

REPORT
OF THE
UTTAR PRADESH
JUDICIAL REFORMS COMMITTEE
1950-51
VOLUME I

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PART I

REPORT

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PART I

REPORT

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CHAPTER I INTRODUCTORY

It has been generally acknowledged that the British system of justice provided this country with a fairly uniform body of common law with a well regulated system of graded courts to interpret them, but it cannot be denied that the rules of procedure and evidence which they framed to regulate proceedings in court, were in some cases foreign to our genius and in many cases were made a convenient handle to defeat and delay justice. Law's delays are proverbial. The British legal system was to some extent responsible for this. The Code of Civil Procedure and the Evidence Act, although specimens of very able drafting, prescribe a procedure which in some ways was so elaborate, technical and lengthy that the case is sometimes prolonged to an extent that between the two parties it becomes an endurance test and whichever party has the more staying power, in other words whichever has better financial resources, many a time succeeds in the end. This formality and elaborateness of the procedure sometimes provide virtual breeding ground for legal quibbling and hair-splitting.

It is felt that the need of the hour is that rules of procedure and evidence should be so simplified that justice may be available to the rich and the poor alike and that it may be prompt and effective.

This should be the aim but it requires a revolution in thought and deed and cannot be achieved in a short time. The British system of justice as applied to India was the result of a long process of evolution and any drastic change therein may not be advisable at the present moment.

If the procedural laws are simple, every citizen can get a fair deal. Not only simplification of laws has to be considered but provision for definite and final decision at an early stage has also to be made. It is also a point for consideration whether in petty cases, both civil and criminal, provision for further appeal or revision after the first appeal is necessary to stop the litigant from ruining himself by proceeding from court to court.

It would be a stupendous task to attempt to overhaul the entire system of administration of justice nor have we attempted to do so. In 1924 a Committee known as the Civil Justice Committee was appointed by the Government of India under the chairmanship of Mr. Justice Rankin of the Calcutta High Court to enquire into the operation and effects of the substantive and adjective law followed by courts in India in the disposal of civil suits, appeals and other civil litigation in order to provide for more speedy, economical and satisfactory despatch of the business transacted in courts and execution of processes issued

by them. The scope of the work of this Committee was confined to civil laws and it did not look into the affairs of criminal courts. The late Sri Tej Bahadur Sapru was a member of this Committee. He had suggested, *inter alia* revision of the Code of Civil Procedure and Limitation Act in order to secure expedition of work and putting down of frivolous litigation and obstructive and dilatory proceedings. The Civil Justice Committee made a large number of recommendations but many of them remained unimplemented.

Various attempts were made in this State from time to time for reform in some branches of the administration of justice and with this end in view several committees were appointed. In 1921 a committee was appointed under the chairmanship of Mr. (later Mr. Justice) Stuart to formulate a scheme for the separation of judicial and executive functions in the United Provinces which recommended severance between these two departments. Shortly after this a committee was appointed under the presidency of Mr. (later Mr. Justice) Dalal, Additional Judicial Commissioner, Avadh, to examine the question of extension of the jury system in this State. It recommended the extension of the system in about 16 districts for trial by jury in all offences except those punishable with death. Then in 1938 a senior I. C. S. Officer, Mr. W. C. Dible, was deputed to re-examine the question of separation of the judicial and executive functions. He suggested a scheme of his own for exercise of the two functions separately. In the same year a Committee was appointed under the chairmanship of Mr. Niamat Ullah to investigate the desirability of extending the system of trial by jury in all its hearings. It recommended that the jury system should receive no further extension, that if it be decided to extend the system, it should extend to the whole province and that the system of trial with the aid of assessors should be abolished altogether. That committee recommended some safeguards against abuse of the system of jury trial in case it was to be retained. Another committee was appointed in 1946 under the chairmanship of (now the Hon'ble) Sri Charan Singh, then Parliamentary Secretary, to consider the reorganization of revenue courts. This Committee made a large number of recommendations for improvement and expedition in the trial of rent and revenue cases. Then in 1949 an *ad hoc* committee was appointed under the chairmanship of Sri B. N. Jha, I.C.S., Chief Secretary to U. P. Government, to consider matters pertaining to disposal of criminal cases. This was due to some instances of unusual delay in the trial of criminal cases being brought to the notice of Government. This committee made various suggestions for expediting investigation enquiry and trial of criminal cases.

The recommendations of all these committees, however, largely remained unimplemented and the evils of delayed trials and complex and ruinous nature of litigation persisted. Apart from the delay there exist large arrears in all classes of courts including the High Court of the State. The Government of India were alive to the gravity of the problem in the High Courts

and in 1950 appointed a small committee under the chairmanship of the Hon'ble Mr. Justice S. R. Das of the Supreme Court of India to enquire into and report on certain matters with a view to reduce the accumulation of arrears in High Courts. This Committee has recently submitted its report and incidentally some of its recommendations cover some questions that have been considered by us.

Though steps have been taken from time to time to simplify laws of procedure and evidence there still remains much to be done in that direction. Defects in our existing system have been pointed out by eminent jurists and more than once the necessity of overhauling it has been suggested. In March, 1948, the Chief Justice of the Allahabad High Court remarked in his inaugural address at the Judicial Officers' Conference that the judicial system needed reform and that a committee of experts should examine the present system and suggest improvement and alteration. Attention of the Government was drawn also in the legislature to the fact that the existing system of administration of justice was expensive and the appointment of a committee to examine the whole question was suggested. The State Government felt that the present system of justice is in many ways too formal and in view of the prevailing illiteracy it has become a clog on justice and is not quite in accord with our genius and its early overhaul is essential. Government therefore appointed this Committee by the following resolution :

Appointment
of the
committee.

" GOVERNMENT OF UTTAR PRADESH "

JUDICIAL (A) DEPARTMENT

No. 2368/VII-123-48

Dated Lucknow, April 26, 1950

RESOLUTION

STATE GOVERNMENT have been considering the question of reform in the system of administration of justice with a view to simplify the processes of law and bring justice within the reach of the common man expeditiously and at less expense. The Government have accordingly constituted a committee composed of the following :

Chairman

The Hon'ble Mr. Justice K. N. Wanchoo, Judge, Allahabad High Court, Allahabad.

Members

(1) Sri Niamatullah, retired Judge, Allahabad High Court and Advocate, Lucknow.

(2) Sri Tika Ram Misra, ex-Judge, Allahabad High Court, Lucknow.

(3) Sri Nasirullah Beg, Government Advocate, Allahabad High Court (Lucknow Bench), Lucknow.

(4) Sri Gopalji Mehrotra, Advocate and Senior Standing Counsel, Allahabad High Court, Allahabad.

(5) Dr. R. U. Singh, M.P., Dean of the Faculty of Law, University of Lucknow.

(6) Sri K. K. Bhattacharya, M.P., Dean of the Faculty of Law, University of Allahabad.

(7) Sri Charan Singh, M.L.A., Uttar Pradesh.

(8) Sri Gopal Swarup Pathak, Advocate, Allahabad High Court, Allahabad.

(9) Sri Ram Chandra Gupta, M.L.C., Advocate, Agra.

(10) Judicial Secretary to Government, Uttar Pradesh, *ex-officio*.

(11) Sri K. M. Lal, Member, Public Service Commission, Uttar Pradesh, Allahabad.

(12) Sri H. S. Chaturvedi, Civil and Session Judge, Kanpur.

(13) Sri S. N. M. Tripathi, Collector, Gorakhpur.

(14) Sri R. N. Sharma, Additional Deputy Secretary to Government, Uttar Pradesh, Judicial Department.

Member-
Secretary.

2. The terms of reference of the Committee will be :—

(1) To enquire into the system of administration of justice in this State with particular reference to—

(a) the causes accounting for delay in the disposal of cases and other proceedings ;

(b) the rules of procedure and other factors which encourage unnecessary litigation and involve the parties in heavy expense ; and

(2) To report—

(a) what reforms are desirable in the present system of administration of justice as will ensure to the people of the State justice expeditiously, at less expense and without unnecessary litigation ;

(b) what changes are required in—

(i) the law of procedure, civil and criminal ; and in other laws, and

(ii) in the rights of appeal, etc.,

so as to simplify the processes of law and bring justice within the reach of the common man ;

(c) whether the system of trial with the aid of jury or assessors should be further extended, limited or eliminated and, if so, in what class or classes of cases ;

(d) what steps are necessary to minimise the evil of perjury in law courts ; and

(c) what should be the general set-up, powers and jurisdiction of the courts, original and appellate, for attainment of the object referred to in clause (a) aforesaid.

3. The Committee will meet on dates and at places to be fixed by the Chairman and will submit its report in due course.

RANDHIR SINGH,

Secretary.

The Committee first met at Mussoorie from June 8 to 10, 1950. It appointed three sub-committees to make a detailed examination separately of the questions of organisation of courts, civil law and procedure, and criminal law and procedure. It also drew up a comprehensive questionnaire consisting of 87 questions (as in Appendix A) covering all problems of administration of justice and decided to invite opinions thereon of all District Magistrates, Judicial Officers, legislators, members of Parliament from this State, Bar Associations, eminent lawyers, Official Receivers, District Government Counsel, University Professors, businessmen, and Chambers of Commerce etc. To give further publicity and to obtain the views of all those interested in the problem, a press *communiqué* was issued giving information of the questionnaire to the public and inviting all those interested in this reform to obtain copies of the questionnaire and send their replies. In all about 5,000 copies of the questionnaire were issued.

The last date for the receipt of replies was extended up to September 30, 1950, because a number of requests were received to that effect but only about 500 replies were received. Some of these were received even up to the time the Committee held its main deliberations. Of these replies 185 were received from lawyers and Bar Associations, 183 from Magistrates and police officers and 108 from Civil Judicial Officers, Official Receivers and District Government Counsel. Some judges of the High Court, members of the Board of Revenue and Commissioners also favoured the Committee with their replies. Response from the public, legislators and senior lawyers was, however, not very encouraging.

Because the questionnaire covered a very wide field of civil, criminal and revenue litigation, a large variety of suggestions has been received. The general trend of replies is that there is nothing intrinsically wrong in the existing system of administration of justice and the machinery has only to be oiled and streamlined. The different parts have to be re-arranged and brought into closer harmony to yield better result. The presiding officer must be alert and vigilant. He has to see that his subordinates act with efficiency and speed without being involved in any sort of unnecessary red-tape or barren formality. He must not be allowed to slide into sloth and indolence. The litigant too has to be put on the track and prevented from indulging in unnecessary and frivolous litigation meant to pro-

long the trial of cases. Unnecessary oral and documentary evidence, meaningless objections and legal quibbling should be discouraged with a strong hand. It has also been suggested that the entire judiciary should be under the High Court.

It is the general consensus of opinion that on the civil side the accumulation of arrears, lack of proper supervision and delay in granting relief is due to the shortage of judicial officers. It is a common theme that the strength of the judiciary should be radically increased. The inefficiency of process-serving staff is another great reason for delay in the disposal of cases. It is felt that in a way the process-server is the executive arm of the court and the arm of the court must be long enough to deter anybody from attempting to escape from the reach of the court's authority. Insistence on a higher standard of probity among the staff attached to courts who are charged with the ministerial side of the administration of justice is very necessary. The Copying Department of the courts must be reorganized and the court must not have a much over-worked ahalmad. It is also felt that the District Judge, in order to enable him to devote more time to his judicial duties, should be relieved of his administrative and quasi-judicial functions to a greater extent.

It is the general feeling that arrears in the High Court cannot be reduced unless its strength is adequately augmented immediately. There are some suggestions for stopping the printing and translation of records in certain classes of appeals in the High Court.

It is further felt that proper care is often not exercised by lawyers in drafting pleadings, the main defects of which are prolixity, argumentativeness, statement of immaterial facts and suppression of material facts which result in failure to disclose the exact nature of the case set up and which provide an opportunity for change of front. The next stage where delay occurs is when the documentary evidence is to be filed. The rules as to the production of documents in the sense of lodging them in the office of the court before the hearing, are not strict and are lacking in precision and loosely observed.

Those who have sent replies feel also that there is great delay in the disposal of criminal cases and repetition of evidence in the trial of warrant cases and sessions trials. Various suggestions have been made for abolition of commitment proceedings in magistrates' courts and cutting short of cross-examination in warrant cases. The system of trial with the aid of assessors and jury and the trial of cases by Panchayati Adalats and other honorary courts have come in for sharp criticism. People in general are in favour of abolition of Panchayati Adalats and all other honorary courts. The Institution of elected judiciary is said to be foreign to modern Indian thought and has been decried.

It is accepted that there cannot be a greater farce than administering oath to witnesses in the form in which it is done at present in our country. Oath has lost all sanctity because most of our

court-houses and the facilities provided there, are anti-diluvian. It is said that they do not lend dignity to our organization of justice and the whole atmosphere of courts is demoralizing and undignified. Generally people have suggested use of special oaths and a large measure of discretion being given to courts, although no drastic changes have been proposed.

The Committee held its ^{Second} meeting in Vidhan Bhawan, Lucknow, on April 9 to 11, 1951. It considered the replies to the questionnaire that were received and directed that the three sub-committees should examine the parts of the questionnaire allotted to each and make their recommendations to the Committee whereafter the Committee, as a whole, would meet and on considering the recommendations of the sub-committees take its own decisions. The work allotted to the sub-committees was as follows :

Sub-Committee on Criminal Law and Procedure

Members

- | | |
|--|--------------------------------|
| 1. Sri (now the Hon'ble Mr. Justice) Nasirullah Beg. | } Part D of the questionnaire. |
| 2. Sri Randhir Singh. | |
| 3. Dr. R. U. Singh. | |
| 4. Sri Gopalji Mehrotra. | |
| 5. Sri S. N. M. Tripathi. | |
| 6. Sri R. N. Sharma. | |

Sub-Committee on Civil Law and Procedure

Members

- | | |
|----------------------------|---------------------------------------|
| 1. Sri Niamatullah. | } Parts C and E of the questionnaire. |
| 2. Sri Randhir Singh. | |
| 3. Sri R. C. Gupta. | |
| 4. Sri T. R. Misra. | |
| 5. Sri K. K. Bhattacharya. | |
| 6. Sri Gopalji Mehrotra. | |
| 7. Sri R. N. Sharma. | |

Sub-Committee on Organisation of Courts

Members

1. Sri K. M. Lal.
2. Sri Randhir Singh.
3. Sri Gopal Swraup Pathak.
4. Sri Gopalji Mehrotra.
5. Sri R. C. Gupta.
6. Sri K. K. Bhattacharya.
7. Sri H. S. Chaturvedi.
8. Sri R. N. Sharma.

The sub-committees held deliberations at Naini Tal from May 21 to June 19, 1951 and submitted their recommendations to the Committee. The whole Committee then met for the third time at Naini Tal from June 20 to July 2, 1951 and considered in detail all the questions, replies and the recommendations of the sub-committees.

Fourth meeting. The fourth and the last meeting of the Committee was held at Lucknow from September 24 to 26, 1951, for finalizing and signing its report.

Attendance at meetings. The Chairman of the Committee presided over all the meetings of the Committee as well as of the sub-committees. Of its members (now the Hon'ble) Sri Charan Singh and Sri Niamatullah could not attend any meeting on account of pre-occupations. Sri (now the Hon'ble Mr. Justice) Nasirullah Beg could not attend any sitting at Naini Tal and thereafter because of his elevation to the High Court Bench. Sri T. R. Mirsa and Dr. R. U. Singh also could not attend the meetings at Naini Tal. At all other meetings of the Committee and of the sub-committees attendance of members was fairly full.

On examining the replies the Committee felt that they were fairly exhaustive and needed no clarification by oral examination. It was not therefore considered necessary to examine any witnesses. The sub-committee on Organization of Courts, however, examined Sri B. N. Jha, I.C.S., Chief Secretary to U. P. Government and Sri B. N. Lahiri, I.P., Inspector General of Police, U. P., to find out what administrative difficulties could arise in case of complete separation of the judicial and executive functions.

CHAPTER II

GUIDING PRINCIPLE

The present judicial system has been frequently subjected to ~~The Ideal~~ adverse criticism and at times dubbed as something wholly unsuitable to Indian conditions. Many inequities are said to be perpetrated in law courts unknowingly and unwittingly because of rigidity of procedure. It is true that the structure of our judicial system is complicated and when there is failure of justice, courts are sometimes treated with scant respect by the people. Because of the defects in the system, the necessity of overhauling it thoroughly has been suggested more than once. As the present system has evolved as a result of long experience and experimenting any wholesale change should be brought about only by another process of evolution. We are also alive to the fact that the sphere of this Committee is restricted to the administration of justice in the State of Uttar Pradesh alone. This is not an all-India Committee and we feel that we should not suggest any revolutionary changes in the law. It is not proper that one State in India should change the basic structure while other States continue to follow the same old guiding principles. At the same time we feel that we have to look to the interest of our own State and reforms should not be delayed further simply because other States have not taken similar steps. We do not, therefore, propose to make any recommendations of a revolutionary character and our main object is to suggest changes that may bring about to some extent relaxation in the rigidity of the laws of procedure, efficient working of courts and reduction in crime and litigation. The whole question has to be examined on the State level but we are making some recommendations which can appropriately be implemented by the Union Government. It will be for the Governments concerned to take suitable action on our recommendations and our own function is to suggest ways and means, within the limitation of present circumstances, for simplifying the processes of law so as to secure expedition of work and the putting down of frivolous litigation and obstructive and dilatory proceedings.

CHAPTER III

OUR JUDICIAL MACHINERY

The existing machinery for the disposal of cases in this State can be divided in three categories, viz., civil, revenue and criminal. Under the Constitution of India the High Court is now the highest judicial authority throughout the territories in relation to which it exercises jurisdiction. It is the highest court in matters relating to civil and criminal law. For revenue matters the highest court is the Board of Revenue although under Article 227 of the Constitution of India the High Court possesses the power of superintendence over the Board of Revenue as well.

Civil side. The court of the lowest grade on the civil side is of Munsif whose pecuniary jurisdiction ordinarily extends up to Rs.2,000 but it can be extended up to Rs.5,000 according to the period of service put in by the officer. Munsifs can also be invested with Small Cause Court powers up to Rs.250.

The civil court next higher in grade is of the Civil Judge who exercises unlimited pecuniary jurisdiction in civil suits. Civil Judges are also invested with Small Cause Court powers up to Rs.500. At some places the Civil Judges are further invested with Insolvency Court jurisdiction and do cases under the Succession Act, Guardians and Wards Act and Land Acquisition Act. They also hear such civil appeals from the orders of Munsifs as may be transferred to them.

Then come the District Judges who are appointed for a judicial district which may consist of more than one revenue district. They try some original suits particularly under section 92 of the Code of Civil Procedure and do miscellaneous civil work relating to the Guardians and Wards Act, Succession Act, Lunacy Act, Insolvency Act, Indian Companies Act, Land Acquisition Act, Divorce Act and various other Acts. Civil appeals are instituted in their courts and they dispose of as many of them as have not been transferred by them to Civil Judges. In some district headquarters where there are no District Judges, civil appeals are instituted in the courts of officers who are designated as Civil and Sessions Judge.

In some big places there are also special Small Cause Courts to which Senior Civil Judges are appointed. Their main work is to try cases under the Provincial Small Cause Courts Act and some original suits and civil appeals are also transferred to them. These courts are also invested with jurisdiction under the Provincial Insolvency Act and the Guardians and Wards Act.

Criminal side.

On the criminal side the courts of lowest grade are of Magistrates who are divided into three classes. Magistrates of the first class can award a substantive sentence of imprisonment up to two years and fine up to one thousand rupees. Magistrates

of the second class can award imprisonment for a term not exceeding six months and impose fine not exceeding two hundred rupees. Magistrates of the third class can award imprisonment for a term not exceeding one month and impose fine not exceeding fifty rupees. There is a large number of Honorary Magistrates of the three classes in this State. Recently Panchayati Adalats have also been set up in the rural area which are in the nature of elected judiciary. They are invested with civil, criminal and revenue powers. They cannot impose sentence of imprisonment but can award a punishment of fine not exceeding one hundred rupees in criminal cases. In civil matters they can try money suits up to the valuation of one hundred rupees.

The District Magistrate is the Chief Magistrate of the district who exercises general control over the magistracy of the district. In matters of sentence he exercises the same powers as a first class Magistrate but in addition he exercises certain special administrative powers as a Magistrate. He is a very busy officer and has multifarious administrative and executive duties to perform. Therefore, in several districts an Additional District Magistrate has been posted for supervising the judicial side of Magistrates' work and he also tries those cases which a District Magistrate is expected to try. He is designated as Additional District Magistrate (Judicial).

Then there are the Courts of Session. The District Judge is also the Sessions Judge and most of his time is occupied in trying sessions cases and hearing appeals and revisions from the orders of Magistrates. In certain district headquarters where there is no District Judge, there is a court of Civil and Sessions Judge. A senior Civil Judge is posted in such courts. He exercises all the powers of the Civil Judge and of a Sessions Judge. The only difference between the District and Sessions Judge and Civil and Sessions Judge is that latter has not to perform the administrative duties of the judgeship like the District and Sessions Judge. He can try such cases under the miscellaneous enactments as may have been specially entrusted to him under various notifications. Under the present law appeals from the orders of all Magistrates lie to the Sessions Judge.

Below the Sessions Judge is the Assistant Sessions Judge. In most of the districts Civil Judges have been invested with the powers of Assistant Sessions Judge and they try sessions cases of comparatively minor nature. They also hear such appeals from the orders or sentences passed by Magistrates of the second class and third class as are transferred to them by the Sessions Judge. Appeal from the order of Assistant Sessions Judge in cases, in which sentence of imprisonment not exceeding four years has been passed lies to the Sessions Judge. In other cases appeal lies to the High Court. Appeals from the orders or sentences passed by the Sessions Judge lie to the High Court.

The state of law in the matter of criminal revisions is rather confusing. Under section 435 of the Code of Criminal Procedure the High Court or any Sessions Judge or District Magistrate or any Sub-Divisional Magistrate empowered by the State Government in this behalf, can call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its or his jurisdiction. The result is that a person can file revision against a Magistrate's order in one of the three courts in the district specified above and if his application is rejected there, he can file yet another revision in the High Court. Although the District Magistrate and the Sessions Judge have been given concurrent jurisdiction with the High Court, the High Court is loath to entertain an application direct unless a previous application has been made to the District Magistrate or the Sessions Judge. Therefore a litigant dissatisfied with the order of a Magistrate has perforce to apply for revision in the district first and often has to repeat the process in the High Court.

The High Court is essentially a court of appeal and revision in all matters but sometimes exercises extraordinary original jurisdiction as well both in civil and criminal matters.

**Revenue
side.**

On the revenue side there are the Assistant Collectors of the first class and second class. They exercise original jurisdiction in rent and revenue cases. Above them are the Collectors and Additional Collectors who exercise original as well as appellate jurisdictions. Next in grade are the Commissioners along with Additional Commissioners and the Board of Revenue who exercise appellate jurisdiction. The Assistant Collector in charge of a sub-division is an Assistant Collector of the first class but exercises some special powers. The Board of Revenue exercises powers of revision as well.

The Committee has not considered it necessary to suggest change in revenue law because with the passing of the U. P. Zamindari Abolition and Land Reforms Act the whole set-up of revenue courts is likely to change.

CHAPTER IV PROCEDURE OF COURTS, DELAYS AND THEIR REMEDIES

The procedure of all the courts, whether civil, criminal or revenue, is lengthy and complex. It is proposed to deal with the procedure of each kind of courts separately and to show at what stages the case is handled by the various parts of the judicial machinery, each contributing its own share in making the procedure long-drawn and expensive.

First we deal with the procedure in civil courts. The main part of litigation in civil courts begins with the institution of a ^{Procedure} ^{in Civil} ^{Courts.} ~~plaint.~~ As is well known, not much care is taken in this country in the matter of drafting pleadings. Pleadings are loosely worded, prolix, argumentative and sometimes off the point. Along with the plaint summonses, copies of the plaint, notices of guardianship and documents, which are basis of the suit, are required to be filed. In some districts or even in some courts it is a frequent practice to file plaints with deficient court-fee. Time after time is taken by the plaintiff for making good the deficiency in court-fee. Very often a shrewd litigant deliberately fails to pay the whole court-fee because after instituting the plaint he is negotiating with the defendant for compromise on the threat of having filed the suit. He thinks he might save the remaining court-fee if the defendant succumbs to the threat and settles up the matter. Cases are not unknown in which a plaintiff has managed to keep the plaint pending for admission for so long as one year. Sometimes plaintiffs do not file the necessary copies of plaint, summonses and notices and also the documents which are basis of suit, and this causes some delay in the registration of the suit or the issue of process.

The next stage after registration of the suit is the issue of process. The office of the court takes a couple of days in sending the processes to the Nazarat where they have to await for a few days the return of the process-server of the particular beat. The process-server is sometimes not a straightforward or efficient person and he leisurely moves to the beat with a determined effort to make as much out of the business as he can. Sometimes it is a question of bid between the two parties and whichever can exercise greater influence obtains a report suiting its need. If the plaintiff is more vigilant, he will obtain a report of service by refusal or affixation, even if the defendant is not available at his residence. If, on the other hand, the defendant can outwit the plaintiff, he may evade service in many ways and manage to get a report recorded about his not being available even though he has met the process-server. We do not mean to say, however, that there are no scrupulous process-servers. There are many and they do record correct report of service but we feel that all is not well with the majority of this class of government servants.

The result of the wrong report either way is delay in the progress of the case. If a process-server has wrongly reported that the service could not be effected for non-availability of the defendant, another long date has to be fixed and fresh summons issued for that date. This process may in some cases go on three or four times and then service may have to be effected by beat of drum or the summons may have to be published in a newspaper. The cumulative effect is that the case is prolonged for a length of time even before it becomes ripe for hearing and the plaintiff is put to unnecessary expense.

If, on the other hand, the defendant has gone out for long or has left the place to which the summons has been sent and a wrong report of service by refusal or affixation has been obtained and as a consequence thereof an *ex parte* decree has been passed against the defendant, he is harassed and put to unnecessary expense in moving an application for setting aside the *ex parte* decree. Generally in such cases the *ex parte* decree has to be set aside and the case has to be heard over again. Under the law an application for setting aside an *ex parte* decree can be made within thirty days from the date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree. The defendant may be able to prove that he got information of the decree, say, a year after it was passed and in that case the litigation has been prolonged for an additional period of one year. If the application is rejected by the trial court, the aggrieved party has the right to go in appeal. Appellate courts generally take a lenient view in such matters and a large percentage of such appeals is successful. Where an aggrieved defendant has succeeded in appeal in getting the *ex parte* decree set aside, much longer time has been wasted and the case still remains undecided.

Besides wrong reports furnished by process-servers there are certain other factors which account for delay in the service of processes. In some districts there are long distances to be traversed on foot and in the rainy season village paths are flooded and water-logged. In alluvial areas service of summonses sometimes becomes impossible in the rainy season.

Another factor which leads to considerable delay at the stage before the settlement of issues, is the appointment of guardian *ad litem*. Relations of minor defendants and even natural guardians have a tendency of refusing to act as guardian. Sometimes plaintiff has to nominate several guardians one after the other as each goes on refusing to act or to accept notice. Generally the object in such refusal is to harass the plaintiff and prolong the case. Besides protracting the case, this practice causes considerable expense to the plaintiff. The existing law is that even the refusal to accept the notice of guardianship amounts to refusal to act as guardian and a fresh guardian has to be proposed and notice has to be issued to him. If in a case there happen to be more than one minor defendant, the same dilatory tactics are at times adopted by several proposed guar-

dians of the different minors and sometimes more than a year passes before the guardians of all defendants are duly appointed.

Next comes the stage of filing defence and the framing of issues. Defendants are often not ready with their defence on the appointed date and several adjournments are taken for the purpose of filing the same. Sometimes it is found that copy of plaint has not been sent to the defendant along with the summons and on this ground alone he seeks adjournment. Sometimes care is not taken by the office of courts to see that a copy and that too legible, is sent along with the summons. If a copy is not received with the summons or if the copy received is not legible or complete, the defendant is left wondering what the plaintiff's case actually is so long as he does not, on the date fixed, obtain a copy from the court directly or by approaching the office in a surreptitious manner.

As has been said already, pleadings are not drafted carefully. They are loosely drafted and suffer from the defect of suppression of material facts or statement of immaterial facts. As we will show hereafter, the civil judiciary is undermanned and consequently overworked. Where a Munsif previously handled a file of about 200 cases, he has now to deal with a file of even 700 or 800 cases. The condition in the courts of Civil Judges is no better. Being overworked, the presiding officer has to rush through the process of striking issues. He does not have sufficient time to make proper use of Order X C. P. C., with the result that many matters, which could be finally settled on the date of issues, are left over to the stage of evidence. Because close scrutiny of the pleadings is not done, many defects are left which give an opportunity to the parties for subsequently twisting the case and changing the front as they like.

Parties do not generally file all the documents on the date of issues and they take time more than once for doing so. Then the case is finally ripe for hearing and date is fixed for evidence. Dilatory tactics again begin at this stage. Parties sometimes manoeuvre to prevent the service of summonses on witnesses in order to obtain an adjournment. It is seldom that a case is fully heard on the first date. Cases are adjourned for various reasons. One of the parties may for some reason of his own not like his case to be taken up on a particular date and he may seek adjournment. Then in other cases, despite the genuine wish of the party that his case be heard, witnesses or any important witness may not turn up for any cause. Then it may not be convenient for a lawyer that the case be heard on the date. Sometimes lawyers seek adjournments because they may have lot of other work elsewhere and may consider it necessary to get the case adjourned. Senior lawyers are found to take greater interest in cases of higher valuation and if they accept smaller cases, they are apt to neglect them and cause considerable waste of time of courts.

If a party dies during the pendency of the suit, proceedings for substitution of legal representatives and appointment of guardian, if any new party happens to be a minor, have to be

taken and these proceedings considerably delay the disposal of the case.

Then there are officers who do not take proper care in maintaining their diary and fix dates unintelligently. They fix more cases for a day than they can possibly hear. The result is that cases are adjourned on several dates for want of time and the parties are put to inconvenience and expense. They have to bring witnesses to the court from long distances and there is the problem of finding accommodation and arranging for meals for the witnesses as well as for the parties themselves in these days of all-round scarcity. Only the costs shown on the file as incurred are taxed and decreed and not the expenses that a party has actually to incur over his own and his witnesses' journeys and in diet. We consider that there is no greater harassment to a litigant than adjourning his case without sufficient cause. Much expense and harassment to the litigants can be avoided by courts if they arrange their diaries properly.

When evidence has been recorded long dates are sometimes fixed for arguments and for this too there are adjournments. Cases are not unknown in which judgment is reserved for several months even when arguments have been heard.

