259	143	195	119	..	..	..	..	..	3,487	4,734	3,737
1956	30	312	643	245	447	136	..	..	..	..	..	4,160	6,077	4,246

Year	& Petitions		Civil Appeals					Civil Miscellaneous Appeals				
	Balance		Pending at the beginning of the year	Institution	Disposal	Balance		Pending at the beginning of the year	Institution	Disposal	Balance	
	Below one year	Above one year				Below one year	Above one year				Below one year	Above one year
	16	17	18	19	20	21	22	23	24	25	26	27
1954	1,449	2,036	2,787	4,342	1,304	2,421	453	894	2,589	1,054	903	25
1955	2,617	1,629	2,872	4,465	1,267	2,644	572	925	2,842	960	1,236	40
1956	4,128	1,839	3,218	4,242	1,006	2,912	1,002	1,238	4,987	1,106	3,117	182

20. The existence of such a state of affairs so close to the High Court shows that inspection of the subordinate courts by the High Court is most essential, yet the practice of a regular and systematic inspection is not in vogue. The Judges do however, inspect courts when they find the time. During the last five years, we understand, only the Courts at Alipore Sadar, Howrah Sadar, Presidency Small Causes Court and the Courts in Andamans were inspected by the High Court. We understand that while the court is fully alive to the need for such inspections, it is not able to depute judges for this work due to the congestion in the High Court itself. Supervision and inspection.

Though the High Court Civil Rules and Orders contain a rule to the effect that the District Judge is to inspect courts at Sadar every year and the courts in mofussil stations once in two years, the rule seems to be more observed in the breach. We were told that inspection by the District Judges was not insisted upon by the High Court as the High Court Judges know that the District Judges were over-burdened with work. Recently however the High Court has begun to insist on District Judges inspecting subordinate courts regularly. But it is learnt that some District Judges make inspection duty a pretext to avoid judicial work. This tendency should be controlled but proper inspections nevertheless insisted upon.

The High Court has not laid down any minimum standard as to the quantum of work that has to be done by a judicial officer during a particular period of time. We were told that there was an attempt at laying down certain standards when Mr. Simpson was the Registrar and that it was found unworkable. There is no rule fixing any time-limit for delivery of judgments; but generally, Sessions Judges deliver the charges to the Jury within seven days; in civil cases, judgments, we were told, are delivered usually within 14 days. In the High Court, there used at one time to be considerable delays in the delivery of judgments but we understand that the Chief Justice has introduced a return in which matters reserved for judgments for over a period of time have to be shown. The introduction of this return has had, it appears, the desired effect and at present there appear to be no delays.

So far as the subordinate judiciary is concerned, a statement showing the cases in which arguments were heard and judgments pending from the previous month together with the dates on which arguments were heard and judgments delivered is to be submitted every month. This, to some extent, prevents unusual delays in the delivery of judgments. While recommending the framing of a rule fixing the period within which judgments should be delivered, we would like to observe that such a rule would be workable only if the presiding officers of courts are provided with necessary secretarial assistance. The Munsifs and Magistrates are at present not provided with stenographers. It is very necessary that every Munsif and

Magistrate be provided with a stenographer as is being done in several other States. The extra expense that will have to be incurred in providing a stenographer will be more than compensated by the increased efficiency and rapidity in disposing of matters and the consequent additional work that the judicial officers will be able to do by being relieved of their wearisome process of writing judgments in their own hand.

Criminal courts.

21. There is no separation of the judiciary from the executive in this State. The magistracy is under the direct control of the executive. The members of the magistracy are drawn from two services—the West Bengal Civil Service (Executive) and the West Bengal Junior Civil Service; officers drawn from the former service function as Deputy Collectors and Deputy Magistrates while those drawn from the latter service are known as Sub-Deputy Collectors and Sub-Deputy Magistrates. They combine in them both executive and judicial functions. At the head of the magistracy of the district is the Collector and the District Magistrate. Most of the witnesses who appeared before us in Calcutta favoured the immediate separation of the judiciary from the executive.

There is considerable delay in the disposal of criminal cases in this State. The Inspector General of Police who gave evidence before us stated that thousands of cases were pending in the mofussil courts because the officers in charge of those courts were pre-occupied with other administrative work and as they were insufficient in number. He said that in the Barrackpore Sub-division over 5000 cases under the Motor Vehicles Act were pending in one court alone. He stated that the police were experiencing enormous difficulties in producing witnesses before courts because of the inordinate delays in the disposal of criminal cases for, the witnesses felt that they were being inconvenienced in being made to attend the courts a number of times in view of the fact that they were not examined when they appeared for the first time in a particular case. A District Magistrate who gave evidence before us, admitted the existence of delays and stated that in view of his other pre-occupations he was able to devote very little time to the supervision of the magisterial work of his subordinates. We are in entire agreement with the view expressed by the Inspector General of Police that the separation of the executive and judicial functions is essential to the expeditious disposal of criminal cases.

Panchayat courts.

22. Notwithstanding the recommendations to the contrary of the West Bengal Judicial Reforms Committee, West Bengal Act (I of 1957) has made a provision for the establishment of Panchayat courts. Our general recommendations relating to this class of courts apply to this State also.

Concentration of courts.

23. There appears to be a concentration of courts at a number of stations in the State. The following Table

(Table No. 16) shows the distribution of judicial officers in the State in the year 1953:

TABLE No. 16

Strength of Judicial Officers in each State	Nos.
Stations with one Munsif only	22
Stations with two Munsifs only	10
Stations with three Munsifs only	6
Stations with one Munsif and one Subordinate Judge only	2
Stations with two Munsifs and one Subordinate Judge only	4
Stations with two Munsifs and two Subordinate Judges only	1
Stations with three Munsifs and two Subordinate Judges only	1
Stations with three Munsifs and four Subordinate Judges only	1
Stations with four Munsifs and four Subordinate Judges only	1
Stations with six Munsifs and twelve Subordinate Judges only	1
Stations with one Subordinate Judge only	4

In our opinion steps should be taken to decentralise courts as such a measure will also contribute to the expeditious disposal of cases. The usual complaint that cases have to be adjourned by reason of the lawyers' being busy in other courts will disappear. Justice will also be brought nearer to the litigant.

Miscellaneous.

24. There were serious complaints that the ministerial staff in many of the subordinate courts was inadequate. It was said that there were similar difficulties on the original side. The position in some of the mofussil courts was said to be so serious that the clerks were said to employ outsiders to finish the work and pay them out of their own pocket—obviously out of the illegal gratifications received by them. This is a sad state of affairs and the only remedy for it would appear to be to assess the staff requirements of the courts afresh and to appoint the necessary hands. The argument of financial stringency cannot be validly advanced in this case as this State appears to be making a large profit out of the administration of justice.

There would also appear to be room for greater delegation of financial powers to the High Court. We have elsewhere referred to the miserable and over-crowded buildings in which the subordinate courts are accommodated. We may mention here that even the High Court is not far better situated. The staff are over-crowded and if the strength of the court is further increased or more court rooms become necessary by increasing the powers of single judges the problem will become acute and nearly impossible of solution.

57.—MINISTRY OF JUSTICE AND IMPLEMENTATION OF RECOMMENDATIONS.

Governmental apathy and the problem of arrears.

1. The picture that has emerged from the foregoing chapters is not encouraging. The state of affairs which it discloses shows in several respects neglect and disregard of one of the primary functions of the State which is the administration of justice.

The altered conditions in the country led to an enormous increase in the load of work carried by the courts. The increase was so patent that no administration could have failed to notice it. Yet, notwithstanding the persistent cry of some High Courts for more judicial personnel and a larger number of courts, the administrations concerned failed to realise their responsibility in the matter. The equipment and building of court-houses received very little attention. Though we have been pouring money into a number of activities, the administration of justice has not seemed to be of enough importance to deserve more financial assistance. On the contrary, in a number of States not only has the administration of justice been starved so as to affect its efficiency, but it has also been made to yield revenues to the State. The inevitable consequence has been the vast volume of arrears not only in civil but also in criminal matters. We meet at conferences to discuss these arrears which are but the creation in a considerable measure of the inaction of the State itself.

Attitude of the Government of India.

2. The attention of the Government of India was drawn to the heavy arrears in civil courts even before the transfer of power. The question was examined by the Rankin Committee as far back as 1925. It made several recommendations. After the submission of the report of that Committee, the Government of India seems to have entered into a lengthy correspondence with several Provincial Governments and attempted some legislation to implement its recommendations. No substantial steps appear, however, to have been taken in this direction. The problem of arrears in the High Courts was considered by the High Court Arrears Committee in 1949. Not much appears to have been done by the authorities to implement the recommendations of this Committee. Its report seems merely to have been circulated to the State Governments and to the High Courts.

Divided responsibility for administration of justice.

3. Perhaps, the situation is partly the outcome of a divided responsibility in respect of these matters between the Central and the State Governments. The administration of justice is, under the Constitution, the exclusive concern of the State Governments. Criminal and civil procedure are matters in the concurrent field of legislation.

The constitution and the organization of High Courts and all matters relating to the Supreme Court are matters for Parliament and the Union Government.

It appears to us that the allocation of business relating to the administration of justice between the various Ministries of the Government is not such as to make for efficiency. There would appear to be no one Ministry or department on whom rests, in a general way, the whole responsibility for the administration of justice. Conventions with other countries in judicial matters, constitution and organization (excluding jurisdiction and powers) of the Supreme Court (but including contempt of such Court) and the fees taken therein, the constitution and organization of the High Courts and the Courts of the Judicial Commissioners except provisions as to officers and servants of these courts, the extension of the jurisdiction of a High Court having its principal seat in any State to and the exclusion of jurisdiction of any such High Court from any area outside the State, criminal law, criminal procedure and the administration of justice, jurisdiction and powers of courts in the Union territories are matters within the purview of the Ministry of Home Affairs. On the other hand, the Ministry of Law deals with treaties and agreements with foreign countries in matters of civil law, the enlargement of the jurisdiction of the Supreme Court, the conferring thereupon of supplemental powers, the persons entitled to practise before the High Courts, bankruptcy, evidence, civil procedure including limitation and arbitration and the legal profession. It is clear to us that such a division of functions between the two Ministries of the Government of India apart from being not logical, is bound to adversely affect the administration of justice. The division is archaic and seems to have its roots in days when the portfolio of law was often held by an Indian Member of the Governor-General's Executive Council while Home Affairs were entrusted to a European Member, it being the function of the latter department to maintain law and order. It is not unnatural that in those days the question of the appointment of Judges to the High Courts should have been left to the Home Department.

Inadequate organization for administration of justice.

4. Neither of the two Ministries as at present organised, would seem to possess the necessary equipment which would enable it to keep in touch with the administration of justice in the several States and to act as a clearing-house of information and ideas and generally to initiate and co-ordinate policies in this regard.

Though it is understood that State Governments and the High Courts have been periodically sending copies of their annual reports on the administration of civil and criminal justice to the Government of India, the information furnished by them does not appear to receive much attention at the Centre. We understand that when recently

the statistics relating to the number of pending matters in the High Courts were needed by the Government, the Home Ministry had to call for figures from the High Courts notwithstanding that some of them were contained in and ascertainable from the reports received by them from time to time. It should be noticed that the Ministry does not possess officials or officers with the background of an adequate knowledge of law and the working of law courts so necessary to a department of Government dealing with such technical matters as criminal procedure and the organization of the High Courts and the Supreme Court.

Nor can it be said that the Ministry of Law as at present organized is in a position to deal effectively with these matters. That Ministry appears to have so far mainly functioned as an adviser and draftsman to the Government of India and seems to have concerned itself very little, if at all, with the general aspects of the administration of justice. It appears to have neglected its responsibility even for keeping the Civil Procedure Code up-to-date. Long before 1939, Sir Dinshah Mulla in his commentaries on the Code of Civil Procedure drew attention to the conflict of decisions under section 47 of the Civil Procedure Code and suggested that the section should be amended so as to set the conflict at rest. No action, however, was taken by the then Legislative Department or by the Ministry of Law to set these matters right till 1956 when the Civil Procedure Code was amended in this respect.

Need for a Ministry of Justice.

5. We have earlier referred to the need for a periodical revision of the laws so that they might be brought into line with modern juristic ideas, conflicts of judicial decisions may be set at rest and the law itself brought into harmony with the changed and the changing conditions in the country. But much more than a periodical revision of the law is needed if the administration of justice is to improve. The needed incentive and action can be provided only by a properly organized department of the Union Government having charge of the administration of justice in all its aspects. It is no doubt true that the administration of justice is a State subject and that the role of the Central Government in this matter, except in relation to the Union territories, is limited. Nevertheless, a great deal of useful and necessary work in this direction can be done at the Centre by effecting a co-ordination of the efforts of the States and by laying down general standards. We have noticed in the course of our enquiry that there is a good deal of ignorance in one State about the methods and procedures adopted in another State. There are many problems common to the States, some of which have been dealt with successfully by one or other of the States. In such cases, the experience of one State is bound to be useful to the others if made available to them. A properly equipped Central Ministry could not only act as a store-house of information and as a clearing-house of ideas, but also lay down standards in the matter of judicial administration

for all the States. Such a Ministry can also make the Union territories models of judicial administration for the rest of the country.

It is, in our view, very necessary that a Ministry of Justice staffed by competent personnel, possessing the necessary technical knowledge and administrative experience, be established at the Centre for these purposes. Among other matters, such a Ministry would be charged with the task of ensuring that the High Courts in the various States possess adequate and competent personnel. It may also assume the control of the Indian Judicial Service whose creation we have recommended. Among other subjects, civil and criminal procedure and the legal profession might be dealt with by this Ministry. If it does become necessary, as indicated by us elsewhere, to amend the Constitution so as to give a greater measure of control to the Centre over the administration of justice in the States, this Ministry might be entrusted with these functions.

We may in this connection refer to the fact that the creation of such a Ministry of Justice has been advocated in England where eminent lawyers have expressed themselves against the condition of affairs under which the responsibility for the administration of justice is divided between the Lord Chancellor and the Home Secretary though the conditions there are not so confused and illogical as here. No doubt this reform has not been given effect to in England for various reasons, some of which are associated with tradition and sentiment and the importance of the high office of the Lord Chancellor. No such considerations, however, have any relevance to our country. It may be mentioned that a Ministry of Justice is a common department of State in many Continental countries.

Implementation of recommendations.

6. We may advert to another important circumstance. We have already referred to the manner in which the recommendations of the Rankin Committee and the High Court Arrears Committee were treated. We trust that the efforts of this Commission will be more fruitful. The Centre as well as the States are at the present moment devoting their energies and resources to nation-building activities which form part of our Five-Year Plans. We trust that the Central as well as the State Governments will regard an improvement in the administration of justice as of equal importance to the nation and take steps forthwith to consider and implement our recommendations. We realise that many of the subjects dealt with in our report are State subjects and that the changes recommended by us can only be effected by a proper co-ordination and co-operation between the the Centre and the States. That in our view emphasises the need for the Centre to take a quick and decisive initiative in the matter of considering and giving effect to the views expressed in the report.

