

LOK SABHA
**THE ENLARGEMENT OF THE APPELLATE
(CRIMINAL) JURISDICTION OF THE SUPREME
COURT BILL, 1968**
BY SHRI ANAND NARAIN MULLA, M.P.

(Report of the Select Committee)

[Presented on the 17th November, 1969]



Author	Shri Anand Narain Mulla
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**LOK SABHA SECRETARIAT
NEW DELHI**

November, 1969/Kartika, 1891 (Saka)

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REPORTS OF THE JOINT/SELECT COMMITTEES
PRESENTED TO LOK SABHA DURING THE
YEAR 1969.

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Sl.No.	Name	Presented on
1.	Contract Labour (Regulation and Abolition) Bill, 1967 -(Joint Committee report)	26.2.69
2.	-do- Evidence	
3.	Lokpal and Lokayuktas Bill, 1968 (Joint Committee report)	26.3.69
4.	-do- Evidence	
5.	-do- Statement containing a gist of main points made by Witnesses in their Evidence before the Joint Committee.	
6.	Government (Liability in Tort) Bill, 1967 (Report of the Joint Committee)	25.3.69
7.	-do- Evidence	
8.	Constitution (Twenty-Second) Amendment Bill, 1968 (Report of Joint Committee)	12.3.69
9.	-do- Evidence	
10.	Indian Penal Code (Amendment) Bill, 1967 (Report of the Select Committee)	1.5.69
	Scheduled Castes and Scheduled Tribes (Amendment) Bill, 1967 (Report of the Joint Committee)	17.11.69
	-do- Evidence	
	of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1967 (Report of the Select Committee) (Member: Shri Anand Narain Mulla, M.P.)	17.11.69

SELECT COMMITTEE ON THE ENLARGEMENT OF THE APPELLATE (CRIMINAL) JURISDICTION OF THE SUPREME COURT BILL, 1968 BY SHRI ANAND NARAIN MULLA, M.P.

COMPOSITION OF THE COMMITTEE

Shri N. C. Chatterjee—Chairman

MEMBERS

2. Shri Krishna Kumar Chatterji
3. Shri C. C. Desai
4. Shri Shivajirao S. Deshmukh
5. Shri Shri Chand Goyal
- *6. Shri Tulsidas Dasappa
7. Shri S. M. Joshi
8. Shri S. M. Krishna
9. Shri Krishnan Manoharan
10. Shri Vikram Chand Mahajan
11. Shri Bhola Nath Master
12. Shri P. Govinda Menon
13. Shri Bakar Ali Mirza
14. Shri H. N. Mukerjee
15. Shrimati Sharda Mukerjee
16. Shri Anand Narain Mulla
17. Shri K. Ananda Nambiar
18. Shri Mrityunjay Prasad
19. Shri K. Narayana Rao
20. Shri Sheo Narain
21. Shri Tanneti Viswanatham
22. Chaudhuri Randhir Singh

LEGISLATIVE COUNSEL

1. Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*
3. Shri H. C. Gupta, *Asstt. Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

*Appointed on the 14th May, 1969 *vice* Shri K. Harimanthaiya resigned.

REPORT OF THE SELECT COMMITTEE

1. The Chairman of the Select Committee to which the Bill* to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters was referred, having been authorised to submit the Report on their behalf, present their Report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 15th November, 1968. The motion for reference of the Bill to a Select Committee was moved in Lok Sabha by Chaudhuri Randhir Singh, M.P. on the 18th April, 1969 which was discussed and adopted on the same day (See Appendix I).

3. The Committee held 7 sittings in all.

4. The first sitting of the Committee was held on the 30th April, 1969 to draw up their future programme of work. The Committee at this sitting decided that a Press Communique be issued advising Bar Councils, Bar Associations, public bodies and individuals, who were desirous of submitting their suggestions|views, to send written memoranda on the Bill for their consideration. The Committee also decided that the State Governments, Union Territories, the Supreme Court of India, all High Courts, Attorney General of India, Advocates General of all the States, all Bar Councils|Bar Associations and some important legal societies|institutes be requested to forward their comments on the provisions of the Bill for the benefit of the Committee.

5. 22 Memoranda|Representations etc. on the Bill were received by the Select Committee from different Government Departments, Associations|individuals mentioned in Appendix II.

6. At their 2nd sitting held on the 14th July, 1969, the Committee decided to hear the evidence of some eminent jurists. At their third sitting held on the 19th July, 1969 the Committee heard the evidence given by Shri A. S. R. Chari, Senior Advocate, Supreme Court of India, New Delhi.

7. The Report of the Committee was to be presented by the first day of the next session i.e. on the 21st July, 1969. As this could not be done, the Committee decided to ask for extension of time for presentation of their Report upto the first day of the Winter Session (1969). Necessary motion was brought before the House and adopted on the 21st July, 1969.

8. The Committee have decided that the evidence given before them should be printed and laid on the Table of the House.

9. The Committee have also decided that the Memoranda|representations etc. submitted by various associations|organisations|Government Departments etc. should be laid on the Table of the House and a copy thereof be placed in Parliament Library for reference by the Members.

10. The Committee considered the Bill clause-by-clause at their 5th and 6th sittings held on the 29th and 30th September, 1969.

11. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 15th November, 1968.

12. *Clause 2.*—The Committee feel that the right of appeal to the Supreme Court proposed to be given under this clause should be in addition to those provided in Article 134(1) of the Constitution of India. With this end in view and to make it clear, the opening part of this clause has been amended accordingly.

13. *Clause 1 and Enacting Formula.*—Amendments made in these are of drafting nature and formal character.

14. The Committee considered and adopted the Report on the 15th November, 1969.

15. The Select Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
15th November, 1969.

24 Kartika, 1891 (Saka).

N. C. CHATTERJEE,
Chairman,
Select Committee.

**THE ENLARGEMENT OF THE APPELLATE (CRIMINAL)
JURISDICTION OF THE SUPREME COURT BILL, 1968**

(AS REPORTED BY THE SELECT COMMITTEE)

[Words underlined indicate the amendments suggested by the Committee.]

A

BILL

*to enlarge the appellate jurisdiction of the Supreme Court in regard to
criminal matters.*

BE it enacted by Parliament in the Twentieth Year of the Republic
of India as follows:—

1. (1) This Act may be called the Supreme Court (Enlargement of
Criminal Appellate Jurisdiction) Act, 1969.

**Short
title and
extent.**

5 (2) It extends to the whole of India except the State of Jammu and
Kashmir.

2. Without prejudice to the powers conferred on the Supreme Court
by clause (1) of article 134 of the Constitution, an appeal shall lie to the
Supreme Court from any judgment, final order or sentence in a crimi-

**Enlarged
Appellate
Jurisdic-
tion of**

Supreme
Court in
regard to
criminal
matters.

nal proceeding of a High Court in the territory of India if the High Court—

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years; 5

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years. 5

APPENDIX I

(Vide para 2 of the Report)

Motion for reference of the Bill to Select Committee

"That the Bill to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters by Shri Anand Narain Mulla, be referred to a Select Committee consisting of 22 members, namely:—

- (1) Shri N. C. Chatterjee
- (2) Shri Krishna Kumar Chatterji
- (3) Shri C. C. Desai
- (4) Shri Shivajirao S. Deshmukh
- (5) Shri Shri Chand Goyal
- (6) Shri K. Hanumanthaiya
- (7) Shri S. M. Joshi
- (8) Shri S. M. Krishna
- (9) Shri Krishnan Manoharan
- (10) Shri Vikram Chand Mahajan
- (11) Shri Bhola Nath Master
- (12) Shri P. Govinda Menon
- (13) Shri Bakar Ali Mirza
- (14) Shri H. N. Mukerjee
- (15) Shrimati Sharda Mukerjee
- (16) Shri Anand Narain Mulla
- (17) Shri K. Ananda Nambiar
- (18) Shri Mrityunjay Prasad
- (19) Shri K. Narayana Rao
- (20) Shri Sheo Narain
- (21) Shri Tenneti Viswanatham; and
- (22) Chaudhuri Randhir Singh.

with instructions to report by the first day of the next session."