After the case has been decided the headache of the winning party begins with the making of an application for execution of the decree. On an execution application being made, the office is required to furnish report whether the particulars of the execution application are correct and whether it is within time. Sometimes the clerk in charge of the register of institutions is not very efficient or careful and it is found that he has not recorded the decision of the case in the register. Then the application has to be sent to the record room for report. There it normally takes four or five days even if the record room happens to be situate in the same station. After the report is received the application is registered and processes for attachment or arrest etc. are issued. For this the decree-holder is required to deposit the process fee and file printed notices for which he may take time more than once. Ultimately the process is issued and we feel that there is hardly a stage through which a process can successfully pass without tipping. Then the civil law and procedure provide so many grounds on which a judgment-debtor or men of his persuasion can raise objections against the execution of the decree. The question of execution of decrees is a problem by itself and will be dealt with in detail in a separate chapter. It will suffice here to say that execution proceedings are greatly protracted and expensive. The law provides appeals from various orders and by reason of such appeals the proceedings are further long drawn. We have in the relevant chapter suggested some remedies for expediting execution proceedings and also reducing expense.

Appeals too remain pending for long because in the courts of judges preference is given to criminal work over civil work.

In the revenue courts conditions are almost the same if not worse. The additional feature is that in a large number of cases in revenue courts the patwari is an indispensable witness and he is much in demand. It is seldom, therefore, that he easily turns up when called as a witness by a party. Then the Deputy Collectors, who are both Assistant Collectors and Magistrates, are very busy with their executive duties and find very little time for revenue work. Conditions now are a little better because most of the revenue cases are heard by Revenue Officers who are now designated as Judicial Officers; but cases which remain on the file of Sub-Divisional Officers, hardly ever get expeditious trial.

Procedure
in revenue
courts.

On the criminal side complaint cases are disposed of comparatively early. The complainant is anxious to have a speedy trial and because complaint cases generally do not involve very serious offences the accused too are served easily. In police cases, however, conditions are very bad. The police take lot of time in investigation and cases are thus prolonged in the pre-trial stage. The police goes on taking remands one after the other and it is readily given by the Magistrates. If the accused cannot find sureties or has not been allowed bail, he has to remain in jail as an under-trial prisoner even though he subsequently obtains an honourable acquittal. Sometimes an accused absconds and then proceedings have to be taken under sections 87 and 88 of the Code of Criminal Procedure and for this reason too cases are delayed. When ultimately the challan is put in court, there is the difficulty about procuring attendance of prosecution witnesses. The procedure of trial of warrant cases has its own intricacies and even if the Magistrate wants, he cannot finish the trial early. The system of double cross-examination particularly makes for delay. The Magistrates fix a large number of cases for a day and they have been found in the habit of examining one or two witnesses in every case that they want to take up. The police too do not very often bring all the prosecution witnesses on one date. For all these reasons even petty police cases are prolonged.

Procedure in
criminal
courts.

Formerly adjournments in sessions cases were rare but now for want of sufficient care on the part of Magistrates in summoning witnesses and partly also for lack of interest taken by the police in effecting service on witnesses, they do not turn up in the sessions courts on the date fixed with the result that sessions cases have to be adjourned.

All appeals from Magistrates' orders now lie to the Sessions Judge. He is generally a very busy officer inasmuch as he has to try sessions cases and do civil miscellaneous work. Most of his time is taken by sessions cases and he finds very little time for hearing appeals whether criminal or civil. Cases are not unknown where accused appellants have served out their sentence before their appeal has been heard.

Other causes of delay. There are many other causes accounting for delay. A Civil Judge has in his reply narrated at length the various causes and they may be summarised as follows :

A. Original Suits on Regular Side

(1) Shortage of judicial officers to cope with the work. (2) Shortage of clerks. (3) Unmethodical work in the office. (4) Number of witnesses multiplied by lawyers. (5) Late summoning of witnesses. (6) Lengthy cross-examination. (7) Court's inability to control the lawyers. (8) Cases not opened as provided in C. P. C. (9) Documents not filed and marked exhibits at the proper time. (10) Service not done properly in time by the process-servers, who are ill-paid and frequently make false reports. (11) Pleadings are generally very loose, vague and prolix. (12) Too many adjournments mainly on counsel's request and non-attendance of witnesses. (13) Amendments in pleadings sought at late stages. (14) Denial of documents on flimsy grounds. (15) Evidence recorded on commission. (16) Appointment of guardians of minor defendants. (17) Death of a party. (18) No margin left in the cause list for adjourned cases. (19) Long dates sometimes fixed in old cases after adjournments. (20) More work fixed for a day than required. (21) Late filing of written statements. (22) Documents filed late and not properly denied or scrutinised on the date of issues. (23) Inability of presiding officers to master facts and control the case from the very beginning by not reading plaints, written statements and examining parties. (24) Lawyers not giving any idea of the exact time they will take in each case. (25) Arguments not heard just after the close of evidence. (26) Judgments not delivered within reasonable time. (27) Cases held up by other cases. (28) Awaiting decision in interlocutory matters. (29) Cases going to arbitration and then returning undecided. (30) Adjournment for want of time by the court and dilatory tactics adopted by the litigants and their counsel.

B. Delay in Execution Cases

(1) Decree prepared late due to over-work and shortage of officials. (2) Proper entries sometimes not made in register of original suits. (3) All expenses not filed at one time. (4) Time for *pairvi* extended unnecessarily. (5) Cases not put up before presiding officers like original suits. (6) Stay orders easily granted in appeals and original suits. (7) Objections not decided promptly. (8) Delay caused in the issue and service of processes. (9) Counsel not taking interest in *pairvi*. (10) Record summoned from the record room or other courts received late. (11) Judgment-debtors generally in collusion with the office and delaying quick execution of decrees. (12) Delay in the disposal of appeals in the High Court and lack of interest by presiding officers in execution cases.

C. Causes of Delay in Civil and Revenue Appeals

(1) Delay in service. (2) Delay in summoning of records. (3) Delay in substitution of names in the event of death of

parties. (1) Delay in transferring appeals to other courts from the court of District Judge where they are instituted.

D. Causes of Delay in Pauper Suits and Appeals

Tahsildar's reports unnecessarily delayed and sometimes sent after several months.

E. Causes of Delay in Revenue Courts

(1) Delay in service. (2) Too much work fixed for a day. (3) Some officers being overworked. (4) Patwaris remaining busy with urgent work of the State and not turning up to give evidence and prepare accounts. (5) Desire of some lawyers to get cases adjourned in order to realise more fees. (6) Lengthy cross-examination and non-attendance of witnesses.

F. Causes of Delay in Sessions Trials

(1) Non-attendance of witnesses, assessors and accused on bail. (2) Summonses and notices not received in time. (3) Statement under section 219, Criminal Procedure Code, taken after commitment. (4) Lengthy cross-examination by defence counsel. (5) Case diary not studied by the Government Counsel or by Court. (6) All the accused not committed at the same time. (7) Accused being brought late from jail. (8) Copies of statements under section 162, Criminal Procedure Code, not given to the accused before the trial starts. (9) Prosecution witnesses failing to appear on the dates fixed. (10) Certificate at the foot of a doctor's statement sometimes wanting.

G. Causes of Delay in Criminal Appeals

(1) Not disposed of summarily. (2) Copies of judgment filed late. (3) Pre-occupation of Sessions Judges with other work. (4) Appeals frequently adjourned. (5) Counsel seeking adjournments.

H. Causes of Delay in Criminal Revisions

(1) Not disposed of summarily. (2) Admitted as a routine. (3) Delay in service. (4) Want of time and want of record.

I. Causes of Delay in Bail Applications

(1) Prosecuting Inspectors' reports received late. (2) Identification of person and property not done in time. (3) Prosecuting Inspector and his staff not co-operating properly with the Government Counsel.

J. Defects and Causes of Delay in Inquiries and Warrant, Summons and Complaint Cases in Magistrates' Courts

(1) First Information Report written by head constable not acquainted with law. (2) Investigation taking long time. (3) Several remands taken. (4) Method of recording statements in the case diary defective. (5) Confused and uncalled for statements taken down in it. (6) Evidence taken piece-meal. (7) Identification of persons and property unnecessarily delayed. (8) Cases not properly conducted by police. (9) Reports of Chemical Examiner and Imperial Serologist not called for in time. (10) Distribution of work among Magistrates defective. (11) Frequent

transfer of cases from one court to another. (12) Lengthy cross-examination by counsel to delay the case and to obtain adjournments. (13) Non-attendance of witnesses. (14) Slackness on the part of police prosecutors. (15) No control over case diary. (16) Double system of cross-examination. (17) All papers not filed with challan sheets. (18) Cases not properly fixed and arranged in the cause list.

Strength of
Judiciary.

The list is not exhaustive and there may still be many more causes which lead to delay in courts. However, as already stated, it is agreed by all those who have sent replies to the questionnaire, that the main cause of delay on the civil side is the shortage of officers. We are of the opinion that considering the amount and nature of work that is coming before the civil courts, the cadre should be substantially increased as early as possible if the arrears, which are accumulating from day-to-day, are to be cleared off. It may also be mentioned that besides this temporary phase of accumulated arrears, the work has gone up both in volume and complexity and the old cadre of civil judicial officers will not be sufficient to deal with the volume of work now coming before the civil courts. What is required, therefore, is a permanent increase in cadre and also some increase for the time being to deal with the accumulated arrears. Civil work has been falling into arrears year by year since 1942. This is due to the fact that after the entry of Japan into the War and the enactment of a large number of new laws creating new offences, for example, under the Defence of India Act and Rules, criminal work to be done by Sessions Judges and Assistant Sessions Judges increased enormously with the result that these officers, who are also District Judges and Civil Judges, were unable to give sufficient time for the disposal of civil work. This is clearly reflected in the figures of pending file of regular suits and civil appeals in the courts of District Judges and Civil Judges. In 1942 the number of appeals pending was slightly over 10,000. It remained at this figure up to 1944 and then started rising and was over 11,000 in 1945, over 13,000 in 1946, nearly 15,000 in 1947, over 15,000 in 1948 and nearly 19,000 in 1949. Similarly the number of civil suits pending before these courts was just below 3,000 in 1942. It went up to over 3,300 in 1943, to over 3,400 in 1944, and to 3,500 in 1945, 4,200 in 1946 and 5,200 in 1947, nearly 5,500 in 1948, and 5,700 in 1949.

It will be seen, therefore, that the number of pending suits in 1949 was almost double of the number pending in 1942. Same is the case with appeals. The reason for this is that Civil Judges and District Judges have been busy in disposing of criminal work, with the result that many civil courts remained lying vacant and many a time Civil Judges were working as Assistant Sessions Judges without doing any appreciable civil work. The cadre could not unfortunately be increased to cope with the increased criminal work thrown on Sessions and Assistant Sessions Judges in the last five years. Similarly the institution, which was just above 4,100 in 1942, has gradually increased and was just above 5,900 in 1949, i.e., an increase of about 40 per cent. in civil

suits. Institution of appeals also rose from just over 2,200 in 1912 to over 4,300 in 1915, but then it came down to 2,900 in 1919. Even so, it is 25 per cent. above the figure for 1912. The reason why the number of appeals has come down since 1915 is that a number of Munsifs have had to be kept vacant and additional Munsif's Courts could not be created and the Munsifs did thus not dispose of as much work as they should have done. Similarly, if we compare the figures in the Munsif's Courts, the state of affairs will be found to be the same.

We have in appendices B to D given comparative figures of the work of courts of District Judges, Civil Judges and Munsifs for some years which will also show the state of pending file. Recently the cadre of District Judges has been increased by 7 posts and that of the Civil and Sessions Judges by 30 posts. Almost all the posts of District and Sessions Judges and Civil and Sessions Judges have been filled up but there is still a shortage of officers even in the sanctioned strength with the result that the work has fallen into arrears.

The statement in Appendix E will show that the work is much in arrears in the High Court as well. At the end of the year 1919, 2,933 first appeals, 6,610 second appeals, 1,407 civil revisions, 140 Letters Patent Appeals, 1,072 criminal appeals, 471 criminal revisions and a large number of miscellaneous cases were pending in the High Court. The present strength of the High Court consists of only 20 Judges and most of the pending cases are quite old. In a recent speech the Chief Justice of the High Court remarked that the efforts of the legislators and judges to check the growth of litigation by simplifying the law and by removing the uncertainties, would not result in any decrease in the number of cases filed. In his opinion the work of the courts is bound to increase as people become more and more conscious of their legal rights and as the average wealth of the citizen increases. After carefully checking the figures he came to the conclusion that with 30 Judges—if the work did not increase further—it would, in about seven years' time, be possible to clear off arrears and bring the work up to date. In his opinion the High Court should immediately have 24 judges so that there may not be further increase in the accumulation of work. The Committee is in general agreement with the Chief Justice.

In recent times there has been a great increase in the duration of cases. This increase in duration in subordinate courts started some time after the beginning of the last war due, to a large extent, to the fact that very many new laws were introduced leading to new types of cases both in the criminal and civil courts. Then came the transfer of power in 1947 leading to a shortage in the cadre of officers required for the disposal of judicial work, the civil, criminal and revenue. There was also an increase in crimes and criminal work due to the troubles following in the wake of the partition of 1917. This led to a sudden appointment of a large number of young men to make up the deficiency in the cadre with the natural result that the quality of the

officers also deteriorated to a certain extent. It has resulted in a good percentage of the cadre consisting of inexperienced officers of less than five years' standing. Over and above this, there is no doubt that so far as the administration of civil justice is concerned, there is an actual shortage of officers to carry on the day-to-day work. In old days a pending file of 200 was considered sufficient for a Munsif and whenever a file went above 300 or so, an Additional Munsif was provided. In those circumstances, it was expected that a suit would not last for more than six months to a year in the Munsif's court. At the present time, a pending file of 300 to 400 is not considered too high for a Munsif while some of them have a pending file of even 700 to 800. In the case of Civil Judges 50 used to be a normal file but now it is generally over 100 and sometimes even 200 or 400. No option is, therefore, left to the officer who fixes dates sometimes six months ahead and sometimes dates have to be fixed only for the fixation of dates. Adjournments cannot be avoided in this state of circumstances. Then if the file of an officer is over-burdened, he has to deal with interlocutory matters in a large number of cases every day which occupies most of his time. The cases also become old and it is common experience that with the duration of the case parties procure more voluminous evidence and create greater complexities. It is, therefore, imperatively necessary, before the entire administration of justice collapses because of the tremendous weight of arrears which cannot be cleared off, to increase the cadre of judicial officers considerably to dispose of the work lying unattended. Once the arrears have been cleared off, it may be possible to keep abreast with a normal cadre of civil judicial officers. Justice delayed is justice denied and no amount spent over the administration of justice will be ill-spent.

**Condition of
Judiciary.**

It is needless to stress that the functions of the judiciary have since the enforcement of the Constitution of India assumed greater importance. The judiciary is the guardian of the citizen's liberty and custodian of public rights. In order to get the best out of the judiciary, therefore, it is necessary that it should be a well contented service free from economic and other worries and its conditions should be improved. The general feeling unfortunately is that the judiciary is dissatisfied with the conditions of its service. It is felt that their emoluments are not adequate. Accommodation for courts is at several places most unsatisfactory and proper facilities are not available to judicial officers for residence.

**Emolu-
ments.**

According to the pre-1981 scales of pay the judicial service had some advantage. It was not without adequate reason that a better scale of pay was provided for the Judicial Service. Members of this service enter Government service at a comparatively late stage. After graduating, a person has to obtain a law degree before entering the Judicial Service. He cannot thus put in as much service as other government servants. Now, as a result of the recommendations of the Pay Committee this service has been placed on an equal footing with the executive branch of the U. P. Civil Service and other State services. We

have elsewhere suggested that practice at the Bar for two years should be made compulsory for recruitment to Judicial Service. A person will thus enter this service roughly at the age of 25 years. If a higher scale of pay is not provided for entrants to the Judicial Service, it will not attract good talent.

We understand that there is a proposal to create a Higher Judicial Service consisting of District and Sessions Judges and Civil and Sessions Judges and to prescribe a higher and lower scale respectively for the two classes of posts. It is generally agreed that the work of the two posts is of like nature and responsibility. It is, therefore, anomalous to have two classes of posts for the same work with two designations and two different scales of pay. We understand that this classification is unique in this State and there are no Civil and Sessions Judges elsewhere in the Union. We recommend that there should be only one class of posts in the Higher Judicial Service with a uniform scale of pay.

It cannot be denied that members of the Judicial Service are being put to great inconvenience due to acute shortage of residential accommodation. There are no proper arrangements for their residence and officers experience considerable difficulty in the matter of allotment of houses. An officer, who cannot get ordinary physical comforts, cannot be expected to give his best to his work. We propose that economic conditions permitting, a five-year building programme may be chalked out by the Government for the construction of residence for members of the judiciary. The provision for residential accommodation can be made in the following ways :

- (1) Construction of buildings ;
- (2) Acquisition of buildings ;
- (3) Taking of buildings on long leases ; and
- (4) Encouraging private individuals to build on nazul or other land provided to them for the purpose.

The position as regards the court buildings is no better. Most of our court houses and the facilities provided therein are far from satisfactory. They do not certainly lend dignity to our organization of justice and the whole atmosphere of courts, for which the lack of facilities is partly responsible, is demoralizing and undignified. It would be a measure greatly redounding to Government's credit if sufficient funds could be earmarked for the improvement of court buildings. With the increase in work the number of additional and temporary courts is fast increasing and whenever a new court is created permanently or temporarily, it is difficult to find accommodation for the same. Instances have been brought to the notice of the Committee where wholly unsuitable accommodation has been provided for courts. At many places court rooms are close to noisy Nazarat or other sections of the court's offices and it is surprising how the courts manage to carry on their task with credit. The present makeshift arrangement of court rooms and chambers for judges is far from satisfactory. We recommend that economic conditions

permitting, Government should take immediate steps to provide necessary accommodation where justice may be administered in a calm and dignified atmosphere.

**Savings from
administra-
tion of
justice.**

As a matter of fact it is not that the State is dispensing justice free of charge. Court-fee is charged from every litigant who goes to seek justice. Figures for some years as in Appendix F would show that year after year the State makes a saving out of the income from the administration of justice. In well advanced countries like England there is no court-fee and justice is administered free by the State. When here in India we are charging for the justice that is administered, we might at any rate provide for sufficient number of courts so that the litigant, who pays handsomely for obtaining justice, gets patient hearing and speedy justice. It is also the duty of the State that properly furnished and commodious court houses are provided and given an appearance of proper temples of justice.

**Ministerial
staff.**

With the increase in the civil judicial officers suggested above there will be an automatic increase in the ministerial staff. No suggestion is, therefore, made for increasing the clerical staff except for execution work. Generally when additional courts are created they do not do the execution work of their own decrees. This is done by the permanent courts with the result that the execution clerk in the permanent court is heavily over-worked wherever there are additional courts. It is, therefore, necessary that whenever additional courts are created extra clerks should be appointed for execution work in the permanent courts, or the additional courts, which are likely to continue for a long period, may be given an execution clerk and authorized to execute their own decrees. It is generally felt that there is shortage of clerical staff in the criminal and revenue courts. This question may, however, be examined with reference to the effect of the zamindari abolition legislation on revenue case work.

**Process
or work**

So far as process-servers are concerned we do not think that there is any shortage on the civil side. There is a general complaint that process-serving staff on the revenue side is insufficient. This question may also be examined with reference to the effect of the zamindari abolition legislation.

**Improve-
ment in the
working of
office.**

So far as the question of improvement in the working of the office is concerned the Committee is of the opinion that if instructions laid down in the General Rules (Civil and Criminal) and in the circulars of the High Court are properly followed, the work of the office would remain up to date and run smoothly. We do not propose to make any other general suggestions for improvement in the working of office but we shall elsewhere make suggestions for improvement in certain matters to which our attention has been specifically drawn and which account for frequent delay, harassment of litigants and corruption in the staff.

We have dealt with the main cause of delay that is the shortage of High Court Judges and Civil Judicial Officers. We shall

(25)

now suggest remedies for minimising litigation, delay in the disposal of cases and expenses of litigation and for general improvement in the system of administration of justice obtaining at present. The remedies that we are going to suggest can be divided into two categories, viz.

(1) which can be effected without change in law or with slight change in rules or government orders; and

(2) which require change in law.

These remedies will be separately dealt with in regard to civil and criminal matters.

CHAPTER V

CIVIL

1. Remedies suggested without change in law or with slight change in rules or Government orders

Essentials
of court's
working.

The main essential of the proper working of a court is that the presiding officer should be vigilant and should take an intelligent interest in his work all round. He should know his duties and should possess the necessary zeal to perform them. No amount of improvement or change in the law or rules of procedure can bring about expeditious and smooth disposal of work if the presiding officer cannot maintain proper control over his diary, staff and other surroundings. He should understand a case thoroughly before he proceeds to try it, so that he may be in a position to appreciate evidence as it proceeds. Only then he can distinguish between relevant and irrelevant evidence and regulate cross-examination and arguments. If he is fully conversant with the various rules and orders, he will not be misguided by those from whom he has to take work and will not allow them to have an upper hand. Avoidable adjournments, recording of evidence piecemeal, long dates for arguments or for delivery of judgment and signing of order sheets as a matter of course, should be avoided as far as possible. This applies with equal force to every officer who has to preside over a court, whether civil, criminal or revenue.

Granting
of time.

A variety of suggestions can be made for improvement in the work of civil courts. They should be strict in granting time for making up deficiency in court-fees, deposit of process-fees and taking of other steps and in granting adjournments.

Processes.

The Nazarat, which deals with processes, and the Copying Department require the utmost vigilance because most of the delays and corruption exist there. The officer, who holds the charge of Nazarat, should see that processes are issued from the office to the Nazarat and thence to the process-servers without avoidable loss of time. The register of processes should be frequently examined and disciplinary action should be taken against any process-server who does not generally give a good account of himself. Frequent changes in the beats of process-servers may sometimes be desirable. Such frequent changes, however, have their own advantages and disadvantages. A process-server, who has made himself familiar with his beat, can do better work than a new man but at the same time he can develop prejudices and friendships. In any event a process-server should not be allowed to stay in a beat for a long time. Statement of modes in which service of processes has been affected by each process-server, should be maintained. The determining factor of the efficiency and integrity of a process-server should be the percentage of processes actually served by him on the person concerned or his relation or agent. We understand

that if the report of a process-server is that he met the party to be served but the party refused to accept the process, this is, for purposes of statistics, classed as personal service but a large percentage of such reports is false.

There are various other matters in which harassment is caused to litigants because of corruption prevalent in the subordinate staff of the courts. One of them is the inspection of records with which we shall deal later. ^{Corruption in staff.}

Delay in issuing copies is an important factor leading to corruption and delay in the disposal of cases. Staff and typewriters in the Copying Department should be increased as the staff is very inadequate and the typewriting machines are also in short supply to these offices. The situation on the criminal and revenue sides, we are told, is desperate. The old practice of empowering the District Judges and District Officers to employ temporary staff in the Copying Department without reference to higher authorities, may be re-introduced as it takes quite a lot of time for them to obtain the sanction of the higher authority to entertain staff whenever it becomes necessary. It is also suggested that in courts, where there are stenographers attached to the presiding officers, applications in advance for copies of judgments may be obtained from parties and as many copies as are required not exceeding three, may be typed by the stenographer at the time when the judgment is typed. In case a larger number of copies is applied for, the rest should be issued by the Copying Department. In the case of applications so made the fee may be reduced by 25 per cent. The practice in vogue in Delhi State for issuing copies of deposition of witnesses, which are not meant to be filed in court, may preferably be adopted in this State also and the heads of offices may be empowered to employ locally such number of copyists as may be necessary to copy out such documents. This staff should be temporary and paid out of the income from such copies. The cost of such copies should, in the first instance, be kept at half the usual rates. An endorsement should be made on such copies that they are not to be used for the purpose of being filed in court. ^{Copying Department.}

The register of applications for copies should be closely and frequently scrutinised. Where the officials of the Copying Department are not scrupulous, they make fictitious entries of the date of posting the notice of preparation of the copy although the copy is not ready on that date.

Searching inspections and surprise visits by officers of their offices will also minimise corruption in courts. Officers at present do not sometimes find time to inspect their courts due to heavy files but inspections are even more important than disposal of cases as ultimately such inspections lead to more speedy disposal of cases and minimise corruption. No time spent in inspection should be considered as wasted. A rule should be made insisting upon all officers to inspect their offices once in every quarter and it should be rigidly observed. A statement should be submitted through the District Judge to the High ^{Inspection of offices.}

Court by each court once in a quarter that inspection has been done according to rules by the officer.

Copy of application to accompany.

A copy of all applications, except those of a routine nature, should accompany all applications and this copy may be delivered to the opposite party either out of court and endorsement obtained of the receipt of such copy or it may be presented along with the application to the court in case the opposite party's counsel is unwilling to accept it out of court. Necessary amendments in the General Rules (Civil) to give effect to this suggestion may be made. This will, to a great extent, minimise the need of parties' surreptitiously approaching the readers and other clerks of the court. A copy of the grounds of appeal should also accompany the notice of appeal to the respondent.

Refund vouchers.

There is a complaint that applications for refund of money are inordinately delayed and that only when parties spend money, they get the refund voucher within a reasonable time. In order to obviate corruption in this matter it is suggested that a register be opened in every court of applications for refund with the necessary columns. The presiding officer should insist that the report from the record room about the title of the applicant and from the Nazarat about the availability of the money, should come within three working days. Thereafter the voucher should be prepared and delivered to the applicant within another four days. Necessary entries should be made in the register to show whether the reports from the record room and the Nazarat have come in time and whether the voucher has been prepared and delivered to the applicant within seven working days from the application. This register should be inspected by the presiding officer frequently, say once in a fortnight to see that vouchers are being prepared promptly and given to the applicants. Where the report does not come within time, an explanation should be called for from the official concerned for the delay. If necessary, General Rules (Civil) may be amended for this purpose. This may apply both to vouchers for refund of decretal money and for refund of court-fee and value of stamps.

Adjournments.

As we have already pointed out, cases are often adjourned by courts for want of time but sometimes adjournments are also obtained where senior counsel engaged in cases fixed in various courts on the same date, is unable to attend to all the cases himself. Courts have sometimes to wait and ultimately adjourn cases when the counsel is not available. It is, therefore, suggested that in all cases it should be imperative for seniors to have with them a competent junior who should independently get a fee equal to a fixed percentage of the fee charged by the senior and should share the responsibility with the senior. This percentage may be fixed at the minimum of 25 per cent. and at the maximum of 50 per cent. of the senior's fee.

Classification of lawyers.

Lawyers should be classed as senior and junior and this classification should be done by the High Court on certain well recognized principles. Seniors should have certain privileges like the King's Counsel in England and should also have certain

disabilities such as they may not be allowed to appear without a junior. This rule insisting on a senior taking with him a junior, will also facilitate quick disposal of cases as courts will not then have to wait in all cases for the senior lawyers to turn up before cases are heard.

The law of pleadings as at present is perfectly exhaustive and good and does not require any change. No doubt courts are not very strict in enforcing this law which should now be insisted upon. Law of pleading.

Replication of the written statement is useful and a rule should be framed for making it obligatory on the plaintiffs to file replication in all cases except in cases of small cause nature or where the court passes order after perusing the written statement that a replication is not necessary. Replication.

One of the main causes of delay in execution proceedings is the grant of time indiscriminately for taking steps and this is usually done by the execution clerk without the presiding officer exercising control over it. If a greater amount of personal interest is taken by the presiding officer, it is possible to curtail delays in a large majority of cases. Presiding officers do not usually get sufficient time to look personally into all these matters and they do not devote sufficient attention also because this work does not count towards the calculation of the amount of work done by the officer. It is, therefore, suggested that half a day in a week should be specially reserved by each court for doing execution work besides Saturdays which are devoted exclusively to miscellaneous work. Delays in execution of decrees.

Petitions should, as a general rule, be taken in open court and usually at the commencement of the sitting of the court every day. This practice of receiving petitions in open court already obtains in the High Court. The lower courts can very well follow it. The majority of petitions can be disposed of and orders passed in court as soon as they are filed. Where a reference to the record or any other paper is necessary before an order can be passed on a petition, it should be taken up the next day. The practice in subordinate courts is that all petitions are filed in the office and the office then takes time in putting up the petitions before the presiding officer along with files. Parties are naturally anxious to see that their applications are put up before the presiding officer as soon as possible and orders passed thereon. This leads to corruption in the office. If the petitions are received and disposed of in open court, harassment of the litigants will be avoided. Presentation of petitions.

The processes should be clear and legible. In the notices to show cause the nature of the application is often not given. Parties are left to speculate and they have to approach the officials for information and for this they have to pay tips. As already suggested copies of all petitions, except of a routine nature, should be made available to the opposite party. The nature of the application should also be specified in the notice. No petition should be accepted unless a copy thereof has been Clarity of process.

handed over to each opposite party or requisite number of copies have been filed along with the application. It should also be the responsibility of the Munsarim of the court to see that no summons is issued without a complete and legible copy of the plaint.

Advantages
of use of
Order X,
C. P. C.

The advantages of greater use by courts of the provisions of Order X, C. P. C., cannot be over-emphasised. A little time spent on the date of issues in examining parties or their counsel for elucidation of facts and admission of documents, saves a good deal of time of the court ultimately.

Besides the matters that we have particularly dealt with above, a little care and intelligent interest taken by the presiding officer can do much to eradicate the evils from which our system of administration of justice continues to suffer.

2. Remedies requiring change in law

We will deal with the question of execution of decree, appeal, revision and review in separate chapters because they are problems by themselves. Here we propose to deal with other provisions of the Code of Civil Procedure and certain other enactments which need amendment. We do not, however, suggest changes in the numerous Central Acts except where it has been found absolutely necessary.

Summary
trial.

We have given our anxious consideration to the question whether we can extend the procedure of summary trial to any other class of cases. On considering the opinions received we find that all are not agreed on the point whether the jurisdiction of Small Cause Courts be extended to any other class of cases not hitherto provided under the Provincial Small Cause Courts Act but we feel that there are certain classes of cases which have been excluded from the jurisdiction of the Provincial Small Cause Courts Act, may be made triable by Small Cause Courts. This will lead to speedy justice. We propose that the following articles be omitted from Schedule II appended to the Provincial Small Cause Courts Act :

(8) (26) (31) (35) (ii) (35) (j), (35)(I) (36) and (43-A).

We further propose that article (38) may be amended as follows :

" (38) a suit relating to maintenance except where it is for arrears of maintenance based on a decree or a written agreement."

