The Law Commission Report

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The Commission undertook and have performed a stupendous task. Its Fourteenth Report is in two bulky volumes running to 1282 pages. It issued a questionnaire consisting of 193 questions, examined about 500 witnesses, has considered all aspects of the present judicial administration in India, from the functioning of the Supreme Court to that of panchayats, considered such general questions as the separation of judicial and executive functions, language, legal education and legal aid, and specifically examined and made recommendations regarding the judicial administration. in each of the States of India.

It has made a large number of recommendations and given its considered opinions on numerous questions that arose in the course of its deliberations.

The Commission has considered the pros and cons of every question with care and detachment, incorporated its views in lucid and unambiguous language, and produced one of the most important Reports that have been made since Independence,

THE existing legal system in India is the product of a number of Law Commissions set up by the British Government, In the last century four Law Commissions were appointed, the first being constituted in 1834 under the chairmanship of Lord Macaulay, then Law Member, and the fourth being constituted in 1879. The third Law Commission, presided over by Lord Romilly, recommended the revision of the enacted law "at Intervals of only a few years" and the provision of "such new rules of law as might be required by the rise of new interests and new circumstances in the progress of society". Acharya, in his Tagore Law Lectures in 1912, recommended the appointment of a Permanent Law Commission or a Ministry of Justice. In 1921 the Statute Law Revision Committee and in 1923 the Civil Justice Committee were appointed. Other Committees were appointed both by the Central and the Provincial Governments from time to time. The latest of these Committees were the West Bengal Committee and the Uttar Pradesh Committee set up in 1949 and 1950 respectively.

Performed a Stupendous Task

Since Independence suggestions have been made in and outside Parliament for the appointment of a Law Commission. In 1964 an official resolution was moved in the Lok Sabha for appointment of such a Commission "to recommend revision and modernisation of laws, criminal, civil and revenue, substantive, procedural or otherwise . . . . to reduce the quantum of case-law and to resolve the conflicts in the decisions of the High Courts on many taints with a view to realize that justice is simple, speedy, cheap. effective and substantial". This resolution was accepted by the Government, which accordingly appointed a Law Commission consisting of Shri M C Setalvad, Attorney-General of India, as the Chairman and ten other Members. The terms of reference were, firstly, to review the system of judicial administration and suggest ways and means for improving it and making it speedy and less expensive, and, secondly, to examine the Central Acts and recommend their revision, amendment and co-ordination. The Commission was directed to function in two sections corresponding to these two terms of reference. It was appointed, in the first instance, up to the end of the year 1956, but the period was extended from time to time up to September, 1958, when the present Report was signed and submitted to the Government of India.

Vast Volume of Arrears

At the end of its Report the Commission has observed: "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 the primary functions of the State which is the administration of justice." One question which has cast its dark shadow throughout the Commission's deliberations is the vast volume of arrears, not only in civil but also in criminal matters. The altered conditions in the country after Independence has led to a large volume of new legislation and in consequence an enormous increase in the load of work carried by the courts, the increase being so great that no administration could have failed to notice it There was a persistent demand from the High Courts in some of the States for more judicial personnel and more courts, yet 'the administrations concerned failed to realise their responsibility in the matter." Even before the transfer of power the attention of the Central Government was drawn to the heav arrears in civil courts by the Rankin Committee as far back as 1925; but no substantial steps appear to have been taken in this direction. Again, the High Court Arrears Committee considered this question in 1949, but its recommendations have been very inadequately implemented. Lest a similar fate should overtake the present Report, the Commission has recommended the appointment of a Special Officer for the consideration of its recommendations by the State Governments with a view to their speedy implementation.