Appointment of special officer necessary.

7. The establishment of a Ministry of Justice may take some time. It is, therefore, necessary, particularly in view of the fact that subjects with which we deal in this respect are matters dealt with partly by the Home and partly by the Law Ministry, that a Special Officer of the appropriate status and experience should be appointed to take up the consideration of our recommendations with the State Governments with a view to their speedy implementation. Many of the matters with which we have dealt require emergent and quick action. The moneys expended on and the labours devoted to the work of this Commission will have been spent in vain, unless it is appreciated that the maintenance of an efficient system of administration of justice is one of the primary functions of the modern State. We shall not attain the noble objectives enshrined in the Preamble to our Constitution unless the State assumes an adequate responsibility for the discharge of this primary function.

M. C. SETALVAD,
(Chairman),
M. C. CHAGLA,
K. N. WANCHOO,
P. SATYANARAYANA RAO,
G. N. JOSHI,
N. C. SEN GUPTA,
V. K. T. CHARI,
N. A. PALKHIVALA,
D. NARASA RAJU,
S. M. SIKRI,
G. S. PATHAK,
(Members).

K. SRINIVASAN,
DURGA DAS BASU,
Joint Secretaries.

R. M. MEHTA,
Deputy Secretary.
NEW DELHI:
September 26, 1958.

Dr. N. C. Sen Gupta and Shri V. K. T. Chari have concurred in the Report, subject to their separate notes.

Shri S. M. Sikri has also expressed his concurrence in the Report.

NOTE BY SHRI V. K. T. CHARI

Section 80 of the Civil Procedure Code serves a useful purpose. Even from the point of view of the citizen, by giving a suit notice, he gets a valuable chance of his claim being considered by competent authority and possibly complied with without having to file a suit. It is true that many State Governments do not scrutinise notices carefully, but the remedy lies in enjoining State Governments to pay proper attention to suit notices and give a proper reply to the party. In this connection the provisions of the Board's Standing Orders in Madras are as follows:

(Standing Orders of the Board of Revenue, Madras Vol. III, Chapter VIII, Government Press Publication, 1958 Edition).

"S. O. No. 92: Preliminary notice of suits: How dealt with: The Government have laid down the following rules for the guidance of Collectors when they receive notices of suits under section 80 of the Code of Civil Procedure, 1908.

(1) Notice of suits solely concerning departments not under the Collector's control:—(i) The Collector should transfer the notice to the head of the department concerned and need take no further action. When a notice of suit is received concerning any land which is in the occupation or under the active control of the Military Authorities or of any Cantonment Authority, it should at once be communicated to the Military Estate Officer of the area in which the land is situated. A list of the Military Estates Officers and the areas in their respective jurisdictions so far as the Madras State is concerned is given in Appendix I. Collectors may also reply direct to Military Estates Officers in cases where their advice and assistance are sought with regard to suits in connection with lands in cantonments (except those classed B2) and lands outside cantonments which were in the effective possession of the military authorities on 1st April, 1921 and have since continued to be so. Where, however, any claim is involved which might be to the prejudice of the State Government the Collector should refer the matter for the orders of the Government through the Board of Revenue.

(ii) Notice of suits primarily concerning a department not under the Collector's control but which affects

or is likely to affect the interests of any department under his control:—

The Collector should send a copy of the notice to the chief local officer of the department primarily concerned. The Collector must see that all points necessary for the defence of the suit as far as the departments under his control are concerned are carefully investigated. If necessary he should address the Board regarding any such notice.

(iii) Notice of suit which primarily concerns some department under the Collector's control, but in which the interests of another department not under his control are also involved:—

The Collector should communicate a copy of the suit notice to the department immediately concerned.

(iv) Notice of suits relating to forest matters:—

The Collector should receive notice of such suits and take action thereon in the manner prescribed in the Forest Code.

(2) Notice of suits to receive careful attention.

(a) In the case of notice of suits solely concerning a department under the Collector's control and in cases (ii) and (iii) above, the Collector should give immediate and careful attention to the complaint, the complainant being desired, if his statements are vague or unintelligible, either to explain his grievances orally or to set them forth succinctly and clearly in writing as the most effectual means towards obtaining such relief as may properly be given. If the proceedings complained of are found to have been wholly indefensible, the Collector should immediately grant redress, if it is in his power to do so, or refer the matter for the orders of the Board. If the complaint is plainly groundless, no action is necessary beyond collecting the information required to defend the threatened action. Legal advice need not be taken merely because notice of suit is received, though in important or doubtful cases it may be desirable for the Collector to obtain such advice.

(b) These instructions should be most carefully attended to, for neglect to follow them frequently leads to delay in the reporting of suits after their institution, for the orders of the Board, which is thus left without sufficient time for their proper consideration before the dates fixed for the filing of answers.

2. The Union Government has also issued similar instructions. Much complaint will be removed and the Governments will benefit if all State Governments would

frame similar instructions and observe them. It is only if the matter is examined at the earlier stage that the Government can file its written statement in time if and when a suit is filed.

3. I therefore think that section 80 C.P.C. should not be deleted. However parties have a reasonable grievance in suits where interlocutory relief by way of injunction etc. is required. Provision may be made for this class of suits by adding a clause to section 80 on some such lines as follows:—

> "Any Court may entertain a suit notwithstanding that no notice has been served as required by this section if the plaint out the reason why the delay caused by the requirement would prejudice the plaintiff with respect the relief sought. An order admitting the plaint shall operate as an exemption from the requirement of the notice and notwithstanding that it is *ex-parte* and shall be final and shall not be liable to be questioned by the defendant in the suit.".

It may be noted that such exemption is now required only in a smaller class of suits than before, such as suits on contractual rights, as the procedure of Writ Petition under Article 226 is available in the case of *ultra vires* executive action.

4. As regards section 77 of the Railways Act the object in providing for notice within six months is to enable the administration to trace the transaction and make an enquiry at an early stage before the relative documents are lost or destroyed and the evidence disappears. The trouble now arises because the State is working the railways. The cumulative requirement of a notice under section 80 C.P.C. may be dispensed with by adding a proviso to section 77 of the Railways Act that where a claim has been preferred thereunder a notice under section 80 C.P.C. shall not be required. Technical defences are now being raised under section 140 of the Railways Act and these should be avoided. Section 140 may be suitably amended providing also that a notice to any one administration should be enough.

NOTE BY DR. N. C. SEN GUPTA

I have read the draft copy of the Report. The report is a lengthy one and the points upon which I disagree also require some extensive treatment. But I shall only refer briefly to the points of difference.

LEGAL EDUCATION

I do not agree that there has been a fall in the standard of efficiency in the Bar or in the law students, and I claim to speak on the subject with considerable experience in this matter. I have been practising in the Calcutta High Court and the Subordinate Courts with occasional visits outside for over 50 years. I definitely disagree with the statement made that the recent recruit to the profession is inferior in legal equipment, less painstaking and in a hurry to find work. Speaking of the Calcutta High Court, I came here when some of the men who are called eminent bright stars of the profession were practising here. I may say with confidence that the new recruits of the Bar at present are definitely not inferior to the Bar of those days. On the contrary, I have found that by and large they are better recruits and more efficient.

The course of studies of the Law Graduates of 50 years ago were much inferior in extent or depth to that of the present Law Graduates and, what is more, they actually have to study the books prescribed in the regular classes. A Law Graduate in my days was not required to study at all. The Law Graduates of those days had only to attend a certain number of lectures in each subject and that was done in off time for a few hours which were simply wasted. For enrolment in the High Court the Law students of those days had to be articled to a Vakil. That was a purely formal matter and excepting in some exceptional cases, neither the master nor his pupil took the work seriously. Things are much changed now. Willy-nilly a student has now to learn a great deal for passing the three examinations in Law and also to make notes of cases before he can be admitted as an Advocate. I have found that the new recruits are generally better equipped in law than men of my time. The master took little or no interest in them in those days and if the pupil picked up anything, it was by his own efforts.

It has been said that the Law Schools attract only men of mediocre ability and indifferent merit. I had been a teacher of Law in the Calcutta University and later as a Professor and Dean of Faculty of Law of the Dacca University and I may say that I took a great deal of interest in teaching of laws principally in the Dacca

University. Before that I worked as a teacher in the Arts Faculty. I have not found much difference in the calibre of students or even that there is more indifference amongst the law students than amongst the Arts students. There is a certain amount of want of enthusiasm amongst the students of Law for reasons some of which have been referred to in the Draft Report, principally because both the Government and the public look upon the legal profession with more or less step-motherly love.

The complaints now made about the causes of inefficiency of lawyers could be made and were made equally when I began teaching law about 1913-14. The Calcutta University Commission had introduced a greater interest in the students and greater facilities for studying law. It would be a surprise to most youngmen today to know that in the beginning of this century one could go through a whole course of law and even get a first class degree in the end without ever handling a Law Report or any text book of law by simply mugging up a few note books. The things were changed by the reforms inaugurated, at the instance principally of Sir Ashuotosh Mukherji and the new regulations by which the students were compelled to read selected cases of Law Reports and larger range of text books and they were also given some training in the moot courts. So far as the Calcutta and the Dacca Universities are concerned, I can say with confidence that the teaching of Law has now become more efficient and the average graduates turned out are certainly not less efficient than those of the past days who had given a great halo to the legal profession by reason of the successes achieved by more or less exceptional men amongst the lawyers.

In point of fact when we look at the range of shining names amongst successful lawyers of the past, we find that it is not from the teaching in schools that the lawyers acquired the knowledge which fitted them for eminence, but it is by the student's own effort after he has graduated and come into contact with the Court,—to get more education in Law by attending the Court after becoming a lawyer and knowing something of law. That is at any rate how I learnt law and I obtained an interest in dealing with books which were made available in the High Court Bar Association Library.

Proficiency in Law is obtained by a willing practitioner or student by practice and not from text books only. When the new entrant gets a case as a Junior Lawyer, he has to prepare it. In doing so, he has to find out the law from the books. It is this search for law that gets him into the touch of actual law which, in a really brilliant youngman develops a real brilliancy of the practitioner in law. It is possible to conceive of a more complete education for the legal profession so that a graduate turned out will at once become an effective lawyer. Such education was given in

Germany. So far as I am aware, before the First World War, there a lawyer had not only to be a graduate in the course of his education but also to write a thesis and thereafter to do practical work in the Courts including virtually doing the work of Bench Clerks as well as making drafts of judgments. I do not know of any such attempt being made elsewhere. I have given an extract in one of my previous Notes on an article on "The Legal Education in Germany" at that time.

I am of opinion that legal education will not improve by providing a better schooling or giving practical work to be done at a time when the candidates has not yet learnt the elements of Law. The real education comes when he has got an elementary knowledge of Law and its practical work as a lawyer, either by trying to pick up the practice or working in the Chamber of a Senior Lawyer not as a dilettant but as a serious lawyer. Success in the profession is not assured to the good scholar. That depends on many factors. In any case it depends upon the personal effort in the enterprise of the new practitioner. Altogether it seems to me that too much importance is given in discussions of these matters upon the schooling of the lawyers, either in the School or by a formal enrolment or engagement as an articled clerk or a Junior. It is the enterprise of the new entrant called forth by his being admitted to actual practical work.

The early Vakils now represented by Advocates at the Bar as well as on the Bench and whose names are handed down from generations as models never received legal education at all. At first men were appointed Vakils by the Judges. No course of legal training was necessary. Later a very elementary course of training in Law was given. The products of the earliest legal education who have been regarded to be pleaders, as distinguished from Vakils—some of whom distinguished themselves at the Bar and some of them also on the Bench, were not law graduates at all. Justice Dwarka Nath Mitra, Justice Chandra Madhab Ghosh, Sreenath Das, Kali Mohan Das in Calcutta, similarly Judges of the High Court of Madras like Muthuswami Iyer were not law graduates at all. But the judgments of some of these Judges were sometimes pitted against the judgments of distinguished Barrister Judges.

The Bar

The opinion expressed in the Draft Report about the degeneration of the Bar at the present moment may or may not be correct. But it would be surprising for a young man of today to learn that 40 or 50 years ago, almost the same complaints were heard made by aged and aging lawyers of the deficiencies of the new entrants. My own experience of the 50 years of practice is that the practitioners in the Calcutta High Court have definitely improved both in the

depth and breadth of their knowledge and their way of presenting the cases. I have come into contact with great names in the past and have seen them in actual practice. But it was only a handful of those great men who could give many points to the really bright youngsters of today. They have learnt the law from more extensive reading and are capable of finding out a law from a wider circle of books and their presentation of cases are definitely superior to that of the Vakil of the past, men including some men who attained to a large practice and reputation. Of course there were brilliant men who were specially distinguished. But their names can be counted on the fingers. The average run of Advocates or Vakils of the past were definitely inferior both in their grounding in law and their mode of presentation of cases.

The opinions which have been given on the average run of Advocates, as compared with those of the past, are mere opinions of the authors and could be matched by similar opinions given about different classes of men advanced by aged or aging men who start with a prejudice in favour of the past. There is no real objective standard by which the truth of these statements can be judged, and in assessing the value of such opinion we may make some deductions on account of the natural predilection of an aging man for remote past.

But having been in practice of the High Court for over half a century and also a teacher of Law during the large part of that period, I hope I may be allowed to claim that my opinions based on my experience are worthy of some more consideration than others who cannot claim similar experiences.

LANGUAGE

I am on the whole in agreement with the actual recommendations made in the Report with minor differences. But in the course of the Report, some observations have been made upon which I shall have to offer certain criticisms.

To start with, I may say that the approach to the problem is not one which I would make. On every question the Report of the Language Commission is taken as a starting point. The criticism proceeds on that basis. I am afraid this is not giving to the Report the position to which it is entitled to under the Constitution, until the Report has been finalised by the Parliament under Article 348. So far it is only the opinion of the majority of a number of persons on controversial question and as a majority report it has a provisional status. The Language Commission owes its authority to Article 344 and notwithstanding the report of the Commission, the Parliament, the President and the Regional Legislatures have certain powers in the matters

of regulating them for a period of 15 years after the commencement of the Constitution, meanwhile English continues to be the official language.

Attention may be drawn to Article 344—clause (4) requires the constitution of the Committee with members of both Houses of Parliament and under clause (5)—"It shall be the duty of the Committee to examine the recommendations of the Commission" with a power under clause (6) of the President to issue directions in accordance with the whole or any part of that Report. There is not even a report of the Parliamentary Committee under Article 344 with regard to the report of the Commission. Under these circumstances, the Commission's recommendations are of an entirely provisional nature,—not forgetting the very important fact that the recommendations of the Commission are in the first place not unanimous,—there being important and very authoritative notes of dissent, and secondly, that since the publication of the Report, there have been tremendous agitation in several parts of India against the main recommendations of the Commission and the Legislature has not yet expressed its opinion on the point.

In any discussion on the language question of the Courts and of the Laws we should, therefore, proceed more or less on a *carte blanche* and judge the whole thing on the merits and not undue importance to the opinion of the Commission which, in my opinion, has to some extent been done in the manner of approach.