The only class of cases, besides those of small cause nature, which can be tried under the summary procedure by courts in the State, is of those to which Order XXXVII, C. P. C., relates. Full advantage of this provision has not been taken by the public mainly because of the shorter limitation provided for suits to be tried by this procedure. At present the limitation for suits under the summary procedure is only one year under article 5, Schedule I, of the Indian Limitation Act. If this period is extended to three years, it is believed that a larger use of this provision of law may be made. It is, therefore, proposed that

article 5 be amended by substituting " Three years " for " One year " in column 2.

A very large number of people do not favour the introduction of summary procedure in subordinate courts. No extension of this procedure is, therefore, recommended except as above.

There is no doubt that process-servers are not above temptation which results in considerable delay and harassment to parties. To improve the tone of process-servers is a difficult matter. It has, however, been suggested that processes may be issued simultaneously by registered post also. We propose that such of the parties as desire to get their processes served by registered post also, may be allowed to do so. Such a rule already exists where the defendant resides outside the State. In all cases if personal service within the State also is effected through post, it should be taken as sufficient even though the process may not have been served in the ordinary course. In order to give effect to the above suggestion, Order V, rule 9, may be amended by adding a third sub-rule as follows :

"(3) Where the defendant resides within the State, the court may also direct the proper officer to cause summons under this chapter to be addressed to the defendant at the place where he ordinarily resides or carries on business or works for gain and sent to him by registered post pre-paid for acknowledgment. An acknowledgment purporting to be signed by the defendant shall be deemed to be a sufficient proof of service of such summons."

The practice of issuing *dasti* summonses to witnesses is working satisfactorily and has resulted in considerable saving of time in service.

We feel that the execution of warrants of arrest is not satisfactorily carried out. Unless the process-servers are themselves interested in executing the warrants, it becomes difficult for a decree-holder to catch hold of the judgment-debtor. No improvement can be suggested in the present state of affairs and it will not be feasible to entrust this duty to the police as suggested by some. We can only recommend more strict supervision of the work of process-servers by presiding officers of courts.

A large number of lawyers and judicial officers have supported the proposal for amending the law regarding interrogatories by giving to a party the right to serve more than one set of interrogatories for the examination of the opposite party. There already exists a provision in Order XI, rule 1, which empowers the court to permit more than one set of interrogatories and if a general right to serve more than one set of interrogatories is given to the parties, it may lead to unnecessary harassment. It does not, therefore, appear to be necessary to make any change in the law on this point.

It has become more or less a common practice to deny all the documents, even though they may have been executed by the parties themselves. It should, therefore, be made obligatory

on the courts to examine the parties or their counsel with reference to the execution of documents produced by them, on the date of issues or at a subsequent time and a rule may be made to this effect. This will save a lot of time of the courts which is now unnecessarily spent in proving documents wrongly denied.

Although rules provide for the award of costs by the court for proving documents wrongly denied, it is felt that this provision has not proved very effective and has not stopped persons from making wrong denial of documents. It is, therefore, proposed that Order XII, rule 2, be amended as follows :

" Either party may call upon the other party to admit any document, saving all just exceptions ; and in case of refusal or neglect to admit without sufficient cause after such notice, special costs, not exceeding fifty rupees to be fixed by the court for each document, shall, on proof of the document, be paid by the party so neglecting or refusing, whatever the result of the suit may be."

Some courts used to interpret the last part of present rule 2 of Order XII in a manner so as to deprive a plaintiff of his costs of proving documents in all cases including contested cases in which a notice was not sent to the other party. Even in cases which were heard *ex parte* this rule was observed and it operated very harshly upon the plaintiffs inasmuch as they were unable to get costs of proving a document unless a notice was served. Now that we are providing for special costs to be awarded in case a party unreasonably neglects or refuses to admit a document, ordinary costs are left to the discretion of the court under section 35 of the Code of Civil Procedure.

Issue of
jurisdiction.

Although opinion is divided among those who have sent replies to the questionnaire as to whether it is desirable to make any amendment in Order XIV, rule 2, yet we feel that sometimes parties are put to unnecessary expense in going into the question of facts where the case could be decided on the plea of jurisdiction. We, therefore, propose that a proviso be added to Order XIV, rule 2, so as to make it obligatory on the courts to decide the question of jurisdiction before deciding issues of fact. The following proviso may, therefore, be added to Order XIV, rule 2 :

" Provided that where a plea of jurisdiction is raised, the issue of jurisdiction shall be decided before other issues of facts and law are determined."

Party failing
to produce
evidence.

It has been suggested that where a party, to whom time has been granted at his request, becomes unavoidably absent on the date of hearing and the court proceeds to decide the case in accordance with Order XVII, rule 3, the party has no remedy left to him except by way of appeal which in some cases causes considerable hardship. We, therefore, propose that Order XVII, rule 3, should be reserved for such cases only where the party has defaulted but is present. Order XVII, rule 3, may, therefore, be amended by adding the words, " where the party is present "

after the words, "notwithstanding such default" and before the words, "proceed to decide."

The following explanation may be added to rule 3 :

"*Explanation*—A party shall be deemed to be present when he is present personally or is represented by a counsel or an agent though engaged only for the purpose of making an application."

Provision already exists for demanding security for costs from persons who own no property within the States and the Allahabad High Court has also amended the rule so as to include cases in which a party is being financed in the litigation by a person not a party to the suit. It is, however, felt that sometimes some of the defendants also finance the plaintiff and they are not covered by the rule as it now exists. In order, therefore, to obviate this difficulty, we propose that the words, "not a party to the suit" be omitted from Order XXV, rule 1, as amended by the High Court and the word, "another" be substituted in place of the word "a" before the word "person." We, however, feel that the word "States" in Order XXV, rule 1 be substituted by the words "State of Uttar Pradesh." It becomes very difficult for a person to whom security is offered, to proceed against property if it exists outside the State. It is, therefore, suggested that security may be demanded from all persons in cases in which they do not own property within the State.

It is a matter of experience that considerable delay is occasioned in the appointment of guardians of minors. When a guardian is originally nominated and he refuses to act as a guardian, a fresh proposal is asked for and this process continues till somebody, who is willing to act as guardian, comes forward and is appointed. This leads to considerable delay and it is suggested that all probable guardians should be nominated in the very first instance and notices should issue to all of them simultaneously including the natural guardians. After the notices have been served, it will be open to the court to appoint a proper guardian out of those to whom notices have been sent. This would obviate the difficulty of fresh nominations and would lead to expeditious disposal of cases. At present notices are issued to minors also who are above 10 years of age. This age-limit may be raised to 12 as usually minors of less than 12 years age are not able to make an intelligent preference of their guardians.

Necessary amendments to Order XXXII may be made so as to give effect to this suggestion.

A number of persons have suggested that some amendment in law should be made so as to stop guardians once appointed by the court with their own consent, from retiring and thereby prolonging the suit. It is, therefore, suggested that in all cases in which a guardian is permitted to retire from guardianship at his option, he should be made to pay costs occasioned by his retirement including costs to be incurred in the appointment of a fresh guardian.

Amendment should, therefore, be made in Order XXXII, rule 11, C. P. C., so as to give effect to this suggestion. Order XXXII,

rule 11 (1) may be remodelled as follows :

"Where a guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the court may permit such guardian to retire or may remove him :

Provided that where a guardian is permitted by the court to retire at his own request but without reasonable excuse, he shall bear the costs occasioned by such retirement including the costs to be incurred in appointing a fresh guardian."

It has been noticed that sometimes suits are instituted on behalf of minors after a suit has already been heard and decided for a substantially similar relief instituted by a different person acting as next friend of the same minor. A large majority of such suits is frivolous and it becomes difficult for the defendant to realise his costs from such next friends even if the court awards costs against the next friend personally. It is, therefore, suggested that in such suits security for costs may be demanded from the next friend.

In order to give effect to this suggestion, a sub-rule may be added to Order XXV, rule 1, as sub-rule (4) in the following words :

"(4) Where a suit is instituted by a next friend on behalf of a minor and it appears to the court that another suit on behalf of the same minor by a different person acting as his next friend, for a substantially similar relief, has been decided against the minor, the court may, on the application of the defendant, order the next friend to furnish security for costs of the defendant."

Decree in simple mortgage suits.

The procedure of passing a decree for sale in simple mortgage suits is a little prolix. A preliminary decree is followed by a final decree which, it appears to us, should not be necessary. We, therefore, suggest that in all decrees in suits on a simple mortgage only, where mortgaged property is sought to be sold, only a final decree should be passed and time not exceeding six months should be granted to the judgment-debtor for redeeming the mortgage. Necessary amendments may be made in Order XXXIV and the forms prescribed thereunder. The Civil Justice Committee had also made this recommendation and we consider that it is not necessary to pass a preliminary decree and then to make it incumbent on the decree-holder to apply within a period of limitation for the preparation of a final decree. Judgment debtors are apt to take undue advantage of this provision by making default in payment of the preliminary decree and then avoiding service of notice of the final decree so long as they can. The object of giving an opportunity to the judgment-debtor for satisfying the decree, can be served by allowing time in the final decree itself.

Special costs.

Some difficulty is experienced in the proper application of section 35-A of the Code of Civil Procedure and the court can award costs by way of compensation only when a party raises a plea at the earliest opportunity that the claim or defence is

false or vexatious to the knowledge of the opposite party. Sometimes parties forget to raise the plea that the claim or defence is false or vexatious and no relief by way of awarding compensatory costs can be granted to them. Moreover, the procedure becomes a little complicated. It is, therefore, suggested that section 35-A (1) may be amended as follows so that courts may have power to award costs under this section in suitable cases :

"If in any suit or other proceeding, including proceedings in execution, not being an appeal or revision, the court holds that the claim or defence or any part of it is false or vexatious to the knowledge of the party by whom it has been put forward and if such claim or defence or any part of it is disallowed, abandoned or withdrawn in whole or in part, the court may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for payment to the successful party of costs by way of compensation."

Sometimes it so happens that the courts by sheer oversight omit to mention the period within which the decree passed against the State or a public officer should be satisfied. In all such cases it becomes very difficult to compute the period after which the decree should be executed. It is, therefore, advisable that some time limit should be mentioned in section 82, C. P. C., to cover cases where the time for payment is not specified by the court. This object can be achieved by adding the following words between the words, "so specified" and "the court" in sub-section (1) of section 82 :

"or within three months, if no time is specified".

In view of this amendment a further amendment would be necessary in this sub-section, namely that the word "shall" occurring between the words "a time" and "be specified" should be substituted by the word "may". This will give discretion to the court to specify a longer period than three months and if a Court does not specify a period, it shall be deemed to be three months.

Sometimes it becomes necessary in cases under section 92, C. P. C., to order delivery of possession of trust property in the possession of a trustee who is removed by the court or against a particular trustee. In all such cases it is doubtful whether the court can pass a decree for delivery of property. In order to remove these doubts it is suggested that a new clause (cc) be added after the clause (c) in section 92(1) in the following words :

"(cc) for delivery of trust property against a trustee".

There is conflict of opinion as to whether the provisions of section 144, C. P. C., apply to a decree which is reversed or varied otherwise than in appeal or revision and whether such an order is also covered by this section. In order to make all these points clear, it is advisable to amend the first part of sub-section (1) as follows :

" (1) Where and in so far as a decree or an order is varied or reversed in appeal, revision or otherwise, the court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed."

Enforcement of liability of surety. Sometimes disputes arise when a Supindar misappropriates the attached property which is entrusted to him and the aggrieved party is driven to the necessity of filing a suit against him. In order to obviate this difficulty we propose that section 145, C. P. C., as it stands, should be re-numbered as sub-section (1) of section 145 and the following amendments may be made in the re-numbered sub-section (1):

The following words may be added between the words, "may be executed against him" and "to the extent":

"personally or against any property given by him in security, without attachment".

The word "personally" occurring between the words, "himself" and "liable" should be deleted.

While provision has been made in this section for giving relief to the decree-holder against a defaulting surety for executing an order or decree against the surety, no provision for relief to the judgment-debtor has been made in case a person entrusted with attached property fails to restore it to the judgment-debtor with the result that the latter is driven to the necessity of filing a suit. It is, therefore, advisable to provide for relief to the judgment-debtor also in such cases. This may be done by adding a new sub-section (2) to this section as follows:

"(2) Where property attached by a court has been entrusted to a person for custody and he fails to restore it to the possession of the court when called upon so to do, the court shall determine the extent of his liability to the judgment-debtor and to the decree-holder and the judgment-debtor and decree-holder shall be entitled to recover the respective amounts so determined, in the manner herein provided for the execution of decrees and such person shall, for the purpose of appeal, be deemed to be a party to the suit within the meaning of section 47."

The following explanation should be added at the end of this section after sub-section (2) proposed above:

"*Explanation*—For the purposes of this section surety includes a person to whom property attached by a court is entrusted for custody."

Some difficulties arising in the application or interpretation of certain civil laws which lead to unnecessary litigation, have been brought to our notice and we make the following recommendations with regard to the same.

Provincial Insolvency Act—

Section 20.—It has been suggested by an Official Receiver that the property, which vests in the Receiver, does not always come into his possession and continues to be in the possession of the insolvent. We feel that in cases where the application is made by the debtor himself to be adjudged insolvent, the court should in all cases direct the Receiver to take immediate possession of the property of the applicant. In order to give effect to this suggestion we propose that section 20 of the Provincial Insolvency Act be amended by omitting the word "ordinarily" occurring between the words "petitioner" and "shall" and the word "may" occurring between the words "and" and "direct him".

Section 59A.—It has been suggested that the powers exercised by the court under section 36 of the Presidency Towns Insolvency Act be also exercised by insolvency courts in the State and this may be done by adding sub-sections (1) to (7) of section 36 of the Presidency Towns Insolvency Act to section 59A of the Provincial Insolvency Act.

The other amendment which we propose is that the limit for summary administration provided in section 74 be raised from Rs.500 to Rs.1,000 as the value of the rupee has gone down and property, which was at one time worth Rs.500, may perhaps be worth Rs.2,000 now.

Indian Companies Act—

We received suggestions for certain amendments in the Indian Companies Act but we feel that as a committee presided over by Mr. Bhabha is going into the question of company law on an all-India basis, we should not propose any changes in the company law at this stage. But we make a suggestion which does not require amendment in the law and can be effected by a slight change in the General Rules (Civil).

It has been sometimes felt that difficulty arises where urgent orders are wanted from the District Judge in company cases during vacation. Instances have been known where District Judges have refused to pass orders in urgent cases during the civil court vacation on the ground that they were working merely as Sessions Judges and not as District Judges. This sometimes leads to hardship and injustice. We, therefore, feel that the District Judges should be directed by rule to hear emergent matters relating to companies during the time they work in the vacation as Sessions Judges.

We feel that some arrangement of like nature is necessary even for the disposal of emergent cases in other civil matters. Sometimes in cases of encroachments etc. urgent orders of court are needed but because all civil courts are closed on account of vacation the aggrieved party is helpless and cannot seek any order from the court. A District and Sessions Judge or a Civil and Sessions Judge is always there to look to criminal matters and he can well be authorized by rule to pass orders in urgent civil matters as well.

U. P.
Agriculturists
Relief Act.

U. P. Agriculturists' Relief Act—

Section 10.—It is felt that applications for redemption of mortgages provided under the U. P. Agriculturist Relief Act can be more appropriately dealt with in the civil courts. It is, therefore, proposed that all such applications should be entertained by the civil courts and the jurisdiction of the Collector to entertain such applications may be withdrawn. Section 10 may thus be omitted from the Act. This recommendation was also made by the Revenue Courts Reorganization Committee presided over by (now the Hon'ble Sri Charan Singh). Consequential amendments in sections 22 and 23 may also be made.

Section 34.—Sometimes decisions of cases are held up as the provision in section 34 (a) requires that an objection raised by a debtor that a creditor has not complied with the provisions of section 32, has to be determined before the claim can be decided on merits. As a matter of practice courts determine all the objections mostly on the same date, but a question may arise when a party may insist on the determination of such an objection before evidence on merits is recorded. To obviate this difficulty and to minimise delay in the disposal of suits it is suggested that clause (a) of section 34 may be deleted, and clause (b) may be amended by the addition of the following words in the beginning :

“ in any suit or proceeding relating to a loan against an agriculturist, if the debtor objects that the creditor has not complied with the provisions of section 32 and ” and before the words “ if the court finds.”

Transfer of
Property
Act.

Transfer of Property Act—

Section 106.—A good number of suits are dismissed and considerable controversy arises on the question whether a particular notice given under section 106 of the Transfer of Property Act is valid or not, because the period of termination of monthly tenancy is not always agreed upon. It is, therefore, suggested that “ thirty days' notice ” may be substituted for “ fifteen days' notice ” and the condition that it should end with the expiry of the month of tenancy may be deleted. In the case of yearly tenancy six months' notice is sufficient, but the condition that it should end with the expiry of the year of tenancy may also be deleted. Section 106 may, therefore, be amended by deleting the words “ expiring with the end of a year of the tenancy ” after the words “ by six months' notice ” and by substituting “ thirty days' notice ” for the words “ fifteen days' notice ” between the words “ by ” and “ expiring ” and by deleting the words “ expiring with the end of a month of the tenancy ”

Evidence
Act.

Evidence Act—

Section 90.—As it has been held by the Privy Council in 1935 A. L. J., page 817, that the presumption of section 90 of the Evidence Act does not apply to certified copies of documents which are over thirty years old and considerable difficulty is experienced by parties to a suit to prove such old documents as

witnesses in such cases are either dead or can not be found, it is proposed that the presumption of section 90 may be extended to certified copies of registered documents, the originals of which are over thirty years old. It is necessary to rely on copies when the originals are not traceable or are lost. Section 90 may, therefore, be amended by adding the words "or a duly certified copy of registered document purporting to be thirty years old" after the words "thirty years old" and before the words "is produced".

It is felt that a good deal of the time of courts is wasted in recording evidence called to prove formally registered documents and other documents of which duly certified copies have been filed, even if there is no real contest with regard to the execution of these documents, e.g., in suits based on custom quite a number of transfer deeds have to be filed to establish a custom and formal proof of these documents has to be adduced before the documents are admitted into evidence. It is, therefore, desired that courts may be empowered to apply the presumption mentioned in section 90 to such documents to a limited extent, i.e., formal execution of these documents may be presumed and need not be proved. A new section as section 90A may be added in the following form or in some other words carrying out the intention referred to above :

"90A. (1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a court of justice, is produced from any custody which the court in the particular case considers proper, the court may presume that the original was executed by the person by whom it purports to have been executed.

(2) This presumption shall not be made in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement.

The explanation to section 90 will also apply to this section."

There are some other matters in which a little reform can minimise litigation to a great extent. Not much importance is attached in this country to the registration of births and deaths and disputes frequently arise as to parentage and time of death. In the absence of record voluminous oral evidence is adduced by parties to establish their points. If registration of these facts is properly done, much litigation and production of evidence can be eliminated.

Although under the Police Act births and deaths are registered yet the agency employed by the State is far from satisfactory. Some more satisfactory mode of recording births and deaths should be introduced. A well bound register may be maintained in which births and deaths should be recorded and it should be made obligatory on parents to report the birth of a child with his name within a reasonable time, say six weeks or two months. Deaths should be reported by the nearest relative or

Registration
of births and
deaths.

if there are no relatives, by the village chaukidar as soon as possible.

Since Gaon Panchayats have been established in all villages, the work of recording births and deaths may be entrusted to them. The duty of recording births and deaths in urban areas may be entrusted to local bodies.

Adoption.

At present a good deal of oral evidence is adduced to prove adoption or permission to adopt and false pleas are also raised. We suggest that in order to make a valid adoption, a document should also be necessary in addition to the requirements of personal law. No permission to adopt should be recognized unless it is in writing and registered except in the following two cases :

- (1) Where such permission is contained in a will ; and
- (2) Where the requirement of writing is not necessary by virtue of section 63 of the Indian Succession Act.

CHAPTER VI

EXECUTION OF DECREES

The law provides much scope to judgment-debtors for raising frivolous objections against execution of decrees and thereby delaying it. Objections are provided almost at every stage of execution and cases are not unknown in which decrees have become time-barred without the decree-holder being able to realise the fruits of his labour and expense to any extent. We have carefully examined the law relating to execution of decrees as contained in the Code of Civil Procedure and have tried to find out remedies for minimising litigation in this respect and giving a fair deal to both parties. With this end in view we make the following recommendations with reference to the particular provisions of the existing law.

Order XXI, C. P. C.—

Rules 1 and 2—It has been noticed that a good deal of time of courts is wasted in deciding objections in execution based on parole payments. The time has now come when courts should insist on all payments to be made towards a decree by the well-recognized modes of payment, i.e. Order XX
O. P. C.

- (1) through a bank, or
- (2) through postal agency, or
- (3) evidenced by a document,

An amendment to Order XXI, rule 1 (1) (b) is, therefore, suggested. For (b), the following may be substituted :

“out of court to the decree-holder through a bank, or postal agency or evidenced by a document.”

Now that we insist upon payment in the manner indicated above and also in view of the fact that sometimes decree-holders do not certify payments made to them through receipts within 90 days and the judgment-debtor has no remedy in the execution court to get the payment recognized, the limitation of 90 days hitherto prescribed for the judgment-debtor to get payment certified towards the decree, may be deleted. The same should apply to adjustments and any adjustment not made in writing should not be recognized by an execution court. It will, therefore, be necessary to amend Order XXI, rule 2, by adding the words “in writing” between the words, “adjusted” and “in whole or in part” in sub-rule (1) of rule 2.

In view of the changes suggested above, the present sub-rule (3) of rule 2 may be substituted by the following :

“ (3) Any payment not made in the manner provided in rule 1 or any adjustment not made in writing shall not be recognized by any court executing the decree.”

In view of the changes suggested above, the present sub-rule be deleted.

We are of opinion that it leads to the making of unnecessary applications for execution if a decree-holder is required to take out execution within a period of three years and to treat these applications as a step in aid of execution for extending the time-limit. If the limitation for making an application for execution is extended to 12 years in the case of decrees in regular suits and to 6 years in the case of decrees in Small Cause cases, the question of applying for execution within three years only to keep the decree alive, will not arise. This will lead to the execution work going down by a large percentage and will also minimise litigation which was based on article 182 of the Limitation Act. If the amendment suggested above is made, article 182 will become redundant and it will only be necessary to define the expression, "date of decree or order" which may be done by adding an explanation to section 48, C. P. C.

The meaning given to "date of decree or order" in items 2-4 in column 3 against article 182 of the First Schedule to the Limitation Act may be incorporated in the proposed explanation to section 48, C. P. C.

In all cases in which it is proposed to curtail the period of limitation for execution of a particular class of decrees or orders provision will have to be made to save limitation in cases which will be adversely affected by these changes.

In view of these changes in article 182 and section 48, clause (f) of sub-rule (2) of rule 11 of Order XXI may be omitted.

Rule 22—Clause (a) of sub-rule (1) of this rule may be omitted as it is unnecessary.

Rule 29—It has been noticed that frivolous suits are sometimes instituted against decree-holders only to obtain a stay of execution of the decree. Courts do not usually refuse to grant stay in such cases and we feel that the provision should be made more stringent with respect to stay of execution and this can be done by making it obligatory on the court in all cases where it orders stay of execution, to require the judgment-debtor to furnish security before granting a stay. In order to give effect to this suggestion, Order XXI, rule 29 may be amended as follows:

"Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed, or any person whose interests are affected by the decree or by any order made in execution thereof, the court may, if it thinks fit, stay execution of the decree until the pending suit has been decided:

Provided that in all cases where stay of execution of the decree is made the court shall require the person seeking such stay to furnish security."

Rule 30—Hitherto decrees executed against revenue paying properties are transferred to the Collector and execution proceeds in the court of the Collector for realisation of the decretal amount. This leads to considerable delay inasmuch as sufficient interest is not taken in such execution in the court of the

Collector. It is also felt that authority should be given to execution courts proceeding against property other than revenue-paying property, to make transfers short of sales in order to realise the decretal amount. It may be useful sometimes to make lease or mortgage of a house property even for realising the decretal amount. This can be done by amending Order XXI, rule 30, by inserting the words "or any other kind of transfer" between the words, "and sale" and "of his property". It will also then not be necessary to transfer decrees for execution to the Collector in any case. Sections 68-72 and Schedule III may be omitted altogether in view of the changes proposed above.

A slight change in section 51 will also become necessary. Section 51 (b) may be re-modelled as follows:

"(b) by attachment and sale or any other kind of transfer, or by sale or any other kind of transfer without attachment, of any property."

Rule 37—In this rule it was in the discretion of the court before the amendment which was made in 1936, to issue a warrant straight away without issuing a notice. In 1936, however, notice was made compulsory and a proviso was added whereby in certain circumstances the notice could be dispensed with. We are of opinion that if execution by arrest has to continue and is to be of any value, it should not be compulsory for the court to issue notice in every case. We, therefore, propose that we may revert to the law as it existed before 1936. As such it will be necessary to amend rule 37 (1) by substituting the word "may" for the word "shall" between the words "the court" and "instead of" and by deleting the proviso which was added to that sub-rule.

Rule 50—There is a conflict of opinion amongst the various High Courts with regard to the interpretation of the words "which passed the decree" in sub-rule (2). Some courts have held that these words include a court to which the decree is transferred for execution while others hold a contrary view. In order to remove this ambiguity the words "or to which the decree is transferred for execution" may be added between the words "which passed the decree" and the words "for leave" in sub-rule (2), so that both courts may have the power to decide the question raised in the sub-rule.

Rule 57—There is a conflict of opinion as to whether attachment alter the dismissal of an application for execution subsists or comes to an end. A plain reading of Order XXI, rule 57, however, shows that the dismissal of an execution application would result in the termination of the attachment. The point is not clear in view of the conflict above mentioned. Considerable difficulty is experienced in this matter by persons whose applications for execution are dismissed for default and the law does not provide any remedy for the restoration of execution applications. We prefer to adopt the rule made by the late Chief Court of Avadh with this modification that the attachment should be allowed to subsist only for a specified period after

the application for an execution has been dismissed and no order with regard to the continuance of the attachment has been made. This period may be fixed at three months. The rule should, therefore, read as follows :

" Where any property has been attached in execution of a decree and the court for any reason passes an order dismissing the execution application, the court shall direct whether the attachment shall continue or cease. If the court omits to make any such direction, the attachment shall be deemed to subsist for a period of three months after the dismissal of the application for execution and no fresh attachment of the same property will be necessary if a fresh application for execution is made within this period of three months. If no such application is made, the attachment shall cease."

Rule 63—It has been noticed that execution cases remain pending when a regular suit under Order XXI, rule 63 is instituted. Some unscrupulous objectors take advantage of these provisions in order to prolong execution proceedings by making frivolous objections in respect of attachment of movable property and then following it by a regular suit. In order to obviate this difficulty we propose that the period of limitation for a suit under Order XXI, rule 63 in respect of movable property should be reduced to 90 days and necessary amendment be made in article 11(1) of Schedule I to the Indian Limitation Act. The limitation for suits in respect of immovable property should continue to remain as it is.

Rule 66—At present a detailed proclamation of the intended sale of all property, whether movable or immovable, is made. It is felt that such a detailed proclamation neither serves any useful purpose nor seems to be necessary in cases where movable property is sought to be sold. In fact it unnecessarily prolongs the execution proceedings. It should not, therefore, be necessary to draw up a sale proclamation in the manner provided in Order XXI, rule 66(2) in the case of movable property. It is, therefore, suggested that Order XXI, rule 66(2) may be amended by the addition of the following words before the words "such proclamation":

" Where the property ordered to be sold is immovable property "

A new sub-rule (2-A) may be added in the following words :

" Where the property ordered to be sold is movable, the proclamation shall contain only the following particulars—

(a) date and time of sale ;

(b) place of sale ;

(c) details of the property to be sold, and

(d) the amount for the recovery of which the sale is ordered."

Sub-rule (3) may be amended by adding the words "of immovable property" between the words "for sale" and "under this rule."

Rule 69(2)—The High Court of Allahabad has already amended rule 69, sub-rule (2), and has provided fourteen days' period for which the sale can be postponed without fresh proclamation. We propose that this period may be extended to thirty days as has already been done by the High Courts of Bombay, Calcutta and Madras.

Rule 70—In view of our suggestion that no decrees should be transferred to the Collector for execution, this rule may be deleted.

Rule 89—Sub-rule (1) of this rule, as it reads at present, allows the judgment-debtor or any person deriving title through the judgment-debtor or any person holding an interest in the property, to apply to have the sale set aside under this rule. It has sometimes happened that the judgment-debtor arranges with a creditor and the money is deposited not in the name of the judgment-debtor but of the creditor who has advanced the money but has taken no interest in the property up to the time of the deposit. Such a deposit has not been held to be valid for the purposes of this rule. It is, therefore, proposed to meet such cases by providing that any person may be allowed to deposit the amount and the sale may be set aside on such deposit. The decree-holder or the auction-purchaser will not suffer in any way by this amendment and it would meet those hard cases where by some mistake the deposit is made by a person who has not acquired any interest in the property up to the date of deposit. It is, therefore, proposed that the opening part of the rule before " (a) " should read as follows :

" Where immovable property has been sold in execution of a decree, the judgment-debtor, or any person acting for or in the interest of the judgment-debtor or any person deriving title through the judgment-debtor, or any person holding an interest in the property, may apply to have the sale set aside on depositing in court,"—

Rule 90—It is common experience that frivolous objections for setting aside execution sales on the ground of irregularity or fraud are often raised and the present law does not afford any adequate protection against such objections. Sometimes the hearing of these objections drags on for quite a long time and the money deposited by the auction-purchaser is locked up with a loss both to the decree-holder and the auction-purchaser. We, therefore, propose an amendment on the lines of that made by the Patna High Court with certain alterations. The main rule will stand as it is and shall be renumbered as sub-rule (1) of rule 90. Instead of the present proviso, the following proviso will be added :

" (i) Provided that no application to set aside a sale shall be admitted—

(a) upon any ground which could have been taken by the applicant on or before the date on which the sale proclamation was drawn up; and

(b) unless the applicant deposits such amount not exceeding 12½ per cent. of the sum realised by the sale

or furnishes such other security as the Court may, in its discretion, fix unless the Court for reasons to be recorded dispenses with both :

(ii) Provided further that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud "

The following shall be added as sub-rule (2) :

" (2) In case an applicant is unsuccessful, the Court may award such compensation to the decree-holder and the auction-purchaser as it may deem fit and such compensation and costs of the opposite party shall be a first charge upon the deposit of security referred to in sub-clause (b) of proviso (i), if any."