The question of arrears is all-pervading in this Report, As regards the state of the Supreme Court's file, the number of pending civil appeals increased from 131 in 1950 to 837 in 1956, the corresponding numbers of criminal appeals being 16 in 1950 and 241 in 1956 and those of petitions under Art. 32 of the Constitution (for enforcement of fundamental rights) being 452 and 428 respectively. A number of such matters had been pending for 3, 4 or more years. The Commission believes that despite the recent increase (since January 1957) in the strength of the Court from 8 to 11 Judges it may not be able to clear the existing volume of arrears. A large number of appeals are being filed against decisions in labour matters, particularly since the abolition of the labour appellate tribu

nal. The Commission has recommended that in such cases parties should be enabled to file appeals either to the High Court or to a special tribunal constituted for the purpose.

Acute Problem for High Courts

As regards the High Courts, the problem of arrears exists in a very accentuated form in certain High Courts. There has been a large increase of work during the period following the Constitution, owing largely to two causes: (1) the economic and industrial development of the country and (2) expansion of the courts' special jurisdiction under a variety of enactments. Other factors are the fundamental rights conferred by the Constitution and the complexity of recent legislation in certain fields. There have been a large number of writ applications and applications questioning the constitutionality of enactments and rules framed thereunder. The gravity of the situation appears to have been appreciated only recently, and the strength of the High Courts has been increased by the addition of partly permanent and partly additional Judges. As to the arrears, the Commission has laid down certain time limits for the disposal of different categories of cases—for first appeals two years, for second appeals and letters patent appeals one year and for writs civil revision petitions and criminal matters six months from the date of institution and has attempted to recommend effective measures for dealing with the arrears so as to bring the pending file of each Court to normal proportions within the shortest possible time. Among such measures may be mentioned the following:

(1) Appointment of additional judges for the specific purpose of dealing with arrears;

(2) Raising the pecuniary limit of the appellate jurisdiction of district judges to Rs 10.000 in all the States; and consequent transfer of appeals to district courts from the High Courts;

(3) Merit to be the sole criterion in the choice of Judges to be appointed; the creation of an ad hoc body presided over by the Chief Justice of India to draw up a panel of names of suitable persons from the Bar as well as the service in each State;

(4) The strength of each High Court to be brought *up* to the level required for dealing with the normal institutions of cases, to be revised every two or three years;

(5) Avoidance of delay in filling vacancies and of deputation of Judges for non-judicial work.

It has been noticed that in some cases the Chief Justices, conscious of the growing accumulation of work, have tried to obtain additional judges for their Courts, but their efforts have been defeated "by a baffling procedure." The Commission has recommended the growth of a convention that if the Chief Justice of a State makes a request for the appointment of additional judges and if the need for such additional judges is accepted by the Chief Justice of India, the Chief Justices request should be acceded to,

A committee, called the High Court Arrears Committee, was set up in 1949 under the Chairmanship of the present Chief Justice of India. It recommended, among other things, that the High Courts increase their working days to 200 per year. The matter was taken up at two conferences of Chief Ministers in 1957 and at the Law Ministers' conference in the same year. As a result many of the High Courts have reduced the length of their vacations and holidays so as to have 210 working days a year. Since 1956 35 judges have been added to the various High *Courts,* so that the pace of clearing arrears has been accelerated. Still the number of pending cases increased from 1,70,000 at the end of 1956 to 1,78.000 at the end of 1958. But out of the 1,70,000 cases pending at the end of 1956 only 64,500 cases still remained pending by the end of 1958.

In Lower Courts

As regards the munsifs courts, the subordinate judges' courts, the small cause courts and criminal courts, the Commission has given its estimates of the average duration which cases of different descriptions should take in their trial, so that cases taking longer time would be classed as arrears, although different High Courts interpret the expression differently. On the whole the strength of the judicial officers may be considered adequate to cope with the current Institutions, but intensive efforts are necessary to rid the files "the incubus of old suits, which has assumed alarming proportion) in several States."