APPENDIX II
(Vide para 5 of the Report)

Statement of Memoranda/Representations received by the Select Committee

S. No.	Nature of document	From Whom Received	Action Taken
1.	Opinion	Advocate-General for Bihar, Patna	Circulated to Members
2.	Comments	Advocate-General for Punjab, Chandigarh alongwith a copy, each of resolutions passed by Bar Council of Punjab and Haryana and Punjab and Haryana Bar Associations	—do—
3.	—do—	Advocate-General for Mysore, Bangalore.	—do—
4.	—do—	High Courts of Jammu and Kashmir	—do—
5.	—do—	Justice S. K. Verma, D. S. Mathur and Hari Swarup of Allahabad High Court	—do—
6.	—do—	High Court of Orissa.	—do—
7.	—do—	Legal Remembrancer, Chandigarh Admn.	—do—
8.	—do—	Administrator, Union Territory of Laccadives.	—do—
9.	—do—	Delhi Administration.	—do—
10.	—do—	Government of Nagaland.	—do—
11.	—do—	Government of Haryana.	—do—
12.	—do—	Bar Council of India.	—do—
13.	—do—	Avadh Bar Association.	—do—
14.	—do—	High Court of Gujarat.	—do—
15.	—do—	High Court of Rajasthan.	—do—
16.	—do—	Hon'ble Judges of the High Court of Judicature at Patna.	—do—
17.	—do—	Delhi High Court.	—do—
18.	—do—	Supreme Court.	—do—
19.	—do—	Government of Tamil Nadu.	—do—
20.	—do—	High Court of Madhya Pradesh.	—do—
21.	—do—	High Court of Madras.	—do—
22.	—do—	Bar Council of Maharashtra.	—do—

APPENDIX III

MINUTES OF THE SITTINGS OF THE SELECT COMMITTEE ON THE ENLARGEMENT OF THE APPELLATE (CRIMINAL) JURISDICTION OF THE SUPREME COURT BILL, 1968

BY SHRI ANAND NARAIN MULLA, M.P.

I

First Sitting

The Committee sat on Wednesday, the 30th April, 1969 from 16.00
to 16.45 hrs.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Krishna Kumar Chatterjee
3. Shri C. C. Desai
4. Shri Shivajirao S. Deshmukh
5. Shri Shri Chand Goyal
6. Shri S. M. Joshi
7. Shri S. M. Krishna
8. Shri Bhola Nath Master
9. Shri P. Govinda Menon
10. Shri Bakar Ali Mirza
11. Shrimati Sharda Mukerjee
12. Shri Anand Narain Mulla
13. Shri K. Ananda Nambiar
14. Shri Mrityunjay Prasad
15. Shri K. Narayana Rao
16. Shri Sheo Narain
17. Shri Tenneti Viswanatham
18. Chaudhuri Randhir Singh

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri P. L. Gupta, *Addl. Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee decided to issue a Press Communique (Annexure
1) inviting memoranda from Bar Councils, Bar Associations, public bodies
and individuals on the provisions of the Bill by the 31st May, 1969.

3. The Committee also decided that all State Governments|Union
Territories, the Supreme Court, all High Courts, Attorney-General and
Advocates-General of all the States, all Bar Councils|Bar Associations|
Calcutta Bar Library and some important legal societies|institutes should

be addressed inviting their views on the provisions of the Bill. The Committee approved the draft letter (Annexure II).

4. The Committee desired that the Ministry of Law should furnish a note on the comparative provisions of law with regard to the criminal jurisdiction of the highest court in U.K., U.S.A. and other countries.

5. The Committee decided to sit daily at 15.30 hours from Monday, the 14th July, 1969 for clause-by-clause consideration of the Bill.

6. The Committee further decided that notices of amendments to the Bill, if any, might be sent by the members by Monday, the 30th June, 1969.

7. The Committee then adjourned to sit again at 15.30 hours on Monday, the 14th July, 1969.

ANNEXURE I

LOK SABHA SECRETARIAT

The Select Committee of Lok Sabha on the Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968 by Shri Anand Narain Mulla, M.P. at their first sitting held to-day under the Chairmanship of Shri N. C. Chatterjee, M.P. decided that public bodies, Bar Councils, High Court Bar Associations and individuals desirous of submitting memoranda on the Bill for the consideration of the Committee should send 35 copies of their memorandum so as to reach the Secretary, Lok Sabha Secretariat, Parliament House, New Delhi on or before the 31st May, 1969. The memoranda which might be submitted to the Committee would form part of the records of the Committee and should be treated as strictly confidential and not circulated to anyone, as such an act would constitute a breach of privilege of the Committee.

The Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968, as introduced in Lok Sabha, was published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 15th November, 1968.

NEW DELHI;

Dated the 30th April, 1969.

ANNEXURE II

LOK SABHA SECRETARIAT

**Parliament House,
New Delhi-1**

No. 15|1|CII|69

May 1, 1969|Vaisakha 11, 1891 (S).

From

**Shri M. C. Chawla,
Deputy Secretary.**

To

1. The Chief Secretary, All State Governments|Union Territories
2. The Attorney-General of India, New Delhi.
3. The Advocates-General of All States.
4. The Registrar, Supreme Court|All High Courts.
5. The Secretary, Bar Council of India|Supreme Court Bar Association|All State Bar Councils|All High Court Bar Associations.
6. The Secretary, Indian Law Institute, New Delhi|Indian Institute of Public Administration, New Delhi|Institute of Constitutional and Parliamentary Studies, New Delhi|Indian Society of International Law, New Delhi|Incorporated Law Society, Calcutta|International Commission of Jurists, New Delhi|Bar Library, High Court, Calcutta.

SUBJECT: Select Committee on the Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968, by Shri Anand Narain Mulla, M.P.

Sir,

I am directed to state that the Select Committee of Lok Sabha on the Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968, at their sitting held on the 30th April, 1969, decided that all State Governments|Union Territories, the Supreme Court, High Courts and all Bar Councils| Bar Associations etc. etc. be addressed to send their comments or suggestions, if they so desire, on the provisions of the Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968 for the consideration of the Committee, so as to reach the Secretary, Lok Sabha Secretariat, Parliament House, New Delhi, by the 31st May, 1969 at the latest.

2. The Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968, as introduced in Lok Sabha, was published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 15th

November, 1968. A copy of the Bill is, however, sent herewith for ready reference.

3. In case any comments or suggestions are sent, it is requested that 35 copies thereof may be furnished to this Secretariat for circulation to the Members of the Select Committee.

Yours faithfully,
M. C. CHAWLA,
Deputy Secretary.

II

Second Sitting

The Committee sat on Monday, the 14th July, 1969 from 15.30 to 16.30 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Krishna Kumar Chatterji
3. Shri C. C. Desai
4. Shri Shri Chand Goyal
5. Shri Vikram Chand Mahajan
6. Shri Bholā Nath Master
7. Shri Bakar Ali Mirza
8. Shri H. N. Mukerjee
9. Shri Anand Narain Mulla
10. Shri K. Ananda Nambiar
11. Shri Mrityunjay Prasad
12. Shri Sheo Narain
13. Shri Tenneti Viswanatham
14. Chaudhuri Randhir Singh

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri K. P. Singh, *Under Secretary.*

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri P. L. Gupta, *Addl. Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Chairman read out to the Committee the letter dated the 11th July, 1969 received by him from the Minister of Law and Social Welfare, Shri P. Govinda Menon, drawing the attention of the Committee to the principle of the Constitution that the Supreme Court should not be made a regular Court of Criminal Appeal Annexure. After some discussion the Committee decided to consider this aspect of the matter later on after hearing the views of the following witnesses on the provisions of the Bill:

- (i) Shri A. S. R. Chari, Senior Advocate, Supreme Court of India;
- (ii) Shri Nuruddin Ahmed, Bar-at-law, Senior Advocate, Supreme Court of India.

The Chairman then permitted Shri Mohammad Yunus Saleem, Deputy Minister of Law to address the Committee under Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee desired that the following information might be made available to them by the Ministry of Law:

- (a) How many appeals were filed before the High Courts throughout the Country against the orders of acquittal passed by the Trial or the Appellate Courts from the 1st January, 1968 to 31st December, 1968;
- (b) In how many appeals the order of acquittal was set aside during the same period by the various High Courts; and
- (c) In how many cases covered by (b) above, a sentence of Death was inflicted and in how many cases a sentence of life imprisonment was awarded.

4. The Committee also decided to seek an extension of time for presentation of their Report by the first day of Winter Session (1969) of the Lok Sabha as it would not be possible for them to consider all aspects of the Bill in the short time at their disposal and present their Report by the first day of the ensuing session i.e. the 21st July, 1969. The Committee authorised the Chairman and in his absence, Shri Shri Chand Goyal, M.P. to move necessary motion in the House to that effect.