Rule 91—In Appendix E* to the C. P. C. there is a form number 38 which is headed "Certificate of Sale of Land". This form is used for certificates of sale issued under this rule. Its heading should be changed into "Certificate of Sale of Immovable Property". It is also proposed that the form should be amended in the same manner as has been done by the Patna High Court, and all the particulars in the amended form of Patna should be used in this State.

As we have provided for other kinds of transfers also to be made by courts executing decrees, it is necessary to provide for the execution of transfer deeds in favour of the party to whom the transfer is made. A new sub-rule may, therefore, be added in the following words as sub-rule (2) and the existing rule 91 may be re-numbered as sub-rule (1) of rule 91 :

"Where immovable property is transferred otherwise than by sale, a document of transfer shall be granted by the court specifying the property, the name of the person to whom it is transferred and the terms on which the transfer is made. Such document shall bear date the day on which the transfer was ordered."

Necessary forms to be included in Appendix E of the Code of Civil Procedure between forms nos. 38 and 39, should be prescribed.

Rule 98—This rule as amended by the Allahabad High Court provides for payment of costs and compensation to the decree-holder where he has been improperly stopped from obtaining possession of the property sold to him. It does not, however, provide for such costs and compensation to the auction-purchaser although it is possible that the decree-holder may not be the auction-purchaser. It is, therefore, proposed that the words "or purchaser" be added after the word "decree-holder" and before the word "for". The amendment made by the Allahabad High Court also provides for appeal from such order of costs and compensation. It is felt that no appeal should be allowed from this order. Therefore it is proposed that the words beginning from "The order to pay costs" and ending with "as if

it were a decree" should be deleted from this rule as amended by the Allahabad High Court. The person resisting may be left with the option of claiming this amount ordered against him as damages, in case he files a suit under Order XXI, rule 103, against his dispossession.

There are some other defects in the law relating to execution of decrees which unnecessarily prolong cases and increase litigation. With a view to remove these defects we want to make the following suggestions.

It is felt that sometimes execution cases are held up because notices have to issue to the judgment-debtor with regard to several matters, for instance, under Order XXI, rule 16, another under Order XXI, rule 22, and a third under Order XXI, rule 37. It is suggested that in all these cases either a single notice be sent with regard to all the matters or even if more than one notice is sent together, only one process fee be payable for all the notices which are issued together. This will result in saving of time as also of expense to the litigant. Necessary amendment may be made in the relevant rules provided for processes and process fees. It is also suggested that a single form providing for all the three notices may be printed and made saleable. In case notice of only one kind has to be issued on such form, the other entries can be scored out.

Notice in execution cases.

Section 42, C. P. C.—Some difficulty is experienced due to conflicting decisions of the various High Courts in the interpretation of section 42, C. P. C. Some courts have held that certain questions can be decided only by the court which passes the decree and not by the court to which the decree is transferred for execution while others have held a contrary view. It is, therefore, necessary to clarify the jurisdiction of the court to which the decree is transferred for execution. It would save a good deal of time of the parties if all the powers which vest in the court, which passed the decree, are also given to the court to which the decree is transferred for execution. It is, therefore, proposed that section 42 may be amended as follows :

Power of court in executing transferred decrees.

"The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself and all questions arising between the parties to the suit in which the decree was passed, or their representatives and relating to the execution, discharge or satisfaction of the decree, may also be determined by it. All persons disobeying or obstructing the execution of a decree shall be punishable by such court in the same manner as if it had passed the decree; and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself."

Section 47, C. P. C.—There is a conflict in the decisions of some High Courts as to whether a purchaser at an auction sale should be deemed a party to the suit for the purposes of section

Purchaser at auction sale.

47, C. P. C. This doubt should be removed by amending the explanation to this section as follows :

“*Explanation*—For the purposes of this section, a plaintiff whose suit has been dismissed, a defendant against whom a suit has been dismissed, and a purchaser at an auction-sale in execution of decree shall be deemed to be parties to the suit.”

**Res judicata
in execution
proceedings.**

A great deal of time is wasted in execution proceedings because there is great divergence of opinion as to the application of the principle of *res judicata* to such proceedings. Some High Courts have held that only when a point has been actually raised and decided that it becomes *res judicata* in execution proceedings. The result of this is that many a time judgment-debtors take objections and allow them to be dismissed for default and then take them again at a later stage with impunity. Further, on other occasions judgment-debtors take the opportunity of raising three or four points under section 47 one after the other instead of raising them all in one objection. This also leads to waste of time of the courts. It is, therefore, proposed to add a new section 47-A in the Code to prevent such an abuse of the process of the court by judgment-debtors. The new section should read as follows :

“47-A. (1) Every objection under section 47 shall include all matters which the objector is entitled to raise at that stage. Any matter so raised and decided shall not be heard again by any court.

(2) Any matter which might or ought to have been raised but was not raised in a former objection, shall be deemed to have been decided and shall not be heard again by any court.”

In view of the introduction of the principle of *res judicata* by adding section 47-A in the Code to certain matters relating to execution, it seems necessary to make Order IX applicable to proceedings under Order XXI, rule 90 and section 47 as far as it can be made applicable. Therefore a new rule as rule 15 may be added to Order IX in the following words :

“The provisions of this Order shall apply as far as they can be made applicable, to proceedings under section 47 and Order XXI, rule 90.”

**Orders of
stay by
appellate
courts.**

The various causes of delay in the disposal of execution proceedings have already been dealt with. It has been suggested that frequent orders of stay passed by appellate courts also cause considerable delay in the disposal of execution proceedings. There are ample powers under Order XLI, rules 5 and 6 of the Code of Civil Procedure and if these powers are carefully exercised, there should not be any cause for delay in the disposal of execution proceedings by any stay order passed by the appellate court. We do not, therefore, think that any change in the law, as it stands at present, is necessary.

CHAPTER VII
CRIMINAL

I. Remedies suggested without change in law

After considering the various suggestions received we are of opinion that it would certainly be conducive to efficiency and expedition of work if processes issued both from the courts of Magistrates as also of Sessions Judges are sent direct to the police stations by registered post, acknowledgment due, and the processes after service are also returned direct to the courts concerned by registered post, acknowledgment due. This may mean some additional work for the sessions clerk in the sessions courts, but it may be obviated to some extent if the committing Magistrate sends the summons for witnesses duly filled in leaving the space for the date blank to be filled in by the sessions clerk.

Proc. sent in criminal cases.

Where processes have to be sent through a particular officer prescribed under the rules, they should be sent direct by the court to that officer and not to the police station.

There is a widespread grievance that bails are not granted expeditiously and various remedies have been suggested in this connection to obviate this difficulty. We have considered all those suggestions and it is recommended that orders should be passed the same day on all applications for bail in bailable cases. In non-bailable cases the sub-inspector should report along with the first application for remand the grounds, if any, on which bail should be opposed. In cases where no report has been sent it may be presumed that there are no valid grounds for opposing the application for bail. The report may be sent in the following form with reasons:

Delay in bails.

1	2	3	4
Status of the accused	Likelihood of tampering with witnesses	Likelihood of his absconding	Any other grounds for opposing bail

It would be for the Police Department to prescribe rules and regulations to enforce the above suggestion as it cannot be made a part of the law.

In cases where an application for bail is made before an application for remand, a certain time-limit, which should be the minimum according to the circumstances of each case, should be fixed for opposing bail. Orders for bail should be passed without waiting for the prosecution to oppose the bail after the

expiry of the time-limit. Where the application for bail is made after the first remand, it should be disposed of on the same day as far as possible.

It is very difficult to find out a practical solution for verification of bail bonds expeditiously ; but it may be suggested that if proposed sureties have been properly indentified to the satisfaction of the court, affidavits of the sureties themselves may be accepted by courts with regard to the sufficiency of the sureties and bail may be granted provisionally till proper verification is obtained. It should not normally take more than a fortnight to obtain proper verification whatever may be the agency employed.

Care should be taken to issue release orders well in time to allow the accused person being released before the jail closes for the day.

**Delay in
investiga-
tion.**

Delay in investigation of criminal cases has become a common feature. One of the consequences of this delay is that the police has to take too many remands if the accused has not been enlarged on bail. The number of undertrial prisoners also thus increases. We do not know and as a matter of fact it is not for us to find out whether there is general deterioration in the efficiency of the investigation branch of the police. However, it appears to us that one of the main causes of delay in investigation is inadequacy of police staff at police stations. It seems necessary, therefore, that police staff should be augmented to cope with the investigation work which has considerably increased of late.

**Inadequacy
of prosecut-
ing staff.**

There is a widespread complaint that courts have to wait for police prosecutors as the number of prosecutors in the districts is much too low to cope with work in all the courts. It is, therefore, suggested that the prosecuting staff should be increased so that there may, as far as possible, be one prosecutor assigned to each court exercising the powers of a Magistrate of the first class.

**Causes of
adjourn-
ment.**

One of the main causes of adjournment on the criminal side in the Magistrates' courts is maldistribution of work. The distribution of work between the Sub-Divisional Magistrates and other Magistrates, now known as Judicial Officers, is not evenly balanced. Some officers are under-worked while some are over-worked and this causes considerable delay in the disposal of cases and results in frequent adjournments. The Committee is of the view that the whole question may be re-examined by the Government so that the work may be evenly distributed between these two sets of officers. Other causes of delay are that prosecution witnesses do not turn up in time and even if they turn up, evidence is recorded by Magistrates piecemeal. It should be impressed upon Magistrates that it is better to record all the available evidence in one case on the date fixed than to record the statements of one or two witnesses in several cases. Perhaps some Magistrates adopt this practice of recording evidence piecemeal because their file is heavy and a large number

of cases have to be fixed by them on one day. If the work is evenly distributed among all the Magistrates in the district and no officer is particularly overworked, he can have better control over his diary.

2. Remedies requiring change in law

We have examined the possibility of adding more offences to the list of those triable summarily. We feel that we should not propose any alteration in the classification of offences which are triable summarily and mentioned in section 260, Code of Criminal Procedure except as follows :

Sections 141, 145 and 153 (first part) of the Indian Penal Code may be added to the list of cases under section 260(1) of the Code of Criminal Procedure.

Section 262 of the Code, providing for the trial of all summary cases should be amended so that in all cases tried summarily the procedure for summons cases should be observed. Sub-section (1) of section 262 may be amended accordingly. We are of opinion that in future the method of keeping record in summary cases should be the same for appealable and non-appealable cases and the Magistrate must record the statement of accused in full and keep on record a note of substance of the evidence.

Necessary amendments may be made in sections 262 and 264, Code of Criminal Procedure.

It is also felt that the classification of cases as summons cases should be revised and all cases punishable with a sentence of imprisonment up to one year should be classed as summons cases with consequent change in the definition of warrant cases. The procedure for the trial of summons cases should remain as it is but the procedure for the trial of warrant cases may be simplified.

It is felt that the procedure hitherto observed in the trial of warrant cases is a little too cumbersome and with a view to simplify it we propose that section 252 be amended and the complainant or the police should be required to produce all the evidence for the prosecution on the first day of hearing.

In section 252 in place of the present sub-section (2) the following may be substituted :

"The accused shall have the right to cross-examine all the witnesses examined on behalf of the prosecution once ; but, if the accused reserves the right to cross-examine the witnesses after the charge or does not cross-examine them, such witnesses, as have not been cross-examined, shall be recalled for cross-examination after the charge has been framed, unless the accused has expressly agreed not to cross-examine a particular witness at any stage, in which case the witness need not be recalled."

The complainant or the police should summon all the evidence required to be produced for the prosecution, on the first day of hearing. In actual practice usually the entire evidence for the

prosecution is produced on the first day of hearing, but as the law gives an opportunity to the complainant to name other witnesses also after the witnesses present have been examined, this gives a loophole for making the trial dilatory.

No amendment is required in section 253 but section 254 requires amendment. Although in practice Magistrates do not usually frame a charge until all the evidence is over, yet the law gives them the right to frame a charge at any time after some of the prosecution evidence has been recorded. It is suggested that the words "or at any previous stage of the case" be omitted from section 254.

Section 256 (1) should be amended to read as follows :

"If the accused refuses to plead, or does not plead, or claims to be tried, such witnesses as have not been cross-examined and have not been expressly given up for cross-examination, shall be recalled, and after cross-examination and re-examination, if any, they shall be discharged. The accused shall then be called upon to enter upon and produce his defence."

As it has been proposed earlier that all the witnesses for the prosecution shall have to be examined before the charge is framed, the question of examining any remaining witnesses for the prosecution after the charge will not arise.

Cross-cases.

A suggestion has been made that a special procedure should be adopted for the trial of cross-cases. It will not be feasible to provide a separate procedure for the hearing of cross-cases, but it will save a good deal of time of the court if cross-cases are disposed of by a single judgment and authority given to the court to refer to the evidence in either case. With this end in view a section may be added in Chapter XXIV of the Code of Criminal Procedure in the following words :

"Where the court considers two or more cases to be cross-cases it shall be open to the court after notice to the parties at the commencement of the trial, to dispose of both or all of them by a single judgment and refer to evidence recorded in any of the cases for the purpose of arriving at its decision. A copy of the judgment shall be placed on the record of the other case or cases."

Other changes in law, where necessary, may also be made to give effect to the above suggestion.

Remand of accused.

It is confusing to have a provision for remand during the investigation in section 344 while in fact it should find a place in the proper setting in section 167.

The explanation to section 344 may be deleted and instead a new sub-section (2-A) be introduced in section 167 in the following words :

"(2-A) Where investigation does not finish within the time of fifteen days allowed in sub-section (2) and if sufficient evidence has been obtained to raise a suspicion that the accused may have committed the offence, and it

appears likely that further evidence may be obtained by a remand, the Magistrate may remand the accused to custody from time to time, as he considers reasonable, for a period not exceeding fifteen days at a time if the accused is in custody." Identification of property.

Although in the Code of Criminal Procedure there is no provision which requires that identification of person or property should be made to serve as circumstantial evidence on behalf of prosecution, yet in actual practice identification, whether of person or property, is carried on presumably under some direction to be found in the Police Manual. Considerable difficulty is felt these days in getting property which may be mixed with the property to be identified and this leads to long delays in completing investigation and accused have to remain in the lock-up for inordinate length of time. There is a provision to be found in paragraph 117 of the Police Regulations which lays down the procedure for getting stolen property identified during the course of investigation. At present all stolen property is put up for identification. It has been suggested that it may not be necessary to put up property for identification in all cases and identification of property may be confined exclusively to those articles which are claimed by the accused as his own property. If this view is accepted, identification will be dispensed with in a large majority of cases and will have to be done only in cases in which the accused claims the property as his own. We, therefore, propose that necessary provision should be made in the Code of Criminal Procedure to give effect to this.

We have after closely considering the replies to the questionnaire come to the conclusion that commitment proceedings should not be eliminated. We have not been able to find out a workable alternative to this system. In order, however, to curtail delay in the courts of Magistrates, formal witnesses should not be examined by them in enquiries in sessions cases. The police should classify the witnesses into formal and non-formal in the charge-sheet while submitting it to the court. The following classes of witnesses will be treated as formal, namely :

- (1) all witnesses who escort dead bodies ;
- (2) all witnesses who escort the accused from place to place *ba purdah* or keep them *ba purdah* at any place ;
- (3) all witnesses who carry the property from place to place or keep it safely, and
- (4) Magistrates who record confessions or conduct identification proceedings of person or property and other witnesses connected with these proceedings.

The rest of the witnesses will be deemed to be non-formal and only these may be examined by the committing Magistrate. The Magistrate may, however, examine any formal witness also if he considers it necessary in a particular case. Any documents to be proved by the formal witnesses in Sessions Court shall,

however, be utilized by the committing Magistrate for the purpose of commitment in anticipation of their statement in the Court of Sessions. The calendar shall contain the names of both formal and non-formal witnesses who will all be examined in the Sessions Court.

Assessors.

The system of trial with the aid of assessors has been in vogue since long without any practical utility. Although the verdict of a jury cannot be set aside except on the ground of perversity or illegality, the opinion of assessors has no value whatsoever. The judge is fully empowered to disregard the opinion of assessors in its entirety. The calling of assessors at sessions trial causes unnecessary waste of public money and the assessors are of no real help to the judge. Their presence at the trial could have some value in olden days when judges of foreign nationality used to preside over Sessions Courts and they being not conversant with the social customs and habits of people of this country, could take the help of assessors in appreciating facts. Now that all judges are from this very country the assessors have lost even the little utility which they previously had.

The opinion submitted to this Committee is almost unanimous that trial with the aid of assessors merely results in waste of public money without any corresponding advantage. The Committee, therefore, recommends that all sections in the Code of Criminal Procedure dealing with the trial of sessions cases with the aid of assessors, should be completely omitted.

Jury trial.

A large majority of those who have replied, are in favour of the abolition of the jury system. It seems that even in the few districts where this system has been working in connection with a few cases it has not been a success. The general complaint is that jurymen are open to approach and do not give a fair verdict on the evidence. It seems difficult to provide for the locking up of the jury in the present conditions as it will mean a very great expense if the system is to be introduced in all the districts of the State. Besides, it would be very difficult, except perhaps in a few districts, to have a sufficient number of the right class of people who would be prepared to serve as jurors. Lately a new factor has arisen which also makes it impossible to adopt the jury system, namely, a large majority of sessions cases do not finish on the first occasion and there is usually an adjournment of about a month or sometimes more. It is impossible to lock up the jury for all the period that the case is pending.

The system of trial by jury was borrowed in this country from England. The origin of this system was based on local knowledge and also independence of juries who were representatives of the people, against the arbitrary acts of King's Judges who were supposed to be and were under the thumb of the King. It was, therefore, considered necessary to make certain that citizens should have a square deal when brought to the bar of justice. The present time, however, is of democracy when the legislature is responsible to the people and Government to the legislature. There is little possibility of autocratic rule or of the

judiciary being influenced by the rulers. The subordinate judiciary is under the direct control of High Courts and the independence of High Courts is guaranteed under the Constitution.

Jury trial has been extended only to a few districts of this State and there too all serious offences are excluded from jury trial. Recently the State Government has excluded certain more offences including those of dacoity. This Committee strongly feels that trial in Sessions Courts should be by the Judge alone and recommends that all sections relating to trial by jury should be omitted from the Code of Criminal Procedure.

We have considered at length the question of *de novo* trial of criminal cases and it has been suggested to us that proviso (b) to section 350 of the Code of Criminal Procedure should be omitted. We consider that this provision is considerably misused and whenever the question of transfer of a Magistrate arises, his transfer has to be held up so long as he does not dispose of pending cases and if he leaves any part-heard cases, they have to be tried *de novo* by the succeeding magistrate. Thus cases are sometimes delayed considerably. Agreeing with the majority of those who have replied to our questionnaire, we recommend that paragraph (a) of the proviso should be omitted and the remaining proviso should now stand as follows:

" Provided that the High Court or the Sessions Judge, when hearing a revision or an appeal, may set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such court is of opinion that the accused has been materially prejudiced thereby and may order a new enquiry or trial."

The rest of this section should stand as it is.

3. General suggestions

The law relating to previous acquittal is a little confusing and so we propose that the explanation to section 403, Code of Criminal Procedure, should be re-drafted as follows:

Explanation I—The dismissal of a complaint under section 203 or the discharge of the accused, shall be deemed to be an acquittal for the purposes of this section unless it is set aside by a competent court.

Explanation II—Entry made upon a charge under section 273 shall be deemed to be an acquittal for the purposes of this section unless it is set aside by the High Court.

Explanation III—The stopping of proceedings under section 249 is not an acquittal for the purposes of this section.

It has been suggested to us that as in England and some other countries the accused should be permitted to appear as a witness in the case against him. On careful consideration the Committee is of opinion that it would not be desirable in the present state of education in the country to give the option to the accused to appear as a witness for himself in criminal cases. It is feared

by the Committee that it may lead to delay and may also sometimes prove disadvantageous to the accused.

Bail pending filing of appeal in High Court,

Sometimes difficulty is experienced by accused convicted by Sessions Judges, in obtaining bail from the High Court and they have to remain in jail for some days. We, therefore, propose that Sessions Judges may be empowered to grant bail pending the filing of an appeal in all cases convicted by them in which the sentence of imprisonment awarded does not exceed four years' rigorous imprisonment. No bail should, however, be granted by them pending the filing of an application for revision.

Transfer of cases.

It has been suggested that power should be given to Sessions Judges alone for transfer of cases from the courts of Magistrates. In view of our suggestion elsewhere that the Bombay scheme of separation of the executive and judicial functions be accepted, no change in section 526, Code of Criminal Procedure, as it stands today, is needed. Section 528(2) will have to be amended on the lines of the amendments suggested in the Bombay Act. In addition to that, section 528(3) will also have to be amended to provide that the District Magistrate may transfer cases pending before executive Magistrates from one Magistrate to another without the necessity of any authorisation from the State Government.

Complaint under section 188, I. P. C.

It has been suggested to the Committee that difficulty is experienced, when a public servant is transferred, in complying with the provisions of section 195(1) (a) of the Code of Criminal Procedure specially in cases under section 188, I. P. C. It is, therefore, proposed that section 195(1) (a) may be amended so as to empower the successor in office of the public servant concerned to file a complaint.

Amendments in Schedule II.

We suggest the following amendments in Schedule II with a view to save the time of Sessions Courts as sometimes Magistrates feel tempted to commit these cases to sessions without adequate justification. We feel that such cases can appropriately be tried by Magistrates :

(i) Remove the words " Court of Session " in column 8 of Schedule II to the Code of Criminal Procedure against the following sections :

" 129, 133, 148, 152, 161, 162, 164, 167, 181, 205, 233, 235 (first part), 237, 239, 242, 246, 248, 250, 252, 261, 263, 301-A, 318, 324, 325, 326, 332, 335, 344, 345, 346, 347, 348, 363, 365, 368, 369, 384, 384, 385, 401, 404 (both parts), 406, 407, 408, 411, 414, 418, 419, 420, 429, 430, 431, 432, 435, 440, 451 (second part), 452, 454, 455, 456, 462, 465, 484, 485, 487, 488, 497, 500, 501, 502, 507 and the second and third parts under the heading "Offences Against Other Laws."

(ii) In column 8 against section 213 substitute "Magistrate, 1st class" for " Court of Session " ; and against section 295-A substitute in place of the present entry " Magistrate, 1st class."

It has been noticed that some Sessions Judges find it difficult to keep a memorandum of evidence in their own hand. Some of them have a bad handwriting also and are unable to write legibly. In all such cases it is more advantageous if the memorandum is typewritten. At present there is no provision for allowing a Sessions Judge or a Magistrate to keep a typewritten memorandum except under sub-section (4) of section 356. We are of opinion that Magistrates and Sessions Judges may be allowed to have a typewritten memorandum of evidence when the same is dictated in open court as the evidence proceeds. In order to give effect to this suggestion sub-section (3) of section 356 may be amended as follows :

Memorandum of evidence.

"In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes ; and such memorandum shall either be written in his own hand by the Magistrate or the Sessions Judge or typed to his dictation and shall be signed by him with his own hand, and shall form part of the record."

Sub-section (4) may continue to remain as it is.

We feel that although the list of offences, which are compoundable, is quite exhaustive, yet some offences, which ought to be made compoundable with the permission of the Court but are not so compoundable at present, may be made compoundable with the permission of the court. Offences under the following sections of the Indian Penal Code may be compounded with the permission of the Court ::

Compound-
ing of
offences.

Section	To be compounded by
147	The person against whom force or violence has been used.
148	Ditto ditto.
326	The person to whom hurt is caused.
344	The person confined.
345	The person assaulted.

Considerable difficulty is experienced by persons convicted, in obtaining copies of judgments or copies of order sheets in order to enable them to apply for bail. It is, therefore, proposed that a copy of the operative part of the judgment, should be given to each accused at the time of delivery of the judgment. A new sub-section as sub-section (1-A) may, therefore, be added to section 366 of the Code of Criminal Procedure in the following words :

Issue of free
copy to
accused.

"(1-A) A copy of the operative part of the judgment shall be delivered free of cost at the time of the delivery of judgment, to each accused sentenced to imprisonment."

Section 371 (1) of the Code of Criminal Procedure may also be amended as follows ::

Add the words "who has been convicted" between the words "of the accused" and the words "a copy of the judgment."

Dispensing
with
presence of
accused.

There has been a conflict of opinion as to whether section 205, Cr. P. C. applies to those cases in which the Magistrate has issued summons or would apply also to cases in which a warrant has been issued by the Magistrate. It would be more in the fitness of things that Magistrates should be given power to dispense with the attendance of the accused in all appropriate cases. Section 205 (1), Cr. P. C., should, therefore, be amended as follows :

“ (1) Whenever a Magistrate sees reason so to do, he may dispense with the personal attendance of the accused and permit him to appear by his pleader.”

Sub-section (2) will remain as it is.

The Committee received suggestions for certain amendments in sections 161 and 162, Cr. P. C., but on close consideration it has come to the conclusion that no change appears necessary in either of these two sections.

CHAPTER VIII

APPEAL, REVISION AND REVIEW

In this chapter we will deal with the question of appeals etc. generally.

1. Civil

Appeals—

We have considered the question as to whether finality should be attached to a civil case decided at the district level in appeal but we feel that there are cases in which questions of law, which have a large implication, arise and unless such questions are decided by the High Court, uniformity of law for the guidance of subordinate courts and litigants will not be secured. At present second appeals to the High Court are entertained only on questions of law and we feel that this practice should continue. The establishment of benches for hearing all first appeals in the district will not be practicable and will also be very expensive. It should be confined only to the cases valued at between rupees five thousand and rupees ten thousand for which we make recommendation as follows.

At present first appeals in cases valued at between rupees five thousand and rupees ten thousand are heard by a Bench of two Judges in the High Court. The High Court Arrears Committee (Das Committee) has recommended that appeals in cases from rupees five thousand to rupees ten thousand in valuation may be heard by District Judges. We endorse this view but we are of opinion that it will not be a sound principle that appeals hitherto heard by a Division Bench in the High Court, should be entrusted entirely to the decision of a single District Judge. While we agree that all these appeals be instituted in the Court of the District Judge, we consider that they should be heard by a Bench of two District Judges and in case of difference of opinion in any particular case, the point on which the difference arises, may be referred for decision to a third District Judge. Arrangements for constituting Benches can be easily made within the same Commissioner's Division, and it would be easy to arrange for a Bench of two District Judges from a single Commissioner's Division. If this suggestion is accepted, it will ultimately lead to considerable saving inasmuch as appeals now heard by two High Court Judges will be heard by two District Judges and the cost of this Bench would be much less than the cost now incurred in the High Court Bench. It will result in quicker disposal also. Usually a Bench of two High Court Judges is busy all the year round in hearing first appeals between rupees five thousand and rupees ten thousand. There will thus be an ultimate reduction in the number of High Court Judges by two after the arrears have been disposed of. This proposal need not affect the appeals now pending in the High Court.

Second Appeals.

It was suggested that the right of second appeal be curtailed and be substituted by the right of revision. In substituting revision for appeal we will have to extend the scope of revision by allowing a litigant to raise points which are not hitherto allowed to be raised in revision as of right. The result would be that most cases, which now go in second appeal, will have to be heard in revision and there will be no substantial relief either to the judges or to the litigants. We, therefore, propose that the right of second appeal should be retained as at present, but an amendment may be made in section 102, Code of Civil Procedure, by substituting two thousand rupees in place of five hundred rupees. This is, in fact, the recommendation of the Das Committee also. This will curtail the number of second appeals to an appreciable extent. We also propose that the jurisdiction of single judge of the High Court in hearing appeals, which hitherto rests at Rs.2,000, may be raised to Rs.5,000, i.e. second appeals valued at Rs.5,000 or below may be heard by a single judge instead of a Division Bench. This is also in conformity with the recommendations of the Das Committee.

Letters Patent Appeals.

After a good deal of discussion we have come to the conclusion that it will not be proper to do away with Letters Patent Appeals particularly when we have proposed that the jurisdiction of a single judge in hearing appeals be raised to Rs.5,000. Sometimes important questions of law are involved and law has to be laid down for the guidance of subordinate courts also and it is, therefore, necessary that the provision for Letters Patent Appeals should remain.

Appeals from orders.

We have examined all the items in Order XLIII and section 101, C. P. C., with a view to find out if any of the provisions of appeal against any particular orders may be omitted. We find that no change is needed in section 101, but in appeals from orders provided in Order XLIII, rule 1, we think that those provided in sub-clauses (g), (i), (o) and (w) may well be omitted as it is not considered advisable that any right of appeal against these orders should be retained. In view of the deletion of item (w) from Order XLIII, rule 1, a consequential change will be necessary in the language of Order XLVII, rule 7. The words "at once by an appeal from the order granting the application or" occurring between the words "Such objection may be taken" and "in any appeal from the final decree" at the end of sub-rule (1) of rule 7 may be omitted.

Appeal in execution cases.

Generally any restriction on the right of appeal in execution cases has not been favoured in the replies to the questionnaire received. We also think that there is no practical solution for curtailing appeals in execution proceedings as one appeal at least should be provided, as at present, against all orders of execution. No concrete suggestions have been made in the replies for restricting to any appreciable extent the right of appeal in execution proceedings. It is, therefore, not feasible to restrict the present right of appeal in execution in addition to what has already been suggested above.

At present appeals against orders in execution are governed in the matter of pecuniary jurisdiction by the value of the original suit in which the decree in execution has been passed. It entails considerable hardship in cases in which the decree finally passed is for an amount which is much less. In such cases also parties have to go in appeal to the High Court from orders of the Civil Judge. We, therefore, propose that in money decrees including decrees for sale passed on mortgage bonds and decrees for costs only, the jurisdiction of the court of appeal in execution cases should be governed by the amount of the money decree finally passed. In our opinion this principle should not be extended to appeals against decrees in suits.

Jurisdiction
in execution
appeals.

At present the court is under Order XLI, rule 10, C. P. C., required to demand security from the appellant only if he resides out of the 'State' which word was earlier substituted for 'British India'. We feel that this may further be narrowed down by substituting the words "the State of Uttar Pradesh" for the words "the States."

Security
from
appellants.

There was a suggestion that security should be demanded in all cases from the appellant when he resides out of a particular district. We do not think it proper to take away the discretion of the appellate court in cases where the appellant resides within the State of Uttar Pradesh as it would amount to a restriction on the right of first appeal in all cases and may result in hardship to people who are unable to furnish security for costs on account of poverty. No other effective method can be devised and it is for the courts to use the discretionary power which already vests in them.

The Committee feels that a party should have a right to approach a court as a pauper only once, i.e., if a plaintiff has sued as a pauper and has failed, he should not be allowed to file an appeal as a pauper. But if a decree is passed against the defendant in a suit, he should be allowed to file an appeal as a pauper if he is adjudged a pauper in the appellate court under the provisions of Order XLIV. If a plaintiff has not sued as a pauper at the time of institution of the appeal, he should also be allowed to file appeal as a pauper under the restrictions mentioned in Order XLIV. Necessary amendments may be made in that order.