The district judges' Courts have been unable to keep pace even with the current institutions in most States, which suggests that the existing strength of these courts is inadequate. The Commission is of the view that it is necessary to establish in most of the States temporary additional courts for suet periods of time as may be necessary. Recent legislation has contributed to the growing volume of work, e g, the Employees State Insurance Act, Displaced Persons (Compensation & Rehabilitation) Act, the Administration of Evacuee Property Act, the Land Reforms Acts and the Hindu Marriage Act,

The inadequacy of the strength of the subordinate judiciary has been pointed out by the High Courts from time to time in their administration reports, particularly by the High Courts of the Madhya Pradesh, Uttar Pradesh, West Bengal and Orissa. The High Courts have from time to time made representations to the Government asking for an increase in the cadre of the subordinate judiciary. The *U* P Judicial Reforms Committee specifically dealt with this questions at length, saying that "it was imperatively necessary, before the entire administration of justice collapses because of the tremendous weight of arrears," to increase the cadre of judicial officers considerably. The High Court of Allahabad recently emphasised this need and recommended the addition of about 85 officers to prevent the arrears increasing. Similar observations have been made by the Chief Justice of West Bengal. The Commission has found that on the one hand, there has been a gross neglect by the State administration of their duty in establishing the necessary number of courts and on the other, a complete failure on the part of the State to carry out its obligations to provide trained and proper judicial personnel for presiding over the courts. The States in question cannot even urge financial stringency as an excuse, for they have been making substantial gains out of the revenue earned fey them by way of court fees. The Commission has suggested that the High Court may

be generally empowered by the State Governments to create additional courts subject to certain limits whenever they consider that additional work justifies the creation of a new court.

Decline in Standards

As regards personnel, the Commission has found unmistakable testimony that the standards of the judicial officers have, during recent years, sadly declined, for a variety of reasons, e g, diversion of talent to professions other than law, appointment (specially in the Southern States) on communal or regional grounds, inadequate remuneration in comparison with the executive branches of the Government, difference of status between the judicial and the executive officers. An experienced Chief Justice observed: "Vis-a-vis the district magistrate, the district judge feels small, and is treated as a person of little consequence". The Commission has observed, "Those who do strive to get into the judicial service after 3 to 5 years at the Bar are disappointed persons who have failed to make a living in the profession and have no hopes of prospering in it".

The Commission has made a number of recommendations for improving this state of affairs; some of them are given below:

(1) There should be two classes of judicial officers, viz, district judges and other officers of equivalent status, and subordinate judiciary;

(2) Recruitment to the latter class should be on the basis of a competitive examination conducted by the Public Service Commission, a High Court Judge having a preponderating voice being associated for the viva voce test; the persons recruited should be given intensive training for six months to 1 year;

(3) An all-India Judicial Service should be created who should man 40 per cent of the posts of the higher judiciary in each State, the remaining 60 per cent being tilled in by promotion from the State Judicial Service and by direct recruitment from the Bar. Officers of this Service should normally be allotted to States other than their home States. They should be trained for a period of two years. Their emoluments should be the same as those of the Indian Administrative Service;

(4) Article 235 of the Constitution should be amended so as to vest in the High Court the power of posting and promotion of district judges,

Severe Strictures

The Commission has been constrained to make strong remarks regarding (1) several unsatisfactory appointments made to the High Courts on political, regional or other grounds, with the result that the fittest men have not been appointed, and (2) the High Courts' prestige having been adversely affected by ill-informed criticism of the judiciary by responsible persons. The Commission states, "We have visited all the High Court centres and on all hands we have heard bitter and revealing criticism about the appointment made to High Court judiciary during recent years....The almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence." Such views have been regarded as showing a well-founded and acute public dissatisfaction at these appointments. The machinery provided by the Constitution in article 217 for the appointment of High Court judges has been found faulty and open to abuse. Certain appointments have been made in recent years against the recommendation of the Chief Justice. A Judge of a High Court has stated:

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

Amendment of Article 217

The Commission has suggested the amendment of article 217 of the Constitution so as to provide that a Judge of a High Court should be appointed only on the recommendation of the Chief Justice of the State and with the concurrence of the Chief Justice of India. Other recommendations are: (1) that the Chief Justice of a High Court should be appointed with the concurrence of the Chief Justice of India, (2) that a Judge should be barred from practice and any employment other than as a Judge of the Supreme Court after retirement under the Union or the State, (3, that the retiring age should be raised to 65 in the case of appointments to be made hereafter and (4) that the existing pensions, which are inadequate, should be raised to Rs 2000 per month (in the case of the Chief Justice) and Rs 1750 per month (in the case of Puisue Judges) for 12 years of service. In the case of the Supreme Court also an increase of pensions has been recommended, namely, Rs 3000 and Rs 2500 per month respectively for the Chief Justice and other Judges, it also being recommended that they should be barred from practice or employment under the Union or a State after retirement.