5. The Committee then adjourned to meet again on Saturday, the 19th July, 1969 at 16.00 hours to hear oral evidence of the witnesses referred to in Para 3 *ibid.*

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ANNEXURE

(Vide para 2 of the Minutes of the second sitting of the Select Committee)

D.O.F. 42(1) 685

P. GOVINDA MENON

(SEAL)

MINISTER OF LAW
AND SOCIAL WELFARE,
INDIA.

New Delhi,
the 11th July, 1969.

Dear Shri Chatterji,

REF:—*Sitting of the Select Committee of the Lok Sabha on 14-7-1969 at 3.30 P.M. for considering the Enlargement of the Appellate (Criminal) Jurisdiction of Supreme Court Bill, 1968, moved by Shri A. N. Mulla.*

I am in agreement with the mover of the Bill that an appeal should lie as of right to an accused in cases falling under Article 134(1) (a) and (b) of the Constitution not only where the High Court sentences him to death but also where the sentence is for imprisonment for life.

2. If the Bill, as introduced, is passed with the provision for regular appeals in cases where the sentence is one for ten years or more, there will be a phenomenally large number of cases in which the Supreme Court will become a regular court of criminal appeal. I do not know whether you have thought about this aspect of the matter. A reference to the Penal Code will reveal that the Code provides for sentences of ten years and more for 87 various offences. A list of such offences is herewith appended.*

3. It is not the policy of our Constitution to make the Supreme Court a regular Court of Criminal Appeal. Article 134(2) is also suggestive of principle that criminal appeals to the Supreme Court should be appropriately restricted.

4. If failure of justice is occasioned by judgments of the High Courts where sentences lighter than imprisonment for life are meted out, I presume that the provisions contained in Article 134(1) (c) and Article 136 would afford adequate remedy.

5. I regret that I am unable to attend the meeting of the Select Committee on the 14th. I have already spoken to you. No discourtesy to you or any Member of the Committee is meant. I trust that you would explain my view point to the Committee.

Thanking you,

Yours sincerely,

Shri N. C. Chatterji,

Sd/- P. GOVINDA MENON

Chairman, Select Committee of Lok Sabha,

Parliament House, New Delhi.

*Already circulated separately.

III

Third Sitting

The Committee sat on Saturday, the 19th July, 1969 from 16.00 to 17.30 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Shri Chand Goyal
3. Shri Tulsidas Dasappa
4. Shri Vikram Chand Mahajan
5. Shri Bhola Nath Master
6. Shri P. Govinda Menon
7. Shri Bakar Ali Mirza
8. Shri Anand Narain Mulla
9. Shri K. Ananda Nambiar
10. Shri Mrityunjay Prasad
11. Shri Sheo Narain

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. Before the Committee proceeded to hear the evidence of Shri A. S. R. Chari, Senior Advocate, Supreme Court of India, New Delhi, the Chairman drew his attention to Direction 58 of the Directions by the Speaker.

3. A verbatim record of evidence was kept.
The Committee then adjourned.

IV

Fourth Sitting

The Committee sat on Tuesday, the 26th August, 1969 from 16.15 to 16.50 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Krishna Kumar Chatterji
3. Shri C. C. Desai

4. Shri Shri Chand Goyal
5. Shri Tulsidas Dasappa
6. Shri S. M. Krishna
7. Shri Vikram Chand Mahajan
8. Shri Bhola Nath Master
9. Shri P. Govinda Menon
10. Shri H. N. Mukerjee
11. Shrimati Sharda Mukerjee
12. Shri Anand Narain Mulla
13. Shri Mrityunjay Prasad
14. Shri K. Narayana Rao
15. Shri Sheo Narain
16. Shri Tenneti Viswanatham
17. Chaudhuri Randhir Singh

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*
3. Shri H. C. Gupta, *Asstt. Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. In the absence of the Chairman, who was held up at the sitting of the Committee of Privileges, the Committee chose Shri Sheo Narain to act as Chairman for the sitting in terms of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee discussed in passing the various implications of the proposed measure in the context of Articles 134 and 136 of the Constitution. The Law Minister informed the Committee that the Law Commission had almost concluded its revision of the Code of Criminal Procedure and one of their recommendations likely to be made related to the right of appeal to the Supreme Court in cases where an order of acquittal had been reversed by the High Court and the High Court had convicted the accused to life imprisonment. He suggested that it would be for the Committee to decide whether or not to proceed with the present Bill in the light of the Law Commission's Report. He assured the Committee that the Law Commission's Report would be carefully considered by the Government and suitable legislation seeking to implement its recommendation by amending the Code of Criminal Procedure would be brought up before Parliament.

[*At this stage Shri N. C. Chatterji took the Chair*]

4. The Committee then discussed their future programme and decided to sit at 9.30 hours daily on the 29th and 30th September, 1969 to take up clause-by-clause consideration of the Bill. It was also decided that Government should make available to the Committee their amendments,

if any, by the 8th September, 1969 and Members might send their notices of amendments, if any, by the 19th September, 1969.

5. The Committee then adjourned.

V

Fifth Sitting

The Committee sat on Monday, the 29th September, 1969 from 09.30 to 10.45 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Krishna Kumar Chatterji
3. Shri C. C. Desai
4. Shri Shivajirao S. Deshmukh
5. Shri Shri Chand Goyal
6. Shri Tulsidas Dasappa
7. Shri Vikram Chand Mahajan
8. Shri Bakar Ali Mirza
9. Shri H. N. Mukerjee
10. Shrimati Sharda Mukerjee
11. Shri Anand Narain Mulla
12. Shri Mrityunjay Prasad
13. Shri K. Ananda Nambiar
14. Shri Sheo Narain
15. Shri Tenneti Viswanatham

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*
3. Shri H. C. Gupta, *Asstt. Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee were informed that the Minister of Law, who had gone to Bombay, was unable to return today morning. In the absence of the Minister, the Committee held a general discussion on the Amendments given notice of by the Minister. It was decided that a copy of today's proceedings should be forwarded to the Law Minister so that he could apprise the Committee of his reaction to the various views put forth by the members in this behalf before they took up clause-by-clause consideration of the Bill at their sitting to be held tomorrow.

3. The Committee then adjourned till 10.00 hours on Tuesday, the 30th September, 1969.

Sixth Sitting

The Committee sat on Tuesday, the 30th September, 1969 from 10.00 to 11.50 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri C. C. Desai
3. Shri Shivajirao S. Deshmukh
4. Shri Shri Chand Goyal
5. Shri Tulsidas Dasappa
6. Shri S. M. Krishna
7. Shri P. Govinda Menon
8. Shri Bakar Ali Mirza
9. Shrimati Sharda Mukerjee
10. Shri Anand Narain Mulla
11. Shri K. Ananda Nambiar
12. Shri Mrityunjay Prasad
13. Shri K. Narayana Rao
14. Shri Sheo Narain
15. Shri Tenneti Viswanatham

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri P. M. Bakshi, *Joint Secretary and Legal Adviser, Ministry of Law.*
2. Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law.*
3. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*
4. Shri H. C. Gupta, *Asstt. Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee resumed further discussion on the Amendments to the Bill given notice of by the Minister of Law and heard the views of the Minister thereon. The Minister *inter alia* explained that in view of the Report of the Law Commission on the revision of the Code of Criminal Procedure in which suitable provision on the subject matter of the Bill had been recommended, no useful purpose will be served by processing the Bill any further. He requested the mover to withdraw

the Bill. The consensus of opinion of the members was that it was too late at this stage to withdraw the Bill and that having deliberated considerably, they should better go ahead with this. The mover, however, did not agree to the suggestion to withdraw the Bill.

3. The Committee then took up clause-by-clause consideration of the Bill.

4. *Clause 2.*—(i) The following amendment was accepted:—

Page 2, line 1,

for "An appeal shall lie to the Supreme Court",

substitute "Without prejudice to the powers conferred on the Supreme Court by clause (1) of article 134 of the Constitution, an appeal shall lie to the Supreme Court";

(ii) The following amendments tabled by the Minister of Law were not accepted:—

(a) Page 2, lines 5-6,

omit "or imprisonment which extends to ten years or more than ten years".

(b) Page 2, lines 10-11,

omit "or imprisonment which extends to ten years or more than ten years".

The Law Minister agreed with the mover of the Bill that where the High Court had "on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life", an appeal might lie. He was also agreeable that where the High Court "has withdrawn for trial before itself any case from any court subordinate to its authority, and has in such trial convicted the accused person and sentenced him to imprisonment for life", then also an appeal might lie to the Supreme Court. He was not agreeable to confer right of appeal where the sentence was for any period less than for life in either of those cases.

Clause 2, as amended, was adopted.