Pauper
appeals.

Quite a number of people do not favour any amendment in Order XLI, rules 23 and 25. But considerable difficulty is felt by courts in remanding cases for retrial where the case is not exactly covered by Order XLI, rule 23, but remand is necessary in the interest of justice. It would, therefore, be better to amend rule 23 of Order XLI, so as to empower the court to remand cases outside the scope of the present rule when it finds that it is necessary, in the interest of justice, to do so. The Madras High Court has amended rule 23 so as to obviate this difficulty. It is, therefore, suggested that the amendment made

Remand.

by the Madras High Court may also be adopted in our State. The amended rule should read as follows :

" 23. Where the court, from whose decree an appeal is preferred, has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the appellate court in reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case, the appellate court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit ; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand."

No change seems to be necessary in rule 25 of Order XLI.

Revision—

The opinion of those who have replied to the questionnaire, is divided on the point of revision, i.e., whether it should lie to the District Judge or to the High Court. Under the Constitution the High Court has revisionary powers of superintendence over all tribunals within its jurisdiction and if revisionary powers are granted to the District Judge, this will not take away the right of the High Court to exercise the powers of revision under its general power of superintendence as well as under section 115, C. P. C. By giving revisionary powers in Small Cause Court cases to the District Judge we will be increasing one more forum for revision and this is also bound to increase considerably the number of revisions which may be filed in the court of the District Judge. We do not therefore favour that revisions in Small Cause Court cases should lie to the District Judge. The present law may be allowed to remain. In view of what we have already stated we do not think that there is any necessity for enlarging the scope of civil revisions.

Review—

The question whether a right of review in civil cases be restricted only to cases in which no appeal lies, was considered at length but we feel that taking away the right of review in cases where an appeal lies, might result in hardship in certain cases. Moreover, review provides a speedier remedy as compared to appeals and in quite an appreciable number of cases when an application for review is allowed, the party appealing does not press his appeal. If everybody, who is aggrieved against the decree of the lower court, is driven to the necessity of filing an appeal, it would mean that cases in which the mistake could be rectified in review, will also have to go in appeal. We do not, therefore, propose any change in the present right of review or appeal. The opinion of all those who have replied to the questionnaire, is also almost equally divided and this is another reason why no change in the present law should be made.

2. Criminal

Appeals—

In view of the consensus of opinion the right of appeal should be allowed against all convictions except convictions by a Magistrate of first class or a Court of Session, in which the sentence imposed is only of a fine not exceeding fifty rupees. Sections 413 and 414 of the Code of Criminal Procedure will have to be amended accordingly. Cases in which appeal should lie

This recommendation, if accepted, is likely to increase the number of appeals to some extent but with the increase in appeals the number of revisions will go down. We are proposing that Sessions Judges be given full powers to determine revisions finally and so the increase in the number of appeals will be set off against the decrease in the number of revisions against non-appealable sentences.

Section 412 of the Code of Criminal Procedure should remain as it is.

It has been suggested to us that like the State, complainants should also be allowed the right of appeal against orders of acquittal of the accused. We have given careful consideration to this matter and we are of opinion that complainants should not be allowed any right of appeal against acquittal because any such change will result in a large number of appeals. Appeal against acquittal.

Revisions—

Sessions Judges should be given full powers to hear and determine all criminal revisions except

- (1) revisions against orders of acquittal, and
- (2) revisions for enhancement of sentence.

In the two excepted cases revisions should lie direct to the High Court. Necessary amendments should be made in sections 435, 438 and 439.

It has been generally felt that section 435 (1), Cr. P. C. provides only for suspension of sentences and does not give power to the Sessions Judge to suspend the execution of any order passed by a Magistrate when the Sessions Judge admits the revision. The word "sentence" does not cover all sorts of orders which come up in revision and which the Sessions Judge feels should be suspended pending the decision of the revision. Amendment may be made in section 435 (1) by inserting the words "or order other than an order under section 144 or the second proviso to sub-section (4) of section 145" between the words "any sentence" and "be suspended."

It is proposed that sections 435 to 437 may be so amended as to make them applicable only to Sessions Judges. References in these sections to the High Court, the District Magistrate or the Sub-Divisional Magistrate may, therefore, be omitted. If powers to decide revisions are given to Sessions Judges, it may not be necessary to invest the District Magistrate or the Sub-Divisional Magistrate with any revisional powers. The Committee have, in arriving at this conclusion, considered the fact

that the appellate powers of District Magistrates and specially empowered Magistrates have already been taken away by the U. P. Act XXXVI of 1948.

Sub-section (1) of section 438 may be omitted altogether as there will be no need for making a report to the High Court in any case by the Sessions Judge.

Section 439 also may be so amended as to make it applicable exclusively to the High Court and it should contain all the provisions which are hitherto contained in section 435.

A period of limitation for the filing of revisions, 90 days for the High Court and 30 days for the Sessions Judge from the date of the order, may be prescribed. Section 5 of the Indian Limitation Act should be made applicable to applications for revision.

3. Revenue

The U. P. Tenancy Act, 1939, will stand repealed as soon as the vesting order is issued under section 4 of the U. P. Zamindari Abolition and Land Reforms Act, 1950. It is not, therefore, necessary to consider any suggestions with regard to the set-up of courts in existence at present under the U. P. Tenancy Act.

There are, however, some matters which will have to be dealt with by revenue courts under the Zamindari Abolition and Land Reforms Act. Three forums have been mentioned in Schedule II to this Act. The original court is either of the Tahsildar or the Assistant Collector first class or the Collector and appeals have been provided to the Commissioner and to the Board of Revenue. We feel that there is no necessity for retaining the posts of Commissioners and of members of the Board of Revenue for purely judicial work on the revenue side. We suggest that the judicial work now proposed to be entrusted under the Zamindari Abolition and Land Reforms Act to Commissioners may well be done by Collectors or District Judges depending upon the nature and complexity of the work and if a second appeal is necessary, the same may be instituted in the High Court instead of the Board of Revenue. We suggest that second appeals should be allowed only on such principles as are mentioned in section 100 of the Code of Civil Procedure and this should be clarified and expressly provided in section 331(4) of the Zamindari Abolition and Land Reforms Act. Some original matters which have been provided in column 3 of Schedule II to the said Act to be heard by Collectors, namely entries 2, 21 and 22, may, well be entrusted to Assistant Collectors of first class specially empowered therefor instead of to Collectors.

Cases already pending in the courts of the Commissioners and the Board of Revenue shall not be affected by these suggestions.

CHAPTER IX
ORGANISATION OF COURTS

Powers of Courts

Opinion was invited on the question of increasing the pecuniary jurisdiction of Munsifs and Judges of Small Cause Courts. A large majority of opinion is not in favour of any change in the pecuniary jurisdiction of Munsifs or Judges of Small Cause Courts. We are also of opinion that no change need be made in the limits of the pecuniary jurisdiction of Munsifs and Judges of Small Cause Courts.

Munsifs and
Judges of
Small Cause
Courts.

We are of opinion that Magistrates of experience may be invested with powers to inflict sentences up to four years' rigorous imprisonment and a fine up to two thousand rupees. In order to give effect to this suggestion a new section as section 32A may be added to the Code of Criminal Procedure in the following words :

Magistrates
and
Assistant
Sessions
Judges.

" 32.A. The State Government may invest any Magistrate of the first class, who has exercised first class powers for a period of not less than five years, to pass a sentence of imprisonment of either description for a term not exceeding four years and fine not exceeding two thousand rupees."

As regards the enhancement of powers of Assistant Sessions Judges the Committee is of opinion that they may also be empowered to award sentence of imprisonment for a term not exceeding ten years. Magistrates who have exercised first class powers for at least ten years, may also be empowered to hear appeals against convictions by Magistrates of the second class. The Committee is recommending the abolition of Magistrates of the third class. The enhanced powers of Magistrates and Assistant Sessions Judges and appellate powers of Magistrates may, however, be given only when the scheme of the separation of judicial and executive functions is given effect to.

A suggestion has been received that there should not be any Magistrates of the third class now. In view of the fact that the Panchayat Raj Act has come into force and most of the powers hitherto exercised by Magistrates of the third class now vest in the Panchayati Adalats, it is no more necessary to retain Magistrates of the third class. There should be only two classes of Magistrates, i.e. of the first class and of the second class.

Abolition of
third class
Magistrates.

We have considered the question of enhancing the powers of Assistant Collectors. As under the new set-up there will be no Assistant Collectors of the second class, the question of raising jurisdiction does not arise. Statutory duties have been assigned to Assistant Collectors of the first class and all the powers heretofore exercised by an Assistant Collector of any class will be exercised by all Assistant Collectors who will have no distinction of class.

Assistant
Collectors.

Honorary Courts

**Panchayati
Adalats.**

The present working of the Panchayati Adalats has proved to be unsatisfactory. The almost unanimous opinion of those who have replied to the questionnaire, is to the effect that the Panchayati Adalats are hot beds of corruption, favouritism and factions. This results in injustice and will tend to develop the national character on wholly wrong lines. The Committee is of opinion that these defects are mainly due to the elective principle which has been introduced in the composition of these village courts. The Committee, however, feels that the decentralisation of courts which was brought about by the Panchayat Raj Act, should not be scrapped altogether but should be given some trial. At the same time the Committee is definitely of the opinion that the elective system for constituting these Panchayati Adalats should go at once. It is suggested that in place of the elective system the Panchayati Adalats should consist of panches nominated by the District Magistrate from within the Panchayati Adalat circle after such local enquiry through a gazetted officer as is considered necessary. Steps should be taken to appoint panches to the Panchayati Adalats from all the villages in the circle and the Bench for any particular case, may be in the form as provided in section 49 of the Panchayat Raj Act. This system of nomination should be tried for three years and thereafter the working should be examined to find out if it has proved successful, and a final decision can then be taken whether the Panchayati Adalat system should go altogether or should be allowed to remain. It is not advisable that all the powers be conferred on the Panchayati Adalats immediately on their appointment. The Government should give authority to the District Magistrate to recommend investment of such powers by stages as the Panchayat develops responsibility.

We, however, feel that no powers to decide contested cases pertaining to mutation, correction of papers and boundary disputes should be vested in the Panchayati Adalats. No further criminal or civil powers beyond those already allowed under the Panchayat Raj Act, should be conferred on the Panchayati Adalats till we have more experience after three years of the working of the nomination system.

**Other
honorary
courts.**

At present there are no Honorary Assistant Collectors and very few Honorary Munsifs but there is a large number of Honorary Magistrates. We recommend that there should be no Honorary Assistant Collectors or Honorary Munsifs but Honorary Magistrates may be retained for the disposal of a large number of small criminal cases which arise particularly in big towns. It is suggested, however, that courts of Honorary Magistrates should only be established either at district headquarters or at tahsil headquarters and should work on fixed days, during fixed hours and in fixed court houses. Honorary Magistrates should have the minimum educational qualification of a Bachelor's degree. The minimum and maximum age-limits should continue as they are at present.

District and Sessions Judges in the State are usually over-worked and have to devote most of their time to sessions work and find little time for civil work. Suggestions have been received for relieving them of some of their miscellaneous work and entrusting it to Civil Judges and Munsifs. It has been suggested that jurisdiction to try cases of probate, guardianship, succession certificates and references under the Land Acquisition Act be given to the Civil Judges and Munsifs. The Committee is in favour of giving power to grant succession certificates to Munsifs to the extent of their pecuniary jurisdiction and to Civil Judges in cases valued at above the power of the local Munsif. The jurisdiction to try cases of probate and guardianship and under the Land Acquisition Act may still be retained with the District Judges. At district headquarters, however, where there is a Civil Judge or Civil and Sessions Judge but no District Judge, the Civil Judge or Civil and Sessions Judge may be invested with all the powers of the District Judge with regard to probate, guardianship and Land Acquisition Act.

Relief to
District and
Sessions
Judges.

Cases under section 92, C. P. C., are hotly contested and require good deal of time. They have been hitherto triable only by the District Judge but the section authorises the State Government to empower any other court in that behalf. We suggest that the State Government may invest all Civil Judges with jurisdiction to try cases under this section.

Cases under the Indian Lunacy Act may also be heard by Civil or Civil and Sessions Judge at district headquarters where there is no District Judge.

Suitable amendments in the relevant Acts may be made.

Insolvency jurisdiction may be conferred on Civil Judges, but only one Civil Judge in each district may be nominated for the purpose of trying insolvency cases. District Judges may be relieved of this work and necessary amendments in the relevant law may be made.

The law about procedure in cases of intestacy should be defined and codified.

It was suggested to us that Special Judges may be appointed for trial of cases of commercial nature in commercial towns like Kanpur but we feel that this is not necessary and it will not lead to any appreciable advantage.

Commercial
Judges.

We considered the question of creating of the post of Registrar in the district court with quasi-judicial powers. The opinion received on this proposal is divided and we are not in favour of appointment of a Registrar for the district court. The main difficulty is that there are courts of three or four types in each district and unless there is a Registrar for each type of court, it would not be worth while having one Registrar for all the courts. Having a Registrar for each type of courts would be very expensive and there would not be enough work also for such Registrar to do.

Registrar of
District
Judge's
Court.

Separation of Judicial and Executive Functions

The more important matter relating to organisation of courts is the question of complete separation of judicial and executive functions of Magistrates. We discussed this question at great length and considered the great volume of opinion received on this question. We have also had the advantage of hearing Sri B. N. Jha, I.C.S., Chief Secretary to Government, U. P., and Sri B. N. Lahiri, I. P., Inspector General of Police, U. P., in this matter. Both of them feel some diffidence in suggesting complete separation of judicial and executive functions of Magistrates. Sri B. N. Jha is definitely of opinion that previous experience of judicial work gives a very good grounding to officers which stands them in good stead in discharging the administrative and executive functions subsequently. He is, therefore, of opinion that officers, who will be working on the executive side, should have some opportunity of doing judicial work in their early career in order to make them efficient officers. We have not been able to evolve any scheme in which this suggestion may be given full effect as desired by Sri B. N. Jha. We feel that if executive officers are given some revenue work to do and also work under the Code of Criminal Procedure, they will have enough grounding to give the necessary background of judicial training which will be sufficient for the purpose of making them efficient administrative officers. If necessary, some judicial training may be imparted to officers, who are to work on the executive side, in the beginning of the period of their training by attaching them to courts after they have finished their training in the Officers' Training School.

Sri B. N. Lahiri favours the continuance of the present system of administration of justice for at least a few years more in view of the present conditions of law and order in the State. He feels that there are powerful forces at work to disrupt the foundations of society and the existing system of administration has still to regain its equilibrium after the strain and stress of the last few years, and it would not be prudent to make a change of such fundamental character in the system as complete separation of judiciary from the executive. He also feels that complete separation of judiciary from the executive will take away the control and supervision which is at present exercised by the District Magistrate on the Magistrates. He further feels that complete separation of judiciary from the executive may lead to delay in the disposal of cases sent up to courts. We are, however, unable to agree with his views on these points. One very great difficulty which has been pointed out in case the entire judicial work is entrusted to a separate body of officers, is that sufficient number of Magistrates will not be available to the District Magistrate to control the difficult situations of law and order. We, however, think that he can requisition the services of judicial officers performing magisterial work on such occasions where he feels that the staff at his disposal is not adequate to meet the situation. During all such contingencies the officers, whose services are so requisitioned, shall be under the control

of the District Magistrate for so long as they are required to do these duties and the District Magistrate shall be entitled to censure their conduct if necessary. If this suggestion is accepted, it will meet the objection raised on the ground that the separation of the executive and judiciary would result in paucity of officers on the executive side to meet difficult situations. The complete separation of judicial functions is one of the directive principles of State policy incorporated in the Constitution of India and we feel that there will be no serious difficulty if effect is given to the suggestion of a complete separation of executive and judicial functions even in the present circumstances. There should, therefore, be a separate body of officers who should exclusively deal with judicial work on the criminal and civil sides, and they should be under the exclusive control and supervision of the High Court and the District and Sessions Judge.

Schemes of separation have been evolved in Bombay and Madras. We have examined the two schemes and we prefer the Bombay scheme which is given in Appendix G in the form of a Bill. It appears to be more practical at this stage. We, therefore, suggest that effect may be given to the Bombay scheme and if at any later stage the working of the scheme discloses some defects and the introduction of further improvement is considered necessary, it may be modified suitably. In adopting the Bombay scheme, which will have to be modified suitably so as to exclude the operation of some Acts which are not in force in our State and to include some local Acts which will be affected thereby, necessary amendments will have to be made in the Code of Criminal Procedure and other Acts. From Appendix G we have omitted the part relating to the Acts in force in the State of Bombay.

We do not think that it is necessary at this time of the day to give elaborate reasons for the justification of separation of the judiciary from the executive. The principle is enshrined in Article 50 of the Constitution and we are only suggesting a way for implementing that principle. We may, however, point out briefly that the separation will lead to minimisation of delay in the disposal of cases. It was said that there might be some slackening on the part of Magistrates as they will be freed from the control of the District Magistrate or the Additional District Magistrate, but we feel that if they are placed under the Sessions Judge, he will be able to exercise supervision over them so that there is no delay in the disposal of cases. The reason why there is sometimes delay in the disposal of cases where the same officer does both judicial and executive work, is that he has many a time to give preference to urgent executive work with the result that judicial cases are adjourned. This will not happen with the separation of the two functions. The Sessions Judge should be able to control and supervise the Magistrates and watch their work quite effectively particularly because he will also be hearing appeals from their judgments and would know the work of each officer and should be able to guide him in his work. Another difficulty,

that was pointed out related to the non-availability of sufficient number of officers to cope with difficult situations of law and order that may at times arise. As the revenue work, which will arise under the Zamindari Abolition and Land Reforms Act, will be done by Assistant Collectors, who will be on the executive side under the Collectors, there will be some officers available to the Collector and District Magistrate from that side. Then we have proposed a scheme similar to the scheme adopted by the Bombay Government and that will require a number of executive Magistrates in each district for the disposal of proceedings under the various sections of the Code of Criminal Procedure. They will be placed under the District Magistrate. If, in addition to these sources, the District Magistrate requires more officers, he should be able to requisition the services of judicial officers performing magisterial work as we have suggested above. If the separation is put into effect, a number of officers out of Deputy Collectors and Judicial Officers will have to be transferred to the judicial side and they should all be persons with law degree. The Governor may also have to issue a notification under Article 237 of the Constitution placing these officers under the High Court in the same manner as the Munsifs and Civil Judges at present are.

Now that we are recommending the separation of the judiciary from the executive and the handing over of the criminal and civil work to judicial officers under the control of the High Court, it may be possible to have one officer in each tahsil doing criminal and civil work. There is no doubt that such decentralisation of courts will lead to an improvement of the tahsil headquarters and will raise the general economic life of the countryside. It will also be less expensive to the litigant who will have shorter distances to travel and will further minimise delay in the disposal of cases. We would, therefore, recommend that the Government may make a beginning with this decentralisation in some districts where proper facilities of residence and educational and medical assistance exist. This may be extended gradually all over the State as and when Government is able to provide educational, residential and medical facilities at tahsil headquarters where they do not exist at present.

Reorganisation of Revenue Courts

As regards the reorganisation of revenue courts we do not propose any change in the present set-up of courts for so long as the Zamindari Abolition and Land Reforms Act is not implemented. The cases which are pending or will be found pending at the time when effect is given to these proposals, may be heard by the courts where they are pending. When the Zamindari Abolition and Lands Reforms Act comes into full operation the courts, which have been provided under the Act, may be established. We do not propose any change in the jurisdiction of original courts which are mentioned in Schedule II of the Act except that suggested in Chapter VIII. The cases which are to be heard by Assistant Collectors according to this Schedule,

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may continue to be heard by them and this task would be entrusted to officers on the executive side.

We have not worked out the details of the separation at this stage. We feel that after separation has been finally decided upon, a small committee presided over by a judge of the High Court should be appointed to work out the details about distribution of personnel and the changes that will be required in various laws including the Code of Criminal Procedure. We have already indicated that we prefer the Bombay scheme for implementation in this State with necessary modifications due to local conditions.

CHAPTER X HIGH COURT

Delay in disposal.

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. If and when arrears are cleared off and it appears that the number of judges can be reduced, the surplus posts may be left unfilled.

Another cause of delay is the printing and translation of records in all cases. Printing also adds to the expense of the litigant. We, therefore, propose 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 typewritten only when a case is to be heard by a Bench of two judges. In single-judge cases no typewritten paper-book may be prepared at all. Paper-books will, however, have to be printed in all capital sentence cases on the criminal side. Even in government appeals against acquittal printing may be restricted to cases where death sentence is possible. Necessary increase will have to be made in the number of typists in the High Court office in view of the above suggestions. The cost of additional typists will be more than counter-balanced by reduction in the number of translators.

Jurisdiction in certain matters.

A large volume of opinion is in favour of a change in the concurrent jurisdiction of the High Court and the District Court in matters relating to Divorce Act, Succession Act and Copyright Act. The Committee is of opinion that concurrent jurisdiction of these two courts should be done away with and the powers under these three Acts may be conferred exclusively on the District Courts.

In cases under the Indian Divorce Act, the District Judge should have the power of passing a final decree and proceedings need not be submitted to the High Court for confirmation. Necessary amendments may be made in the Indian Divorce Act.

The power of entertaining applications under section 26 of the Patents and Designs Act which exclusively vests in the High Court at present, may now be vested in the District Court. Although an application under section 26 is entertainable only in the High Court, yet the same grounds can be pleaded in defence in suits under section 29 in the District Court also. It is, therefore, desirable that the entire proceedings under section 26 also be taken in the District Courts.

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A good deal of the time of the High Court will be saved if the entire original jurisdiction under the Trade Marks Act and the Patents and Designs Act is vested in the District Courts.

We have already proposed that first appeals in cases valued at between five thousand rupees and ten thousand rupees should be heard by a Bench of two District Judges. This will also reduce the work of the High Court considerably. Besides, the High Court Arrears Committee has made a number of recommendations and if they are implemented, they will go a long way in reducing the arrears.

CHAPTER XI MISCELLANEOUS

Recruitment to judiciary. We understand that there is a proposal to reintroduce three years' practice rule so that nobody, who has not put in at least three years at the Bar, will be eligible to sit for the competitive examination for the State Judicial Service. We feel that some experience at the Bar is absolutely necessary in order to make an efficient judicial officer. Some officers do not actually realise the difficulties of the members of the Bar and in order to acquaint them with the conditions at the Bar as also with the working of the law courts from the litigants' point of view, practice at the Bar would be a qualification for the efficient discharge of the duties of the judicial officer. Judges of the High Court are unanimously in support of this proposal but we recommend that two years' practice, including the period of training, should be introduced as this would, in our opinion, be sufficient. The age-limit for entry into the service may be fixed at 28 years as the maximum and 21 years as the minimum. The examination is usually held in cold weather and that will give another six months before the prospective candidate can appear for it and then it takes six months or more after the examination for a candidate to be appointed and to begin work. Thus by the time a candidate appointed to the service begins to work as a Munsif, he would have had practised at least for three years if not more.

At present no training in General Rules or departmental matters is given to civil judicial officers before they start their career as such. Besides a thorough knowledge of law, it is also very necessary that civil judicial officers should have good knowledge of the rules and regulations so that they may be able to discharge their administrative duties efficiently. It has been experienced that some officers do not get properly acquainted with the General Rules and other orders of the High Court relating to the courts. We, therefore, suggest that a departmental examination in General Rules (Civil) and letters and circulars of the High Court should be held by the High Court twice a year and no officer should be confirmed until he has passed this examination.

Judicial Officers. At present a large number of officers designated as Judicial Officers are doing criminal and revenue work. They have so far been working on a temporary basis. We consider that this state of affairs is not conducive to proper administration of justice and should cease as early as possible.

Qualification of ministerial staff. There should be some improvement in the qualifications of clerks working in civil courts. At present no training of any kind is insisted upon in the case of clerks and they have only to sit for a test before entering service. We suggest that a departmental examination in the chapters of the General Rules (Civil)

pertaining to office work, should be held for them and no clerk should be confirmed unless he passes this examination.

The various suggestions that we have so far made will reduce the expense of litigation to an appreciable extent. The main items of expense are the court-fee and lawyers' fee. While we feel that it may not be possible to reduce court-fee in original suits as also the lawyers' fee in the present circumstances, court-fee paid on appeals may be reduced to half in cases where *ad valorem* court-fee is payable on grounds of appeal.

No doubt evidence, which can be avoided, is sometimes produced in courts because of the very stringent provisions of the law. We have already made various suggestions for curtailing evidence, as for instance by recommending that registered documents may be admitted without formal proof in certain cases. These suggestions, if accepted, will minimise to a great extent the production of oral evidence in courts.

It cannot be disputed that oath has lost its sanctity in law courts and some mode should be devised to improve its sanctity. It has been suggested that religious oaths may be administered but we feel that even the sanctity of religious oaths will disappear after some time, if introduced. The question has a close connection with moral character and we hope the sanctity of oath will increase in course of time.

Suggestions have been made by some members of the Committee that some effective and quick mode of punishing those witnesses, who deliberately perjure in law courts, should be thought out. We gave consideration to the question of fining witnesses who commit perjury in law courts, in a summary manner by the imposition of fine by the same court. But we feel that it would be in violation of the well-recognised principles of administration of criminal justice and also because it may deter respectable witnesses from coming into the witness-box, we are unable to accept this suggestion of conferring such powers on law courts. We, therefore, leave the matter to improve with the passage of time.

CHAPTER XII

ACKNOWLEDGMENTS

The Committee is grateful to the Hon'ble Judges of the High Court, Members of the Board of Revenue, officers, members of the Bar, and the associations which helped it with their valuable suggestions.

The Committee would like to place on record its appreciation of the help received from Sri Randhir Singh, Judicial Secretary to Government, who was present at every meeting of the Committee and the Sub-Committees in spite of his other onerous duties.

The Committee also acknowledges the valuable assistance given to it by its Secretary, Sri R. N. Sharma and the hard work put in by him in drafting the report and generally looking after the work of the Committee.

Finally the Committee records its appreciation of the assistance given by Sri Ramadhin Saxena, Superintendent, Sri Bhola Nath Sinha, Assistant and other staff of the Judicial (A) Department of the Secretariat in preparing the various statements and placing other valuable material before the Committee.

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•Signed subject to note of dissent.

SUMMARY OF RECOMMENDATIONS

Serial no.	Chapter	Recommendations
1	2	3

I. Recommendations that require changes in Law
CIVIL

- | | | |
|-----|---|---|
| 1. | V | More cases may be tried as Small Cause Court cases. |
| 2. | " | The period of limitation for suits under summary procedure may be increased. |
| 3. | " | Processes may be issued simultaneously by registered post. |
| 4. | " | Special costs may be awarded for wrong denial of documents. |
| 5. | " | Issue of jurisdiction to be decided before deciding issue of facts. |
| 6. | " | The party to a case should be deemed to be present if represented by a Counsel or Agent. |
| 7. | " | Security may be demanded from all persons in cases in which they do not own property within the State. |
| 8. | " | All probable guardians should be nominated at the very first instance and age-limit for minors be increased to 12 years. |
| 9. | " | Guardians who retire at their option must be made to pay costs. |
| 10. | " | Security for costs may be demanded from the next friend for instituting a suit. |
| 11. | " | Preliminary decree in simple mortgage suit should not be passed. |
| 12. | " | Special costs may be awarded even without application. |
| 13. | " | Time limit to be specified in decrees against the State. |
| 14. | " | Courts to pass decree for delivery of property in suits relating to public charities. |
| 15. | " | Court of first instance should cause restitution on an application of a party if a decree is varied or reversed in appeal, revision or otherwise. |
| 16. | " | Provision for enforcement of liability of surety should be made. |

Serial no.	Chapter	R e c o m m e n d a t i o n s
1	2	3
17.	VI	Courts should insist on all payments to be made towards a decree by the recognised modes of payment and payments or adjustments not made in the manner provided should not be recognized by any court executing the decree.
18.	"	Limitation for making an application for execution should be extended to 12 years in regular suits and 6 years in Small Cause Court cases and there should be no necessity of taking steps after 3 years in order to keep the decree alive.
19.	"	Judgment debtor should furnish security before stay orders.
20.	"	Decrees should not be transferred to Collectors for execution.
21.	"	Execution courts may make transfers short of sales in order to realise the decretal amount.
22.	"	Notice before arrest in execution should not be necessary.
23.	"	Order XXI, rule 50 be amended to remove ambiguity regarding the " Court which passed the decree".
24.	"	Attachment should be allowed to subsist for a period of 3 months after the application for an execution has been dismissed.
25.	"	Period of limitation for suit under Order XXI, rule 68 be reduced to 90 days for movable property.
26.	"	Detailed proclamation in the case of movable property should not be necessary.
27.	"	The sales may be postponed without fresh proclamation for 30 days.
28.	"	Any person may be allowed to deposit the amount for setting aside sales.
29.	"	Application to set aside a sale not to be admitted unless security is furnished or the court is satisfied that the applicant has sustained substantial injury.

Serial no.	Chapter	Re commendat.oi
1	2	3
30.	VI	Only a single notice with regard to all matters to the judgment-debtor should issue and process-fee should be charged only once.
31.	"	All powers of the court which passed the decree should also be given to the court to which decree is transferred.
32.	"	A purchaser at an auction sale should be deemed to be a party to the suit for purposes of section 47, C. P. C.
33.	"	Every objection under section 47, C. P. C., shall include all matters and matters so decided should not be heard again by any court. Matter which might have been raised but was not raised at the appropriate stage, shall not be heard by any court.
34.	VIII	First Appeals between Rs.5,000 and Rs.10,000 be heard by a bench of two District Judges.
35.	"	" Rs.2,000 " be substituted for " Rs.500 " in section 102, C. P. C.
36.	"	Jurisdiction of the Single Judge in the High Court be raised to Rs.5,000 and second appeals below Rs.5,000 be heard by a Single Judge.
37.	"	Appeals from orders provided in sub-clauses (g), (i), (o) and (w) of rule 1, Order XLIII be eliminated.
38.	"	Jurisdiction of the court of appeal in execution cases should be governed by the amount of money-decree finally passed in certain classes of cases.
39.	"	Security from the appellant, if he resides outside the State, must be demanded.
40.	"	Pauper appeals should be restricted.
41.	"	Courts may remand cases outside the scope of the present rule.
42.	IX	Munsifs should grant succession certificates to the extent of their pecuniary jurisdiction.
43.	"	At district headquarters where there is no District Judge, all his powers with regard to probate, guardianship and cases under Land Acquisition Act be given to Civil Judge or Civil and Sessions Judge.