As regards the Supreme Court also, "it is widely felt that communal and regional considerations have prevailed in making the selection of the Judges", so that the best talent among the Judges of the High Courts have not found their way to the Supreme Court. This, according to the Commission, has prevented the Supreme Court from being looked upon by the Subordinate Court and the public generally with that respect and reverence to which it is entitled.

Prestige of Judges Lowered

Under the Constitution our Supreme Court does not possess such wide powers as are enjoyed by the Supreme Court of the U S A. A comparison of Articles 21, 33, 31A and 31B of our Constitution with the Fifth amendment to the American Constitution sufficiently shows this. Under Article 21 no person shall be deprived of his life or personal liberty "except according to procedure established by law"; similarly, S 31 begins, "No person shall be deprived of his property save by authority of law'. The Fifth Amendment says that no person shall be deprived of his life, liberty or property "without the process of law," The words "process of law" do not occur in our Constitution, but have been given such a liberal interpretation by the American Supreme Court as to enable it to invalidate laws which may be found to offend against the 'spirit of the Constitution'. By our First Amendment to the Constitution, no law providing for the acquisition *by* the State of any estate or of rights therein

"shall be deemed to be vold on the ground that it is inconsistent with the rights conferred by any provision regarding fundamental rights." The object of this amendment was to validate the acquisition of zamindaris and the abolition of the Permanent Settlement without interference from the courts. Thus from the beginning the final arbiter of the citizens' rights, in spite of the fundamental rights, has been Parliament, and the Courts are empowered merely to interpret and give effect to the law enacted by the legislature, which have in many enactments whittled down the fun damental rights. Since Independ ence, again, a good deal of legislation has been "delegated legislation" enacted by the rule-making authorities, i e, the Union and the States, and the courts have limited authority in this field. Referring to certain legislations 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 unmistakenly proclaims, and is to be hoped that the democratic process in this country will not function along these lines." When, however, any enactment or rule has been found by the Courts to be ultra vires, the Government has not been slow to get a validating enactment often with retrospective effect, passed by the legislature. That the Government is aware that the public have faith in the impartiality of Judges is shown by their appointment for enquiry into cases of police firing and other important matters requiring careful and unbiased sifting of the evidence; but the Government has often been unable to accept the findings in such cases, thus in a way nullifying the rationale of such enquiries by a. High Court or Supreme Court Judge, The Commission has observed that 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" and failing to keep pace with what the politicians think are progressive ideas of the times. Selection of persons by the executive as Judges on improper grounds has already been commented upon. These circumstances have combined to lower the prestige of the Judges in the eyes of the public, the legislature and the executive government.

This is not a desirable state of affairs It can be remedied, at least to some extent, by (a) selecting the most suitable persons for appointment, (b) leaving no scope for expectations in the minds of the Judges, before or after their retirement, of employment by the Union or the State, (c) compensating them by increased pensions and raising the retiring age of High Court Judges to 65, (d) making the High Courts wholly responsible for judicial administration of the States, (e) giving district judges the same status and scale of pay as district magistrates and collectors, with the status and pay of other members of the judiciary corresponding to those of other members of the executive, (f) resort to validating acts, particularly with retrospective effect, for overriding judicial decisions only in cases of real and extreme necessity; and (g) abstention on the part of the executive and members of the legislature from criticism of the judiciary in public.