5. *Clause 1.*—The following amendment was accepted:—

Page 1, for lines 3-4,

substitute "(1) This Act may be called the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1969."

Clause 1, as amended, was adopted.

6. *Enacting Formula.*—The following amendment was accepted:—

Page 1, line 1,

for "Nineteenth" substitute "Twentieth"

The Enacting Formula, as amended, was adopted.

7. *Long Title.*—The Long title was adopted without any amendment.

8. The Committee authorised the Legislative Counsel to correct patent errors and to carry out amendments of consequential and drafting nature in the Bill and to submit attested copies thereof, as amended.

9. The Committee decided that the evidence given before them should be printed and laid on the Table of the House.

10. The Committee further decided that the Memoranda received by them on the Bill should be laid on the Table of the House and also be placed in the Parliament Library for reference by the Members.

11. The Chairman then drew the attention of the Committee to the provisions of Direction 87 of the Directions by the Speaker under the Rules of Procedure regarding Minutes of Dissent and also announced that the Members could give their Minutes of Dissent, if any, by 10.00 hours on Monday, the 17th November, 1969.

12. The Committee decided to sit again at 16.00 hours on Saturday, the 15th November, 1969 to consider the draft Report.

13. The Committee then adjourned.

VII

Seventh Sitting

The Committee sat on Saturday, the 15th November, 1969 from 16.00 to 16.45 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Krishna Kumar Chatterji
3. Shri Shivajirao S. Deshmukh
4. Shri Tulsidas Dasappa
5. Shri Vikram Chand Mahajan
6. Shri Bhola Nath Master
7. Shri P. Govinda Menon
8. Shri Bakar Ali Mirza
9. Shri H. N. Mukerjee
10. Shri Anand Narain Mulla
11. Shri Mrityunjay Prasad
12. Shri Sheo Narain
13. Shri Tenneti Viswanatham

REPRESENTATIVES OF THE MINISTRIES

1. Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law.*
2. Shri Dalip Singh, *Deputy Legal Adviser.*

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

2. The Committee considered the Bill as amended and adopted it.
 3. The Committee then considered the draft Report and adopted it without any amendment.
 4. The Chairman announced that the Report of the Committee would be presented to Lok Sabha on the 17th November, 1969.
 5. The Chairman also announced that the Minutes of Dissent, if any, by Members might be sent to the Lok Sabha Secretariat by 10.00 hours on Monday, the 17th November, 1969. Members were requested to send four copies of their Minutes of Dissent, if possible.
 6. The Committee authorised the Chairman and, in his absence, Shri Tenneti Viswanatham to present the Report and to lay a copy of the Evidence and the set of Memoranda|representations received by the Committee on the Table of the House on the 17th November, 1969.
 7. The Committee then adjourned.
-

लोक-सभा

श्री आनन्द नारायण मुल्ला, संसद सदस्य

का

उच्चतम न्यायालय के अपीलिय (आपराधिक)
क्षेत्राधिकार का विस्तार विधेयक, 1968

(प्रवर समिति का प्रतिवेदन)

(17 नवम्बर, 1969 को प्रस्तुत किया गया)

(मुहर)

लोक-सभा सचिवालय
नई दिल्ली

नवम्बर, 1969 । कार्तिक, 1891 (शक)

मूल्य : रूपये

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श्री आनन्द नारायण मुल्ला, संसद सदस्य

के

उच्चतम न्यायालय के अपीलीय (आपराधिक)
क्षेत्राधिकार का विस्तार विधेयक, 1968
के संबंध में प्रवर समिति

समिति की रचना

श्री एन. सी. चटर्जी - - - - - समापति

सदस्य

2. श्री कृष्ण कुमार चटर्जी
3. श्री सी. सी. देसाई
4. श्री शिवाजी राव एस. देशमुख
5. श्री श्रीचन्द गोयल
- *6. श्री तुलसी दास दासप्पा
7. श्री एस. एम. जोशी
8. श्री एस. एम. कृष्ण
9. श्री कृष्णन मनोहरन
10. श्री विक्रम चन्द महाजन
11. श्री मोला नाथ मास्टर
12. श्री पी. गोविन्द मेनन
13. श्री वाकर अली मिर्जा
14. श्री ही. ना. मुकजी
15. श्रीमती शारदा मुकजी
16. श्री आनन्द नारायण मुल्ला

* श्री के. हनुमन्तैया द्वारा त्यागपत्र दिये जाने पर 14 मई, 1969 को
नियुक्त किये गये ।

17. श्री के. आनन्द नम्बियार
18. श्री मृत्युंजय प्रसाद
19. श्री के. नारायण राव
20. श्री शिव नारायण
21. श्री तेन्नेट्टि विश्वनाथन
22. चांघरी रणधीर सिंह

विधायी सलाहकार

1. श्री पी. एल. गुप्ता,
अतिरिक्त विधायी सलाहकार,
विधि मंत्रालय ।
2. श्री ए. जी. नम्बियार,
उप-विधि सलाहकार,
विधि मंत्रालय ।
3. श्री एच. सी. गुप्ता,
सहायक विधि सलाहकार,
विधि मंत्रालय ।

सचिवालय

श्री एम. सी. चावला - उप-सचिव

प्रवर समिति का प्रतिवेदन

मैं, प्रवर समिति का सभापति, जिसको आपराधिक मामलों के संबंध में उच्चतम न्यायालय का अपीलिय कौत्राधिकार बढ़ाने के सिलसिले में विधेयक साँपा गया था, तथा उनकी ओर से प्रतिवेदन प्रस्तुत करने का अधिकार दिया गया है, उसका प्रतिवेदन विधेयक के साथ, समिति द्वारा संशोधित रूप में, जो उसके साथ संलग्न है, प्रस्तुत करता हूँ।

2. यह विधेयक 15 नवम्बर, 1968 को लोक-सभा में पेश किया गया था। विधेयक को प्रवर समिति को साँपने का प्रस्ताव लोक-सभा में 18 अप्रैल, 1969 को चाँघरी रणधीर सिंह, संघ सदस्य द्वारा रखा गया जिस पर उसी दिन चर्चा की गई तथा उगी दिन स्वीकृत हुआ (परिशिष्ट एक देखिए)।

3. समिति की कुल 7 बैठकें हुईं।

4. भावी कार्यक्रम निश्चित करने के लिए समिति की पहली बैठक 30 अप्रैल, 1969 को हुई। समिति ने इस बैठक में निश्चय किया कि एक प्रेस विज्ञप्ति जारी की जाये जिसमें विधिज्ञपरिषद्, विधिज्ञ संस्थाओं, सार्वजनिक निकायों तथा व्यक्तियों को, जो विधेयक के संबंध में अपने सुझाव/विचार व्यक्त करना चाहते थे, उनसे विधेयक पर विचार करने के लिये लिखित ज्ञापन देने की सलाह दी गयी थी।

समिति ने यह भी निश्चय किया कि राज्य सरकारों, संघ राज्य कौत्रों, भारत के उच्चतम न्यायालय, सभी उच्च न्यायालयों, भारत के महा-न्यायवादी, सभी राज्यों के महाधिवक्ताओं, सभी विधिज्ञ परिषदों।

विधिज्ञ संस्थाओं से, विधेयक के उपबन्धों के संबंध में समिति के काम के लिये, अपने टिप्पण भेजने का अनुरोध किया जाय।

तथा कुक्षमहत्वपूर्ण
विधि संस्थाओं।
शालाओं

* भारत सरकार के दिनांक 15 नवम्बर, 1968 के असाधारण गान्धत्र के भाग दो, खण्ड 2 में प्रकाशित।