With regard to the main points on the recommendations in the Draft (Report) I have, as I have said, comparatively few criticisms to offer and I might almost say that I accept the recommendations generally. But in making the Reports, certain observations are made to which there is room for serious objections. I should, therefore, add a note against all such statements made. But I should add a caution that every observation made in connection with discussion of these questions is not to be necessarily acceptable.

Apart from the Constitutional position of the Report, on the merits there are very serious matters of consideration on the recommendations of the Commission. The outstanding fact about the recommendations is that they assume the introduction of Hindi by the following stages: For the first 15 years no Hindi except by special provisions by the authority of the President. Thereafter the Hindi language will have to be brought up to the standard which is necessary for its universal adoption as the language of Law and the Courts. Thirdly it is virtually admitted that the Hindi language, as it is, is not capable of performing the functions required of a precise and accurate language of all laws. The proposals are that steps will be taken by means of translation, by making a Law Lexicon and things

of that sort and certain undefined things done by the State to bring the language upto the mark. What would be the position in the meantime? Every page of the recommendations would show that there is bound to be terrible confusion in the interim periods and not in one place, but several such confusions in several places. In other words, we shall, instead of simplifying the Law and making it more intelligible and accessible to the people, make it extremely difficult to be sure about them. There is bound to be a confusion much of the measure of that made by the Tower of Babel for various long and indefinite periods in the course of this evolution.

I do not think that it is worthwhile giving up our present position of precision of law in favour of this confusion.

In the recommendations made in our draft, the present factual position is correctly worked out in the early paragraphs of the Report. In spite of a certain number of languages, which are in use in different States, all legal proceedings in different Provinces have avoided any confusion by reason of the reference to English. All these will be gone and confusion will be multiplied at every stage, as is virtually pointed out in our Draft Report itself.

Notwithstanding the views ultimately expressed with regard to the language about the position of English, the Draft Report expresses surprise—"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". If this refers to the fact of the opposition to Hindi as such, I have no objection. But what is the balanced opinion? If it is one suggested in the draft, it is certainly not in favour of having Hindi at all costs and rejecting English. The mischief of the deficiencies of the Hindi language will not be solved by a Law Lexicon alone as the Draft supposes. A Law Lexicon may help translators but it cannot lay down the law with the precision of a Statute. Then the Draft Report refers to the Law Lexicon which is being framed. I have had a slight connection with the framing of the Law Lexicon so far as the legal terms are concerned and I may say that there is every reason to apprehend what the Draft report seeks to avoid in the following words:—

> "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".

The Hindi version of the Constitution itself which is authoritative in the sense that it is prepared under the authority of the Government shows to what absurd length the Sanskritised portions has gone and will go. The Hindi

Constitution even goes to the length of translating a legal term like *'certiorari'* as *'utpreshana'* which conveys nothing to a Hindi-speaking man and, though it might convey the sense of the original Latin in the ancient writ, now defunct, it will be a definitely incorrect term to express the modern sense of modern order of *certiorari.*

The difficulties about translation and the maintenance of a large staff of translators for years have been referred to in the Report. I should say that the difficulties would be almost unsurmountable. The translators themselves would, first of all, have to refer to the lexicon that is prepared and when they have been trained in the language of the lexicon, they will have to translate the English or the regional languages into that language. All that I can say is that that is the surest way of creating the utmost confusion, and even then the amount of labour would be absolutely out of proportion to the benefit obtained by it.

I would refer to another provision of the Constitution. Under Art. 348, which does not relate the interim period of 15 years only. Art. 348 (1) (a) says that unless the Parliament provides otherwise,—"all proceedings in the Supreme Court and in every High Court and the authoritative texts of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House of either House of the Legislature of a State or of all Acts passed by Parliament or the Legislature ..... shall be in the English language." It provides therefore that notwithstanding the fact that a particular legislation is made either in Hindi or in the regional language as provided by the recommendations of the Commission, the authoritative version shall still be English. The Bill must be introduced in English, all discussions on it will take place in English, but the final Bill will be, say, in Hindi, and embodied in a form and language in which it has never been placed before or discussed in Parliament or the State Legislature, but the legislation will be put in Hindi or the regional language. Everybody knows that much depends upon small words and phrases or even punctuations upon the exact form of which sometimes elaborate discussion takes place.

This Draft does not contain any summary of the conclusions. It may be attempted to make such a summary. As a matter of fact, here is very little of the Report of the Law Commission that has been endorsed by this Draft. I might attempt to make a summary as follows:

The conclusion is that as it is advisable to have a uniformity of language, the present position of English is not advantageous for which it cannot be replaced by Hindi or any other language. But a rider is added that at some convenient date in the future, Hindi should be substituted for and take the place of English. This is a conclusion to which I do not subscribe. In any case, I do not think we

are called upon to speculate about the future. It would be for the Parliament to adapt the Law to the circumstances as they are.

The possibility of regional languages for all proceedings in State Courts which has been advocated by some has been rejected. To this I entirely agree. But I do not feel the justification for the observation.....that it is surprising that the opinion expressed by some lawyers should give evidence antagonistic to Hindi on the ground of its being a regional language. I do not see much justification for this surprise when as a matter of fact, the advocacy of Hindi for purely provincial reasons does not cause any surprise. It is suggested that the authoritative enactment ought to be eventually Hindi both in respect of the Parliament and the State Legislatures. I refuse to accept this as an unalterable truth. The Constitution does not make it so. The provisions of the Constitution are that after the Language Commission's report has been accepted by a Parliamentary Committee, it may be made effectually the official language. In that view I think that it is surprising that the opinion that question should be reconsidered even though it involves a change of the Constitution should cause no surprise.

The whole of the suggestion in sub-paragraph (17) on the whole is also vitiated by the assumption that you must accept without question the provision in the Constitution making Hindi the official language and that for the next few years is not the position. The matter is open to consideration. The Report of the Language Commission has to be considered by a Parliamentary Committee, and on the recommendations of the Parliamentary Committee, the proper legislation will have to be made by order of the President, it is true, but with the authority of the Parliament. Until that I do not think why the mere publication of a provisional Report of the Language Commission should compel us to accept the unalterability of the provision about the language of the State. The matter has been very seriously considered not only in the dissentient reports but also by distinguished members of the public everywhere in the Union and there has been a very vocal opposition to this view. I do not think that it would be within our province to make a recommendation which brushes aside all the opposition which the suggestion has made.

In paragraph 22 it is again assumed that the change over from English into Hindi must be made, but it would only have to wait till the ground has been prepared. I do not understand why this should be taken for granted; and least of all, why we who, in our opinion, in the draft have accepted the position that Hindi cannot be made the State language for legal purposes now should go out of our way in a way to mortgage the future and provide for a possibility which may never arise. The passages in the Report concluding in paragraph 24 in extending the continuance of the present system to at least 25 years is wholly uncalled

for and should be abandoned. It is enough that we find out that the time has not yet come for changing over it Hindi as the official language of the State. Whether it may come in the future inevitably or otherwise may be left to the future. The Constitution will not be amended. To this extent, I entirely differ from the suggestion.

Administrative Bodies

I find myself in agreement with regard to the assessment of facts and principles regarding Administrative Tribunals and in particular the analysis of the administrative procedure in France, America and England. I also agree with maintaining the judicial control, such as it is, in our Constitution. If this recommendation is accepted, there would be nothing further to add,—except perhaps to increase the efficiency of the Civil Court's jurisdiction over the Executive and Administrative Departments. But I do not quite agree with the opinion that merely because of the special history and conditions of Conseil d'etat in French Law, it is wholly unsuitable for adoption in India. I am particularly impressed by the inquisitorial procedure of the court in France which has been clearly explained and analysed in the Report. In fact in France, as has been pointed out, a complaint is made before the Conseil d'etat and the Conseil itself takes up the matter and investigates it on its own without requiring any further interposition of the complainant or any counsel and the inquisitorial process is so thorough that nothing is left to chance. I think similarly the Special Administrative Bench of the High Court recommended should follow the same procedure and the Court should over-ride merely formal objections and decide questions of Law fact without being bound by the findings of the Administrative Officer. This is an aspect of the French procedure which should be specifically provided for in the case of petitions against acts of Administrative and Executive Officers.

I think that the prejudice against the administrative acts created by Dicey is not wholly based on sound principle. As has been pointed out in the Report, procedure is a thoroughly judicial procedure and has been, on the whole, conducted judicially.

Even in India we have some administrative tribunals who often act with extreme fairness and justice. These tribunals consist of Administrative Officers of high rank and they have got the advantage over the Civil Courts that they are very familiar with the law and procedure they have to deal with. I have experience of only one such tribunal, the Bengal Board of Revenue. Like the judges of Civil Courts, the members of the Board of Revenue have been in the course of its history good, bad and indifferent. But these were very good judges who could decide on revenue matters and administrative questions as experts and could not be misled by mere advocacy. The similar

tribunals established in connection with the Sea Customs Act, the Income-tax Act etc., have different powers under different Statutes. But in all these, there is an opening left for judicial interference particularly in the present Constitution. The experience of the decisions given by the Board of Revenue in revenue matters in the past makes me hopeful that with a limited judicial oversight, they might be even more useful than Civil Courts. It is necessary to provide further that Administrative Tribunals, where they exist, should be independent and like the High Court Judges not liable to be removed at the wish of the Government. The tenure of office of these Administrative Tribunals should be fairly long and secure.

What I mean to say is that Administrative Tribunals are not *ipso facto* bad. They may be quite as just and impartial as Civil Courts, provided they are allowed to work in an atmosphere of independence. And as they would consist of persons with administrative experience, they would be in a better position to decide the matters than mere lawyer judges,—provided they are allowed to work in an atmosphere in which they can be quite independent of the administrative departments. I have spoken of the Board of Revenue of Bengal which has, on the whole, a tradition for a fair trial. I cannot say the same thing of all other administrative tribunals notably of the Income Tax Act tribunals, a decision by which shuts out further investigation by any court except on a reference by that tribunal.

High Courts—Original Civil Jurisdiction

I have dealt with this question with the question regarding the Original Side, and I have said, so far as the Calcutta High Court is concerned, there is no justification in maintaining the Original Side with its exclusive jurisdiction over a class of cases. I might point out that the objectives to the Original Side of the High Court principally turn on two factors,—firstly, the discrimination between different classes of lawyers and secondly, excessive costs involved not only in compulsory engagement of two sets of lawyers in every case but also for the taxing rule of the Original Side. I am afraid that the findings on the question of costs proceed on the view that in the City Civil Court or in the Mufassil courts, the costs allowed in the decree are only fraction of the actual costs incurred in the lawyer's fees. That is a fact. But in the Original Side of the High Court also, Senior Counsel engaged in the case do not work on the scale of fees allowed by the taxing rules. They receive fees in some cases fancy fees, including such things as, sticking fees which are not taxed. The taxed cost falls very short of the fancy fees paid to the very distinguished lawyers. It has been said that there is no taxing rules on the Appellate Side and the Advocates can charge any fee far in excess of what is charged in the Original Side, while on the Original Side the entire costs are limited by the taxing rules.

This also is not accurate. Costs not included within the Tax bill have to be incurred by the parties in contentious litigations and further there are such a multitude of items included in the taxing rules which enable a Solicitor to increase the bill by many unnecessary applications and correspondence for every bit of it which costs are billed. Those who suggest that the costs of the Original Side are absolutely fixed by the tax bills are labouring under a delusion. On the contrary, the taxing bills may be inflated by unnecessary items.

On the whole there can be no doubt that the taxing rules provide no protection against inflating the costs.

Under these tax rules the costs of a Commission for examination of a witness or on a reference for accounts and similar items, the fees are extraordinarily high. No document can be put in and not even the report of the Commissioner, the examination of a witness could be brought before the Court except in payment of costs which are sometimes very heavy. I am afraid that those who say that the costs on the Original Side are not heavy evade the real issues without full investigation.

The very fact that it is compulsory for a litigant in a suit of very small value which has to be brought in the Original Side has to pay two sets of lawyers necessarily increases the cost. There may be advantages in having two sets of lawyers, but it ought to be left to the discretion or capacity of the litigant to incur the cost for the luxury of two lawyers. There are cases which can be very efficiently managed by a single lawyer. There is no reason why every body is required to pay for two if he wants justice from the Original Side of the High Court.

I do not say that the Original Side of the High Court should be abolished. I would be quite content if the High Court follows the procedure laid down in the Civil Procedure Code just like all other Civil Courts. It has been pointed out that if there is a superior efficiency in the procedure laid down in the High Court rules, one would suggest that the same procedure ought to be applied by other courts also. There should not be any discrimination between the High Court and Mufassil Courts. If the High Court procedure leads to more efficient administration of justice, there is no reason why it should not be extended to all Courts, at any rate, in a limited number of cases. It is not impossible to have the same procedure followed in the High Court in other courts in a limited number of cases and give the Mufassil litigants the advantage of a decision of a High Court standard which can be achieved by providing for circuits with judges of the High Court held in Mufassil courts accompanied by this set of lawyers and administering the same laws according to the same procedure. The costs incurred on the procedure, if it is more efficient, need not be a bar. In point of fact, as it has been

pointed out in another part of the Report, the Government is making lot of profit from the litigants by way of court fees. They might discard the profit and pay for the benefit of the litigants. My conclusion, therefore, is not that the High Court Original Side should be abolished, but that its procedure should be brought into lines with other Courts of the country.



APPENDIX I

Questionnaire

PART I

SECTION A

(i) *General*

1. Do you consider the present system of administration of justice based on the British model suited to our needs having regard to—

(a) our poverty, and

(b) the mass of our population being in the villages?

2. Suggestions have been made for the establishment of "a system of judicial administration suited to the genius of the country", or, what has been called, "an indigenous system". Have you any suggestions to offer in this connection?

3. Would you consider the adoption, in whole or in part, of the system of judicial administration in countries other than Anglo-Saxon countries as being more suitable to our needs? If so, please offer detailed suggestions.

4. Do you consider our court structure complicated and in need of simplification? If so, please state suggestions with a view to such simplification.

(ii) *Separation of the Judiciary from the Executive*

5. How far has the separation of the judiciary from the executive progressed in your State? What steps would you suggest for expediting the carrying out of this separation?

THE JUDICIARY—ITS RECRUITMENT, CONDITIONS OF SERVICE AND TRAINING

(iii) *The Supreme Court*

6. Do you consider the present method of selecting the Judges of the Supreme Court from the Judges of the High Court, retired or about to retire, a satisfactory one?

7. What are your views on appointing to the Supreme Court Bench distinguished members of the Bar?

8. Do you consider it feasible to select for the Supreme Court Bench constitutional and other expert lawyers, particularly academic lawyers, from the Universities?

9. Would you be in favour of providing that the Supreme Court should deliver only one judgment as the judgment of the Court?

(iv) *High Courts*

10. It is stated that the High Court judiciary of recent years compares unfavourably with what it used to be in earlier days. Do you agree with this view? If so, what in your opinion are the causes of this change?