Complex Procedural Law

I have discussed only a few of the numerous questions dealt with by the Commission. The lay public is not interested, or equally interested, in all the other questions discussed in its voluminous Report. It is mainly interested in the question of delay in the decision of cases (and in execution proceedings) and in the cost of litigation. A part of the first question has already been dealt with in considering the question of arrears, regarding which the recommendations of the Commission are eminently proper and sound. There is, however, the question of the complex procedural law inherited by us from the pre-Independence days, such law being largely modelled on English practice and inspired by the principles of English law. It has often been asserted that our laws of civil and criminal procedure are unnecessarily complicated and time-consuming. The provisions of the Civil Procedure Code are based on the theory that there must a full disclosure by each party of his case to the other, that rival contentions must be reduced to clear issues and that there must be adjudication by the Court upon those Issues. "All responsible and experienced persons" who answered the Commissions questionnaire or gave evidence before it agreed that the Code of Civil Procedure is a carefully devised enactment, the provisions of which, if properly followed, are designed to expedite rather than delay the disposal of cases. There is no doubt that in many cases delay is attributable to numerous extraneous and personal factors, like an inefficient judiciary, insufficient number *of* judicial officers, incompetent and corrupt ministerial and process-serving agency, delaying tactics deliberately adopted by parties and their lawyers, unmethodical arrangement of work by the presiding judge and heavy files of arrears. The Commission in their Chapters headed "Trial of Suits'' "Civil Appeals", "Civil Appellate Procedure", "Civil Revisions" and "Execution of Decrees", have examined the procedures relating to these matters and made a large number of recommendations which, if adopted, would no doubt appreciably abbreviate delays.

Pre-trial Conference

Conciliation proceedings exist in France, Japan and Norway, but not in our country under the Code of Civil Procedures. Under such procedure, if a settlement is arrived at between the parties that disposes of the case without the matter going to a civil court. In the United States there is provision for a pretrial conference in the Rules of Civil Procedure for District Courts, action thereunder being discretionary with the Court. The settlement of large parts of the cases for trial by such procedure has been claimed by Mr Arthur T. Vanderbilt, Chief Justice *of* the State of New Jersey, in his book "The Challenge of Law Reform". The Evershed Committee in England examined this procedure but decided against it; and the Commission, too, has arrived at the same conclusion regarding its applicability to Indian conditions. Under the present Code the trial Judge is not precluded from acting as a conciliator. It is open to him, at an appropriate stage, to make a suggestion for, and to bring about, a compromise. A Judge, specially in the mofussil, who tries to induce parties to come to an amicable settlement, however, is apt to be misunderstood as a shirker seeking a short-cut in the disposal of his cases. There can be little doubt that the procedure is open to abuse, for if a Judge appears to favour one of the

parties it may be considered expedient for the other party to compromise his case.

All the same, it seems desirable that at least in the courts of certain selected judges, the method of pre-trial conferences adopted in America should be given a fair trial for a few years. This system may not result in total settlement but are mainly intended to discover all laces and documents which are admitted or uncontroverted, what each party expects to prove and what issues remain to be proved at the trial. It has been said that the success of pre-trial conference depends for the most part on the personality of the Judge and his willingness to deal and aptitude for dealing with such proceeding. That is why it has been recommended above that this method may be tried in the courts of certain selected judges in this country. Of course, there is a risk of the procedure becoming unnecessarily elaborate or developing into a •fishing expedition'; but we believe that in spite of such risks it should be given a fair trial on a limited scale. Only after it has been so tried can it be said whether it is suitable for adoption in this country or not.

Quasi-judicial Tribunals

A number of administrative or quasi-judicial tribunals have been instituted throughout the country, mainly out of considerations of expediency and cheapness. In this connection the Commission has examined the systems that have grown up in this field in England and the United States and examined at length the French system of droit administratif, which is a distinct chapter of law, applicable not only to the public service but also to all disputes between the Government or its servants and private citizens. The United States has an Administrative Procedure Act. In England the Donoughmore Committee was appointed in 1929 to examine the problem of delegated legislation and the powers exercised by persons or bodies appointed especially by the Ministers. In 1955 a Committee under the Chairmanship of Right Honourable Sir Patrick Spens undertook a study of the problem, the object being "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." This Committee 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. In November 1955 a Committee presided over by Sir Oliver Franks was appointed for the consideration of Administrative Tribunals, It reached 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, except where, for reasons of cheapness, accessibility, freedom from technicality, expediency and expert knowledge of a particular subject, a tribunal may be considered more appropriate.