5. परिशिष्ट दो में उल्लिखित विभिन्न सरकारी विभागों, संस्थाओं। व्यक्तियों से प्रवर समिति को 22 ज्ञापन।अभ्यावेदन आदि प्राप्त हुए ।
6. समिति ने अपनी दूसरी बैठक में जो 14 जुलाई, 1969 को हुई, कुछ प्रमुख विधिवेत्ताओं के साक्ष्य लेने का निश्चय किया । समिति ने अपनी तीसरी बैठक में, जो 19 जुलाई, 1969 को हुई, भारत के उच्चतम न्यायालय, नई दिल्ली के अधिवक्ता श्री ए.एस.आर. चारी का साक्ष्य सुना ।
7. समिति का प्रतिवेदन अगले सत्र के प्रथम दिन अर्थात् 21 जुलाई, 1969 को पेश किया जाना था चूंकि ऐसा नहीं किया जा सका, इसलिए समिति ने प्रतिवेदन को शीतकालीन सत्र (1969) के प्रथम दिन तक पेश करने के लिए समय बढ़ाने की मांग करने का निश्चय किया । 21 जुलाई, 1969 को सदन में आवश्यक प्रस्ताव रखा गया तथा स्वीकृत किया गया ।
8. समिति ने निर्णय किया कि उनके सम्मुख जो साक्ष्य दिया गया है उसको प्रकाशित किया जाना चाहिए तथा सभा पटल पर रखा जाना चाहिए ।
9. समिति ने यह भी निर्णय किया कि विभिन्न संस्थाओं। संगठनों। सरकारी विभागों आदि द्वारा जो ज्ञापन।अभ्यावेदन आदि दिये गये हैं उनको सभा पटल पर रखा जाये तथा उनकी एक प्रति संसद के ग्रन्थालय में सदस्यों के उपयोग के लिए रखी जाय ।
10. समिति ने अपनी पांचवीं तथा छठी बैठकों में, जो 29 तथा 30 सितम्बर, 1969 को हुई, विधेयक पर खण्डवार विचार किया ।

11. विधेयक में प्रस्तावित मुख्य परिवर्तनों के संबंध में समिति के टिप्पणों का व्यौरा अनुवर्ती पैराग्राफों में दिया गया है ।
12. खण्ड 2 - समिति अनुमत्त करती है कि इस खंड में उच्चतम न्यायालय में अपील करने का अधिकार देने का जो विचार है, वह भारतीय संविधान के अनुच्छेद 134(1) में दिये गये अधिकारों के अतिरिक्त होना चाहिए । इस उद्देश्य को ध्यान में रखते हुए तथा इसको और अधिक स्पष्ट बनाने के लिए इस खण्ड के प्रारंभिक भाग को उचित रूप से संशोधित किया गया है ।
13. खण्ड 1 तथा अधिनियमन सूत्र - इनमें जो संशोधन किये गये हैं वह प्रारूप संबंधी तथा औपचारिक हैं ।
14. समिति ने 15 नवम्बर, 1969 को प्रतिवेदन पर विचार किया तथा उसको स्वीकृत किया ।
15. प्रवर समिति सिफारिश करती है कि विधेयक को संशोधित रूप में पारित किया जाय ।

नई दिल्ली ;
15 नवम्बर, 1969।24 कार्तिक, 1891(शक)

एन. सी. चटर्जी
समापति
प्रवर समिति

उच्चतम न्यायालय के अपीलीय (आपराधिक)
दोत्राधिकार का विस्तार विधेयक, 1968

(प्रवर समिति द्वारा प्रतिवेदित रूप में)

उच्चतम न्यायालय के अपीलीय (आपराधिक)
क्षेत्राधिकार का विस्तार विधेयक, 1968

(प्रवर समिति द्वारा प्रस्तुत रूप में)

(रेखांकित शब्दों से, समिति द्वारा सुझाये गये संशोधनों की
ओर संकेत है)

आपराधिक मामलों के सम्बन्ध में उच्चतम न्यायालय
के अपीलीय क्षेत्राधिकार का विस्तार करने के लिए एक
विधेयक ।

भारत गणराज्य के तीसरे वर्ष में संसद द्वारा निम्न-
लिखित रूप में यह अधिनियमित हो :--

संक्षिप्त नाम
तथा विस्तार

1. (1) यह अधिनियम उच्चतम न्यायालय (आपराधिक
अपीलीय क्षेत्राधिकार का विस्तार) अधिनियम,
1969 कहा जाये
- (2) इसका विस्तार जम्मू तथा काश्मीर राज्य के सिवाय
समूचे भारत पर है ।

आपराधिक
मामलों के
सम्बन्ध में
उच्चतम
न्यायालय का
विस्तृत
अपीलीय
क्षेत्राधिकार -

2. संविधान के अनुच्छेद 134 के खण्ड (1) द्वारा उच्चतम न्यायालय को दी गई शक्तियों पर कोई प्रतिकूल प्रभाव डाले बिना, भारत के राज्यक्षेत्र में एक उच्च न्यायालय की एक आपराधिक प्रक्रिया में किसी निर्णय, अन्तिम आदेश या दण्डादेश के तारे में एक अपील उच्चतम न्यायालय को स्वीकार्य होगी यदि उच्च न्यायालय ने -

- (क) अपील करने पर एक अपराधी व्यक्ति की दोष मुक्ति का आदेश बदल दिया है और उसे आजीवन कारावास या 10 वर्षों से अन्यून अवधि के लिए कारावास का दण्ड दिया है ;
- (ख) किसी अधीनस्थ न्यायालय से अपने सामने तिनार के लिए कोई मामला ले लिया है और ऐसे मुकदमे में अभियुक्त व्यक्ति को दोषी ठहराया है और उसे आजीवन कारावास या 10 वर्षों से अन्यून अवधि के लिए कारावास का दण्ड दिया है ।

परिशिष्ट - एक

(देखिये प्रतिवेदन का पैरा 2)

विधेयक को प्रवर समिति को सौंपने का प्रस्ताव

कि श्री आनन्द नारायण मुल्ला द्वारा आपराधिक मामलों के सम्बन्ध में उच्चतम न्यायालय के अपीलीय क्षेत्राधिकार का विस्तार करने के लिए विधेयक को निम्नलिखित 22 सदस्यों की एक प्रवर समिति को इन हिदायतों के साथ सौंपा जाये कि इसका प्रतिवेदन अगले अधिवेशन के पहले दिन तक दिया जाये :--

1. श्री एन. सी. चटर्जी
2. श्री कृष्ण कुमार चटर्जी
3. श्री सी. सी. देसाई
4. श्री शिवाजी राव एस. देशमुख
5. श्री श्रीचन्द गोयल
6. श्री के. हनुमन्तैया
7. श्री एस. एम. जोशी
8. श्री एस. एम. कृष्णा
9. श्री कृष्णान मनोहरन
10. श्री विक्रम चन्द गहाजन
11. श्री भोलानाथ मास्टर
12. श्री पी. गोविन्द मेनन
13. श्री बाकर अलो मिर्जा
14. श्री ही. ना. मुकजी
15. श्रीमती शारदा मुकजी

16. श्री आनन्द नारायण मुल्ला
17. श्री के. आनन्द नम्बियार
18. श्री मृत्युंजय प्रसाद
19. श्री के. नारायण राव
20. श्री शिव नारायण
21. श्री तेन्नेटि विश्वनाथन , और
22. चाँधरी रणधीर सिंह ।

परिशिष्ट - दो

(प्रतिवेदन के पैरा-5 को देखिए)

प्रवर समिति द्वारा प्राप्त किये गये जापनों/अभ्यावेदनों का वितरण

क्रम संख्या	दस्तावेज की क्रिया	जिससे प्राप्त हुआ	को गई कार्यवाही
1.	मत	महाधिवक्ता, -बिहार - पटना	सदस्यों को भेजा गया
2.	टिप्पणियां	महाधिवक्ता, पंजाब, चंडीगढ़, पंजाब और हरियाणा विभिन्न परिषदों तथा विभिन्न संस्थाओं द्वारा पारित किये गये प्रत्येक प्रस्ताव की प्रतिलिपि के साथ	तदेव
3.	तदेव	महाधिवक्ता-मैसूर, बंगलौर	तदेव
4.	तदेव	उच्च न्यायालय, जम्मू और कश्मीर	तदेव
5.	तदेव	इलाहाबाद उच्च न्यायालय के न्यायाधीशों एस.के. वर्मा, डी.एस. माथुर और एच. स्वरूप ।	तदेव
6.	तदेव	उड़ीसा उच्च न्यायालय	तदेव
7.	तदेव	विधि परामर्शी, चंडीगढ़ प्रशासन	तदेव
8.	तदेव	प्रशासक, लक्कदीव संघ राज्य क्षेत्र	तदेव
9.	तदेव	दिल्ली प्रशासन	तदेव
10.	तदेव	नागालैंड सरकार	तदेव
11.	तदेव	हरियाणा सरकार	तदेव