11. Is the falling off in the High Court judiciary due to:

(a) decreasing respect in governmental circles for the lawyer and for the judicial office,

(b) unsatisfactory methods of selection,

(c) insufficient remuneration and pension?

12. Has it happened in your State that unsatisfactory appointments to the High Court judiciary have been made under the influence of the executive?

13. Has the provision with regard to consultation with the Governor of the State in the matter of appointment to the High Court worked satisfactorily in your State?

14. Would you consider it advisable to provide that appointments to the High Court judiciary be made by the President after consultation with the Chief Justice of India and *on the recommendation* of the Chief Justice of the High Court of the State?

15. Are you in favour of raising the age limit at which the Judges of the High Court are bound to retire?

16. What are your views on the High Court judiciary being constituted on an all-India cadre, the Judges being freely transferred from one State High Court to another?

(v) *Subordinate Courts*

17. Do you consider the subordinate judiciary in your State (from the Munsif or Magistrate to the District or Sessions Judge) efficient? How does the capacity of the present judicial officers compare with those of about 10 years ago? If the judiciary is not efficient, what, in your opinion, are the causes of such inefficiency? Do you think that the conditions under which the judicial officers work (*e.g.*, the residential and court accommodation allotted to them or deficient law libraries attached to the courts) have affected their efficiency? Have you any suggestions to make for an alteration in the existing system of their recruitment?

18. Are you in favour of recruitment to the judicial service by a competitive examination of a general character (as in the case of all-India Services) which would also test the candidate's knowledge of law and procedure?

19. Is the recruitment to the judiciary in your State mainly or wholly from the Bar? If not, would you be in favour of such recruitment wholly from practising members of the Bar? Please offer detailed suggestions.

20. Do you consider it necessary that members recruited to the services either by examination or by selection from the Bar should receive a special training before they are entrusted with the performance of judicial duties? If so, please indicate the nature of the training concerned necessary and the manner in which it should be imparted.

21. Would you consider it necessary that judicial officers who are likely to be entrusted with the disposal of litigation in industrial and commercial towns like Kanpur or Ahmedabad should receive special training? If so, please state the nature of the training envisaged and the manner of imparting it.

22. Does corruption prevail among the judiciary in your State? Have moral standards deteriorated? If so, what, in your opinion, are the reasons and what remedies would you suggest?

23. What tests would you suggest for assessing the efficiency of a judicial officer both in regard to the quality as well as the quantity of his work?

24. Has there been a deterioration in the exercise of superintendence and control by the Superior courts over subordinate courts? Have you any suggestions to make?

25. The power to make appointments to the subordinate judiciary is at present vested in the executive who have to act *in consultation* with the High Court and under rules made after consultation with the State Public Service Commission and with the High Court. Do you consider this method of appointment satisfactory? What is your view as to the powers of appointment to the subordinate judiciary being exercised by the executive *on the recommendation* of the Hight Court?

26. Do you consider that the age of superannuation of the District Judges could be raised with advantage?

(vi) *Panchayat Courts*

27. Have you any panchayat courts in your State? If so, what is your experience of the working of these Courts?

28. How would you constitute these courts? Would you prefer the members of the panchayat to be elected or appointed? If appointed, by what authority?

29. With what powers would you invest panchayat courts? Would you entrust them with civil matters only or both civil and criminal cases? What limits would you set to their civil and/or criminal jurisdiction? Would you entrust them with cases involving rights over immovable property? If so, would you set limits to the value of such property?

30. Do you consider it feasible to have a single panchayat court for a group of neighbouring villages? Would you consider courts so constituted more likely to be impartial?

31. Would you be in favour of investing panchayat courts with exclusive jurisdiction in cases entrusted to them? If so, would you suggest safeguards, by way of revision or otherwise, against capricious or arbitrary exercise of jurisdiction by them?

(vii) *Law Reports*

32. Are you in favour of the present system of relying on decided cases as precedents? Have you any suggestions to make as to any alternative system?

33. Do you not consider the present system of the publication and citation of law reports an impediment to the administration of justice? Would you be in favour of preventing the citation in courts of cases other than those reported in the official series, the reporting in which would be controlled by editing boards in the states and at the Centre constituted of eminent lawyers, the board's discretion to report being in no way fettered by the views of the Judges? Have you any other suggestions to offer in order to make law reports really helpful to a correct decision?

34. Would you be in favour of providing that courts consisting of more than one Judge should pronounce judgments of the court and not of individual Judges and that dissenting judgments, where permitted, should not, as a rule, be reported?

(viii) *Legal Education*

35. In your opinion should university degrees in law continue to be accepted by the law courts as a qualification for legal practice? Or, would you be in favour of admission to the Bar being regulated by tests carried out by a Central body invested with the power to impart education in law and conduct examinations in it?

36. If you are in favour of maintaining the present system of accepting university degrees as a qualification for legal practice, would you suggest any measures for the enforcement of adequate and uniform standards throughout the country?

37. Are you in favour of excluding any subjects which at present form the syllabus of law studies in the universities and including therein fresh subjects?

38. Would you consider a good liberal education comprised in obtaining university degrees in arts, science or commerce a necessary preliminary to entering upon the

study of law? Or, would you be in favour of a course of general education forming a part of the syllabus of legal education?

39. Is legal education imparted at universities enough to give the necessary equipment to the lawyer for the preparation and conduct of cases in court? Or, if some further equipment is necessary, what in your opinion, should be the nature of such equipment and what measures should be adopted to impart that equipment?

40. In your opinion should practising lawyers be teachers in law schools or should teaching be left to academic lawyers?

41. What in your view is the cause of the decline in India in recent years of the true academic lawyer and the jurist?

42. Are you generally in favour of the recommendations in regard to legal education contained in the proposals made by the All-India Bar Committee in 1953?

43. What suggestions have you to offer in connection with legal education from the point of view of the expected change of the language of statutes and courts from English into Hindi?

(ix) *Legal Practitioners*

44. Have you any suggestions to offer in regard to the creation of a uniform and an All-India Bar over and above the proposals formulated by the All-India Bar Committee of 1953?

45. Would you favour a system of division of the Bar into Seniors and Juniors? If so, on what basis? What should be the respective rights and obligations of each section?

46. What are your suggestions for eliminating the evil of toutism?

(x) *Legal Aid*

47. Are there any agencies or institutions in your town, district or State for giving legal aid or advice to poor persons? If so, please give briefly details of their objects, membership and activities.

48. Do you consider the rendering of legal aid to the poor citizen or a citizen of moderate means an obligation of the State? If so, would you provide for the giving of such legal aid in all civil or criminal proceedings?

49. Should the scope of legal aid in criminal cases, which is being given in the shape of providing the services of the lawyers for defence of persons charged with offences punishable with death, be enlarged so as to make such services available to the accused in all courts in respect of

lesser offences? If so, to what extent and in what class of cases?

50. What, in your opinion, is the true scope of any comprehensive scheme of legal aid? Should it be limited to a mere remission of court fees and other legal charges or should it include within its ambit legal advice, representation by lawyers and out-of-pocket charges?

51. Would you confine the grant of legal aid to litigants who are very poor or would you be in favour of extending it by fixing:

(a) a limit based on income and capital; and

(b) a scale of contribution to be paid by the litigants within those limits?

Please make detailed suggestions.

52. Can you suggest any tests apart from income for determining the claim of a litigant to legal aid? What safeguards would you suggest to prevent any abuse of a scheme of legal aid?

53. To what agency (for example, Bar Association, Legal Aid Committee, courts or a State department) would you entrust the administration of a scheme of legal aid? Would you subject any agency administering legal aid, other than the courts or the States, to control or supervision by the courts or the State?

54. Can you suggest any measures by which the legal profession may make a contribution towards the successful working of a scheme of legal aid?

(xi) *English, Hindi and Regional Languages*

55. Having regard to the constitutional provisions in regard to the official language of the Union and the States what would you envisage in future to be the language of—

(a) Subordinate Courts in a State;

(b) High Courts in States;

(c) law reports of State High Courts;

(d) law reports of the Supreme Court?

Please give your views in detail remembering the need of co-ordination between the courts and the judiciary of the different States and the Union and of the Bar throughout the country?

(xii) *Miscellaneous*

56. What are your views on the Supreme Court and the High Courts functioning in circuits? Do you think that such a course will tend to public convenience and advantage and not affect the prestige of the Courts or be too expensive?

57. What are your views on the vacations at present enjoyed by the civil courts? Would the curtailment or abolition of the vacations adversely affect their efficiency?

58. Is it your opinion that the efficiency of courts has suffered on account of inadequate allotment of funds by the State Governments for the purpose of administration of Justice? Have arrears of work accumulated in your State in the Subordinate Courts owing to the failure of the State to appoint an adequate number of judicial officers?

SECTION B

Delays

59. Do you consider that the period actually taken in the disposal of civil and criminal proceedings in the courts of your State exceeds what you consider to be reasonable in a large number of cases? If so, what in your opinion, are the main causes of such delay?

60. Is it your view that the delay in the disposal of cases is due not so much to defects in the existing procedure as to other factors such as:—

(a) the dilatory tactics of the litigants or their lawyers,

(b) the slackness and the lack of proper training and experience in the presiding officers, and

(c) the inefficiency and lack of integrity of the clerical and the process serving staff of the court?

What suggestions will you make for the removal these factors?

61. Is there a tendency in the courts of your State to seek frequent adjournments on insufficient grounds and are such adjournments frequently granted? Do these adjournments take place because—

(a) the lawyers being busy in other courts seek adjournments, or

(b) the cause list is crowded making it impossible for the presiding officer to take up the cases listed for the day?

Have you any suggestions to offer to eliminate delays caused in this manner?

62. Do you agree that the hearing of *ex-parte* matters is often delayed by these matters being mixed up in the list with contested matters? Would it be helpful to devise a system by which *ex-parte* matters could be separately listed and disposed of? Could the disposal of these matters be left to a Registrar of the Court. Could these matters be disposed of on the allegations made in the plaint and without calling oral testimony?

63. What are your views on the proposal to appoint a special officer of the rank of a civil or subordinate judge for the performance of the following functions:—

(a) receipt, scrutiny and correction of pleadings,

(b) issue of processes;

(c) disposal of *ex-parte* and uncontested suits and proceedings;

(d) administrative duties at present discharged by the District Judge;

(e) execution proceedings?

64. Would you be in favour of devising a system by which cases would be listed only after they are ready and disposed of on fixed dates, no adjournments being granted except in exceptional circumstances for reasons to be recorded by the Judge?

65. Do you consider that the congestion of cases in the courts and the delay in their disposal are due to an insufficient number of judicial officers or courts?

66. Are any delays caused by the concentration of several courts in one and the same place?

67. Would you favour decentralization of Courts in Tehsil, Taluk, or Chowki headquarters?

68. Are there delays in the disposal of cases in the High Court? What are the causes thereof?

SECTION C

(i) *Jurisdiction of Civil Courts*

69. Do you consider the extension of the pecuniary jurisdiction of the subordinate civil courts in your State desirable? If so, to what extent? Would you extend the jurisdiction of the munsif's or civil or subordinate judge's courts in—

(a) regular suits, and

(b) small cause suits?

70. Would you recommend the extension of the jurisdiction of the small cause courts and if so, to what extent and in what classes of cases? Are you in favour of restricting the scope of section 19 of the Presidency Small Cause Courts Act and Schedule II of the Provincial Small Cause Courts Act? If so, which of the items now included in those provisions would you omit?

71. Would you extend the summary procedure contemplated by section 128(2)(f) and Order XXXVII of the

Code of Civil Procedure to the subordinate courts? If so, to what extent? What safeguards would you advocate to obviate any untoward consequences of the extension of such procedure to these courts?

72. Would you extend to the civil or subordinate Judges in your State the jurisdiction to try land acquisition references and proceedings in probate, succession certificate and guardianship matters? If so, should such jurisdiction be conferred on all such Judges or only on selected Judges?

73. What amendments would you suggest to section 80 of the Code of Civil Procedure so as to safeguard the rights of the Citizen and at the same time give the State the necessary opportunity to consider its legal position?

(ii) *Pleadings*

74. Do the pleadings filed in the courts in your State conform generally to the rules prescribed in Orders VI, VII, and VIII of the Code of Civil Procedure? Are the forms of pleadings given in the Code of Civil Procedure generally adhered to? Do you consider these forms adequate and sufficiently simple? Have you any suggestions to make in regard to pleadings generally from the point of view of their simplification and the dispensing with them altogether in certain types of cases? Do you take the view that the pleadings generally need to be more precise and elaborate?

75. Would you be in favour of requiring the advocate drawing the plaint to certify that it is in accordance with the Code?

76. Would you consider it desirable in the interests of a speedy trial that the plaint should be accompanied by—

(a) a list of documents relied on,

(b) copies of the documents relied on,

(c) list of the witnesses whom the plaintiff proposes to call at the trial,

(d) detailed addresses of the defendants,

(e) names and addresses of proposed guardians *ad litem* in the case of minor defendants,

(f) the name and address of the plaintiff's lawyer, and

(g) the payment of process fees?

(iii) *Service of Process*

77. Is the dilatory service of process one of the principal causes of delays in litigation in your State? If so, have you any suggestions to offer to remedy these delays?

78. Would you recommend a more extensive use of the post office for service of various kinds of processes? Should the refusal of a packet of summons be presumed to be good service? Are you in favour of leaving a wider discretion to the courts for ordering service of process in the manner they think most suitable in individual cases? Would you give the court the power to order substituted service if service is not affected within a certain number of days?

79. Are there complaints of corruption in the process-serving staff in your State? Is the service of process delayed on account of fraud or negligence on the part of the process-servers? If so, what measures would you devise for remedying this evil and for an effective check and supervision over the work of the process-servers so as to speed up the service of processes?

80. Do you consider the conditions of service (including that of pay, etc.) and method of recruitment of the process-servers partly responsible for corruption amongst their ranks? If so, what reforms would you advocate?

81. Would you recommend that the summons should—

(a) be accompanied by copies of the documents relied on by the plaintiff;

(b) state, as an alternative to (a), that the copies of the documents filed by the plaintiff are available for defendant's inspection in court forthwith;

(c) require the defendant to file his written statement by a date before the date fixed for hearing;

(d) require the defendant to file with his written statement a list of the documents relied on by him, copies of such documents and a list of the witnesses proposed to be called by him;

(e) state that no extension of time would be granted for filing the written statement excepting for sufficient reasons; and

(f) require copies of the written statement and the documents annexed to it to be furnished direct to the plaintiff's lawyer at address given by the plaintiff?

(iv) *Attendance of Witnesses*

82. What are your views in regard to the framing of a rule preventing parties from calling witnesses other than those mentioned in the lists given by them excepting in exceptional circumstances?

83. Are the parties reasonably diligent in applying for the issue of witness summonses? What remedies would you suggest to obviate delays consequent on the frequent non-service of witness summonses and the non-attendance of witnesses?

84. Should it be made a general practice to leave the parties to procure attendance of their witnesses, summonses being issued by the Court only in special cases?