Serial no.	Chapter	Recommendations
1	2	3
44.	IX	Cases under Lunacy Act may be heard by Civil Judges.
45.	"	Insolvency jurisdiction may be conferred on Civil Judges.
46.	"	Law about procedure in case of intestacy should be defined and codified.
47.	"	Concurrent jurisdiction of the High Court and the District Court in matters relating to Divorce Act, Successions Act and Copyright Act be done away with and only District Courts may hear cases under these Acts.
48.	"	District Judge should pass the final decree under the Indian Divorce Act.
49.	"	Jurisdiction under the Trade Marks Act should also be vested in District Courts.
50.	"	Proceedings under section 26 of the Patents and Designs Act be held in District Courts.
		<i>Provincial Insolvency Act</i>
51.	V	Receivers should immediately take possession of the property of the applicant.
52.	"	Powers exercised by court under section 36 of the Presidency Towns Insolvency Act should also be exercised by the courts in this State.
53.	"	Limit for summary administration be raised to Rs.1,000.
		<i>U. P. Agriculturists' Relief Act</i>
54.	V	All applications for redemption of mortgages be heard by Civil Courts.
55.	"	Section 34 may be amended so that objections may be heard on the same date.
		<i>Transfer of Property Act</i>
56.	V	Period of notice under section 106 should be changed.
		<i>Evidence Act</i>
57.	V	Presumption of section 90 should also apply to certified copies of documents which are 30 years old.
58.	"	Registered documents or their certified copies produced from proper custody may be accepted by the Courts.

Serial no.	Chapter	Recommendations
1	2	3
CRIMINAL		
59.	VII	Sections 144, 145 and 153, Indian Penal Code, be added to the list of cases under section 260 (i), Criminal Procedure Code.
60.	"	In summary trial the procedure of summons cases be followed.
61.	"	The statement of accused be recorded in full and a note of substance of evidence be kept on record.
62.	"	All cases punishable with a sentence of imprisonment up to one year be classed as summons cases.
63.	"	Prosecution or the complainant in warrant cases should produce all the evidence on the first day of hearing.
64.	"	The accused should cross-examine once all the witnesses examined on behalf of the prosecution.
65.	"	Charge should be framed only when all the evidence has been recorded.
66.	"	If the accused does not plead guilty, witnesses who have not been given up for cross-examination, should be recalled.
67.	"	Cross-cases may be disposed of by a single judgment.
68.	"	Amendment in section 167, Criminal Procedure Code, relating to remand.
69.	"	Identification of property should be done only where the accused claims the property as his own.
70.	"	Formal witnesses should not be examined by Magistrates in sessions cases.
71.	"	Trial of sessions cases to be without the aid of assessors.
72.	"	System of trial with the aid of Jury be abolished.
73.	"	<i>De novo</i> trial as a matter of right should be abolished.
74.	"	Dismissal of a complaint under section 203, Cr. P. C. and entry made upon a charge under section 273, Cr. P. C., shall be deemed to be acquittal for the purposes of this section.

Serial no.	Chapter	Recommendations
1	2	3
75.	VII	Sessions Judges may be empowered to grant bail pending the filing of an appeal.
76.	"	Schedule II, Cr. P. C., be amended so that Magistrates may try more cases.
77.	"	Sessions Judges and Magistrates may be allowed to maintain typewritten memorandum of evidence.
78.	"	More offences may be made compoundable.
79.	"	A copy of the operative part of the judgment be given free to each accused at the time of the delivery of judgment.
80.	"	Section 371 (1), Cr. P. C., may also be amended.
81.	"	Magistrates may dispense with the attendance of the accused in all appropriate cases.
82.	VIII	Appeals should be provided against all convictions in which the sentence exceeds fine of Rs.50.
83.	"	Sessions Judges should decide criminal revisions except against acquittal and enhancement of sentence.
84.	"	Sessions Judges may suspend any order passed by the Magistrates.
85.	"	"District Magistrates" in sections 435-437, Cr. P. C., be omitted.
86.	"	A period of limitation for filing revisions both before High Court and Sessions Judge be specifically provided.
87.	IX	Magistrate after exercising first class powers for 5 years be invested with powers to pass a sentence of imprisonment for a term not exceeding 4 years or fine not exceeding Rs.2,000.
88.	"	Assistant Sessions Judges may be empowered to award sentence of imprisonment for a term not exceeding 10 years.
89.	"	Magistrates, first class, after 10 years' experience may hear appeals against the orders of Magistrates, second class.
90.	"	Magistrates exercising third class powers should be abolished.

Serial no.	Chapter	Recommendations
1	2	3
91.	IX	Judicial Officers doing criminal work should be under the control of the High Court and the Bombay Scheme of separation of Judicial and Executive functions may be adopted.
REVENUE		
92.	VIII	Second appeals should be allowed on the principles laid down in section 100, C. P. C.
93.	..	Posts of Commissioners and the Board of Revenue for judicial work be abolished and the work should be entrusted to District Judges and High Court, as the case may be.
94.	IX	Some original matters provided in Schedule II of the Zamindari Abolition and Land Reforms Act, be entrusted to Assistant Collectors of the first class.
GENERAL		
95.	V	More satisfactory method of recording births and deaths should be introduced.
96.	"	A document for adoption should be made necessary.
97.	IX	Elective system for constituting Panchayati Adalats should be abolished.
98.	"	Powers on Panchayati Adalats should be conferred gradually by stages.
99.	"	No powers to decide contested cases pertaining to mutation, correction of papers and boundary disputes be vested in Panchayati Adalats.
100.	"	No further criminal or civil powers should be given to Panchayati Adalats.
101.	"	Honorary Munsifs and Honorary Assistant Collectors should be abolished.
102.	XI	Court-fees paid on appeals may be reduced to half where <i>ad valorem</i> court fee is payable.
II. Recommendation that can be carried into effect without any change in Law		
GENERAL		
103.	IV	Cadre of civil judiciary should be increased.
104.	"	A higher scale of pay should be provided for civil judicial officers.

Serial No.	Chapter	Recommendat ons
1	2	3
105.	IV	There should be one class of posts in the Higher Judicial Service with a uniform scale of pay.
106.	"	A five-years building plan for the construction of residence for members of Judiciary should be chalked out.
107.	"	Step to provide decent accommodation for courts should be taken.
108.	"	Staff for execution work should be provided when additional courts are created.
109.	V	Staff and typewriters should be increased in the copying department.
110.	"	Application in advance for copies of judgments may be obtained where stenographers are attached to presiding officers.
111.	"	Periodical inspections of their offices by presiding officers should be made incumbent.
112.	"	Copy of application should accompany all applications and should be delivered to the opposite-party.
113.	IX	Courts should be located gradually at tehsil headquarters.
114.	"	Honorary Magistrates should work on fixed days, during fixed hours and in fixed court houses. They must be at least graduates.
115.	X	The number of Judges in the High Court should be increased.
116.	"	Printing and translation of records in High Court may be restricted to cases which have a valuation of Rs.20,000 or above and in cases below this valuation typewritten copies be prepared if a case is to be heard by a Bench.
117.	XI	Two years' practice at the Bar should be compulsory for recruitment to the State Judiciary and the maximum age-limit be fixed at 28 years.
118.	"	A departmental examination in General Rules and circulars of the High Court should be made compulsory for Judicial Officers before confirmation.

Serial No.	Chapter	Recommendations
1	2	3

CIVIL

119. V Refund voucher should be delivered within four days.
120. " Senior lawyers should appear with competent juniors.
121. " Emergent matters relating to companies and other civil matters should also be heard during civil court vacations.
122. IX All civil judges should hear cases under section 92, C. P. C.

CRIMINAL

123. VII, Processes should be sent direct to the police station by registered post.
124. " In non-bailable cases the Sub-Inspector should report along with the first application for remand the grounds, if any, on which the bail is to be opposed.
125. " Where application for bail is made before an application for remand a certain time-limit should be fixed for opposing it.
126. " Affidavits of sureties may be accepted and bail granted provisionally till proper verification is made.
127. " Police staff should be increased to cope with the work of investigation.
128. " One prosecutor for each court in the district exercising the powers of a Magistrate should be provided as far as possible.
129. " Work between S. D. M. of the first class and Judicial Officer be evenly distributed.

III. General recommendations for proper working of Courts

CIVIL

130. V Avoidable adjournments, recording of evidence piecemeal, fixing of long dates for arguments or for delivery of judgments and signing of order sheets as a matter of course, should be avoided.
131. " Strictness in granting time for making up deficiency in court-fee, deposit of process-fee and in granting adjournments is necessary.

Serial no.	Chapter	Recommendations
1	2	3
132.	V	Register of processes should be examined and disciplinary action taken against process-servers who do not give a good account of themselves. Frequent change in beats may be desirable.
133.	"	Register of applications for copies should be frequently scrutinised.
134.	"	Strict enforcement of the existing law of pleadings.
135.	"	Half day in a week should be exclusively devoted for execution work.
136.	"	Petitions should be received and disposed of by the Presiding Officers in open court.
137.	"	No summons should be issued without a complete and legible copy of plaint.
138.	"	Greater advantage of Order X, C. P. C., should be taken.
CRIMINAL		
139.	VII	Orders in bailable cases should be passed the same day as also in cases where the application is made after the first remand.
140.	"	Release orders should be issued well in time before the jail closes for the day.
141.	"	All available evidence should be recorded on the day fixed for it.

PART II
APPENDICES

APPENDIX A

QUESTIONNAIRE

A—General

1. Do you think that the existing system of administration of justice in this State has become archaic and unsuited to the present conditions and generally-calls for change? If so, please elucidate and give reasons. What alternative system do you suggest?

2. Do you consider the present system too formal, intricate, dilatory and uneconomical? If so, please state your reasons and make your suggestions for its simplification?

3. What are, in your opinion, the main causes accounting for delay in the disposal of cases generally and what remedies in general can you suggest with a view to make justice more speedy and economical? Your answer may be divided into the following heads:

(a) Shortage of Judicial Officers.

(b) Shortage of staff, both clerical and process-serving.

(c) Method of working in the office and suggestions for its improvement.

(d) Improvements necessary in the procedure relating to the trial of civil cases in order to expedite decision.

(e) Improvements necessary in the procedure relating to the trial of criminal cases in order to expedite decision.

4. In order to secure greater efficiency, what special qualifications, training or experience would you prescribe for the appointment of judges of lower courts and of their staff?

5. Do you think that the District Judges can be appropriately relieved of some of their miscellaneous work—both judicial and administrative—so as to leave them more time for regular judicial work? What are your suggestions in this regard?

6. Do you suggest the creation of the post of a Registrar in the district courts with *quasi-judicial* powers? If so, with what powers should he be invested?

7. Are you in favour of the appointment of special judges for trial of cases of commercial nature in commercial towns like Kanpur?

8. Does alleged corruption in subordinate staff of courts lead to delay and, if so, what steps are necessary to eradicate the same?

9. What rules of procedure and other factors encourage unnecessary litigation and what measures do you suggest to check it?

10. What measures may be adopted to reduce the expense of litigation in different classes of cases in various courts?

11. Are there too many adjournments of cases in all classes of courts in this State? What are, in your opinion, the main causes of adjournments? Are many adjournments sought because witnesses are not summoned in time or because lawyers are busy with other work?

12. Do you think that with the general enlightenment and awakening in the country litigation has become more intricate and consequently trial of cases now takes more time of courts?

13. Is much unnecessary and avoidable oral evidence led in courts? What ways and means do you suggest for curtailing it?

14. Is any change necessary in the law relating to oaths and what alternative form and procedure can you suggest in order to impress upon the litigants the sanctity of oath?

15. Can you suggest any way of eliminating perjury from courts? Can it be done by giving summary powers to courts to fine witnesses who have, in their opinion, definitely perjured on material points in the case?

16. Do you consider any change necessary in section 90 of the Evidence Act regarding presumption as to documents thirty years old? Should such presumption apply to certified copies of such documents even though the copies are not thirty years old?

17. Do you consider that registered documents of any particular class may be admitted in evidence without formal proof at the discretion of the court and, if so, of what class or classes?

B—Organisation of Courts and Appeals

18. Should any change be made in the present organisation of courts which is three-fold at the bottom—civil, criminal and revenue?

19. Should the jurisdiction of civil revenue courts be raised in view of the fall in the value of money as below :

Munsifs	..	..	from Rs.5,000 to Rs.10,000.
Judges of Small Cause Courts	..	..	from Rs.1,000 to Rs.2,000.
Munsifs as Judges of Small Cause Courts	..	..	from Rs.250 to Rs.500.
Civil Judges as Judges of Small Cause Courts	..	..	from Rs.500 to Rs.1,000.
Assistant Collectors, second class	..	..	from Rs.200 to Rs.400.

20. Should the present system of locating all courts at headquarters of districts be changed and courts of Munsifs, Magistrates and Assistant Collectors established at tahsil headquarters, if residential, medical and educational facilities be available there?

21. Should the *Panchayati Adalats* and other honorary courts be retained at all?

22. Should the Board of Revenue be abolished and should its jurisdiction be transferred to the High Court ?

23. (a) Should cases relating to the U. P. Tenancy Act be tried by civil courts and should revenue courts confine themselves only to cases under the Land Revenue Act ?

(b) If so, what should be the division of revenue cases for trial by Munsifs and Civil Judges with reference to their valuation ?

24. Do you think that the existing law gives too much scope for appeals and should the right of appeal be curtailed to any extent ? In particular—

(a) should there be only one appeal open to a defeated litigant and thereafter only a right of revision whether in civil, criminal or revenue cases ?

(b) should Letters Patent Appeals be allowed at all ?

(c) should the scope of civil revisions be enlarged if no second appeals and Letters Patent Appeals are allowed ?

(d) (i) should appeals from interlocutory orders be cut down or altogether done away with ?

(ii) what are your suggestions for preventing frivolous appeals and revisions against interlocutory orders ?

(e) should the right of review in civil cases be restricted only to cases in which no appeals lie or should it be altogether eliminated ? Under what restrictions should it be allowed ?

25. Should the lower limit of valuation of civil cases in which first appeals lie to the High Court, be raised to Rs.10,000 from Rs.5,000 ?

26. Do you think that in certain classes of civil, revenue and criminal cases finality of litigation should be given at the district level and if so, in what classes of cases ?

(a) Do you consider it appropriate to have an appellate bench at the district headquarters which may finally decide a civil case and that only those cases may go in second appeal to the High Court which may be certified as fit by such appellate bench ?

(b) What classes of cases, if any, should be allowed to go to High Court in second appeal without being certified by the appellate bench ?

27. Do you think that a rule making it obligatory on an appellant to deposit the decreed costs of the other party, if any, of the lower court, can have a salutary effect on frivolous appeals.

28. Should the decretal amount or the valuation of the suit determine the pecuniary jurisdiction of an appellate court ? If the decretal amount be the determining factor, should this rule of jurisdiction be restricted to execution cases or should it be extended to suits as well ?

29. If second appeals in civil cases are allowed at all—

(a) do you agree that appeal from the decision of a Munsif should lie in the first instance to the Civil Judge and in cases whose valuation does not exceed Rs.1,000, the second appeal may lie to the District Judge?

(b) should, in special cases involving important point of law, special leave to appeal be permitted on a certificate granted by the District Judge?

30. Should revisions in Small Cause Court cases lie to the District Judge and not to the High Court?

31. Do you think that the right of appeal in execution proceedings should be restricted to any extent so as to expedite them? Please make concrete suggestions?

32. Should the Sessions Judges be given full power to hear and determine criminal revisions?

33. Whether the right of appeal should be allowed against all convictions in criminal cases?

C—Civil Procedure

34. Do you think that Civil Judges and Munsifs should be invested with jurisdiction to try cases of probate, guardianship, succession certificate and references under the Land Acquisition Act? If so, to what extent and to which classes of courts can such powers be given?

35. Should concurrent jurisdiction of the High Court and the district courts in certain matters e.g. those under the Divorce Act, Succession Act and Copyright Act, be done away with and the jurisdiction vested solely in the district courts?

36. Is any change necessary in the rules relating to pauper suits? Should pauper appeals be allowed at all?

37. Would you suggest any changes in the law of pleadings and, if so, what?

38. Do you think that where the court thinks proper parties or their counsel should be examined for admission and denial of documents?

39. Is any amendment in Order XII, rule 2, C. P. C., necessary for giving more powers to courts for preventing wrong denial of documents?

40. Do you think that the provisions relating to taking of security for costs from parties, as contained in Order XXV, C. P. C., should be modified and, if so, in what manner?

41. Do you consider any amendment necessary in Order XLI, rules 23 and 25, C. P. C. and, if so, what?

42. Do you suggest that the law should be so amended as to give right to a party to serve more than one set of interrogatories for the examination of the opposite parties?

43. Whether any amendment is necessary in Order XIV, C. P. C., making it obligatory for courts to decide the issue of jurisdiction before deciding other issues?

44. Should the jurisdiction of small cause courts be extended to any other class of civil cases than those provided under the Provincial Small Cause Courts Act?

45. Do you think that summary procedure, as contemplated by section 128 (2) (f) of the Code of Civil Procedure, can be introduced in lower courts and, if so, to what extent? What class of cases can in your opinion be included under this provision?

46. Is considerable delay sometimes caused in the disposal of civil cases owing to the proceedings for appointment of a guardian of the minor parties? Do you approve of the suggestion that instead of successive petitions being filed, as each proposed guardian refuses to act, the plaintiff should be called upon to name all the possible guardians in one petition and notice should be ordered to go to them simultaneously and the court should appoint, at the hearing of the petition, the one best fitted to safeguard the interests of the minor?

47. Do you suggest any amendment in Order XXXII, rule 11, C. P. C.?

48. Has the easy grant of stay orders and interim injunctions anything to do with the delay in disposal of civil suits and, if so, what course should be adopted with reference to such orders?

49. Are execution proceedings too long-drawn in this State? What are the main causes of delay in execution proceedings?

50. What amendments are necessary in the procedure relating to execution to minimise delay without jeopardising the interest of the judgment-debtor?

51. Does the law give too much scope for frivolous objections against execution of decrees? What remedies can you suggest for preventing abuse of the process of court in this regard.

52. Do you think that much delay is caused in the disposal of execution proceedings by frequent orders of stay passed by appellate courts? Can the insistence of courts on the furnishing of security or deposit of the decretal amount before granting a stay, to a large extent prevent frivolous objections?

53. (a) Would you suggest any change in the procedure of disposal of objections under Order XXI, rule 58 and subsequent rules of the Code of Civil Procedure so far as they relate to all movable property and immovable property worth not more than Rs.1,000?

(b) Are you in favour of conferring the right of one appeal in such cases and debarring a regular suit?

54. Does the existing law of insolvency, to any extent, create difficulties in the due execution of decrees and what changes in this law can you suggest with a view to remove those difficulties?

55. Is there any avoidable delay in the disposal of insolvency petitions and realisation of assets by receivers? If so, please suggest the remedy.

56. Do you consider that vesting of more powers in Insolvency Judges can lead to better results and, if so, what additional powers should be conferred on Insolvency Judges ?

57. What are the causes of delay in the disposal of appeals in the High Courts ?

(a) Do you suggest that the printing of records in English in the High Court may now be dispensed with so as to obviate the necessity of translation ?

(b) Should the printing of records in all cases of a valuation below Rs.20,000 be dispensed with ?

(c) Can you suggest any other economy in the printing of records ?

(d) Do you agree that there should be no printing of records in second appeals and the parties be asked to supply to the High Court in advance typed copies of important papers certified to be correct by their respective counsel ?

58. Does in your opinion the disposal of company cases involve inordinate delay ? If so, what improvements do you suggest ?

59. Are you of the opinion that cases arising under the Indian Companies Act should be disposed of by District Judges ?

60. Can you suggest any change in the procedure of appointment and working of official liquidators ? If so, please give details ?

61. Is the system of serving various kinds of processes of civil and revenue courts not working satisfactorily and does it account for delay in the disposal of cases and harassment of parties ? What ways and means do you suggest for remedying the defects ?

62. Do you think that better use should be made of the post office for serving processes and a wider discretion should be given to courts for serving processes in the manner they consider best ?

63. What suggestions can you make for more speedy and effective service of warrants of arrest in execution cases ?

D—Criminal Procedure

64. Do you think that any offences other than those enumerated in section 260 of the Code of Criminal Procedure should be tried summarily ? If so, what are those offences ?

65. What procedure should be followed in the summary trial of criminal cases or in the alternative should summary procedure be eliminated ?

66. Do you suggest any change in the method of keeping record of the memorandum of oral evidence in summary trials ?

67. Do you think that the trial of cases in Magistrate's courts is unduly prolonged and what suggestions in general can you make for reducing the period of trials ?

68. Do you think that complete separation of judicial and executive functions of Magistrates can ensure a more speedy trial of criminal cases ?

69. Do you think that the procedure of trial of warrant cases is cumbersome and unduly prolonged? What are your suggestions for expediting it?

70. Can sessions cases be expedited if commitment proceedings are eliminated? If so, what other method should take its place with particular reference to giving the accused advance information of the evidence against him?

71. Is the system of trial with the aid of assessors out of date? Do you think that it should be eliminated?

72. (a) Is the trial with the aid of jury not appropriate to the existing conditions? What are its defects and how can they be removed?

(b) What safeguards are necessary so that the jury is not approached by either the complainant or the accused during the course of the trial?

(c) Should steps be taken to lock-up the jury so that they are not got at? If this locking up be not possible, should jury trial be eliminated altogether and all cases tried by the judge alone?

73. Do you recommend that all cases involving offences in which imprisonment of not more than two years may be awarded, should be tried as summons cases?

74. Whether any amendment of section 350, Code of Criminal Procedure, is required and, if so, what?

75. Should an accused be permitted to appear as a witness in the case against him and, if so, under what circumstances?

76. Is any amendment in the Explanation to section 403, Code of Criminal Procedure, necessary and, if so, what?

77. Do you agree that Sessions Judges should be given the power to grant bail in all cases pending the filing of an appeal or revision in the High Court?

78. Do you think that much time is wasted during the investigation in identification of stolen goods? Is simplification of procedure in this regard necessary? Should identification proceedings be eliminated in certain circumstances and, if so, what?

79. Do you consider any change necessary in sections 161 and 162 of the Code of Criminal Procedure and, if so, what?

80. Do you think that it will expedite matters if processes in criminal courts are sent direct to police stations concerned for service and are returned by them direct to the court concerned?

81. What suggestions have you to make for verification of bail bonds so as to give effect to orders of bail expeditiously and to avoid people being sent to the lock-up unnecessarily?

82. Do you favour the idea of Sessions Judges being invested with powers to transfer cases from the courts of Magistrates?

E—Revenue Court Cases

83. Should the monetary limit laid down in section 265 (1) (a) of the U. P. Tenancy Act be raised to Rs.100 from Rs.50 ?
84. Should second appeals under sections 267 and 269 of the U. P. Tenancy Act be eliminated in view of sections 275 and 276 of the same Act ?
85. Should the scope of section 211 of the U. P. Land Revenue Act be restricted and appealable orders enumerated therein ?
86. Should appeals from orders under sections 270 and 271 of the U. P. Tenancy Act be further restricted and, if so, how ?
87. Should second and third appeals under sections 212 and 213 of the U. P. Land Revenue Act be eliminated in view of section 218 of the same Act ?

APPENDIX B

STATEMENT SHOWING THE WORK DISPOSED OF BY DISTRICT JUDGES IN AGRA AND AVADH DURING 1910, 1920, 1930 AND 1940-49

Year	Instituted during the year			Decided			Regular Appeal decided			Mis- cellane- ous Appeals decided	Duration	Decided			Pending at the close of each year			Number of Judges
	Regular Suits	Miscellane- ous cases	Appeals	Original suits after full trial	Applica- tions for exe- cution of decrees	Mis- cellane- ous cases	Civil Judges	Munsifs	Revenue Courts			Sessions trials	Criminal appeals	Criminal revisions	Regular suits	Mis- cellane- ous cases	Appeals	
1910 .. (1) Agra ..	490	5,352	7,620	374	277	4,566	1,196	3,897	1,471	275	..	1,746	5,151	681	117	786	2,252	28
.. (2) Avadh ..	285	1,073	2,029	264	77	906	..	1,548	..	145	..	509	1,920	255	71	166	262	9
1920 .. (1) Agra ..	261	5,936	9,171	136	261	5,012	1,589	3,571	1,527	443	..	1,546	4,395	1,074	125	924	3,568	25
.. (2) Avadh ..	37	1,443	1,316	23	115	1,279	..	757	..	112	..	620	1,145	199	11	164	147	9
1930 .. (1) Agra ..	73	4,741	8,741	113	207	4,348	792	1,524	1,593	547	..	1,172	6,997	1,431	81	858	3,422	47
.. (2) Avadh ..	15	951	497	17	121	927	..	345	..	115	..	308	1,091	275	4	201	199	9
1940 .. (1) Agra ..	115	4,525	7,753	19	88	4,086	494	1,991	466	708	432	1,102	6,590	1,932	79	1,039	3,858	22
.. (2) Avadh ..	7	620	1,350	73	26	362	..	313	547	207	..	301	1,975	337	2	117	297	9
1941 .. (1) Agra ..	80	1,372	8,744	45	241	4,023	671	1,379	571	938	322	1,018	6,612	1,739	92	1,040	5,019	22
.. (2) Avadh ..	4	629	1,349	1	19	404	..	307	210	241	..	325	1,744	317	3	93	344	6
1942 .. (1) Agra ..	59	4,566	10,384	54	176	4,483	704	1,729	872	1,002	331	895	5,003	1,357	70	908	5,518	25
.. (2) Avadh ..	7	571	1,735	69	29	353	141	240	109	228	..	370	1,518	338	50	102	472	9
1943 .. (1) Agra ..	115	4,426	10,980	46	313	4,270	630	2,030	1,176	956	465	945	7,727	1,365	67	820	5,047	25
.. (2) Avadh ..	7	558	1,591	30	30	365	168	289	104	260	..	320	1,444	298	6	68	335	9
1944 .. (1) Agra ..	97	4,055	10,512	59	252	3,821	611	1,450	1,115	802	363	1,001	6,176	1,457	120	782	4,566	24
.. (2) Avadh ..	12	491	1,812	2	22	290	157	270	140	176	..	378	1,406	287	7	36	416	8
1945 .. (1) Agra ..	57	4,150	10,346	59	243	3,804	300	1,310	1,098	777	228	862	6,055	1,082	92	913	5,220	27
.. (2) Avadh ..	9	504	842	10	12	300	162	233	97	277	..	304	1,577	299	7	70	751	8
1946 .. (1) Agra ..	78	4,178	11,338	43	207	3,802	429	1,329	879	635	257	715	5,392	1,959	124	1,000	6,674	25
.. (2) Avadh ..	11	512	2,031	6	14	372	235	292	127	165	..	317	1,327	407	3	68	482	8
1947 .. (1) Agra ..	109	3,951	9,617	37	154	3,606	332	800	941	598	240	692	5,156	1,655	185	1,076	5,969	27
.. (2) Avadh ..	22	531	2,021	5	15	369	239	281	72	178	..	289	1,304	328	11	88	398	10
1948	106	5,033	10,639	80	150	4,498	518	1,181	702	651	248	1,157	6,187	2,165	203	1,407	6,701	33
1949	83	5,050	11,376	40	148	4,763	312	798	499	616	539	1,440	7,165	2,712	164	1,290	8,120	33

APPENDIX C

STATEMENT SHOWING THE WORK DISPOSED OF BY CIVIL JUDGES IN AGRA AND AVADH

Year	Instituted during the year			Suits disposed of			Decided						Pending at the close of each year			Duration	Number of Civil Judges		
	Regular suits	Miscellaneous cases	Appeals	After full trial	<i>Ex-parte</i>	Other-wise	Applications for execution of decrees	Miscellaneous cases	Regular appeals	Miscellaneous appeals	Sessions trials	Criminal appeals	Criminal revisions	Regular suits	Miscellaneous cases			Appeals	
1910	(1) Agra ..	12,061	8,788	3,885	4,539	2,856	3,814	8,140	7,255	2,434	30	Not available			4,890	1,308	578	149	23
	(2) Avadh ..	2,750	2,051	970	3,381	1,401	5,583	9,021	2,457	713	75				828	250	144	124	14
1920	(1) Agra ..	12,490	12,123	5,933	6,254	6,928	7,428	15,455	12,046	3,979	102	630	689	67	41,495	2,266	1,591	196	38
	(2) Avadh ..	4,066	2,978	1,797	2,978	1,677	5,012	9,922	3,636	1,270	117	Not available			1,343	419	410	172	17
1930	(1) Agra ..	6,726	6,853	8,982	8,005	10,704	9,468	22,147	8,443	5,497	290	825	1,385	234	2,683	1,681	3,371	174	68
	(2) Avadh ..	1,233	2,457	1,274	2,860	3,128	7,699	18,520	4,609	1,155	169	306	201	68	506	405	449	193	30
1940	(1) Agra ..	3,875	4,489	1,814	3,830	4,287	8,330	8,601	6,192	5,703	241	1,430	2,350	678	2,287	2,169	4,144	201	69
	(2) Avadh ..	501	1,264	457	1,866	1,272	5,299	5,745	2,163	1,331	135	621	591	98	729	367	548	101	34
1941	(1) Agra ..	4,524	6,194	1,782	4,230	4,903	9,836	19,758	10,703	6,346	215	1,398	2,759	582	2,772	2,738	4,171	302	71
	(2) Avadh ..	479	2,126	500	1,660	1,443	8,529	8,367	1,090	145	381	615	652	114	602	811	575	391	34
1942	(1) Agra ..	3,740	5,311	1,885	3,290	4,599	9,158	17,459	10,765	5,902	1,210	1,256	2,642	670	2,611	2,275	4,218	232	67
	(2) Avadh ..	458	2,122	588	1,588	1,613	5,955	18,024	7,307	1,419	739	505	482	83	369	591	493	296	30
1943	(1) Agra ..	4,424	5,499	2,651	3,334	4,754	9,783	17,689	10,489	6,979	1,043	965	3,137	406	2,780	2,018	4,617	226	62
	(2) Avadh ..	639	1,874	474	1,179	1,408	5,161	13,620	4,699	1,175	622	511	538	80	554	558	560	211	30
1944	(1) Agra ..	4,167	4,967	2,283	3,166	3,525	10,292	16,468	9,013	7,200	1,228	1,297	2,934	700	2,962	1,834	4,947	180	67
	(2) Avadh ..	609	1,745	466	1,418	1,568	5,204	14,669	4,124	1,290	632	475	656	103	473	492	616	224	34
1945	(1) Agra ..	4,140	4,852	2,356	2,300	1,954	6,041	9,713	6,801	6,551	804	1,010	2,255	670	2,994	1,689	4,875	225	59
	(2) Avadh ..	663	1,534	2,027	1,241	1,116	3,540	10,226	3,300	1,739	608	414	466	110	508	388	483	170	30
1946	(1) Agra ..	4,563	4,136	2,693	1,927	2,157	6,151	7,851	5,772	6,195	867	960	2,706	929	3,681	1,605	5,697	242	53
	(2) Avadh ..	797	1,575	894	1,282	1,074	3,852	8,386	2,710	2,046	655	323	353	66	595	379	927	162	31
1947	(1) Agra ..	4,975	4,012	2,336	2,053	2,803	6,546	7,546	5,363	6,019	762	1,032	2,444	977	4,751	1,697	7,738	323	58
	(2) Avadh ..	688	1,354	871	1,355	1,029	4,724	7,817	2,560	2,029	428	338	455	100	495	337	894	221	26
1948	.. ..	5,341	5,077	2,641	3,619	4,808	14,454	11,519	7,331	7,327	1,410	1,895	3,604	918	5,483	2,122	8,531	301	87
1949	.. ..	5,910	4,979	2,902	3,836	5,557	19,618	11,836	7,449	6,258	1,420	2,718	7,436	1,616	5,757	2,315	10,736	330	99