क्रम संख्या	दस्तावेज की किस्म	जिससे प्राप्त हुआ	की गई कार्रवाई
12.	टिप्पणियां	भारतीय विधिज्ञ परिषद्	रदस्कों को भेजा गया
13.	तदेव	अवध विधिज्ञ संस्था	तदेव
14.	तदेव	गुजरात उच्च न्यायालय	तदेव
15.	तदेव	राजस्थान उच्च न्यायालय	तदेव
16.	तदेव	पटना उच्च न्यायालय के न्यायाधीश वर्ग के माननीय न्यायाधीश	तदेव
17.	तदेव	दिल्ली उच्च न्यायालय	तदेव
18.	तदेव	उच्चतम न्यायालय	तदेव
19.	तदेव	तामिलनाडू सरकार	तदेव
20.	तदेव	मध्यप्रदेश उच्च न्यायालय	तदेव
21.	तदेव	मद्रास उच्च न्यायालय	तदेव
22.	तदेव	मद्रास विधिज्ञ संस्था	तदेव

परिशिष्ट III

संरक्ष सदस्य श्री आनन्द नारायण मुल्ला के उच्चतम
न्यायालय के अपीलीय (आपराधिक) क्षेत्राधिकार
का विस्तार विधेयक, 1968 के सम्बन्ध में प्रवर समिति
की बैठकों के कार्यवाही सारांश

I

पहली बैठक

समिति की बैठक बुधवार, 30 अप्रैल, 1969 को म.प.
4 से 4.15 वजे तक हुई।

उपस्थित

श्री नि.चं.चटर्जी - समापति

सदस्य

2. श्री कृष्णकुमार चटर्जी
3. श्री चं.चु. देसाई
4. श्री शिवाजीराव शं. देशमुख
5. श्री श्रीचन्द गोयल
6. श्री स.मो. बनर्जी
7. श्री एस.एम. कृष्ण
8. श्री मोलानाथ मास्टर
9. श्री पी. गोविन्द मेनन
10. श्री वाकरजली मिर्जा
11. श्रीमती शारदा मुकर्जी
12. श्री आनन्द नारायण मुल्ला

13. श्री के. आनन्द नम्बियार
14. श्री मृत्सुख प्रसाद
15. श्री के. नारायण राव
16. श्री शिव नारायण
17. श्री तेन्नेटि विश्वनाथम
18. चाँधरी रणधीर सिंह

विधि मंत्रालय के प्रतिनिधि

1. श्री पी. एल. गुप्त, अतिरिक्त विधायी सलाहकार,
विधि मंत्रालय ।
2. श्री ए. जी. नम्बियार, उप-विधि सलाहकार,
विधि मंत्रालय

सचिवालय

श्री मेहरखन्द चावला - उप-सचिव

2. समिति ने एक प्रेस विज्ञप्ति जारी करने का निश्चय किया (अनुबन्ध- I) जिसके अन्तर्गत विधिज्ञ परिषदों, विधिज्ञ संस्थाओं, सार्वजनिक संस्थाओं तथा व्यक्तियों से विधेयक के उपबन्धों के सम्बन्ध में 31 मई, 1969 तक ज्ञापन आमंत्रित किये जाने थे ।

3. समिति ने यह भी निश्चय किया कि सभी राज्य सरकारों, संघ राज्य क्षेत्रों, उच्चतम न्यायालय, सभी उच्च न्यायालयों, सभी राज्यों के महा-न्यायादालयों तथा महा-अधिवक्ताओं, सभी विधिज्ञ परिषदों, विधिज्ञ संस्थाओं, कलकत्ता

विधिज्ञ गृहालय तथा कुछ प्रमुख विधिसंस्थाओं, संस्थानों को पत्र लिखे जायें और विधेयक के उपबन्धों के सम्बन्ध में उनके विचार मांगे जायें, समिति ने पत्र के प्रारूप (अनुबन्ध II) का अनुमोदन किया ।

4. समिति ने यह भी इच्छा व्यक्त की कि विधि मंत्रालय एक नोट प्रस्तुत करे जिसमें ब्रिटेन, अमेरिका तथा अन्य देशों के उच्चतम न्यायालयों के आपराधिक क्षेत्राधिकार से संबंधित विधि के उपबन्धों का तुलनात्मक विवरण दिया गया हो ।

5. समिति ने विधेयक पर सण्डवार विचार करने के लिये सोमवार, 14 जुलाई, 1969 से प्रतिदिन 3.30 म.पू. तजे बैठने का निश्चय किया ।

6. समिति ने यह भी निश्चय किया कि सदस्यों को विधेयक में संगोचन की सूचनारं, यदि कोई हों तो, सोमवार, 30 जून, 1969 तक भेज देनी चाहिए ।

7. इसके बाद समिति की बैठक सोमवार, 14 जुलाई, 1969 को म.प. 3.30 तजे पुनः सम्वेत होने के लिये स्थगित हुई ।

अनुबन्ध I

लोक सभा सचिवालय

संसद् सदस्य श्री आनन्द नारायण गुल्ला के उच्चतम न्यायालय के अपीलीय (आपराधिक) क्षेत्राधिकार का विस्तार विधेयक, 1968 के सम्बन्ध में प्रवर समिति ने श्री नि. चं. चटर्जी संसद् सदस्य, की अध्यक्षता में आज अपनी पहली बैठक में यह निर्णय किया कि ऐसे सार्वजनिक विकास, विधिज्ञ परिषदें, उच्च न्यायालय विधिज्ञ संघ तथा अन्य व्यक्ति जो इस विधेयक के सम्बन्ध में कोई ज्ञापन-पत्र समिति के विचारार्थ भेजने के इच्छुक हों, वे अपने अपने ज्ञापन-पत्र की 35 प्रतियां भेजें और ये प्रतियां सचिव, लोक-सभा सचिवालय, संसद भवन, नई दिल्ली को 31 मई, 1969 तक अथवा इससे पहले पहुंच जायें। समिति को भेजे जाने वाले ज्ञापन समिति के अभिलेखों का अंगूठा लगाया जाएगा और इसे नितान्त गोपनीय समझा जाना चाहिये तथा इसे किसी भी व्यक्ति को परिचालित नहीं किया जाना चाहिए क्योंकि ऐसा कृत्य समिति के विशेषाधिकारों का उल्लंघन समझा जाएगा।

लोक-सभा में प्रस्तुत रूप में उच्चतम न्यायालय के अपीलीय (आपराधिक) क्षेत्राधिकार का विस्तार विधेयक, 1968 भारत के राजपत्र, असाधारण, भाग दो, खण्ड 2 में 15 नवम्बर, 1968 को प्रकाशित किया गया।

नई दिल्ली ;

दिनांक 30 अप्रैल, 1969।

परिशिष्ट - दो

लोक-सभा सचिवालय

संसद भवन,
नई दिल्ली-1

संख्या 15।1।सी.आई.आई.।69

1 मई, 1969

11 वैशाख, 1891 (शक)

प्रेषक

श्री मेहरचन्द चावला,
उप-सचिव ।

सेवा में

1. मुख्य सचिव,
सभी राज्य सरकारों।संघ राज्य क्षेत्र ।
2. भारत के महान्यायवादी,
नई दिल्ली ।
3. सभी राज्यों के महाधिवक्ता ।
4. रजिस्ट्रार
उच्चतम न्यायालय।सभी उच्च न्यायालय ।
5. सचिव,
भारत की विधिज परिषद्।उच्चतम न्यायालय
वकील परिषद्।सभी राज्य विधिज परिषद्।
सभी उच्च न्यायालय वकील-परिषद् ।
6. सचिव ,
भारतीय विधि संस्थान, नई दिल्ली ।
भारतीय लोक-प्रशासन संस्थान, नई दिल्ली।
संवैधानिक तथा संसदीय अध्ययन संस्थान,
नई दिल्ली।अन्तर्राष्ट्रीय विधि की भारतीय
संस्था, नई दिल्ली।इन्कारपोरेटेड ला सोसाइटी,

कलकत्ता।विधिवेत्ताओं का अन्तर्राष्ट्रीय आयोग,
नई दिल्ली।वकील-गुन्नालय, उच्च न्यायालय,
कलकत्ता ।

विषय : श्री आनन्द नारायण मुल्ला, संगद सदस्य के उच्चतम
न्यायालय के अपीलीय (आपराधिक) क्षेत्राधिकार का
विस्तार विधेयक, 1968 संबंधी प्रवर समिति ।

महोदय,

मुझे यह बताने का निदेश मिला है कि उच्चतम
न्यायालय के अपीलीय (आपराधिक) क्षेत्राधिकार का विस्तार
विधेयक, 1968 सम्बन्धी लोक सभा की प्रवर समिति ने, अपनी
30 अप्रैल, 1969 को हुई अपनी बैठक में यह निर्णय किया कि
सभी राज्य सरकारों।संघ राज्यक्षेत्रों, उच्चतम न्यायालय, उच्च
न्यायालयों और सभी विधिज्ञ परिषदों।वकील - परिषदों
आदि आदि को लिखा जाये कि यदि वे चाहें तो उच्चतम
न्यायालय के अपीलीय (आपराधिक) क्षेत्राधिकार का विस्तार
विधेयक, 1968 के उपबन्धों के सम्बन्ध में अपने अपने विचार अथवा
सुफाव समिति के विचारार्थ लोक सभा सचिवालय, संसद भवन,
नई दिल्ली के सचिव के पास 31 मई, 1969 तक भेज दें ।