(v) *Uncontested Matters*

85. Do you agree with the view that matters in which process has been duly served and no written statement has been filed—

(a) should be set down for hearing from time to time in a separate *ex-parte* list,

(b) judgment may be signed forthwith on the verified statement in the plaint and without evidence,

(c) if evidence considered desirable, evidence may be taken and decree passed forthwith,

(d) if evidence is desired and not available, a short date may be fixed for production of evidence and matter may be disposed of *ex-parte* on that date,

(e) may be dealt with by the Registrar or other Special Officer in the manner above-mentioned.

(vi) *Contested Matters*

86. Are you in favour of a conciliation proceeding which would take place at the date fixed for hearing and after pleadings are closed at which the Judge may try to induce parties to come to a settlement? If so, should the conciliation proceeding take place before the trial judge or some other judge? Further, should the conciliation proceeding precede or follow—

(a) discovery and inspection,

(b) pre-trial procedure mentioned in the next question?

87. Are you in favour of a thorough going pre-trial conference or pre-trial hearing which would take place at the date fixed for hearing and at which the Judge would—

(a) examine the parties summarily and hear the lawyers,

(b) determine the issues arising in the case,

(c) consider what documents need to be produced in court and in what manner,

(d) consider what facts are necessary to be proved and the manner of their proof by affidavit, oral or documentary evidence or by means of interrogatories or admissions,

(e) consider whether any witnesses other than those mentioned in the lists are necessary to be called or examined on commission,

(f) fix the date of disposal of the case?

Would you have the pre-trial conference or hearing before discovery or after discovery?

88. Are the provisions relating to examination of parties and discovery, production and inspection of documents in Orders X, XI, XII, and XIII of the Code of Civil Procedure generally followed in your State? If not, can you suggest any methods by which the use of these provisions can be made more general? Do these provisions need simplification? If so, in what manner? Would you recommend any amendment in Order XII, Rule 2 with a view to giving more powers to the courts to deal with unjustified denial of documents?

(vii) *Hearing*

89. Is the hearing of a suit or proceeding once begun generally continued from day to day in your State? If not, state the causes which contribute to interrupted hearings? What measures can you suggest—

(a) for ensuring the start of the hearing on the day fixed for it, and

(b) for the continuance of the hearing from day to day till it is finished as contemplated by Order XVII, Rule 1?

90. Is it your experience that in a large number of cases interrupted hearings and adjournments result by reason of applications made by the lawyers engaged in the case? If so, would you be in favour of a provision that as a rule, and except in special circumstances adjournments shall not be granted on the ground of the convenience of lawyers?

91. Is it your experience that the provisions of the Evidence Act in regard to the relevancy of evidence are insufficiently observed in the course of recording the evidence? Have you any measures to suggest for the exercise of greater control by the presiding judge over the evidence led both in regard to its relevant nature and its volume?

92. Would you be in favour of leaving the examination of witnesses of both sides to the Judge himself, liberty being given to the lawyers of the parties to suggest questions to the Judge? Would not a system of questioning in this manner by the Judge be a better method of eliciting the truth?

93. Would you give the presiding Judge a 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?

94. Would you be in favour of a larger use of affidavit evidence with liberty to ask for the deponent to be called for examination with the leave of the court? Does your

experience in writ matters support the view that larger use of affidavit evidence in other matters is practicable? If so, would you suggest the matters in which such affidavit evidence could be used with advantage?

95. Do you think that the recording of evidence of witnesses by the Judge in his own hand, causes delay? If so, have you any measures to suggest to obviate this delay?

96. Do you consider that generally argument addressed by lawyers to courts are unduly prolix and that courts exercise little control over the length of these arguments? Can you suggest any method of cutting down or controlling the length of these arguments? Would you consider it advisable to give the Judge special powers in this connection?

97. Do you consider that the issue of commissions has been a frequent cause of delay in the disposal of cases? If so, have you any suggestions to make in order to obviate such delay?

98. Would you give power to the commissioner to exclude irrelevant and inadmissible evidence?

99. Have you any suggestions to make in regard to the selection of Commissioners by the Court?

(viii) *Judgments*

100. Do you consider that in many cases judgments are unnecessarily prolix by reason of their containing a summary of the pleadings, a reproduction of the evidence of witnesses and a discussion of the authorities cited? Would you be in favour of having more concise judgments? Would you consider it advisable to enact suitable provisions in the Code of Civil Procedure for this purpose?

101. Is the delivery of judgments considerably delayed in your State? If so, could you suggest measures for ensuring the quick delivery of judgments? Would you be in favour of providing that judgments should, as a rule, be delivered within a week of the close of the hearing and not later than a month?

102. Are you in favour of only the findings and the operative part of the judgment being read out in open court, the judgment itself being made immediately available to the parties?

SECTION D

Execution of Decrees

103. What changes would you suggest in the existing procedure relating to the execution of different classes of decrees with a view—

(a) to avoid delays, and

(b) to simplify the procedure?

104. Are you in favour of investing the courts to which a decree is transferred for execution with additional powers such as—

(a) adding legal representatives of a deceased judgment-debtor under section 50(1),

(b) recognition of assignments of decrees under Order XXI, Rule 16,

(c) transfer of the decree to some other court under section 39,

(d) the grant of leave under Order XXI, Rule 50(2)?

Please suggest other powers which you may consider useful or necessary.

105. Would you favour an amendment of section 47 of the Code of Civil Procedure so that a purchaser in execution who is a stranger to the decree may be deemed to be a representative of the parties within the meaning of that section?

106. Do you think it necessary to have a rule analogous to Order XXI, Rule 15, applicable to judgment-debtors?

107. Should not the principle of *res-judicata* apply in contested execution applications?

108. Do you not consider it advisable that the right of appeal against orders made under section 47 should be substantially restricted? Would you agree that orders passed under that section should be made non-appealable at any rate to the extent of the executing Court's small cause jurisdiction? Have you any suggestions to make for any specific restrictions? If so, please state them.

109. Would you be in favour of shortening the period prescribed by section 48 for the execution of decrees? If so, to what extent and in respect of what classes of decrees?

110. What are your views on the suggested omission of articles 182 and 183 of Schedule I of the Indian Limitation Act leaving the decreeholder to execute his decree at any time within the period prescribed by section 48 of the Code of Civil Procedure?

111. Is there considerable delay in your State in the execution of decrees which are transferred to the Collector for sale of properties under sections 68 to 70 of the Code of Civil Procedure? Would you recommend the total abolition of the Collector's jurisdiction in this matter? If not, what measures would you propose for obviating such delays?

112. Would you be in favour of an amendment of Rules 1 and 2 of Order XXI so as to disallow pleas of payment and adjustment out of court unless evidenced by a writing?

113. Are execution proceedings in your State unduly delayed by stay orders granted by appellate courts? Are such orders granted as a matter of course? What measures would you suggest to prevent such a practice and the consequent delays?

114. Are you in favour of an amendment of Order XXI, Rule 26 so as to provide that there shall be no interim stay of a money decree? If not, would you suggest the payment of the decretal amount (or a substantial part thereof) ir court being made a condition precedent to the grant of stay?

115. Would you empower the executing court to investigate into the existence of a debt due to a judgment-debtor, where such debt is denied by the garnishee in execution?

116. Is it your experience that a large number of applications made under Order XXI (Rules 58 to 63 and 98 to 102) of the Code of Civil Procedure are frivolous and made with a view to causing delay? Have you any suggestions to make for an alteration of these provisions with a view to preventing such applications and consequent delays?

117. Are the provisions for suits in Order XXI, Rules 63 and 103 frequently used for the purpose of instituting frivolous suits? If so, would you suggest any measures for remedying this evil? Would you consider it advisable to provide that claims or objections should be investigated in execution after full enquiry and that a suit after the decision in an execution proceeding should be barred? Would the raising of court fees for suits of this character be justified in principle and serve as a check against the institution of frivolous suits?

118. Are the provisions of Order XXI, Rule 90 frequently availed of the make frivolous applications? Would you advise the deposit of the sale-warrant-amount or the amount realised at the court sale being made a condition precedent to the granting of an application under that rule?

119. Do you consider that the setting up of a single executing court for a particular local area would make for speedy and effective execution of decrees?

Section E

(i) *Appeals and Revision*

120. Do you agree with the principle that as a rule only one appeal should lie in civil cases followed by a revision on the ground of miscarriage or failure of justice? Would you be in favour of appeals being heard by a Bench of District Judges with no further right of appeal? Will this method lead to conflicting decisions by the District Judges and if so what remedy will you suggest?

121. Do you agree that the present law leads to a multiplicity of appeals which causes enormous delay and the hearing of the same matter occasionally as many as five times with no tangible advantage to the litigants?

122. Are you in favour of omitting any of the items in the list of appealable orders given in order XLIII, Rule 1?

123. Have you any changes to suggest in the existing method of the preparation of paper books and other records of the appeal with a view to reducing, as far as possible, the costs in appeal?

124. Would you be in favour of written briefs being submitted in the heavier appeals in the Supreme Court and a suitable time limit being applied to arguments by the lawyers?

125. What are your views in regard to the rights of appeal to the Supreme Court provided by the Constitution in articles 132, 133, 134 and 136?

126. Would you enlarge or curtail the appellate jurisdiction conferred on the Supreme Court in regard to Criminal matters under article 134?

127. How, in your opinion, has the exercise of the appellate jurisdiction under article 134 affected the High Courts?

128. What generally are your views in regard to the exercise of its jurisdiction by the Supreme Court under article 136?

129. Do you agree that a large number of revision applications filed before High Courts lack substance and are filed for delaying the conclusion of the litigation? Would you be in favour of a drastic curtailment of this right of revision?

130. Would you be in favour of a drastic curtailment of the right of revision in the case of interlocutory orders? What is your view on the proposal that revisions in respect of such orders should be confined only to cases falling within clause (a) of section 115 of the Code of Civil Procedure and that no revision should be allowed in cases falling under clauses (b) and (c)?

131. Do you agree that the admission of an application for revision under section 25 of the Provincial Small Cause Courts Act should be made conditional on an applicant depositing the decretal amount in court?

132. Would you confer upon the District Court revisional jurisdiction under section 25 of the Provincial Small Cause Courts Act, without any further revision to the High Court?

(ii) *Writ Procedure*

133. What are your views as to the manner in which writ proceedings under article 226 have been dealt with in your State? Have these proceedings been the cause of congestion and delays in your courts?

134. Do you agree that these proceedings furnish a satisfactory method for the expeditious disposal of important matters? If so, would you extend such a procedure to a wider class of cases? If so, please state the matters to which this procedure could be extended.

SECTION F

(i) *Costs*

135. Do you agree with the principle that costs awarded to a successful party should be a fair indemnity for the expenses incurred by him in asserting or defending his legal right? If so, do the costs awarded in your State to the successful litigant give him such an indemnity? If not, have you any measures to suggest by which the disparity between the costs awarded to a litigant and the amount he should be entitled to by way of a fair indemnity is eliminated?

(ii) *Court Fees*

136. Do you agree with the general principle that the vindication of legal rights in the courts of law of the State should be made easy and a nominal court fee only should be charged to the citizen for the vindication of his rights in a court of law?

137. Would the introduction of such a principle in this country give rise to a mass of frivolous litigation?

138. Are you in favour of the system prevailing in many States under which the system of administration of justice is a source of revenue and profit to the State? Do you approve of the costs of administering justice in criminal courts being made a charge on the civil litigant? Would you relate the scale of fees chargeable in civil cases to the actual cost of the administration of civil justice? If so, what heads of expenses would you include in such costs?

139. Would you favour the levy of a single composite court fee at the initiation of the proceedings and the total abolition of such fees at subsequent stages on various items such as certified copies, Government records, applications for adjournments, etc? Would not the abolition of the latter tend to a reduction of the administrative staff and a simplified and a quicker system of administration of justice?

140. Would you favour the levy of reduced court fees in first appeals?

141. Would you advocate a proportionate refund of the court fees in cases which are settled before the framing of issues?

Section G

Legal Representatives and Guardians ad Litem

142. Are considerable delays caused in legal proceedings in your state by applications for the appointment of *guardians ad litem* and bringing on record legal representatives of deceased parties? If so, can you suggest any measures to obviate these delays?

143. Would you approve of the plaintiff being permitted to propose in one application names of several persons as possible *guardians ad litem* so that notices may be issued to all of them simultaneously and the court may appoint a suitable person out of them?

Section H

Law of Evidence

144. Are you of the view that some of the provisions of the Indian Evidence Act tend to cause delay in the disposal of civil and criminal matters? If so, please state the provisions and indicate suitable amendments?

145. Would you be in favour of giving summary powers to courts to punish witnesses who have clearly committed perjury in the enquiry before the courts? Would the grant of such powers, in your opinion, help to eradicate perjury or reduce the number of false claims or defences?

146. Would you empower the officers presiding over courts to interfere and terminate, if necessary, the examination-in-chief or cross-examination of particular witnesses or to refuse to hear additional oral evidence on particular points?

147. Should the provisions of section 90 of the Evidence Act be made applicable to certified copies of documents thirty years old although the copies themselves may not be thirty years old?

148. Would you be in favour of relaxing to some extent the present rule against the admission of hearsay evidence? If so, please indicate the manner and extent to which such relaxation should be made?

149. Are delays in the disposal of cases caused by the need for the production of certified copies of public documents?

150. Would you be in favour of permitting parties, by consent, to give secondary evidence of such documents in some form in order to obviate such delays?

151. It has been said that our law of evidence needs to be modernized. Do you agree? If so, have you any suggestions to make in that direction?

152. Are you generally in favour of leaving much larger power than at present in the presiding judge to regulate, shorten and refuse the admission of evidence?

153. Should the scope of the provisions relating to judicial notice in section 57 of the Indian Evidence Act be enlarged? If so, to what extent?

154. Would you amplify the scope of the rules relating to the admission of secondary evidence? If so, how?

SECTION I

Compulsory registration of documents and allied matters

155. Would you make the following compulsorily registerable so that they could be effected only by a registered instrument—

(*a*) partition of immovable property in a joint Hindu family,

(*b*) a release by a member of the joint family of his interest in joint family properties,

(*c*) a surrender by a Hindu female in favour of the reversioner,

(*d*) a family arrangement,

(*e*) a grant of maintenance,

(*f*) adoption, and

(*g*) a contractual partnership with a capital exceeding Rs. 500?

156. Would you recommend amendment of sections 59 and 123 of the Transfer of Property Act and section 68 of the Evidence Act so as to do away with or modify the requirements as to attestation and proof?

157. Would you be in favour of providing that the registration of a document should be presumptive evidence of the execution of, and signature to the, document by the parties thereto?

SECTION J

Insolvency Jurisdiction

158. Are you in favour of the continuance of the two differing procedures which at present govern insolvency in the Presidency Towns and outside?

159. Have you any suggestions to make in regard to improvements in the administration of the estates of insolvents? Are there undue delays in such administration? If so, what remedies would you suggest to obviate the delays?

160. Are the existing provisions relating to compositions and schemes of arrangement satisfactory? Are these provisions taken advantage of by creditors and insolvents? Have you any alterations to suggest?