The number of administrative authorities in India, purely administrative as well as quasi-judicial, is very large; they include tribunals and other authorities dealing with revenue and taxation laws, labour and land laws. The provisions relating to judicial control of administrative process are enshrined in Articles 32, 136, 225 and 227 of the Constitution, the first two giving the Supreme Court the power inter alla to issue prerogation writs for enforcing fundamental rights and plenary powers to entertain appeals from orders of any tribunal; while Articles 226 gives the High Courts the power to issue directions or writs not only for enforcing fundamental rights but "for any other purpose", and Article 227 gives the High Courts powers of superintendence. The Commission has made certain recommendations regarding decisions which may be regarded as judicial or quasi-judicial and as administrative decisions; namely, that in the case of the first category an appeal on facts should lie to an independent tribunal presided over by a person qualified to be a judge of a High Court; and an appeal or revision on questions of law should lie to the High Court; and that in the case of the second category the decisions should be accompanied by reasons and should conform to principles of natural justice. It is not quite clear why the Commission has advocated exclusion from the scope of the appeal to the tribunal, in the case of the first category, of questions of law; not only may this be difficult where a question in dispute is a mixed question of law and fact, but the splitting up of questions of law and fact in this manner, when an appeal Is made to a competent tribunal, would appear also to be otherwise an undesirable procedure.

Delegated Legislation

The law that many tribunals have to administer largely consists of delegated legislation, i e, rules framed by Government, so that the legislature has little part in the enactment of a substantial part of the law applicable, which is left in the hands of the executive. The Lok Sabha has established the "Committee on Subordinate Legislation" for scrutiny of such legislation after publication. This Committee has no doubt performed and is performing very useful functions. Similar Committees have been constituted by several of the State Legislatures, The Commission has recommended that a permanent body of experts should be set up for examining delegated legislation before its publication and before it is laid on the Table of the House. An important part of its functions should be to see that undue complexity is avoided and that the rules should not encroach on matters* which ought more properly be dealt with by the legislature itself. Many of the Acts passed since Independence have left a very large part of the legislation to be made by the rule-making authority; this virtually amounts to abdication of its law-making powers on the part of the legislature in favour of the executive government. Circumstances may render such procedure necessary in certain technical fields; but there is no doubt that such a tendency on the part of the legislatures has been indulged in excess and that an effective check on such practice would be the institution of such expert committees at the Centre and in the States as have been recommended by the Commission.

Expense of Litigation

One matter which specially concerns the average litigant is the question of expense. The costs awarded by courts to the successful party are usually a small percentage of the costs actually incurred. The items of expenditure constituting the great bulk of the out-of-pocket expenses of a litigant are court fees and the lawyer's fee. A successful litigant often pays higher fees to his lawyer than he gets from

his opponent on taxation. The costs awarded by Courts do not include several items of expenditure incurred, e g, notice charges, typing charges (except in West Bengal and Bihar), charges incurred in securing documentary evidence such as (except in West Bengal and Bihar) search fees and copying charges, coats of the party's own attendance. The Commission has recommended the inclusion of such items in the costs taxed.

The Commission has regarded court fees so .important as to merit a separate chapter. India appears to be the only country in which the Government imposes a tax on person seeking a remedy against the deprivation of his property or infringement of his legal rights. "Our States", says the Commission, "provide hospitals which give free treatment to persons who are physically afflicted. But if a person is injured in the matter of his fundamental or other legal rights, we bar his approach to the Courts except on payment of a heavy fee". The fee charged is so excessive that it pays not only for the entire cost of the administration of civil justice but also the cost of prosecuting and punishing criminals for crimes with which the civil litigant has no concern.