2. उच्चतम न्यायालय के अपीलीय (आपराधिक) क्षेत्राधिकार
का विस्तार विधेयक, 1968, लोक-सभा में पेश किये हुए हैं,
भारत के असाधारण गजट, भाग दो, दिनांक 15 नवम्बर, 1968
में प्रकाशित हुआ था । तथापि, विधेयक की एक प्रति अवलोकनार्थ
भेजी जाती है ।

3. यदि कोई विचार अथवा सुफाव भेजने का प्रवर समिति
के सदस्यों में परिचालित करने के लिए कृपया उनकी 35 प्रतियां
भेजी जायें ।

भवदीय,

ह0- मेहरचन्द चावला

संलग्न पत्र - एक

उप-सचिव

दो

दूसरी बैठक

समिति की बैठक सोमवार, 14 जुलाई, 1969 को
15.30 बजे से 16.30 बजे तक हुई।

उपस्थित

श्री नि. चं. चटर्जी - समापति

सदस्य

2. श्री कृष्ण कुमार चटर्जी
3. श्री सी. सी. देसाई
4. श्री श्रीचन्द्र गोयल
5. श्री विक्रम चन्द्र महाजन
6. श्री मोलानाथ मास्टर
7. श्री बाकर अली मिर्जा
8. श्री ही. ना. मुकजी
9. श्री आनन्द नारायण मुल्ला
10. श्री के. आनन्द नम्बियार
11. श्री मृत्युंजय प्रसाद
12. श्री शिव नारायण
13. श्री नैत्तैटि विश्वनाथ
14. चाँधरी रणधीर सिंह

श्री मोहम्मद युनुस सलीम (विशेष निमंत्रण द्वारा)

गृह- मंत्रालय के प्रतिनिधि

श्री के. पी. सिंह, अवर सचिव

विधि मंत्रालय के प्रतिनिधि

1. श्री पी.एल. गुप्त, अतिरिक्त विधायी सलाहकार विधि मंत्रालय
2. श्री ए.जी. नम्बियार, उप-विधि सलाहकार, विधि मंत्रालय ।

सचिवालय

श्री मैहर चन्द चावला - उप-सचिव

2. सर्वप्रथम समापति महोदय ने श्री पी. गोविन्द मेनन, विधि तथा समाज कल्याण मंत्री से प्राप्त उनका 11 जुलाई, 1969 का पत्र समिति के सामने पढ़ा जिसमें संविधान के इस सिद्धान्त की ओर समिति का ध्यान दिलाया गया है कि उच्चतम न्यायालय को आपराधिक अपील अनुबन्ध का एक नियमित न्यायालय नहीं बनाया जाना चाहिए। थोड़ी-बहुत चर्चा के बाद समिति ने विधेयक के उपबन्धों पर निम्नलिखित गवाहों के विचार सुनने के बाद विषय के इस पहलु पर विचार करने का निश्चय किया :

(एक) श्री ए.एस.आर. चारी, वरिष्ठ एडवोकेट,
उच्चतम न्यायालय ।

(दो) श्री नुरुद्दीन अहमद, बार-एट-ला, वरिष्ठ एडवोकेट,
उच्चतम न्यायालय ।

उसके बाद समापति महोदय ने लोक-सभा के प्रक्रिया तथा कार्य संचालन सम्बन्धी नियमों के नियम 209 के अधीन उप-विधि मंत्री, श्री मोहम्मद युनुस सलीम को समिति के सम्मूह अपना प्राण देने के लिए कहा ।

3. समिति ने यह इच्छा व्यक्त की कि विधि मंत्रालय द्वारा उन्हें निम्नलिखित जानकारी उपलब्ध करायी जाये :

- (क) देश भर में 1 जनवरी, 1968 से 31 दिसम्बर, 1968 तक निरीक्षण अदालत अथवा अपीलीय न्यायालयों द्वारा अपराधी को निर्दोष ठहराये जाने के आदेश के विरुद्ध उच्च न्यायालयों में कितनी अपीलें दायर की गईं ;
- (ख) कितनी अपीलें में विभिन्न न्यायालयों द्वारा उसी अवधि के दौरान अपराधी को निर्दोष ठहराये जाने के आदेश को अस्वीकार कर दिया गया ;
- (ग) ऊपर (ख) में बताये गये मामलों में से कितने मामलों में मृत्यु-दण्ड दिया गया और कितने मामलों में जीवन कारावास का दण्ड दिया गया ।

4. समिति ने अपना प्रतिवेदन लोक-सभा के शरदकालीन सत्र (1969) के पहले दिन तक प्रस्तुत करने के लिए अनुमति मांगने का भी निश्चय किया क्योंकि उनके लिए इतने थोड़े समय में विधेयक के सभी पहलुओं पर विचार करना और आगामी सत्र के पहले दिन अर्थात् 21 जुलाई, 1969 तक अथवा प्रतिवेदन प्रस्तुत करना सम्भव नहीं हो सकेगा । समिति ने समाप्ति महोदय को और उनकी अनुपस्थिति में श्री श्रीचन्द्र गोयल, संसद् सदस्य को सदन में इस सम्बन्ध में आवश्यक प्रस्ताव प्रस्तुत करने के लिए प्राधिकृत किया ।

5. उसके बाद समिति की बैठक पैरा 2 में उल्लिखित गवाहों की मौखिक सहाय्य लेने के लिए शनिवार, 19 जुलाई, 1969 तक के लिए सहमति हुई ।

अनुबंध

(प्रवर समिति की दूसरी बैठक के कार्यवाही-सारांक के पैरा
2 को देखिए)

डी. ओ. एफ. 421(1) 1685

पी. गोविन्द मेनन (मुहर)

विधि तथा समाज
कल्याण मंत्री, भारत
नई दिल्ली

11 जुलाई, 1969

प्रिय श्री चटर्जी

सन्दर्भ : श्री ए. एन. मुल्ला द्वारा प्रस्तावित उच्चतम न्यायालय
के अपीलीय (आपराधिक) क्षेत्राधिकार विस्तार विधेयक, 1968 पर
विचार करने के लिए 14-7-1969 को 3.30 म.प. वजे लोक सभा
की प्रवर समिति की बैठक ।

मैं, विधेयक के प्रस्तावक से सहमत हूँ कि संविधान के
अनुच्छेद 134 (1)(क) और (ख) के अन्तर्गत आने वाले मामलों में
अभियुक्त को अपील करने का अधिकार होना चाहिए और यह
अधिकार उच्च न्यायालय द्वारा उसको मृत्यु दंड दिये जाने के मामले
तक ही सीमित न होकर आजन्म कैद के सिलसिले में भी लागू होना
चाहिए ।

2. यदि प्रस्तुत किये गये रूप में विधेयक दस वर्ष या उससे
अधिक के दंड के मामलों में नियमित अपीलें करने की आज्ञा देने के
उपबन्ध के साथ पारित हो जाता है तो उच्चतम न्यायालय के पास
ऐसी अनेक आपराधिक अपीलें पहुंचेंगी और उच्चतम न्यायालय एक
नियमित आपराधिक अपील न्यायालय बन जायेगा । मुझे नहीं
मालूम कि आपने इस पहलू पर भी विचार किया है या नहीं ।
दंड संहिता को देखने पर पता चलेगा कि संहिता में विभिन्न 87
अपराधों के लिए 10 वर्ष या उससे अधिक दंड का उपबन्ध है ।

इस प्रकार के अपराधों की एक सूची इस पत्र के साथ लगाई गई है।*

पहले ही अला
अला भेज दी
गई है।

3. उच्चतम न्यायालय को एक नियमित आपराधिक अपील न्यायालय बनाने की हमारे संविधान की नीति नहीं है। अनुच्छेद 134(2) में भी इस सिद्धान्त की चर्चा की गई है कि जहां तक संभव हो आपराधिक अपीलों को उच्चतम न्यायालय में जाने से रोका जाए।