161. Is the method of appointment of Official Receivers in your State satisfactory? Are these Receivers efficient in the discharge of their duties? Would you be in favour of conferring greater powers on these Receivers?

SECTION K

Administrative Bodies

162. Having regard to the increasing powers conferred on administrative bodies to decide matters affecting rights of citizens, do you consider that the system followed in the disposal of these matters by the administrative bodies sufficiently safeguards the interests of the citizens?

163. Would the rights of the citizen in regard to administrative bodies be sufficiently safeguarding by a provision that the officials within the body itself who hear and decide a matter should be distinct from the officials who investigate and prosecute? Would you be in favour of a legislation laying down standard methods of procedure and other requirements to be followed by all administrative bodies entrusted with powers to deal with the rights of citizens?

164. Would you favour the constitution of a body like the *Conseil d'etat* in France or confer similar powers on the High Court?

165. What is your opinion about the present tendency of legislation to exclude lawyers from appearing, as of right, before administrative bodies?

166. Would you advocate the creation of a permanent body at the Centre and in each State, entrusted with the function of keeping a watch over the progress and development of laws and statutory rules, substantive and procedural, and to suggest revision?

167. What suggestions would you offer to render satisfactory, the making and the promulgation of statutory rules?

PART II

Criminal Law and Procedure

168. To what causes, in general, do you attribute the delays in the investigation of offences? What remedies do you advocate to minimise such delays?

169. Are the delays in the enquiries into, and the trial of, cognisable offences, due to—

(*i*) insufficient number of courts and prosecuting officers,

(*ii*) inability of the Police to produce their witnesses on the due dates?

170. To what causes do you attribute the prosecution's failure to produce their witnesses and what remedies do you suggest for eliminating such delays?

171. Is the practice of entrusting police officers with the duties of prosecution still prevalent in your State? Should not the prosecuting officers be selected from the legal profession?

172. What is your opinion on the proposal to issue pre-trial summonses in petty offences, stating the nature of the offences and the fine to be imposed and giving the accused the option to plead guilty by registered letter and to remit the amount of fine?

173. What measures do you suggest for ensuring that the Police get the help of respectable persons for making *panchnamas*?

174. Is it necessary to maintain the difference in the procedure relating to trial of summons and warrant cases?

175. What reforms do you suggest in the procedure relating to summary trials? Are you in favour of enlarging the list of offences triable summarily?

176. Would you agree that in summary trials the procedure prescribed for summons cases alone should be followed and warrant procedure omitted?

177. Is there any necessity to retain committal proceedings in any form?

178. Would you agree to the proposal that the procedure in section 202 of the Criminal Procedure Code should not be made applicable to complaints under sections 196, 196A, 197 or 476 of the Code?

179. Should not the provision in section 256 of the Code allowing the accused *at the commencement of the next hearing of the case* to state the names of prosecution witnesses he wishes to cross-examine be omitted, and the accused asked to state forthwith the names of such witnesses?

180. Is there any objection to the procedure under section 251A of the Code to be made applicable to complaints under section 476?

181. Are you in favour of a provision that objections on the ground of want of sanction, misjoinder of charges, etc., should be taken at the earliest opportunity and should not be permitted on appeal unless they have been taken in the court of the first instance?

182. Have you any suggestions to make in regard to the provisions as to the framing and joinder of charges in the Code of Criminal Procedure with a view to secure a simpler set of rules, avoidance of pleas based on technicalities and a larger discretion in the Court?

183. Are you in favour of retention of Honorary Magistrates of any class, exercising judicial functions?

184. Are you in favour of enlarging the revisional jurisdiction of the Sessions Judges so as to enable them to pass final orders instead of making a reference to the High Court? If so, to what extent?

185. Is it necessary to retain the proviso to section 366 of the Code requiring the presiding judge to read out the whole judgment on the request of the prosecution or the defence?

186. Do you recommend the extension of the scope of section 561A of the Code of Criminal Procedure to all criminal appellate and revisional courts, to prevent abuse of the process of the Court or to secure the ends of justice?

187. What amendments do you suggest to section 27 of the Evidence Act to remove the difficulties in its use and interpretation?

188. Do you think that the prescribing of a minimum sentence of imprisonment for offences under several special Acts is sound in principle? Should not the law lay down the maximum penalty leaving it to the Court's discretion to determine the quantum of punishment in each case?

189. Are you in favour of making any amendments in Schedule II of the Code of Criminal Procedure so as to exclude certain offences from the list of those exclusively triable by the Court of Session?

190. What is your opinion on the working of the system of trial by Jury in your State? Do you advocate its continuance or abolition? Please give your reasons.

191. To what extent, if any, would you liberalise the provisions relating to compensation and restitution? (Sections 250, 517, 545, 546A and 553 of the Code of Criminal Procedure).

192. Are you in favour of relaxation of the rule of presumption of innocence of the accused in any case? If so, in what class of cases and to what extent?

193. Do you agree that the provisions in sub-section (2) of section 510 of the Code of Criminal Procedure confer an unqualified privilege upon the prosecution and the accused to summon the chemical examiner and other officials mentioned therein and that they are likely to cause unreasonable delay in the disposal of Criminal trials?



APPENDIX II

List of witnesses examined by the Law Commission

Allahabad

8-12-1956

1. Shri R. N. Seth, Advocate, District Court, Kanpur.
2. Shri S. Bhasin, Advocate, District Court, Kanpur.
3. Shri Munnalal Bhushan, Advocate, District Court, Kanpur.

10-12-1956

4. Shri R. U. Singh, Professor of Law, Lucknow University, Lucknow.
5. Prof. K. K. Bhattacharya, Dean of Faculty of Law, Allahabad University, Allahabad.
6. Shri S. K. Verma, Advocate, C/o Bar Library, High Court, Allahabad.
7. Shri Raghunath Sahai, ADM(Judl.), Unnao.

11-12-1956

8. Shri Sarju Prasad, Advocate, District Court, Banaras.
9. Shri P. N. Singh, Advocate, District Court, Banaras.
10. Shri S. N. M. Tripathi, Deputy Commissioner, Lucknow.
11. Shri J. N. Raina, District Magistrate, Allahabad.

12-12-1956

12. Shri K. P. Mathur, Registrar, Allahabad High Court.
13. Shri A. P. Pandey, Advocate, High Court, Allahabad.
14. Shri Ghatak, representing Advocates Association.

13-12-1956

15. Shri Prem Prakash, State Judicial Service, Allahabad.
16. Hon'ble Mr. Justice Randhir Singh, Allahabad High Court, L.B., Lucknow.
17. Shri Sri Ram, Deputy Government Advocate, High Court, Allahabad.

14-12-1956

18. Shri A. N. Jha, Chief Secretary to the U.P. Government, Lucknow.
19. Shri M. G. Kaul, Home Secretary to the Government of U.P., Lucknow.

20. Shri Girish Chandra, Judicial Secretary to the Government of U.P., Lucknow.
21. Shri R. N. Sharma, Jt. Secretary, Judicial Department, Government of U.P., Lucknow.
22. Shri Shanti Bhushan.
23. Shri Sudersan Dayal Agarwal.
24. Shri R. S. Pathak.
25. Shri Amitav Banerji.

} Junior Advocates.

26. Shri Satyendra Nath Verma.
27. Shri Rajesh G. Verma.
28. Shri Gopikrishna Sahai.
29. Shri Vijay Kumar Barman.
30. Shri Behariji Das.
31. Shri N. C. Upadhya.

15-12-1956

32. Hon'ble Mr. Justice V. G. Oak, I.C.S., Allahabad High Court, Allahabad.
33. Hon'ble Mr. Justice B. R. James, I.C.S., Allahabad High Court, Allahabad.

17-12-1956

34. Shri Rai Rajashwar Pershad, Advocate, Gorakhpur.
35. Shri Gopal Behari, Advocate, Allahabad High Court, Allahabad.
36. Shri K. L. Misra, Advocate General, U.P., Allahabad.

18-12-1956

37. Shri A. Sanyal, Advocate, High Court, Allahabad.
38. Shri Janki Prasad, Advocate, High Court, Allahabad.
39. Shri Brij Bhan Kishore, Board of Revenue Bar Association, C/o Board of Revenue, Lucknow.

19-12-1956

40. Shri M. S. Mathur, Inspector General of Police, U.P., Lucknow.
41. Shri S. C. Misra, D.I.G. of Police, Lucknow.
42. Shri P. C. Chatturvedi, Advocate, Allahabad.
43. Shri O. N. Agarwal, Advocate, District Court, Bareilly.
44. Shri K. N. Kankan, Advocate, District Court, Bareilly.

20-12-1956

45. Shri Kailash Behari Mathur, District Government Counsel, Farrukhabad, U.P.
46. Shri G. S. Chooramani, Joint Director, Panchayat, U.P.
47. Shri S. N. Mulla.

48. Shri Mirza Hameedulla Beg.
49. Shri C. S. Saran, Editor, I.L.R., Allahabad.
50. Shri S. N. Agarwala, Editor, Allahabad Law Journal Reports, Allahabad.

21-12-1956

51. Shri Shiv Naik Singh Ukil, Banaras.
52. Shri G. C. Chatterji, Advocate, Lucknow.
53. Shri S. S. Dhawan, Bar-at-Law, Allahabad.
54. Shri B. K. Dhaon, Advocate, High Court, Lucknow.
55. Shri S. C. Das, Advocate, High Court, Lucknow.

Ernakulam

7-1-1957

1. Shri V. K. K. Menon, Bar-at-Law, Advocate, Advocates' Association, Ernakulam.
2. Shri T. N. Subramania Iyer, Advocate, Advocates' Association, Ernakulam.
3. Shri G. B. Pai, Representative of the Bar Council, Ernakulam.
4. Shri Ramaiya, Ernakulam Bar Association.

8-1-1957

5. Shri T. S. Venkateswara Iyer, Bar Association, Ernakulam.
6. Shri V. Permeswara Menon, Bar Association, Ernakulam.

} Advocates.

7. Shri T. P. Paulose, Government Pleader, District Court of Anjikaimal, Ernakulam.
8. Shri K. V. Varkey, Advocate, Bar Association, Haripad.
9. Shri R. Narayana Iyer, Pleader, Bar Association, Haripad.

9-1-1957

10. Shri P. T. Raman Nair, I.C.S., District Judge on Spl. Duty, Law Department, Trivandrum.
11. Shri T. R. Balakrishna Iyer, Secretary to Government of Kerala, Law Department, Trivandrum.
12. Shri Rama Verma Thampuran, Rtd., Chairman of the Public Service Commission, Trivandrum.
13. Shri A. K. Vasudevan, Sub-Judge, Parur.
14. Shri K. S. Manikkam, Dist. Munsif, Trichur.
15. Shri M. V. Abraham, Registrar of Village Courts, Cochin.

10-1-1957

16. Shri Govind Menon, Ex-Chief Minister of Travancore-Cochin.
17. Shri Mathew P. Muricken, Advocate General of Kerala, Ernakulam.
18. Mrs. Anna Chandy, Dist. & Sessions Judge, Kottayam.
19. Shri T. Sivarama Menon, Sub-Divisional Magistrate, Alleppey.
20. Shri P. V. Govindaswamy Iyer, Sub-Magistrate, Trivandrum.
21. Shri V. N. Subramania Iyer, Principal Law College, Quilon.
22. Hon'ble Mr Justice T. K. Joseph, Kerala High Court, Ernakulam.
23. Shri N. Bhagawan Nair, Advocate, Trivandrum.
24. Shri R. Narayana Pillay, Advocate and Senior Govt. Pleader, Trivandrum.

11-1-1957

25. Shri K. S. Narayana Iyer, Dist. & Sessions Judge, Quilon.
26. Shri P. Muhammad Kunju, Dist. Magistrate (Judl.), Quilon.
27. Hon'ble Mr. Justice K. T. Koshi, Chief Justice, Kerala High Court, Ernakulam.
28. Hon'ble Mr. Justice K. Sankaran, Kerala High Court, Ernakulam.

Bangalore

14-1-1957

1. Shri D. Ramaswamy Iyengar, Registrar, High Court, Bangalore.
2. Shri N. S. Krishnamurthi, Civil Judge & Dist. Magistrate, Bellary.
3. Shri A. Panchakashariah, City Magistrate, Bangalore.
4. Shri B. Gopaliah, Asst. Law Secretary, Govt. of Mysore, Bangalore.

15-1-1957

5. Shri M. Ramachandra Rao, Advocate, President, Legal Aid Society, Bangalore.
6. Shri N. R. Gopalakrishna, District Judge, Coorg.
7. Shri K. R. Karanath, Advocate, Bangalore.
8. Shri M. P. Somasekhara Rao, Advocate, Bangalore.
9. Shri P. S. Devadas, Advocate, Bangalore.

16-1-1957

10. Shri G. R. Ethirajulu Naidu, Advocate General of Mysore, Bangalore.
11. Shri V. K. Govinda Rajulu, Govt. Pleader, Bangalore.
12. Shri M. Sadasvayya, Secy. to the Govt. of Mysore, Law Deptt., Bangalore.
13. Shri R. Vasudeo, Addl. Secy. to the Govt. of Mysore, Law Department, Bangalore.

14. Shri K. Jaggannatha Shetty.
15. Shri R. P. Hiremutt.
16. Shri S. Shamanna.
17. Shri A. K. Puranik.

} Junior Members of the Bangalore Bar Association.

18. Shri A. V. Shankar Rao, President, Civil Station Bar Association, Bangalore.
19. Shri Deshpande, Pleader, Gurberga.

17-1-1957

20. Shri P. Shivashankar, Principal Law College, Bangalore.
21. Shri M. A. Gopalaswamy Iyengar, Professor, Law College, Bangalore.
22. Shri Iqubal Hussain, Professor, Law College, Bangalore.
23. Shri R. B. Naik, Civil Judge, Junior Division, Dharwar.
24. Shri M. Narasimhachar, Bangalore.
25. Shri P. Kodenda Rao, President, Servants of India Society, Bangalore.
26. Shri V. P. Majumdar, Vice President, Bar Association, Belgaum.
27. Shri Samasekhara Rao, President, Bar Association, Bangalore.

18-1-1957

28. Shri P. K. Monappa, I.P.S., Inspector-General of Police, Bangalore.
29. Shri S. Nijalingappa, Chief Minister, Mysore State.
30. Shri M. V. Rama Rao, Law Minister, Mysore State.
31. Shri P. Medappa, Retd. Chief Justice, Mysore.
32. Hon'ble Mr. Justice R. Venkataramaiya, Chief Justice of Mysore High Court, Bangalore.

19-1-1957

33. Shri T. K. Tukal, Dist. Judge, Dharwar.
34. Shri K. Rama Rao, Public Prosecutor, Bellary.
35. Shri H. Gowda, Chairman Public Service Commission, Bangalore.

Madras

21-1-1957

1. Shri T. M. Krishnaswami Aiyar, President, Advocates' Association, Madras.
2. Shri V. L. Ethiraj, President, Bar Association, Madras.
3. Shri K. Rajah Aiyar, President, Madras State Bar Association.