APPENDIX D

STATEMENT SHOWING THE WORK DISPOSED OF BY MUNSIFS IN AGRA AND AVADH (1910, 1920, 1930, 1940-1949)

Year	Instituted during the year		Suits disposed of			Decided		Pending at the close of each year		Duration	Number of Munsifs	
	Suits	Miscellaneous	After full trial	Ex parte	Otherwise	Applications for execution of decrees	Miscellaneous cases	Suits	Miscellaneous			
1910	(1) Agra ..	85,862	Not available	22,224	24,446	19,313	76,063	2,536	..	..	60	84
	(2) Avadh..	20,263	Ditto	8,025	2,649	6,328	34,494	688	3,892	725	87	31
1920	(1) Agra ..	78,321	Ditto	22,067	28,584	16,882	92,431	3,903	14,922	6,437	106	88
	(2) Avadh..	20,500	Ditto	7,946	3,088	5,860	33,725	1,360	5,953	728	106	38
1930	(1) Agra ..	49,961	30,949	25,823	21,310	Not available	105,885	Not available	417	5,166	131	87
	(2) Avadh..	9,070	4,929	4,899	3,361	Ditto	36,043	Ditto	2,638	514	134	36
1940	(1) Agra ..	33,481	20,846	16,879	1,800	26,436	37,661	7,272	18,197	5,179	177	89
	(2) Avadh..	7,624	2,675	5,066	742	5,147	15,034	1,378	2,809	423	202	30
1941	(1) Agra ..	47,879	41,149	16,800	6,702	26,597	84,969	16,646	26,816	14,094	182	92
	(2) Avadh..	7,672	7,989	4,269	649	3,976	42,317	3,425	2,834	1,034	171	29
1942	(1) Agra ..	34,980	34,436	17,637	7,953	31,167	76,171	13,161	22,584	10,964	204	96
	(2) Avadh..	6,574	6,799	4,148	746	3,707	7,729	8,858	1,992	1,132	147	31
1943	(1) Agra ..	43,880	35,339	18,924	7,717	34,601	70,952	12,128	24,722	9,201	210	102
	(2) Avadh..	8,254	6,196	3,827	689	4,725	21,639	3,086	2,903	1,099	126	31
1944	(1) Agra ..	43,893	29,425	17,840	6,850	34,331	58,489	8,090	28,490	7,689	190	100
	(2) Avadh..	11,498	5,370	4,430	935	6,207	17,437	2,525	5,189	1,085	145	33
1945	(1) Agra ..	44,627	24,895	18,502	7,378	39,767	45,783	8,613	31,730	7,050	220	102
	(2) Avadh..	11,381	4,723	5,361	1,052	7,213	14,601	2,177	5,575	1,036	159	32
1946	(1) Agra ..	45,982	23,404	20,181	7,376	30,300	39,976	6,969	34,050	6,231	233	108
	(2) Avadh..	12,414	4,500	5,478	1,000	8,159	12,627	2,088	6,100	960	173	32
1947	(1) Agra ..	44,481	22,057	18,242	7,438	38,646	34,648	11,738	37,818	6,341	233	108
	(2) Avadh..	11,229	3,939	5,473	1,087	7,631	11,367	1,990	5,152	792	237	29
1948	..	57,522	25,773	21,448	9,379	40,151	39,260	8,984	50,423	8,458	258	29
1949	..	50,423	25,971	10,684	7,313	50,549	37,460	9,847	57,325	8,293	305	122

(66)

N. B.—The figures in the last column show the actual number of courts which worked during the year and it is possible that some of these courts might not have worked throughout the year.

APPENDIX E

STATEMENT SHOWING INSTITUTION, DISPOSAL AND PENDING FILE IN THE HIGH COURT AND ERSTWHILE CHIEF COURT (1910, 1920, 1930, 1940-49)

Year	First Appeals			Second Appeals			Revisions			Miscellaneous			Letters Patent Appeals			Appeals from Orders			Matrimonial Suits and References			Testamentary suits and cases			Income-tax References			Criminal Appeals			Criminal Revisions			Criminal Miscellaneous cases and References			Number of Judges										
	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.	Ins.	Dis.	Pend.											
1910	J.C.C.	Total number of appeals instituted are 669; decided 434 and 496 remained pending. 141 revisions, 187 from original decrees and 392 from appellate decrees were also decided.																														495	497	49	287	276	20	43	45	..	3
	H.C.	226	138	88	Total number of cases decided are 4 regular, 851 Miscellaneous (Original) and 2,058 regular and 138 Miscellaneous (Appeals). Number of appeals pending 1,605. 155 L. P. Appeals, 481 from original decrees and 1,422 from appellate decrees were also decided.																														943	930	85	897	828	94	353	351	7	7
1920	J.C.C.	125	153	113	420	395	207	177	163	14	311	272	39	No other figure is available.			..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
	H.C.	333	191	142	Total number of cases decided are 8 regular, 234 Miscellaneous (Original) and 1,966 regular and 191 Miscellaneous (Appeals). Number of appeals pending 3,771. 168 L. P. Appeals, 382 from original decrees and 1,416 from appellate decrees were also decided.																														1,135	1,162	109	894	940	109	418	423	11	9
1930	C.C.	124	115	105	435	373	156	184	155	41	732	777	142	6	5	2	..	..	..	..	..	..	5	3	3	..	..	..	553	527	45	209	195	17	47	50	3	5
	H.C.	553	474	1,395	1,882	1,713	1,133	568	508	335	15	17	16	58	225	85	274	265	202	22	14	19	1	1	1	9	10	4	829	1,059	161	672	634	120	266	246	47	12									
1940	(1) H.C.	419	572	1,551	1,679	1,776	2,611	1,042	1,043	375	364	288	166	100	78	130	332	328	388	13	19	11	27	31	10	8	21	28	1,145	872	642	863	844	131	372	319	135	12									
	(2) C.C.	103	88	445	540	415	1,037	238	367	421	1,235	1,295	553	34	17	79	..	..	..	8	7	4	2	..	2	2	3	2	725	743	102	218	217	31	75	76	10	5						
1941	(1) H.C.	468	380	1,563	1,863	2,005	2,471	833	804	404	319	321	163	68	61	135	349	333	395	6	5	4	21	18	13	21	1	47	1,102	1,463	281	924	925	130	345	375	105	12									
	(2) C.C.	173	95	517	509	293	1,434	304	319	496	1,231	1,236	551	16	11	84	..	..	..	12	8	8	4	4	2	5	2	5	612	590	124	261	247	45	73	74	914	5						
1942	(1) H.C.	546	737	1,372	1,954	2,231	2,200	840	711	533	188	212	139	30	96	71	359	347	407	14	11	20	20	27	6	8	26	29	1,081	1,105	257	779	784	125	280	298	87	12									
	(2) C.C.	137	109	561	577	378	1,633	321	252	475	1,384	1,326	609	12	37	59	..	..	..	4	5	7	7	6	3	..	5	..	692	724	92	230	249	26	145	156	514	5						
1943	(1) H.C.	585	539	1,358	2,408	1,873	2,735	1,039	945	627	153	151	141	39	48	62	354	256	505	31	21	30	31	23	14	23	8	44	1,060	1,005	312	954	963	116	296	251	132	12									
	(2) C.C.	137	91	601	3,554	272	1,925	314	257	532	1,463	1,347	696	9	40	28	..	..	..	7	12	2	3	5	1	4	..	4	642	643	91	217	197	36	241	230	16	5						
1944	(1) H.C.	607	573	1,402	2,637	2,853	2,519	1,289	1,196	720	645	533	274	64	20	101	386	292	599	34	28	36	30	30	11	29	23	50	1,109	885	536	1,206	1,131	191	288	223	197	13									
	(2) C.C.	124	126	599	510	301	2,135	351	204	666	1,575	1,413	799	3	23	5	..	..	..	8	5	5	5	5	1	3	..	7	690	705	66	248	257	27	242	241	17	5						
1945	(1) H.C.	626	408	1,620	2,401	2,547	2,373	1,365	1,152	938	438	277	403	43	41	108	374	429	580	43	58	21	33	41	8	30	10	70	801	794	543	1,233	1,253	171	369	391	175	13									
	(2) C.C.	121	192	528	605	462	2,278	281	282	668	1,512	2,056	932	6	4	7	..	..	..	7	9	3	12	5	8	1	5	3	408	401	73	269	255	41	226	228	15	5						
1946	(1) H.C.	516	329	1,807	2,678	2,293	2,758	1,010	922	1,026	513	478	443	50	63	95	324	310	594	42	35	23	37	29	16	21	27	64	750	674	619	1,329	1,199	301	594	398	371	13									
	(2) C.C.	144	123	519	913	569	2,622	305	218	753	1,623	1,489	1,965	10	6	11	..	..	..	10	6	7	5	7	6	..	2	1	386	805	54	273	276	38	224	217	21	6						
1947	(1) H.C.	446	171	2,032	2,176	1,470	3,464	833	492	1,367	457	437	463	53	6	142	279	491	472	35	41	21	46	39	23	26	7	83	723	628	714	1,158	1,022	473	326	495	202	13									
	(2) C.C.	93	104	54	956	764	2,814	292	298	747	1,791	1,614	1,153	8	10	9	..	..	..	11	10	8	5	5	6	1	2	..	385	314	125	236	213	61	250	251	20	6						
1948	H.C.	649	521	2,886	2,940	1,724	7,629	1,189	1,259	2,049	2,120	1,907	1,753	32	30	153	353	382	649	8	25	13	37	47	19	30	10	103	1,170	1,129	880	1,451	1,420	507	3,323	3,149	262	20									
1949	H.C.	426	407	2,939	2,293	2,848	6,610	1,227	1,862	1,407	1,970	1,813	2,027	55	66	140	333	472	507	20	20	13	35	42	12	73	32	144	1,584	1,392	1,072	1,896	1,932	471	490	499	262	20									

APPENDIX F

STATEMENT SHOWING REVENUE FROM AND EXPENDITURE ON
ADMINISTRATION OF JUSTICE DURING 1938-49

Year	Revenue			Expenditure			Savings		
	Rs.	P.	A.	Rs.	P.	A.	Rs.	P.	A.
1938-39	1,07,26,318			69,35,106			37,91,132		
1939-40	1,08,79,510			70,57,680			38,21,830		
1940-41	1,18,53,882			71,44,502			47,09,380		
1941-42	1,30,96,677			72,02,419			58,93,858		
1942-43	1,39,74,340			73,83,179			55,91,061		
1943-44	1,50,79,859			79,16,276			71,53,574		
1944-45	1,63,84,009			84,41,974			79,42,035		
1945-46	1,62,09,747			94,65,071			68,94,176		
1946-47	1,48,29,269			1,00,93,005			47,36,184		
1947-48	1,51,38,722			1,01,02,799			50,34,933		
1948-49	1,70,74,954			1,14,77,134			55,97,800		

N. B.—The figures under the head "Revenue" do not include receipts from magisterial fines.

APPENDIX G

A BILL TO PROVIDE FOR THE SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS IN THE STATE OF BOMBAY

WHEREAS it is expedient to provide for the separation of the performance of judicial and executive functions by officers in the State of Bombay; It is hereby enacted as follows :

Short title, extent and commencement.

1. (1) The Act may be called the Bombay Separation of Judicial and Executive Functions Act, 1951.

(2) It extends to the whole of the State of Bombay.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, specify in this behalf.

Amendments to enactment.

2. The Central Acts specified in Parts I and II of the Schedule appended to this Act (hereinafter called the Schedule) in their application to the State of Bombay and the Bombay Acts specified in Part III of the Schedule are hereby amended to the extent mentioned in the fourth column of the Schedule.

Amendments not to render invalid notifications, orders, etc., issued before commencement of Act.

3. The provisions of this Act which amend any Act specified in the Schedule so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, by-law, rule or regulation duly made or issued or anything duly done before the commencement of this Act; and any such notification, order, commitment, attachment, by-law, rule or regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances, as if it had been done after the commencement of this Act by the competent authority and in accordance with the provisions then applicable to such a case.

Saving.

4. Nothing in this Act shall be deemed to affect—

(a) the validity, invalidity, effect or consequence of anything done or suffered to be done in an area before the date on which the provisions of this Act come into force in such area;

(b) any right, privilege, obligation or liability already acquired, accrued or incurred before such date;

(c) any penalty, forfeiture or punishment incurred or inflicted in respect of any act before such date;

(d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment;

(e) any legal proceeding pending in any Court or before any officer on the aforesaid date or anything done or suffered to be done in the course of such proceeding; and any such proceeding or any appeal or revisional proceedings arising out of such proceeding shall be instituted, continued or disposed of, as the case may be, as if this Act had not come into force.

SCHEDULE

(See section 2)

PART I—The Code of Criminal Procedure, 1898

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>1. For section 6, the following shall be substituted, namely :</p> <p>“6. Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of criminal Courts in the State of Bombay namely :</p> <p>I.—Courts of Session. II.—Courts of Magistrates.”</p> <p>After section 6, the following shall be inserted, namely :</p> <p>“A—1. Classes of Magistrates. 6.A. There shall be the following classes of Magistrates, namely :</p> <p>I. Judicial Magistrates— (1) Presidency Magistrates. (2) Magistrates of the first class. (3) Magistrates of the second class. (4) Magistrates of the third class. (5) Special Judicial Magistrates. II. Executive Magistrates— (1) District Magistrates. (2) Sub-Divisional Magistrates. (3) Taluka Magistrates. (4) Presidency Magistrates specially empowered by the State Government. (5) Special Executive Magistrates.”</p> <p>3. For section 7, the following shall be substituted, namely :</p> <p>“7 (1) The state of Bombay shall consist of sessions divisions; and every sessions division shall for the purposes of this Code, be a district or consist of districts.</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure 1898.	<p>(2) For the purposes of this Code, Greater Bombay shall be a sessions division and be deemed to be a district.</p> <p>(3) The State Government may alter the limits or the number of such divisions and districts.</p> <p>(4) The sessions divisions and districts existing when the Bombay Separation of Judicial and Executive Functions Act, 1951, comes into force shall be sessions divisions and districts respectively, unless and until they are so altered."</p> <p>4. In section 8, in sub-section (1), for the words "outside the presidency towns" the words "outside Greater Bombay" shall be substituted.</p> <p>5. In section 9,—</p> <p>(i) in sub-section (1), after the words "sessions divisions, and" the words "in consultation with the High Court" shall be inserted;</p> <p>(ii) in sub-section (3), after the words "may also" the words "in consultation with the High Court" shall be inserted;</p> <p>(iii) in sub-section (4), after the words "sessions division may" the words "in consultation with the High Court" shall be inserted.</p> <p>6. In section 10,—</p> <p>(i) in sub-section (1),—</p> <p>(a) for the words "outside the presidency towns" the words "outside Greater Bombay" shall be substituted;</p> <p>(b) the words "Magistrate of the first class, who shall be called the" shall be deleted;</p> <p>(ii) in sub-section (2), the words "any Magistrate of the first class to be" shall be deleted;</p> <p>(iii) sub-section (3) shall be deleted.</p>
		Bom. of 1951.	

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>7. In section 12,—</p> <p>(i) in sub-section (1),—</p> <p>(a) the words "besides the District Magistrate" shall be deleted;</p> <p>(b) for the words "outside the presidency towns" the words "outside Greater Bombay" shall be substituted;</p> <p>(c) the words "the State Government or the District Magistrate, subject to the control of the State Government" shall be deleted;</p> <p>(ii) after sub-section (1), the following sub-section shall be inserted, namely:</p> <p>"(1-A) The power of appointment of Magistrates under sub-section (1) shall on the issue of public notification under article 237 of the Constitution, be exercised subject to the terms of the said notification."</p> <p>(iii) for the marginal notes to the said section, the following shall be substituted, namely:</p> <p>"Judicial Magistrates".</p> <p>8. In section 13,—</p> <p>(i) in sub-section (1), the words "of the first or second class" shall be deleted and after the words "sub-division" the words "or a taluka" shall be inserted;</p> <p>(ii) in sub-section (2), after the words "Sub-Divisional Magistrates" the words "or Taluka Magistrates, as the case may be" shall be added;</p> <p>(iii) in the marginal note to the said section, the words "or taluka" shall be added.</p> <p>9. For section 14, the following shall be substituted, namely:</p> <p>"14. (1) The State Government may, in consultation with the High Court, confer upon any person all or any of the powers conferred or</p>

Special
Magistrates.

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>conferable by or under that Code on a Judicial Magistrate in respect to particular cases or to a particular class or classes of cases, or in regard to cases generally in any local area. Such Magistrates shall be called Special Judicial Magistrates, and shall be appointed for such terms as the State Government may in consultation with the High Court by general or special order direct.</p> <p>(2) The State Government may also appoint Executive Magistrates for particular areas or for the performance of particular functions and confer upon them such powers as it deems fit. Such Magistrates shall be called Special Executive Magistrates and shall be appointed for such term as the State Government may by general or special order direct :</p> <p>Provided that no powers shall be conferred under this sub-section on any police officer below the grade of Assistant Superintendent and no powers shall be conferred on a police officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.</p> <p>(3) The State Government may delegate, with such limitations as it may think fit, to any other officer under its control the powers conferred by sub-section (2)."</p> <p>10. In section 15, in sub-section (1), for the words "The State Government may direct any two or more Magistrates in any place outside the presidency towns" the words "The State Government may, in consultation with the High Court, direct</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>any two or more Judicial Magistrates in any place outside Greater Bombay" shall be substituted.</p> <p>11. In section 16, for the words "The State Government may, or, subject to the control of the State Government, the District Magistrate" the words "The High Court, subject to the sanction of the State Government" shall be substituted.</p> <p>12. In section 17,—</p> <p>(i) in sub-section (1),—</p> <p>(a) for the words "All Magistrates" the words "All Judicial Magistrates" shall be substituted;</p> <p>(b) the figure "13" shall be deleted;</p> <p>(c) for the words "District Magistrate" the words "Sessions Judge" shall be substituted;</p> <p>(d) the word "and" at the end shall be deleted;</p> <p>(ii) sub-section (2) and sub-section (5) shall be deleted;</p> <p>(iii) in the marginal note to the said section, for the word "Magistrates" the words "Judicial Magistrates" and for the words "District Magistrate" the words "Sessions Judge" shall be substituted.</p> <p>13. After section 17, the following sections shall be inserted, namely:</p> <p>" 17-A. All Executive Magistrates appointed under sections 13 and 14 shall be subordinate to the District Magistrate.</p> <p>17-B. Courts of Session and Courts of Magistrates (including Inferior Criminal Courts. Courts of Presidency Magistrates) shall be Criminal Courts inferior to the High Court and Courts of Magistrates outside Greater Bombay shall be Criminal Courts inferior to the Court of Session".</p>

Year	No.	Short title	Extent of amendment
7	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>14. In section 18, after sub-section (4) the following sub-section shall be added, namely:</p> <p>“(5) The power of appointment of the Chief Presidency Magistrate and the Additional Chief Presidency Magistrate shall be exercised in consultation with the High Court and the power of appointment of other Presidency Magistrates shall on the issue of public notification under article 237 of the Constitution, be exercised subject to the terms of the said notification.”</p> <p>15. In section 29-B,—</p> <p>(i) the words “a District Magistrate or” shall be deleted;</p> <p>(ii) for the words “by any Magistrate specially empowered by the State Government” the words “by any Judicial Magistrate specially empowered by the State Government in consultation with the High Court” shall be substituted.</p> <p>16. In section 36, for the words “District Magistrates, Sub-Divisional Magistrates and Magistrates of the first, second and third classes” the words “Judicial and Executive Magistrates other than Special Judicial and Executive Magistrates” shall be substituted.</p> <p>17. For section 37, the following shall be substituted, namely:</p> <p>“37. In addition to his ordinary powers, the State Government may invest any Magistrate with the powers as specified in the fourth Schedule:</p> <p>Provided that in the case of Judicial Magistrates such powers shall be conferred in consultation with the High Court:</p> <p>Provided further that the State Government may authorise a District</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part II of the fourth Schedule."</p> <p>18. In section 38, for the words "conferred on" the words "delegated to" shall be substituted.</p> <p>19. After section 38, the following section shall be inserted, namely:</p> <p>" 38-A. Whenever under any provisions of this Code or of any law for the time being in force relating to any of the matters specified in Lists II and III of the Seventh Schedule to the Constitution any judicial powers are to be conferred on a Sessions Judge, an Additional or Assistant Sessions Judge or a Judicial Magistrate or any such Magistrate is to be specially empowered to exercise such powers, the orders conferring such powers or empowering the exercise of such powers shall be made by the State Government in consultation with the High Court notwithstanding that such provision may not expressly provide for such consultation.</p> <p><i>Explanation.</i>—For the purposes of this section, the question whether any powers are judicial shall be decided by the State Government in consultation with the High Court and such decision shall be final."</p> <p>20. In section 41, to sub-section (1) the following proviso shall be added, namely:</p> <p>" Provided that in the case of Judicial Magistrates the withdrawal of such powers shall be made in consultation with the High Court."</p> <p>21. In section 57, in sub-section (2), for the words, "before a Magistrate if so required" the words "before a Magistrate</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>having jurisdiction if so required" shall be substituted.</p> <p>22. In section 63, for the words "special order of a Magistrate" the words "special order of a Magistrate having jurisdiction" shall be substituted.</p> <p>23. In section 78, in sub-section (1), after the words "or Sub-Divisional Magistrate" the words "or Magistrate of the first class" shall be inserted.</p> <p>24. In section 88, in sub-section (6C), the words beginning with the words "of the first" and ending with the words "may be" shall be deleted.</p> <p>25. In section 94, in sub-section (1), for the words "beyond the limits of the towns of Calcutta and Bombay" the words "beyond the limits of Greater Bombay" shall be substituted.</p> <p>26. In section 106, in sub-section (1), the words "a District Magistrate, a Sub-Divisional Magistrate" shall be deleted.</p> <p>27. In section 107, in sub-section (1), for the words "Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class" the following shall be substituted, namely:</p> <p style="padding-left: 40px;">"Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or Sub-Divisional Magistrate or a Taluka Magistrate specially empowered by the State Government in this behalf".</p> <p>28. In section 108, for the words "or a Presidency Magistrate, or Magistrate of the first class" the words "or Sub-Divisional Magistrate or a Presidency Magistrate" shall be substituted.</p> <p>29. In section 109, for the words, "Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class" the words "Presidency Magistrate specially empowered by the</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	v	Code of Criminal Procedure, 1898.	<p>State Government in this behalf, or a District Magistrate or a Sub-Divisional Magistrate" shall be substituted.</p> <p>30. In section 110, for the words "Presidency Magistrate, District Magistrate, or Sub-Divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the State Government" the words "Presidency Magistrate specially empowered by the State Government in this behalf, or a District Magistrate or a Sub-Divisional Magistrate" shall be substituted.</p> <p>31. In section 126,—</p> <p>(i) in sub-section (1), for the words beginning with the words "to a Presidency Magistrate" and ending with the words "first class" the words "to the Court by which an order was made to give security" shall be substituted;</p> <p>(ii) for sub-section (2), the following shall be substituted, namely,—</p> <p>"(2) On such application being made, the Court shall issue summons or warrant, as it may think fit, requiring the person for whom such surety is bound to appear or to be brought before it."</p> <p>32. In section 133, in sub-section (1),—</p> <p>(i) for the words "District Magistrate, a Sub-Divisional Magistrate or a magistrate of the first class" the words "Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or a Sub-Divisional Magistrate" shall be substituted;</p> <p>(ii) in the last paragraph for the words "to appear before himself or some other Magistrate of the first or second class" the words "to appear before himself or some other Executive Magistrate" shall be substituted.</p> <p>33. In section 113, for the words "A</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>District Magistrate or Sub-Divisional Magistrate, or any other Magistrate empowered by the State Government or the District Magistrate in this behalf" the words "A Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or a Sub-Divisional Magistrate or any Executive Magistrate empowered either by the State Government or the District Magistrate in this behalf" shall be substituted.</p> <p>34. In section 144, in sub-section (1) for the words and brackets "or of any other Magistrate (not being a Magistrate of the third class)" the words "or of any other Executive Magistrate" shall be substituted.</p> <p>35. In section 145, in sub-section (1), for the words "or Magistrate of the first class" the words "or any other Executive Magistrate specially empowered by the State Government in this behalf" shall be substituted.</p> <p>36. In section 147, in sub-section (1), for the words "or Magistrate of the first class" the words "or any other Executive Magistrate specially empowered by the State Government in this behalf" shall be substituted.</p> <p>37. In section 161, in sub-section (1), for the words "Any Presidency Magistrate, any Magistrate of the first class or any Magistrate of the second class specially empowered in this behalf by the State Government" the words "Any Presidency Magistrate, any District Magistrate, any Sub-Divisional Magistrate, any Magistrate of the first class or any other Magistrate specially empowered by the State Government in this behalf" shall be substituted.</p> <p>38. In section 167,—</p> <p>(i) in sub-section (1), for the words "the nearest Magistrate" the words "the nearest Judicial Magistrate" shall be substituted;</p> <p>(ii) for sub-section (4), the following shall be substituted, namely:</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	v	Code of Criminal Procedure, 1893.	<p>" (1) Any Magistrate giving such order, with his reasons for making it to the Sessions Judge."</p> <p>39. In section 170, sub-section (3) shall be deleted.</p> <p>40. In section 171, in sub-section (5), for the words "or Magistrate of the first class and any Magistrate" the words "or any Executive Magistrate" shall be substituted.</p> <p>41. In section 186, in sub-section (1), for the words "a District Magistrate, a Sub-Divisional Magistrate, or if he is specially empowered in this behalf by the State Government, a Magistrate of the first class" the words "or a Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court" shall be substituted.</p> <p>42. In section 187, in sub-section (1), for the words "by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-Divisional Magistrate" the words "the Magistrate issuing the warrant shall send the person arrested to the Sessions Judge" shall be substituted.</p> <p>43. In section 190,—</p> <p>(i) in sub-section (1),</p> <p>(a) the words "District Magistrate or Sub-Divisional Magistrate" shall be deleted;</p> <p>(b) for the words "any other" the words "any Judicial" shall be substituted;</p> <p>(c) after the words "in this behalf" the words "by the State Government in consultation with the High Court" shall be inserted;</p> <p>(ii) in sub-section (2), the words "or the District Magistrate subject to the general or special orders of the State Government," shall be deleted;</p> <p>(iii) in sub-section (3), after the words "The State Government may"</p>

Year	No.	Short Title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>the words "in consultation with the High Court" shall be inserted.</p> <p>41. In section 192,—</p> <p>(i) in sub-section (1), the words "District Magistrate or Sub-Divisional Magistrate" shall be deleted;</p> <p>(ii) in sub-section (2),—</p> <p>(a) for the words "Any District Magistrate" the words "A Sessions Judge" shall be substituted;</p> <p>(b) for the words "in his district" the words "in the sessions division" shall be substituted.</p> <p>45. In section 193, in sub-section (2), after the words "the State Government" the words "in consultation with the High Court" shall be inserted.</p> <p>46. In section 206, in sub-section (1),—</p> <p>(i) the words "District Magistrate, Sub-Divisional Magistrate" shall be deleted;</p> <p>(ii) after the words "State Government" the words "in consultation with the High Court" shall be inserted.</p> <p>47. In section 219, for the words "or with the previous sanction of the District Magistrate, any other Magistrate" the words "or any other Judicial Magistrate specially empowered in this behalf by the State Government in consultation with the High Court" shall be substituted.</p> <p>48. In section 260, in sub-section (1),—</p> <p>(i) the clause "(a) the District Magistrate," be deleted;</p> <p>(ii) in clauses (b) and (c) after the words "State Government" the words "in consultation with the High Court" shall be inserted.</p> <p>49. In section 261, after the words "The State Government may" the words "in consultation with the High Court" shall be inserted.</p> <p>50. In section 265, in sub-section (2), after the words "The State Government may" the words "in consultation with the High Court" shall be inserted.</p>

Year	No.	Short title	Extent of amendment
1	2	3	
1898	V	Code of Criminal Procedure, 1898.	<p>51. In section 269, in subsection (1), after the words "The State Government may" the words "in consultation with the High Court" shall be inserted.</p> <p>52. In section 347, in the proviso to subsection (1), the words "other than the District Magistrate" shall be deleted and for the words "sanction of the District Magistrate" the words "sanction of the Sessions Judge" shall be substituted.</p> <p>53. In section 346, in subsection (1),— (i) for the words "outside the presidency towns" the words "outside Greater Bombay" shall be substituted, (ii) after the words "District Magistrate" the words "or Sessions Judge, as the case may be," shall be inserted.</p> <p>54. In section 349, — (i) in subsection (1), for the words "to the District Magistrate or Sub-Divisional Magistrate to whom he is subordinate" the words "to a Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court" shall be substituted; (ii) in subsection (1A), for the words "the District Magistrate or Sub-Divisional Magistrate" the words, brackets and figures "the Magistrate empowered under subsection (1)" shall be substituted.</p> <p>55. In section 350, in proviso (b) to subsection (1), for the words "subordinate to the District Magistrate, the District Magistrate" the words "the Court of Session" shall be substituted; and the words "or District Magistrate" shall be deleted.</p> <p>56. In section 380, the words "or a Sub-Divisional Magistrate" shall be deleted.</p> <p>57. In section 407,— (i) in subsection (1) — (a) the word "sub-divisional" shall be deleted;</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>(b) for the words "District Magistrate" the words "Court of Session" shall be substituted ;</p> <p>(ii) in sub-section (2)—</p> <p>(a) for the words "District Magistrate" wherever they occur, the words "Sessions Judge" shall be substituted ;</p> <p>(b) after the words "State Government" the words "in consultation with the High Court" shall be inserted.</p> <p>58. In section 408, for the words, "a District Magistrate or other" the words "or a" shall be substituted.</p> <p>59. In section 413, for the words "District Magistrate or other" the letter "a" shall be substituted.</p> <p>60. In section 428, in sub-section (1), for the words "by a Magistrate" the words "by a Judicial Magistrate" shall be substituted.</p> <p>61. In section 435,—</p> <p>(i) in sub-section (1), the words "or District Magistrate, or any Sub-Divisional Magistrate empowered by the State Government in this behalf," and the Explanation to the said sub-section shall be deleted ;</p> <p>(ii) for sub-sections (2) and (4), the following shall be substituted, namely :</p> <p>" (2) The District Magistrate or any Sub-Divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceedings before any Subordinate Executive Magistrate for the purposes of satisfying himself as to the correctness, legality or propriety or any order recorded or passed and as to the regularity of any proceedings of such subordinate Magistrate and may, when calling for such record, direct that the execution of any</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>order be suspended and if the person is in confinement that he be released on bail on his own bond pending the examination of the record.</p> <p>(3) If any Sub-Divisional Magistrate acting under sub-section (2) considers that any such proceeding or order is illegal or improper he shall forward the record with such remarks thereon as he thinks fit to the District Magistrate.</p> <p>(4) The High Court may call for and examine the record of any proceeding under section 143, 144 or 145, notwithstanding the fact that such proceeding was before an Executive Magistrate."</p>
			<p>62. In section 436,—</p> <p>(i) the said section shall be renumbered as sub-section (1) of that section;</p> <p>(ii) in sub-section (1) so renumbered for the words "the District Magistrate by himself or by any of the Magistrates subordinate to him, to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make" the words "the Judicial Magistrate to make," shall be substituted;</p> <p>(iii) the following new sub-section shall be added, namely:</p> <p>"(2) On examining any record under section 435 or otherwise, the District Magistrate may direct any Sub-Divisional Magistrate or any other Executive Magistrate subordinate to him to make, and the Sub-Divisional Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any proceedings:</p> <p>Provided that no District Magistrate shall make any direction under this section for further inquiry into</p>

Year	No.	Short title	Extent of amend ment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>the case of any person unless such person has had an opportunity of showing cause why such a direction should not be made."</p> <p>63. In section 437, the words "or District Magistrate" and the words "or Magistrate", wherever they occur, shall be deleted.</p> <p>64. In section 438, the words "or District Magistrate" shall be deleted.</p> <p>65. In section 479, the words "District Magistrate" shall be added.</p> <p>66. In section 488, in sub-section (1), the words "the District Magistrate" and the words "a Sub-Divisional Magistrate" shall be deleted.</p> <p>67. In section 505— (i) for the words "such Magistrate, shall apply to the District Magistrate" the following shall be substituted, namely : "such Magistrate, if he is a Judicial Magistrate shall apply to the Sessions Judge and if he is an Executive Magistrate shall apply to the District Magistrate," ; (ii) for the words "and the District Magistrate" the words "and the Sessions Judge or the District Magistrate, as the case may be," shall be substituted.</p> <p>68. For section 515, the following shall be substituted, namely : "515. All orders passed under section 514 by an Executive Magistrate other than the District Magistrate shall be appealable to the District Magistrate and by a Judicial Magistrate other than a Presidency Magistrate to the Sessions Judge and if no appeal is made against such orders they may be revised in the case of the orders passed by an Executive Magistrate by the</p>

Appeal from,
and revision of
orders under
section 514.