The Court Fees Act of 1870 fixed what may be described as a moderate scale of court fees. Since then the financial needs of the government have grown enormously. In most of the States the increase has been "to an oppressive lever' so that the fee is no longer a fee but a heavy tax.

The administration of justice is one of the fundamental functions of the State. A litigant should be entitled to seek justice at as little expense as possible, for it is the duty of the State to enable every citizen to assert his legal rights against fellow citizens and the State. Unfortunately the view of the State Government seems to be that the court fee is an ideal source of revenue, which can be collected without any difficulty and made available for the purposes of general administration. Step by step every State Government has raised the court fees higher and higher till the rates have reached alarmingly high figures. A former Chief Justice of Madras has observed that when he came to India he "was amazed by the High Court fees which the litigants were called upon to pay". In the State of Bombay the total realisations of revenue from both civil and criminal courts was Rs 1,99,65,385 in 1953-54 and the total expenditure in the same year for the maintenance of civil and criminal courts was Rs 1,98,72,274. The receipts amounting to Rs 1,99,65,385 included Rs 1,22,51,290 realised from court fees. The Commission has characterised as mistaken the view of the Taxation Enquiry Commission that the administration of justice as a whole did not pay its way and that a part of its costs had to be borne by the general revenues.

Thus to an honest litigant the courts of justice would appear to wear a stern and forbidding frown instead of an aspect expressing an anxious interest in the dispensation of justice. Neither in the United Kingdom nor in the United States does a system of levy of court fees graded on the stake in action prevail, except for a few items in the United Kingdom where ad valorem fees are charged. Generally speaking, in both countries a simple initiating fee is charged in most cases, to which another fee known as the "settling-down" fee is added in the United Kingdom at a later stage of the trial. The Commission has recommended the immediate acceptance of the principle adopted in England that the cost of the judiciary should be looked upon as a charge to be borne by the general tax payer and that the remaining cost of the administration of civil justice only should be borne by fees paid by the civil litigants. This appears to be a most salutary recommendation and the sooner it is given effect to the better. There is no justification in principle for not adopting the practice which obtains in the United Kingdom, for the existing practice in this country, complicated as it is by great disparities in the rates adopted in different States, amounts merely to an irrational imposition.

Ministry of Justice

In the last chapter of its Report the Commission has recommended the establishment of a Ministry of Justice at the Centre, although the administration of justice is, under the Constitution. the exclusive concern of the State Governments, with the exception of the constitution and organisation of High Courts and all matters relating to the Supreme court. In these last matters there is a division of the functions of the Central Government, a part falling within the purview of the Ministry of Home Affairs and a part within that of the Ministry of Law. This division appears to have taken place first in the days when the portfolio of law was held by an Indian Member of the Governor-Generals Executive Council, while Home Affairs were the concern of a European Member, who was in charge of law and order and the appointment of judges to the High Courts. It has been recommended that the Ministry of Justice should assume control of the Indian Judicial Service whose creation the Commission has recommended, and should be charged with the task ensuring that the High Courts possess adequate and competent personnel. It has also been suggested that civil and criminal procedure and the legal profession might be dealt with by this Ministry. It may be necessary to amend the Constitution so as to give a greater measure of control to the Centre over the administration of justice in the States and if such amendment be made, this Ministry might be entrusted with such functions.

In England, also, the administration of justice is divided, mainly for historical reasons, between the Lord Chancellor and the Home Secretary, This recommendation of the Commission is intended to do away with an archaic and illegal division of functions at the Centre and deserves consideration and implementation at an early date.

The Law Commission of India is to be complimented on its careful and detailed Report containing a large number of useful suggestions and recommendations. This review is already too lengthy to admit of any discussion of a number of questions of some importance, e g, language, separation of judicial and executive functions and legal aid; as to the last the Commission has recommended the adoption of schemes already recommended in Bombay and West Bengal (Appendices I and II to Chapter 27). It is to be hoped that the Government will find at least the majority of the conclusions arrived at and the proposals made in the Report as eminently cogent and practicable and give effect to them without undue delay.