4. Shri V. Jayarama Ayyar, President, Bar Association, Tiruchirapalli.
5. Shri T. R. Sundaram Pillai, Public Prosecutor, Coimbatore.
6. Shri K. Bashyam, Advocate, Madras.
7. Shri B. V. Vishwanatha Iyer, Secy. Rule Committee, Madras.

22-1-1957

8. Shri C. V. Srinivasachari, President, Bar Association, Chidambaram.
9. Shri K. Nagarajan, President, Bar Association, Pudukkotai.
10. Shri S. Varadachariar, Retired Judge of the Federal Court.
11. Shri M. Patanjali Sastri, Retired Chief Justice of India, Madras.
12. Shri J. S. Athanasius, Public Prosecutor, Madras City.
13. Shri N. Nagaraja Rao, Asst. Public Prosecutor, Tiruchirapalli.
14. Shri P. S. Subramania Pillay, Public Prosecutor, Tirunelvelli.

23-1-1957

15. Shri P. Venkataramana Rao Nayudu, Retired Chief Justice of Mysore, Madras.
16. Shri M. Anantanarayanan, I.C.S., Director of Legal Studies, Madras, and at present performing functions of Principal, Law College.
17. Mr. V. C. Gopalarathnam, Advocate, Madras High Court, Original Side.
18. Mr. V. Thiagarajan, Advocate, Madras High Court, Original Side.
19. Shri V. R. Rangaswamy Iyengar, Advocate, Madras.
20. Shri C. D. Venkataraman, District Magistrate, Tiruchirapalli.
21. Shri R. Sadasivam, District Magistrate, Vellore.
22. Shri F. Jagannathan, Advocate (Criminal Side).
23. Shri Askar Ali, Advocate (Criminal Side).

24-1-1957

24. Shri Gnanasundra Mudaliar, Chairman, Public Service Commission, Madras.
25. Shri J. M. Lobo Probhu, I.C.S., Home Secretary, Madras.
26. Shri A. Alagiriswami, Law Secretary, Madras.
27. Shri G. Vasanth Pai.
28. Shri Srinavasan. } High Court Advocates.
29. Shri Venkataswamy.
30. Shri K. V. Venkatasubramania Ayyar, Advocate, Madras.
31. Shri V. R. Rajaratnam, I.P., Inspector General of Police, Madras.
32. Shri F. V. Arul, I.P., Commissioner of Police, Madras.

33. Shri Gajapati Nayagar. } Office bearers
34. Shri A. Sattanathan. } of Tamil Akademy.

35. Shri Narayanan. } Junior members of the Bar.
36. Shri Vedantam Srinivasan and others. }

25-1-1957

37. Dr. C. P. Ramaswami Aiyar, Madras.
38. Shri P. Sharfuddin, Chief Judge (Retd.), Small Cause Court, Madras.
39. Shri S. A. Ayyasami Chetty, Chief Presidency Magistrate, Madras.
40. Shri P. Ramakrishna Ayyar, I.C.S., Chairman, Sales Tax Appellate Tribunal, Madras.
41. Shri C. Kadarvelu, Regional Inspector of Municipal Council and Local Board, Chingleput, and Shri Mudaliar.
42. Shri Veera Raghavan, Secretary Bar Council, Madras and also Secretary of the Madras State Bar Federation.
43. Hon'ble Mr. Justice Somasundaram, Judge, High Court, Madras.
44. Hon'ble Mr. Justice Ramaswamy Gounder, Judge, High Court, Madras.
45. Shri P. Venugopal, Sub-divisional Magistrate, Tuticorin.
46. Shri S. Subbanna Shetty, District Munsif, Coimbatore.
47. Shri C. A. Vaidyalingam, Govt. Pleader, Madras.
48. Shri S. Palaniswamy, Government Pleader, Mudurai.
49. Shri Chakramakal, Advocate, Madras.

26-1-1957

50. Shri K. Chandrasekaran, Editor, Indian Law Reports, Madras.
51. Shri W. N. Ramaratham, Editor, Madras Law Journals, Madras.
52. Shri V. C. Sri Kumar, Publisher of the Law Weekly, Madras.
53. Shri M. K. Nambiar, Advocate, Madras.
54. Shri S. Mohan Kumaramangalam, Advocate, Madras.
55. Hon'ble Mr. Justice A. S. P. Iyer, Judge, High Court, Madras.

Hyderabad

28-1-1957

1. Shri Vivekanandamurthy, Chairman, Andhra State Public Service Commission, Hyderabad.
2. Shri P. Somasundaram, Advocate, High Court, Hyderabad.
3. Shri N. S. Raghavan, Advocate, Hyderabad.
4. Shri Mohamed Mirza, Public Prosecutor & Govt. Advocate, Hyderabad.

5. Shri Rajaram Iyer, Advocate, High Court, Hyderabad.

6. Shri Anjani Kumar, Second Class Magistrate, Judicial, Eluru.

7. Shri Tej Rai Kapoor. } Junior Members of the
8. Shri Sriramulu. } Bar at Hyderabad.

29-1-1957

9. Shri V. K. Vaidya, Bar Association, Hyderabad.

10. Shri G. C. V. Subba Rao, Principal, Law College, Osmania University, Hyderabad.

11. Shri Narahari Rao. }
12. Smt. Sarala Devi. } Advocates High Court,
13. Miss Amina Naqvi. } Hyderabad.

14. Shri V. Padmanabhan, Advocate, Eluru, West Godavari District.

15. Dr. V. V. Chowdari, Editor, Indian Law Reports, Andhra Series High Court, Hyderabad.

16. Shri M. Seshachalapathy, Govt. Pleader, Hyderabad.

17. Hon'ble Mr. Justice Chandra Reddy, Judge, High Court, Hyderabad.

18. Hon'ble Mr. Justice Umamaheswaram, Judge, Andhra High Court, Hyderabad.

30-1-1957

19. Shri D. Munikannaya, Public Prosecutor, Andhra Pradesh.

20. Shri Nambiar, I.P.S., Inspector General of Police, Andhra Pradesh.

21. Shri Shiv Kumar Lal, I.P.S.

22. Shri C. Rangaswamy Iyengar, Commissioner of Police, Hyderabad.

23. Shri P. Basi Reddy, Advocate, High Court, Andhra.

24. Shri B. Rajabhushana Rao, Advocate.

25. Shri G. V. Raghavayya, Advocate, High Court, Hyderabad.

26. Shri Ramachandra Rao, District Munsif, Tennali.

27. Hon'ble Mr. Justice Bhimsankaran, Judge, High Court, Andhra Pradesh.

31-1-1957

28. Shri O. Pulla Reddy, I.C.S., Chief Secy. to the Government of Andhra.

29. Shri H. Ananta Narayana Ayyar, I.C.S., Secretary to the Government, Law Department, Hyderabad.

30. Shri N. Ramasen, I.A.S., Secretary to the Chief Minister, Andhra Pradesh.

31. Shri V. V. Subrahmanyan, I.C.S., Third Member, Board of Revenue, Andhra Pradesh.
32. Shri Gopalrao Ekbote, ex-Minister for Education, Hyderabad.
33. Shri Tarachand Gupta, Chief Judge, City Civil Court, Hyderabad.
34. Shri V. Vedantachari, Advocate, High Court of Andhra, Hyderabad.
35. Shri E. Venkatesam, Advocate, High Court of Andhra, Hyderabad.
36. Hon'ble Mr. Justice N. D. Krishna Rao, I.C.S., Judge, Andhra Pradesh High Court.

1-2-1957

37. Shri T. Krishnamma, District & Sessions Judge, Vishakapatnam.
38. Shri D. R. Venkatesa Iyer, Special Judge, Tribunal for Disciplinary Proceedings, Guntur.
39. Shri Pola Reddy, District & Sessions Judge, Vishakapatnam.
40. Shri D. Krishna, President, Apprentices Association.
41. Shri M. Balasubrahmanyam, Secretary, Apprentices Association.
42. Shri Lakkaraju Subbarao, Advocate, Coconada, East Godavari District.
43. Shri Ramamurthy, Sub-judge, Rajamundhry.
44. Shri Y. Venkateswar Rao, Principal Sub-Judge, Vijayawada.

Delhi

22-2-1957

1. Hon'ble Mr. Justice N. H. Bhagwati, Judge, Supreme Court of India.

23-2-1957

2. Hon'ble Mr. Justice S. R. Das, Chief Justice, Supreme Court of India.
3. Hon'ble Mr. Justice Syed Jafer Imam, Judge, Supreme Court of India.
4. Hon'ble Mr. Justice B. P. Sinha, Judge, Supreme Court of India.
5. Shri L. R. Shiva Subramaniam, Dean, Faculty of Law, Delhi University.
6. Shri A. A. A. Fyzee, Member, U.P.S.C.

24-2-1957

7. Shri S. C. Isaacs, Advocate, Supreme Court, New Delhi.
8. Shri Ved Vyas, Advocate, Supreme Court, New Delhi.
9. Shri A. V. Viswanath Sastry, Advocate, Supreme Court, New Delhi.
10. Shri Sant Singh, Advocate, Supreme Court, New Delhi.

Calcutta

27-3-1957

1. Shri N. C. Chakraborthy, Senior Government Pleader, Calcutta.
2. Shri S. K. Basu, Advocate, Bar Association, High Court.
3. Shri P. K. Roy, Advocate, Bar Association, High Court, Calcutta.

28-3-1957

4. Shri I. P. Mukherjee, Bar-at-Law, Library Club, High Court.
5. Shri S. D. Bannerjee, Bar-at-Law, Bar Library Club, High Court.
6. Shri D. N. Mookerjee, President, Bar Association, Alipore.
7. Shri B. N. Bhattacharjee, Vice-President, Bar Association, Alipore.
8. Shri H. N. Sircar, Inspector-General of Police, West Bengal.
9. Shri H. S. Ghose Chowdhury, Commissioner of Police, Calcutta.
10. Shri B. C. Ghose, Principal Judge, City Civil Court, Calcutta.

29-3-1957

11. Shri N. L. Som, District Judge, 24-Paraganas.
12. Shri S. K. Nyogi, District Judge, Burdwan.
13. Shri P. C. Ghose, Public Prosecutor, 24-Paraganas.
14. Shri S. S. Mukerjee, Advocate, High Court.
15. Shri A. K. Sen, Bar-at-Law.
16. Shri A. C. Ganguli, Bar-at-Law, Chief Reporter & Editor, ILR Series, Calcutta.

30-3-1957

17. Hon'ble Mr. Justice S. K. Sen, Judge, High Court, Calcutta.
18. Hon'ble Mr. Justice P. K. Sarkar, Judge, High Court, Calcutta.

1-4-1957

19. Shri S. K. Bhattacharya, Munsif, Howrah.

20. Shri R. C. Hazra.
21. Shri S. N. Chaudhuri.
22. Shri N. C. Mitra.

} Incorporated Law Society, High Court, Calcutta.

23. Shri K. P. Mukherji, Judge, City Civil Court. (Formerly Chief Judge, Court of Small Causes, Calcutta.)
24. Shri S. P. Ghose, Judge, Court of Small Causes, Sealdah.

2-4-1957

25. Shri Mallinath Mukherjee, Chief Presidency Magistrate.
26. Shri S. C. Sarkar, Commentator.

27. Shri S. N. Ray, I.C.S., Chief Secy. to the Govt. of West Bengal.
28. Shri H. C. Mazumdar, Lawyers Association, Chief Presidency Magistrate's Court, Calcutta.
29. Shri K. C. Gupta, Presidency Magistrate's Court Bar Association, Calcutta.
30. Shri S. C. Goswami, Representative of the Small Cause Court Bar Association, Calcutta.
31. Hon'ble Mr. Justice Randhir Singh Bachawat, Judge, Calcutta High Court.
32. Hon'ble Mr. Justice G. K. Mitter, Judge, Calcutta High Court.

3-4-1957

33. Shri Samarendra Banerjee, Bar Association, Bankura.
34. Shri N. R. Ghose, Bar Association, Jalpaiguri.

4-4-1957

35. Shri N. Sanyal, Secretary, Legal Aid Society, Calcutta.
36. Shri B. L. Sarkar, Judge, City Civil Court, Calcutta.
37. Shri N. C. Das, Government Pleader, Howrah.
38. Shri B. R. Gupta, I.A.S., District Magistrate, 24-Paraganas.
39. Shri K. K. Maitra, Assistant Secy., Democratic Lawyers' Association, Calcutta.
40. Shri A. P. Chatterji, Joint Secretary, Democratic Lawyers' Association, Calcutta.
41. Shri B. N. Das, Member, Democratic Lawyers' Association, Calcutta.
42. Shri J. N. Mallick, Sub-Judge & Assistant Sessions Judge, Howrah.
43. Shri A. B. Shyam, Sub-Judge, 24-Paraganas.

Cuttack

5-4-1957

1. Shri Somnath Misra, District Magistrate, Korap.
2. Shri B. G. Rao Patnaik, I.A.S., Board of Revenue, Sambalpur.
3. Shri S. K. Mahanty, Government Pleader, Cuttack.
4. Shri G. B. Misra, Law Secretary.
5. Shri P. N. Mahanty, Home Secretary.
6. Shri B. Roy, Inspector General of Police, Orissa.

6-4-1957

7. Shri D. V. Narasaingha Rao, Advocate, Berhampore (Ganjam).
8. Shri L. K. Das Gupta, Advocate, Cuttack.
9. Shri H. Mahapatra, Advocate, Cuttack.
10. Shri M. S. Rao, Advocate, Chief Editor of Cuttack Law Times.
11. Shri S. N. Das Gupta, Advocate, High Court, Cuttack.

7-4-1957

12. Shri J. K. Misra, District & Sessions Judge, Sambalpur.
13. Shri K. K. Bose, Subordinate Judge, Puri.
14. Shri K. S. Murthy, Professor of Law, M. S. Law College, Cuttack.

Gauhati

10-4-1957

1. Shri B. C. Barua, Dist. & Sessions Judge, LAD, Gauhati.
2. Shri C. Lyngodh, Addl. Judge & Judicial Officer, K. & J. Hills, Shillong.
3. Shri Dinesh Chandra Datt, I.G. of Police.
4. Shri B. C. Dutta, Registrar, Assam High Court.
5. Shri M. K. Barkataki, Registrar, Assam High Court.
6. Shri D. N. Medhi, Senior Govt. Advocate, Assam.
7. Shri Chandranath Sarma, Government Pleader & Public Prosecutor.

11-4-1957

8. Shri S. K. Dutta, ICS, Chief Secy. to Govt. of Assam.
9. Dr. J. C. Medhi, Secretary & Legal Remembrancer, Assam.
10. Shri A. Ahmad, Deputy Commissioner, Kamrup.
11. Shri S. Sarkar, Additional District Magistrate, Kamrup.

11A. Shri S. J. Das, A. M., Gauhati.