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>District Magistrate and in the case of the orders passed by a Judicial Magistrate by the Sessions Judge."</p> <p>69. In section 524, in sub-section (1), for the words "of a Magistrate of the first class" the words "of an Executive Magistrate" shall be substituted.</p> <p>70. In section 528, in sub-section (2)—</p> <p>(i) for the words "District Magistrate or Sub-Divisional Magistrate" the words "or Sessions Judge" shall be substituted;</p> <p>(ii) in the marginal note to the said sub-section, for the words "District or Sub-Divisional Magistrate" the words "Chief Presidency Magistrate or Sessions Judge" shall be substituted.</p> <p>71. In section 559, in sub-section (2), for the words "the District Magistrate outside such towns" the words "outside such towns, the Sessions Judge in the case of Judicial Magistrates and the District Magistrate in the case of Executive Magistrates," shall be substituted.</p> <p>72. In section 561, for the words "District Magistrate", wherever they occur, the words "a Magistrate of the first class" shall be substituted.</p> <p>73. In section 562, in the proviso to sub-section (1), the words "or Sub-Divisional Magistrate" shall be deleted.</p> <p>74. In section 563, in sub-section (1), the words "District Magistrate, Sub-Divisional Magistrate" shall be deleted.</p> <p>75. In Schedule II, in column 8,—</p> <p>(i) for the words "Any Magistrate", wherever they occur, the words "Any Judicial Magistrate" shall be substituted;</p> <p>(ii) in the entry relating to section 124-A, the words "or District Magistrate" shall be deleted and after the words "in that behalf" the words "in</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>consultation with the High Court" shall be inserted ;</p> <p>(iii) in the entry relating to section 376, for the words "District Magistrate" the words "Magistrate of the first class" shall be substituted.</p> <p>76. In Schedule III,—</p> <p>(a) In Part I, in item (17), for the words "District Magistrate" the words "Sessions Judge" shall be substituted.</p> <p>(b) In Part III,—</p> <p>(i) after item (1) the following shall be inserted, namely :</p> <p>(1a) Power to direct warrants to landholders, section 78;</p> <p>(ii) items (4, (5), (6), (6a), (7) and (7b) shall be deleted.</p> <p>(c) after Part III the following shall be inserted, namely :</p> <p>"II-A—Ordinary powers of a Taluka Magistrate.</p> <p>(1) Power to arrest or direct the arrest of, and to commit to custody a person committing an offence in his presence, section 64.</p> <p>(2) Power to arrest, or direct the arrest, in his presence of an offender, section 65.</p> <p>(3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 85.</p> <p>(4) Power to require search to be made for letters and telegrams, section 95.</p> <p>(5) Power to issue search warrant, section 96.</p> <p>(6) Power to endorse a search warrant and order delivery of things found, section 99.</p> <p>(7) Power to command unlawful assembly to disperse, section 127.</p> <p>(8) Power to use civil force to disperse unlawful assembly, section 128.</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>(9) Power to require military force to be used to disperse unlawful assembly, section 130.</p> <p>(10) Power to apply to District Magistrate to issue commission for examination of witness, section 506.</p> <p>(11) Power to recover penalty on forfeited bond, section 514 and to require fresh security, section 514-A.</p> <p>(12) Power to make order as to disposal of property, section 517.</p> <p>(13) Power to sell property of a suspected character, section 525."</p> <p>(d) In Part IV,—</p> <p>(i) for item (1), the following shall be substituted, namely: " (1) The ordinary powers of a Taluka Magistrate ";</p> <p>(ii) after item (2), the following shall be inserted, namely: " (2a) Power to issue search warrant otherwise than in course of an inquiry, section 98.</p> <p>(2b) Power to issue search warrant for discovery of persons wrongfully confined, section 100.</p> <p>(2c) Power to require security for good behaviour, section 107.</p> <p>(2d) Power to require security for good behaviour, section 109";</p> <p>(iii) after item (3), the following shall be inserted, namely: " (4) Power to discharge sureties, section 126-A.</p> <p>(4a) Power to make orders as to local nuisances, section 133.";</p> <p>(iv) after item (6), the following shall be inserted, namely: " (6a) Power to make orders etc. in possession cases, sections 145, 146 and 147.";</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>(v) after item (8), the following shall be inserted, namely : “(8a) Power to record statements and confessions during a police investigation, section 164.”;</p> <p>(vi) after item (9), the following shall be inserted, namely : “(10) Power to hold inquests, section 174.”;</p> <p>(vii) items (12) to (16) (both inclusive) shall be deleted ;</p> <p>(viii) item (19) shall be deleted ;</p> <p>(e) in Part V, items (1a) (7), (8), (10), (12), (13) and (14) shall be deleted.</p>

77. For Schedule IV, the following shall be substituted, namely :

“ SCHEDULE IV
(See section 37)

Additional powers with which Magistrates may be invested

PART I.—By State Government

Powers with which a Magistrate of the first class may be invested

1. Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186 ;
2. Power to take cognisance of offences upon complaint, section 190 ;
3. Power to take cognisance of offences upon police reports, section 190 ;
4. Power to take cognisance of offences without complaint, section 190 ;
5. Power to transfer cases, section 192 ;
6. Power to try summarily, section 260 ;
7. Power to pass sentence on proceedings recorded by a Magistrate of the Second and Third class, section 349 ;

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>8. Power to hear appeals from conviction by Magistrate of the Second and Third class, section 407 ;</p> <p>9. Power to try cases under section 121-A of the Indian Penal Code.</p> <p><i>Powers with which a Magistrate of the Second class may be invested</i></p> <p>1. Power to record statements and confessions during a police investigation, section 164 ;</p> <p>2. Power to authorise detention of a person in the custody of the police during a police investigation, section 167 ;</p> <p>3. Power to take cognisance of offences upon complaint, section 190 ;</p> <p>4. Power to take cognisance of offences upon police reports, section 190 ;</p> <p>5. Power to take cognisance of offences without complaint, section 190 ;</p> <p>6. Power to commit for trial, section 206 ;</p> <p>7. Power to stop proceedings instituted otherwise than upon complaint, section 249 ;</p> <p>8. Power to make order as to first offenders, section 562.</p> <p><i>Powers with which a Magistrate of the Third class may be invested</i></p> <p>1. Power to record statement and confessions during a police investigation, section 161 ;</p> <p>2. Power to take cognisance of offences upon complaint, section 190 ;</p> <p>3. Power to take cognisance of offences upon police report, section 190 ;</p> <p>4. Power to stop proceedings instituted otherwise than upon complaint, section 249.</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1898	V	Code of Criminal Procedure, 1898.	<p>PART II—By State Government</p> <p><i>Powers with which a Sub-Divisional Magistrate may be invested</i></p> <p>1. Power to call for records, section 435.</p> <p><i>Powers with which any other Executive Magistrate may be invested</i></p> <p>1. Power to make orders prohibiting repetitions of nuisances, section 143 ;</p> <p>2. Power to make orders under section 144 ;</p> <p>3. Power to make orders, etc., in possession cases, sections 145 and 147 ;</p> <p>4. Power to record statements and confessions during a police investigation, section 164 ;</p> <p>5. Power to hold inquests, section 174 ;</p> <p>6. Power to sell property alleged or suspected to have been stolen, etc., section 524.</p> <p>By District Magistrate</p> <p><i>Powers with which any Executive Magistrate may be invested</i></p> <p>1. Power to make orders prohibiting repetitions of nuisances, section 143 ;</p> <p>2. Power to make orders under section 144 ;</p> <p>3. Power to hold inquests, section 174."</p> <p>PART II—Other Central Acts</p>
1889	I	The Metal Tokens Act, 1889.	In section 5, in sub-section (2), the words "except a District Magistrate or Sub-Divisional Magistrate," shall be deleted.
1894	LX	The Prisons Act, 1894.	<p>In section 52,—</p> <p>(i) the words "of the District Magistrate or" shall be deleted ;</p> <p>(ii) in the first proviso, the words "by the District Magistrate to any Magistrate of the first class and" shall be deleted.</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1897	VIII	The Reformatory Schools Act, 1897.	<p>1. In section 8, in sub-section (2), for the words "by the State Government in this behalf" the words "by the State Government in this behalf in consultation with the High Court" shall be substituted.</p> <p>2. In section 9, in sub-section (1), for the words "the District Magistrate to whom he is subordinate" the words, brackets and figures "the Magistrate specially empowered under sub-section (2) of section 8" shall be substituted.</p> <p>3. In section 10, for the words "District Magistrate" the words, brackets and figures "Magistrate specially empowered under sub-section (2) of section 8" shall be substituted.</p> <p>4. In section 11, in sub-section (2), for the words "District Magistrate" the words "Magistrate specially empowered" shall be substituted.</p> <p>5. In section 31,—</p> <p>(i) in sub-section (4) for the words "the District Magistrate to whom such Court is subordinate" the words, brackets and figures "the Magistrate specially empowered under sub-section (2) of section 8" shall be substituted;</p> <p>(ii) in sub-section (5), the word "District" shall be deleted.</p>
1900	III	The Prisoners Act, 1900.	In section 37, for the words "District Magistrate" the words "Sessions Judge" shall be substituted.
1911	X	The Prevention of Seditious Meetings Act, 1911.	In section 8, the words "or Sub-Divisional Magistrate" shall be deleted.
1917	I	The Inland Steam-Vessels Act, 1917.	<p>1. In section 33, in clause (b) of sub-section (1), the words "or the Court of any District Magistrate" shall be deleted.</p> <p>2. In section 35, in sub-section (1), the words "or the Court of the District Magistrate," shall be deleted.</p> <p>3. In section 38, in clause (b), the words "or the Court of the District Magistrate" shall be deleted and for the words</p>

Year	No.	Short title	Extent of amendment
1	2	3	4
1923	IX	The Indian Official Secrets Act, 1923.	<p>“respectively by either Court” the words “by it” shall be substituted.</p> <p>In section 13, in sub-section (1), after the words “Government” the words “or that of a Presidency Magistrate” shall be inserted and the words “which is inferior to that of a District or Presidency Magistrate” shall be deleted.</p>
1927	XVI	The Indian Forest Act, 1927.	<p>In section 67, after the words “The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government” the words “Any Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court,” shall be substituted.</p>

APPENDIX II

NOTES OF DISSENT

1. I do not agree that the need of the hour is the simplification of the laws of Procedure and Evidence and that such simplification will achieve the end in view. In my opinion the real need of the hour is the inculcation of a higher sense of duty, a greater regard for public convenience, greater efficiency, in all those concerned in the administration of justice. Ask any litigant, any practising lawyer and he will tell you his grouse is not so much against the complexities of these laws as about the shortage of Judges and Magistrates, the unsatisfactory manner in which many of them handle their cases with utter disregard of public convenience and the corruption of the clerical and the process-serving staff. I do not deny that some simplification in the laws of procedure and evidence is called for in order to curtail unnecessary litigation but I do not think such simplification will effect any substantial saving in expense and time.

2. In my opinion the principal causes of delay and expense are (1) shortage of Judicial Officers and Magistrates, (2) disregard of public convenience in arranging cause lists and in adjourning cases too frequently without adequate cause, (3) inefficiency and slacknesses of several Judicial Officers and (4) laxity of supervision.

3. There is an undoubted shortage of Judges and Magistrates and there is urgent need of making this shortage good as soon as possible. There should be one Munsif for a file of 250 Munsiff's suits and one Civil Judge for a file of 75 or 80 Civil Judge's regular suits. If Civil Judges are required to do criminal work also, extra officers should be provided. The Committee has not been supplied with a list of cases pending in each court. As far as I am aware the work in most of the courts is much too heavy for a single officer to cope with expeditiously and satisfactorily. Most of the Munsifs have a pending file of 500 to 1,000 regular suits, which means the work of two to four Munsifs. The criminal work with District and Sessions Judges and Civil and Assistant Sessions Judges has also considerably increased. Partly owing to this increase and partly owing to the faulty manner in which it is arranged civil work is greatly dislocated causing much avoidable trouble, expense and delay to the parties. So long as this heavy burden is not removed or appreciably lightened by the appointment of more officers, Government's object to give cheap and speedy justice to the people of the State can not be achieved. As observed by the Civil Justice Committee report, the existence of a mass of arrears takes the heart out of a presiding officer. He ceases to take much interest in his work, too readily accepts any excuse for adjourning a case and easily succumbs to the temptation of holding back

the heavier contested suits, devoting attention to the lighter ones in order to make up the quota of work prescribed for him. The really difficult work is thus pushed further and further into the background.

1. The appointment of more Judicial Officers will not however put an end to all the delay and expense which the litigant has to undergo at present for we find that even in courts where work is not too heavy, cases are not always decided with due despatch. I do not agree that increase in the duration of cases is due only to the shortage of officers and to causes beyond their control.

5. Some time ago I made inquiries from several Judicial Officers as to the main causes of delay and one of the District Judges wrote to me as follows :

"Increase in the pending file is due to unsystematic method of working ; cases are not properly handled from the very beginning and the number of cases more than 6 months old therefore increases abnormally."

6. The Civil Judge working under my friend had a pending file of only 41 regular suits and yet out of these 24 had been pending for over 6 months, 9 for over one year, 8 for over 2 years, 6 for over 3 years and 4 for over 4 years.

7. It is said that the main reason why in some courts so many cases remain pending for years and adjournments are given too freely is that many a presiding officer thinks that so long as he is able to show that he has done the prescribed quota of work, the higher authorities will not concern themselves as to how and in what time he decides his cases. The result is that in order to make up the prescribed quota, many presiding officers are often tempted to dispose of the easier cases and go on putting off difficult or troublesome ones, as long as they can sometimes until they themselves are transferred.

8. Referring to the provisions of Order 17, Rules 1 and 3 which regulate the granting of adjournments, the Civil Justice Committee observed as follows :

"It is a perversion of words and a clear transgression of the law when courts in so many instances order an adjournment to suit their own convenience or on the flimsiest pretext to suit the convenience of one party or the other. This laxity must stop and cease entirely... The principle must be accepted as absolute, that a case must be taken up on the date fixed, unless there is really good cause for an adjournment."

(the italics are mine)

9. Laxity in granting adjournments too freely has become a source of great harassment, expense and delay to the litigants. Cases which can and should be disposed of in 2 or 3 hearings are often adjourned without adequate cause 10 or 15 times and are not decided for years. Parties and witnesses have to come to court and go back unheard several times. The diet money

of these witnesses and the fees of the lawyers who are generally engaged on daily fee have to be paid by the parties causing them considerable expense.

10. Before the amalgamation of the late Chief Court with the High Court, justice in Avadh was speedy and efficient. The Chief Judge used to make it his special concern to see that cases were decided, with due despatch and no unnecessary adjournments were given and that the rules of procedure were strictly followed. District and Sessions Judges were also enjoined to do the same. Delayed statements of pending cases were examined with care and presiding officers who were found slack, were pulled up. I have little doubt that with similar strict supervision much of the present expense and delay can be avoided.

11. The practice which is so widely prevalent in courts of fixing more work than can possibly be disposed of on the day allotted to it and adjourning the remaining work was also strongly denounced by the Stuart Committee. In many courts two, three and sometimes four days' work is fixed for disposal in one day and most of it has to be adjourned for want of time. In answering the argument which is so commonly advanced to justify this practice, namely that if only sufficient work is fixed and for some reason a portion of it disappears, the presiding officer would be left without occupation, that Committee made the following observations :

"The utmost concession that should be made to this view would be to fix for hearing on one day perhaps one-quarter work more than could be done on it and to give the undone work precedence on the next date. . . . *In any circumstance the principle is vicious.* It appears to be based upon the idea that the courts may safely ignore the convenience of the public in order to enable them to show a tale of work which they suppose will be considered sufficient by the authorities. *It must be impressed and impressed very clearly that the first consideration should be the convenience of the public and all other considerations must give way to that.*"

(the italics are mine)

12. It is a great pity that many of our Judges and Magistrates should in utter disregard of public convenience fix too much work and then adjourn cases time after time, and send back every day thousands of litigants and witnesses unheard, causing them great harassment, expense and delay.

13. In the Court of Civil Judges who exercise criminal powers, criminal work is often sent at such short notice by the Sessions Judges that there is no time left to inform parties and witnesses in civil cases that their cases will not be taken up on the date fixed. Consequently they appear in court only to go back. Strict instructions should be issued to Sessions and Assistant Sessions Judges to arrange the criminal work so that civil work may not be dislocated.

14. Frequent adjournment of cases in the High Court as well as in the Subordinate Courts to suit the convenience of counsel is also a real cause of delay and expense to parties. Under the prevailing practice in the High Court at Allahabad a counsel can claim three adjournments as of right : (1) by asking his case to be sent down to the bottom of the list ; (2) by sending an engagement slip and (3) by sending a slip of illness. Such is not the practice at Lucknow. These adjournments mean a delay in decision of the case by several months. The following observations of the Civil Justice Committee on this point will bear repetition :

" When a pleader finds that two cases in which he is *solely* engaged have been fixed in different courts for the same day, one court would ordinarily grant an adjournment. At present however not only are such adjournments granted too frequently but the interests of the other side are not sufficiently considered. When a party wants an adjournment to suit his own convenience, the court should insist as a preliminary that he pays that costs of the other side for the day. *Such adjournments should not be granted except for really good cause.* Presiding Officers must be stricter on the point and be ready to give up a reputation for easy-going good nature in the interests of efficiency. Lawyers who take up more work than they can handle must be shown the court will not delay decision to suit their convenience. They can as is the practice in England, when their work increases beyond a certain point, insist on having a junior with them or transfer their briefs. What is more remarkable is the view which has almost become universal that the courts' own convenience is 'sufficient cause' for an adjournment. This laxity must stop and cease entirely."

15. Great delay is also caused by stay order passed by High Court Judges and District Judges. If Judges become strict in this matter and if deposit of the decretal amount and failing that adequate security is demanded before ordering stay and the application, appeal, or revision in which stay is granted is given priority in disposal, the present delay would cease.

16. As regards awarding compensatory costs for false and frivolous claims or defences, in order to make the provisions of section 35-A, C. P. C. more effective, it should be provided that no appeal shall lie against an order awarding such costs unless the sum so awarded exceeds Rs.250 (or at least Rs.100) in the case of an order passed by a Munsif and Rs.500 (or at least Rs.250) in that of an order passed by a Civil Judge. These are the highest and lowest limits of small cause court powers of these two classes of officers in which no appeal lies.

Inefficiency and laxity of supervision

17. It is commonly said that as in many other departments, so in the judicial, there has been deterioration in the efficiency of judicial officers during the last six or seven years. The High Court **Arrears** Committee has also observed that the jurisdiction

of District Judges and Civil Judges should not be enlarged by investing them with greater powers "unless their calibre is raised higher and proper care should be taken in the selection and appointment of the right type of men." This may in part be attributed to the extremely heavy work which these officers are called upon to perform. They are unable to give adequate time and attention to each case and after the day's heavy work they do not feel inclined to read the Law Reports and Standard Commentaries in order to advance their knowledge. At the same time, the leniency with which confirmations and promotions are now made, tends to make many judicial officers slack and inefficient. They do not exert themselves and try to improve, which they would if they found that bad work would be punished and good work would be rewarded. Almost as a matter of course every Munsif whether efficient or otherwise is confirmed, is certified fit to cross the efficiency bar, is promoted as Civil Judge and in nine cases out of ten as Civil and Sessions Judge and even as District and Sessions Judge. The few who are passed over in the first instance are promoted in the second or third chance. It is overlooked that the rules about the efficiency bar has been expressly enacted to stop the inefficient and to promote only the efficient, and that the posts of Sessions and Civil Judge and District and Sessions Judge are *selection* posts to which promotion should be made on the ground not of seniority but of *outstanding merit*.

18. Laxity of control and supervision prevails in the offices of District and Sessions Judges too. Lapses by clerks and process-servers are either condoned or not adequately punished with the result that these lapses are repeated with greater impunity. District Judges and presiding officers should be much more strict than at present.

Suggestions for improvement

19. The desired end can be achieved only if Government appoints the requisite number of Judges and Magistrates, if the High Court becomes strict and makes it plain to presiding Judges that inefficiency and slackness will not be tolerated, that good work will be recognized and rewarded and bad work will be censured and punished, that they must have due regard for public convenience in handling their cases and should be firm and fearless in dealing with those who try to obstruct and delay justice.

20. Before a Munsif is confirmed or certified as fit to cross the efficiency bar or entrusted with the work of Civil Judge, at least 10 of the contested cases decided by him selected at random should be carefully examined by a Judge of the High Court to satisfy him that the Munsif is able to understand and handle a complicated case, to frame proper issues, to control the proceedings and to write a fairly reasoned and balanced judgment. There should be no compunction in extending the period of his probation or in detaining him for an year or two before allowing him to cross the efficiency bar if he is not found up to the mark.

21. Only those officers should be promoted as District and Sessions Judge who are of outstanding ability and are known to be strong and competent enough to be able to guide and supervise the subordinate Judicial Officers.

22. It should be the main responsibility of the District Judge to see that the Subordinate Judicial Officers do their work expeditiously and efficiently. For this purpose he should examine, quarterly, their cause lists and the files of some old pending cases to see that cases are fixed with due regard for public convenience, that no unnecessary adjournments are given and that difficult cases are not relegated to the background and easier ones disposed of to make up the prescribed quota of work.

23. It should further be his responsibility to see that the Nazarat, the Copying Department and the Record Room work is done with despatch and efficiency. He should be required to do a substantial amount of civil work and only as much criminal work as he can conveniently find time to do after having attended to the administrative and civil work mentioned above. At present almost the whole of his time is taken up with sessions work and the other work suffers. The number of Additional Sessions Judges and Assistant Sessions Judges should be increased to meet the heavy increase of criminal work.

Emoluments of Judicial Officers.

24. I agree that the present emoluments of the Civil Judicial Officers are inadequate and the starting salary and scale of increment of Munsifs and District Judges should be increased. These officers do not get the advantages and facilities which their compares in the Executive Department enjoy. When Government is making a substantial saving from the income of the Judicial Department there is no justification for its not spending the savings in the improvement of the pay, prospects and working conditions of the officers and clerks of the department. Adequate typewriters and stationery should be supplied to District Judges and Judicial Officers for their offices. The typed copies which are now issued from the Copying Department, are a disgrace to the Judicial Department. At considerably less cost much better copies can be typed on private typewriters, but this is not allowed.

Separation of the Judicial and the Executive

25. As regards separation of the Judicial and the Executive, my view is that it should not be effected unless and until Government and the High Court can make sure that District Judges will be able effectively to guide and supervise the Magistrates who will be placed under them, otherwise more than what we may gain in the independence of the Magistracy by the separation may be lost in efficiency by lack of adequate supervision and guidance.

T. R. MISRA.

I regret that I have to dissociate myself from some general observations with which Chapter I of the Report opens. The observations, in my opinion, are too vague to be of any real assistance to the Government or to the people in the formulation of policy or principles.

The British system of justice is the result of the experience of centuries. It helped the growth of ideas of freedom and the development of Democracy not only in the country of its birth but also in other freedom-loving countries. It has been the bulwark of the liberty of citizens and has provided them with valued safeguards in the defence of those liberties. The system of administration of justice of this country is to play its part in the development of that independence and freedom of its citizens which it is the aim of our Democratic Constitution to achieve. Unless a concrete and well-defined system of administration of justice, which can serve as a substitute for the present system, is placed before the country, I find it difficult to subscribe to a view, which, to however small a degree, amounts to the condemnation of the system which is now firmly established. It is easier to destroy than to build. And unless the various systems of administration of justice prevailing in other countries and those which prevailed in India prior to the introduction of the present one are compared with it and we are able to evolve a system adapted to the fulfilment of those freedoms on which our Constitution is based, I am not in favour of decrying the present one. We can and must strive to improve the efficiency in the working of the present machinery by introducing such changes in the matter of detail in procedure as are strictly called for by the necessities of the times. But that is a different matter altogether. In doing that we do not alter the fundamental principles which constitute the system itself. When it is predicated of any rules of procedure and evidence that they are foreign to the Indian genius, it must be the fundamental principles underlying those rules which are intended. It may not be easy for the public mind to grasp the full significance of the idea that certain rules of procedure and evidence in the present system are opposed to the Indian genius unless there is a clearer enunciation. The best laws are liable to abuse. But it is no reproach to the high quality of those laws, if they are not worked with efficiency and in the spirit in which they were made. Laws, like every other effort of the human mind, are imperfect and there is always scope for improvement.

With the advance of times human affairs have become complicated and laws have naturally become complex. Simplification of the laws must be the aim but that aim should never be allowed to be achieved at the sacrifice of fundamental principles. If some delay is necessarily caused by the adherence to those principles, that delay is inevitable. Thus we cannot attribute the law's delays to the system itself, if the system means the framework which embodies fundamental principles. But that is not to say that we should not revise our laws in order to prevent delay

which is not inevitable, and should not simplify them "that justice may be available to the rich and poor alike and that it may be prompt and effective", subject, however, always to the condition that the fundamental principles are not altered or that the laws are revised within the framework of the system.

The report speaks of "legal quibbling and hair-splitting" as being the result of formality and elaborateness of certain rules of procedure and evidence. The implication appears to be that there are some rules which lend themselves peculiarly to quibbling and hair-splitting. It is unfortunate that I have not had the benefit of the discussion on this point, if there was any, although I attended preliminary meetings at Mussoorie and a large number of meetings at Naini Tal.

The Legislative Authority always frames rules of law founded on some principles or scheme and with a definite end in view and the rules of procedure and evidence are no exception. To charge that the enforcement of rules by courts can in any case amount to a breeding ground for anything undesirable is a serious matter. And without a close study of such offending rules, if any, and without an opportunity of judging the correctness of the observation, I am not prepared to associate myself with it. If some of the rules have gone out of date or do not fit in with the spirit of the Constitution, they certainly call for a change. Quibbling may have different meanings for different people. To those who are not generally concerned with the practical working of the Courts and their real function of the interpretation of laws, even a weighty legal argument on the interpretation of a statute or the Constitution may appear to be quibbling. But it appears that the Report uses this expression in its real sense, i.e., play upon words, equivocation, the evasion of point at issue or an argument based on purely trivial circumstances. I should think that if any rules of procedure and evidence are open to objection on this ground, these rules can be changed without altering the system of justice itself, as it is not the system which favours quibbling.

I am not in favour of any observations in the Report which may possibly be construed as generalisations whether they are directed against the presiding officers of Courts or against lawyers.

Among the reasons for delay in the disposal of cases it has been stated that senior lawyers, if they accept smaller cases are apt to neglect them and cause considerable waste of time of the Courts. It is surprising that a general remark of so vague a nature should have found place in the Report. What is generally found is that the litigant public insists on engaging senior lawyers and the Courts at times grant accommodation to the latter, if there is other work for the day. It is always open to the Court to refuse adjournment in case there is no other work. In any event the court can always prevent wastage of its time if there is any such possibility. Further, I cannot subscribe to the view that defective pleadings are a matter of frequent occurrence and that proper care is often not exercised by lawyers in drafting them.