12. Shri F. Ali Ahmed, Bar-at-Law, High Court, Assam.
13. Shri Bohra, Principal, Law College, Gauhati.
14. Shri P. N. Das, Advocate, Editor, I.L.R., Assam Series, Gauhati.
15. Shri Gunjanan Barua, Advocate, Jorhat.
16. Shri Nagendra Nath Syam, Advocate, Silchar.
17. Shri Parbati Kumar Goswami, Advocate, Dibrugarh.

Bombay

15-7-1957

1. Shri V. A. Naik, District Judge, Poona, & Ex-Registrar, High Court.
2. Shri S. A. Sudhalkar, Advocate, Baroda.
3. Shri S. C. Patwardhan, Advocate, High Court, Bombay.
4. Shri E. B. Ghaswalla, LL.B., Advocate (O.S.), Bombay.
5. Shri H. M. Seervai, Advocate-General, Bombay.

16-7-1957

6. Shri T. T. Barodawala, Chief Judge, Small Cause Court, Bombay.

7. Shri K. J. Khambata, Chief Presidency Magistrate, Bombay.
8. Shri G. K. Rege, Chief Presidency Magistrate, Bombay.
9. Shri M. L. Maneksha, Bar-at-Law, High Court, Bombay.

17-7-1957

(Contd.) Shri Maneksha.

10. Shri Dhirajlal, Editor, Bombay Law Reporter.
11. Shri N. B. Chandurkar, Editor, Nagpur Law Journal.
12. Shri S. V. Gupte, Editor, I.L.R. Bombay.
13. Shri V. V. Chitaley, Editor, All India Reporter, Nagpur.
14. Shri V. S. Desai, Judge, Small Cause Court, Poona.
15. Shri R. B. Mehta, Principal Judge, City Civil Court, Bombay.
16. Shri Shanti Lal Shah.
17. Shri N. S. Sethna.
18. Shri R. A. Gagrat.
19. Shri N. B. Mudgurkar.
20. Shri P. V. Pakwasa.

(16–20) Incorporated Law Society, Bombay.

21. Shri P. S. Malvankar, Joint Civil Judge, Junior Division, Poona.
22. Shri M. P. Amin, former Advocate-General, Bombay.

18-7-1957

23. Shri J. R. Dhurandhar, Hon'y Legal Adviser to Govt. Legal Deptt., Sachivalaya, Bombay.
24. Shri M. M. Chudasama, I.P., Inspector General of Police, State of Bombay, Poona.
25. Shri M. G. Wagh, I.P., Deputy Director of the Intelligence Bureau, Bombay.
26. Shri E. S. Modak, I.P., Deputy Inspector General of Police, Anti-Corruption and Prohibition Intelligence, Bombay.
27. Shri S. S. More, M.P., Advocate, Bombay High Court.
28. Shri Alva, Retired Judge of the City Civil Court.
29. Shri J. R. Gharure, Ex-Principal, Law College, Poona.
30. Shri K. P. Mehta, Principal, Govt. Law College, Bombay.
31. Messrs. Pandya and Latifi of the Legal Aid Society, Bombay.
32. Shri M. R. Paipia.
33. Shri B. J. Kapadia.
34. Shri H. K. Shah.
35. Shri D. S. Parikh.

(32–35) Junior Members of the Bar.

19-7-1957

36. Shri L. M. Paranjpe, District Judge, Nasik.
37. Shri B. H. Desai, Advocate, Ahmedabad.
38. Shri K. S. Cooper.
39. Shri M. R. Modi, Government Pleader, City Civil Court, Bombay.
40. Shri H. R. Gokhale, Advocate, High Court, Bombay.
41. Shri H. H. Trivedi, Chief Panchayat Officer, Bombay State, Bombay.
42. Shri D. V. Patel, President, Western India Advocates Association, Bombay.
43. Shri H. M. Choksi, Government Pleader, High Court, Bombay.

Jodhpur

31-7-1957

1. Shri Amrit Raj Mehta, Advocate, Jodhpur.
2. Shri Kan Singh, Advocate, Jodhpur.
3. Shri Hastimal Parakh, Advocate, Jodhpur.
4. Shri O. C. Chaterji, Advocate, Jaipur.
5. Shri R. K. Sharma, Civil Judge, Jodhpur.
6. Shri Laxmi Mul Singhvi, Advocate, Jodhpur.
7. Shri G. C. Kasliwal, Advocate-General of Rajasthan, Jaipur.
8. Shri Nand Lal Mathur, Distt. & Sessions Judge, Kotah.
9. Shri Sumerchand Bhandari, Editor, I.L.R. Rajasthan Series, Jodhpur.
10. Shri Dharam Veer Kalia, Editor, Rajasthan Law Weekly, Jodhpur.

1-8-1957

11. Shri L. N. Changani, Govt. Advocate, Jodhpur.
12. Shri Bimolacharan Chatterji, Asst. Govt. Advocate, High Court Bench, Jaipur.
13. Shri Umed Singh, Advocate, Bali.
14. Shri Ranjitmal, Advocate, Bali.
15. Shri Gopal Mal Mehta, Acting District Judge, Jodhpur.
16. Shri Roop Singh, Judge, Small Cause Court, Jodhpur.
17. Shri Devi Shankar Tewari, Chairman, Public Service Commission, Rajasthan.
18. Shri K. R. R. Sastry, Principal, University Law College, Jaipur.
19. Shri R. C. Bhandari, Junior Advocate, High Court, Rajasthan, Jodhpur.

2-8-1957

20. Shri S. L. Kakar, District Magistrate, Ajmer.
21. Shri R. P. Mody, Advocate, Dholpur.

22. Shri Madan Lal Vyas, Munsif, Jaipur West.
23. Shri Karan Singh, R.A.S., City Magistrate, Ajmer.
24. Shri Makhtoormal Singhvi, Advocate, Jodhpur.
25. Shri Murlimanohar Vyas, Advocate, Jodhpur.
26. Shri P. D. Loiwal, R.H.J.S. Secretary to Govt. and Legal Remembrancer, Judicial Department, Jaipur.
27. Shri Hari Singh, Chief Panchayat Officer of Rajasthan, Jaipur.

Chandigarh

5-8-1957

1. Shri A. N. Bhanot, Senior Sub-Judge, Ludhiana.
2. Shri H. B. Lal, I.A.S., District Magistrate, Amritsar.
3. Shri F. C. Mittal, Advocate, Chandigarh.
4. Shri R. P. Khosla, Advocate, Chandigarh.
5. Shri Harbans Singh, Distt. and Sessions Judge, Rohtak (now at Delhi).
6. Shri Waryam Singh, Addl. District Magistrate, Simla.
7. Shri S. S. Nehru, Advocate, Ambala.

6-8-1957

8. Shri Shamsher Bahadur, Bar-at-Law, Legal Remembrancer and Secretary to the Govt. of Punjab, Legislative Department, Chandigarh, Punjab.
9. Shri K. S. Chawla, Assistant Advocate-General, Punjab, Chandigarh.
10. Shri M. S. Pannu, Legal Adviser-*cum*-Asstt. Advocate General in Anti-Corruption Deptt., Punjab Govt., Chandigarh.
11. Shri H. R. Mehta, Professor, Law College, Jullundur.
12. Shri Waryam Singh, I.P., Inspector General of Police, Punjab, Chandigarh.
13. Shri D. K. Mahajan, I.L.R. (Punjab Series), Chandigarh.
14. Shri Anand Mohan Suri, Editor, Punjab Law Reports, Chandigarh.
15. Shri Bhagat Ram Sharma, Chairman, Public Service Commission.
16. Shri R. B. Har Parshad, Chairman, Bar Council of the Punjab High Court, Chandigarh.
17. Shri D. N. Aggarwal, Member, Bar Council.

7-8-1957

18. Shri Kunj Behari Srivastava, Judl. Secretary & Legal Remembrancer to Govt. of Himachal Pradesh.
19. Shri Tej Singh Vaidy, Distt. & Sessions Judge, Mahasu, Sirmur & Bilaspur Districts.
20. Shri Chandu Lal, Advocate, Simla.

21. Shri Bishan Singh, Advocate, Nahan.
22. Sarvashri Lakhanpal and Manmohan Singh, Advocates, High Court, Chandigarh.
23. Shri Anand Swarup Gupta, I.P., Inspector General of Police, Himachal Pradesh.
24. Shri Chet Ram, Senior Sub Judge, Mahasu, Simla.
25. Shri A. C. Mehta, Advocate, Simla.
26. Shri Shamir Chand, Bar-at-Law, Chandigarh.

8-8-1957

27. Shri Nakul Sen, I.C.S., Chief Secretary to the Govt. of Punjab, Chandigarh.
28. Shri S. N. Vasudeva, Director of Panchayats, Punjab.
29. Shri J. N. Kausal, Advocate, High Court, Chandigarh.
30. Shri Kashmir Singh Sidhu, Subordinate Judge-*cum*-Magistrate, Sangrur.
31. Shri K. S. Nagra, Advocate, Patiala.
32. Shri K. L. Jagga, Advocate, Chandigarh.

Jabalpur

18-11-1957

1. Shri M. A. Razzaque, Distt. & Sessions Judge, Jabalpur.
2. Shri S. C. Dube, Advocate, Jabalpur.
3. Shri Abdul Razak, Advocate, Jabalpur.
4. Shri J. L. Verma, Advocate, Damoh.
5. Shri P. Lobo, Advocate, Jabalpur.
6. Kumari Rama Gupta, Advocate, Jabalpur.
7. Shri R. S. Dabir, Advocate, Jabalpur.
8. Shri S. C. Upadhaya, Advocate, Jabalpur.

19-11-1957

9. Shri S. B. Sen, Government Advocate, Jabalpur.
10. Shri M. C. Nihalani, Public Prosecutor, Bhopal.
11. Shri Bhagwan Das Gupta, Advocate, Gwalior.
12. Shri N. C. Dwivedi, U.S. Law Deptt., Govt. of M.P.
13. Shri S. P. Hakim, Deputy Registrar, High Court of M.P., Jabalpur.
14. Shri B. L. Seth, Advocate, Dean, Faculty of Law University, Teaching Department, Jabalpur.
15. Shri Y. P. Verma, Bar-at-Law, Jabalpur.

20-11-1957

16. Shri B. G. Ghate, Inspector General of Police, Bhopal.
17. Shri N. L. Mukherji, Advocate, Jabalpur.

18. Shri Rajinder Singh, Advocate, Jabalpur.
19. Shri R. L. Sharma, Advocate, Raipur.
20. Shri N. L. Shrivastava, Addl. District & Sessions Judge, Rewa.
21. Shri Navneet Lal Ojha, President, Bar-Association, Ratlam.
22. Shri P. R. Padhye, Advocate, Editor, I.L.R., Jabalpur.
23. Shri J. A. Khare, Junior Advocate, Jabalpur.
24. Shri J. M. Sood, Junior Advocate, Jabalpur.
25. Hon'ble Mr. Justice Shrivastava, Judge, High Court, Jabalpur.

21-11-1957

26. Shri B. N. Saxena, Civil Judge, Bhopal.
27. The President, Bar Association, Raigarh.
28. Shri S. S. Pandey, Member, Public Service Commission.
29. Shri Moti Singh Songar, Divisional Welfare Officer, Jabalpur.
30. Chief Justice of Madhya Pradesh (The Hon'ble Mr. Justice Hidayatulla).

Patna

25-11-1957

1. Shri Balmiki Pd. Sinha, Addl. Judge, Muzzaffarpur.
2. Shri T. P. Choudh [illegible] Addl. Subordinate Judge, Patna.
3. Shri A. N. M. Q. K [illegible], Subordinate Judge, Purnea.
4. Shri S. Bhaddin Ahmad, Subordinate Judge, Arrah.
5. Shri V. C. De, Advocate, Patna.
6. Shri N. Ojha, Additional Munsif, Gaya.
7. Shri Nazir Ahmad, Munsiff, Banka.
8. Shri F. Paul, Munsiff-Magistrate, Bihar Sheriff.
9. Shri Baldev Sahai, Advocate, Kadamkuain, Patna-3.

26-11-1957

10. Shri B. N. Basu, I.A.S., District Magistrate, Patna.
11. Shri A. Haseeb, Addl. Collector, Purnea.
12. Shri Aditya Narain Lal, Advocate, Editor, Patna Law Report, Patna.
13. Shri Syed Hussain, Editor, Indian Lal Report Series, C/o The Registrar, High Court, Patna.
14. Shri S. N. Sahai, Bar-at-Law, Patna.
15. Shri M. K. Sinha, I.P., Inspector General of Police.
16. Shri H. R. Kazmi, Dist. Judge, Darbhanga.
17. Shri C. D. Tewari, Judicial Magistrate, Patna.
18. Shri S. N. Verma, Judicial Magistrate, Dinapore.
19. Shri Sachidanand, District Judge, Shahabad.
20. Shri Anant Singh, Registrar, Patna High Court, Patna.

27-11-1957

21. Shri S. C. Prasad, Secretary to the Govt., Law Department, Patna.
22. Shri M. S. Rao, I.C.S., Chief Secy. to the Govt. of Bihar, Patna.
23. Shri S. V. Sohoni, I.C.S., Commissioner, Patna Division.
24. Shri B. K. Sinha, Principal, Law College, Ranchi.
25. Shri Kishori Narain, Principal, S. K. Law College, Muzaffarpur.
26. Shri V. V. Deshpande, Principal, Patna Law College, Patna.
27. Sir Sultan Ahmed, Patna.
28. Shri Venkatesh Narain, Director, Gram Panchayats, Patna.
29. Shri Nageshwar Prasad, Advocate, Civil Court, Patna.
30. Shri B. B. Roy, Advocate, President Legal Aid Society, Bhagalpur.

28-11-1957

31. Shri Syed Hussan, Govt. Pleader, Patna.
32. Shri B. Prasad, Advocate, Secretary Indian Council of Public Affairs, Patna.
33. Shri Ras Bihari Singh, Advocate, Pa
34. Shri S. N. Misra, S.D.O., Purnea.
35. Shri M. Singh, S.D.O., Jamshedpur.
36. Shri A. K. Bose, S.D.O., Arrah.

(Hon'ble the Chief Justice examin[illegible]n his Chamber in the Afternoon—evidence not reco[illegible]d).

29-11-1957

37. Shri K. S. V. Raman I.C.S., Chairman, Bihar Public Service Commission, Patna.
38. Shri Pandy Narsingh Sahay, Public Prosecutor, Patna.
39. Shri K. A. R. Subramanian, I.A.S., Deputy Commissioner, Hazaribagh.
40. Shri S. R. Ahmed, Sub-Divisional Officer (Sadar), P.O. Motihari (Champaran).
41. Shri B. B. Pandey. } Representatives of
42. Shri Durga Prasad } the State Judicial
43. Shri Tiwari. } Officers.
44. Shri Kusheshwar Prasad, President, Bihar State Mukhtiars Association.
45. Shri Devta Prasad, Vice-President, Bihar State Mukhtiars Association.
46. Shri Talkeshwar Prasad, Secretary, Bihar State Mukhtiars Association.

GMGIPND—SS—122 M. of Law—11-12-[illegible]