4. जहां उच्च न्यायालयों के निर्णयों में आजन्म कागजात के स्थान पर कोई हल्की सजा दी गई हो, उन मामलों में, मैं सम्मत्ता हूँ कि अनुच्छेद 134(1) (ग) और अनुच्छेद 136 में जो उपबन्ध किये गये हैं, वह उसके उपचार के लिये काफी होंगे।

5. मुझे खेद है कि मैं प्रवर समिति की 14 तारीख को तैतक में उपस्थित नहीं हो सकता। मैंने आपको पहले ही बता दिया है। मेरा अभिप्राय आपके या समिति के किसी सदस्य के प्रति अशिष्टता दिखाने का नहीं है। मेरा विश्वास है कि समिति को आप मेरा दृष्टिकोण बता देंगे।

धन्यवाद

आपका ही

हस्ताक्षर (पी. गोविन्द मेनन)

श्री एन. सी. चटर्जी
समापति, प्रवर समिति, लोकसभा
संसद भवन, नई दिल्ली

III

तीसरी बैठक

समिति की बैठक शनिवार, दिनांक 19 जुलाई, 1969
को 16.00 बजे से 17.30 बजे तक हुई ।

उपस्थित

श्री एन. सी. चटर्जी - समापति

सदस्य

2. श्री श्रीचन्द गोयल
3. श्री तुलसीदास दासप्पा
4. श्री विक्रम चन्द महाजन
5. श्री भोलानाथ मास्टर
6. श्री पी. गोविन्द मेनन
7. श्री टाकर अलो मिर्जा
8. श्री आनन्द नारायण मुल्ला
9. श्री के. आनन्द नम्बियार
10. श्री मृत्युंजय प्रसाद
11. श्री शिव नारायण

विधि मंत्रालय के प्रतिनिधि

1. श्री पी. एल. गुप्ता, अतिरिक्त विधायी सलाहकार,
विधि मंत्रालय ।
2. श्री ए. जी. नम्बियार, उप विधि सलाहकार, विधि मंत्रालय

सचिवालय

श्री एम. सी. चावला - उप-सचिव

2. भारत के नई दिल्ली स्थित उच्चतम न्यायालय के वरिष्ठ अधिवक्ता श्री ए. एस. आर. चारी के साक्ष्य लेने से पहले समापति ने उनका ध्यान अध्यक्ष महोदय के निर्देशों के निर्देश 58 की ओर दिलाया ।

3. साक्ष्य का शब्दशः रिकार्ड रखा गया ।

उसके बाद समिति की बैठक स्थगित हुई ।

समिति की बैठक मंगलवार, 26 अगस्त, 1969 को 16.15
वजे से 16.50 वजे तक हुई।

उपस्थित

श्री एन. सी. चटर्जी - सभापति

सदस्य

१. श्री कृष्ण कुमार चटर्जी
३. श्री सी. सी. देसाई
४. श्री श्रीचन्द गोयल
५. श्री तुलसीदास दासप्पा
६. श्री एस. एम. कृष्ण
७. श्री विक्रम चन्द महाजन
८. श्री भोलानाथ मास्टर
९. श्री पी. गोविन्द मेनन
१०. श्री ही. ना. मुकर्जी
११. श्रीमती शारदा मुकर्जी
१२. श्री आनन्द नारायण मुल्ला
१३. श्री मृत्युंजय प्रसाद
१४. श्री के. नारायण राव
१५. श्री शिव नारायण
१६. श्री तेन्नेटि विश्वनाथन
१७. चाँधरी रणधीर सिंह

विधि मंत्रालय के प्रस्तनिधि

१. श्री पी. एल. गुप्ता, अतिरिक्त विधायी सलाहकार,
विधि मंत्रालय।

2. श्री ए. जी. नम्बियार, उप-विधि सलाहकार,
विधि मंत्रालय ।
3. श्री एच. सी. गुप्ता,
सहायक विधि सलाहकार,
विधि मंत्रालय ।

सचिवालय

श्री एम. सी. चावला - उप-सचिव

2. सभापति की अनुपस्थिति में, जिन्हें विशेषाधिकार समिति की बैठक में रोक लिया गया था, समिति ने लोक-सभा में प्रक्रिया तथा कार्यवाही संचालन संबंधी नियम 258(3) के अनुसार बैठक के लिए श्री शिव नारायण को सभापति के रूप में कार्य करने के लिए चुना ।

3. समिति ने संविधान के अनुच्छेद 134 और 136 के संदर्भ में प्रस्तावित विधान की विभिन्न बातों को पार करने में होने वाली बातों पर विचार किया । विधि मंत्री ने समिति को सूचित किया कि विधि आयोग ने दण्ड प्रक्रिया संहिता की पुनरीक्षा लगभग समाप्त कर ली है और जो सिफारिशों की जाने की संभावना है उनमें से एक उन मामलों में उच्चतम न्यायालय को अपील के अधिकार के बारे में है जिनमें उच्च न्यायालय ने सि युक्ति का आर्डर उलट दिया और उच्च न्यायालय ने अपराधी को आजीवन कारावास का दण्ड दे दिया । उन्होंने सुझाव दिया कि यह निर्णय समिति करेगी कि विधि आयोग के प्रतिवेदन को देखते हुए इस विधेयक पर आगे कार्यवाही की जाये अथवा नहीं । उन्होंने समिति को आश्वासन दिया कि सरकार विधि आयोग के प्रतिवेदन पर सावधानी से विचार करेगी और दण्ड प्रक्रिया संहिता में संशोधन कर के इसकी सिफारिशों को अमल में लाने के उद्देश्य से उपयुक्त विधान संसद के सामने लाया जायेगा

(इस समय श्री एन. सी. चटर्जी पीठासीन हुए).

4. इसके बाद समिति ने अपने भावी कार्यक्रम पर विचार किया और विधेयक पर खण्डवार विचार करने के लिए 29 और 30 सितम्बर, 1969 को हर रोज़ 9.30 बजे समवेत होने का निर्णय लिया। यह भी निर्णय लिया गया कि सरकार को 8 सितम्बर, 1969 तक अपने संशोधन, यदि कोई हो, समिति को उपलब्ध कर देने चाहिए और सदस्य संशोधनों की सूचनाएँ, यदि कोई हो, 19 सितम्बर, तक भेज सकते हैं।

5. इसके बाद समिति की बैठक स्थगित हुई।

पांचवीं बैठक

समिति की बैठक सोमवार, 29 सितम्बर, 1969 को
09.30 बजे से 10.45 बजे तक हुई ।

उपस्थित

श्री एन. सी. चटर्जी, - सभापति

सदस्य

2. श्री कृष्ण कुमार चटर्जी
3. श्री सी. सी. देसाई
4. श्री शिवा जी राव एस्. देशमुख
5. श्री श्रीचन्द गोयल
6. श्री तुलसी दास दासप्पा
7. श्री विष्णु चन्द महाजन
8. श्री लालू अली मिर्जा
9. श्री ही. ना. मुकजी
10. श्रीमती शारदा मुकजी
11. श्री आनन्द नारायण मुल्का
12. श्री मृत्युंजय प्रसाद
13. श्री के. आनन्द नम्बियार
14. श्री शिव नारायण
15. श्री तेन्नेटि विश्वनाथन

विधि मंत्रालय के प्रतिनिधि

1. श्री पी. एल. गुप्ता,
अतिरिक्त विधायी सलाहकार,
विधि मंत्रालय ।

2. श्री ए. जी. नम्बियार,
उप-कानूनी सलाहकार,
विधि मंत्रालय ।
3. श्री एम. सी. गुप्ता,
सहायक कानूनी सलाहकार,
विधि मंत्रालय ।

सचिवालय

श्री एम. सी. चावला - उप-सचिव

2. समिति को सूचित किया गया कि विधि मंत्री, जो बम्बई गये हुए थे, आज प्रातः लॉट नहीं सके । मंत्री महोदय की अनुपस्थिति में समिति ने उन संशोधनों पर सामान्य चर्चा की जिनकी सूचना मंत्री महोदय द्वारा दी गई थी । यह निर्णय लिया गया कि आज की कार्यवाही की एक प्रति विधि मंत्री को भेजी जानी चाहिए ताकि समिति की कल होने वाली बैठक में विधेयक पर खण्डवार विचार करने से पहले मंत्री महोदय इसके सम्बन्ध में सदस्यों द्वारा प्रकट किये गये विभिन्न विचारों पर अपनी प्रतिक्रिया से समिति को अवगत करा सकें ।

3. उसके बाद समिति की बैठक मंगलवार, 30 अक्टूबर, 1969 के 10.00 बजे तक के लिए स्थगित हुई ।

कः

कृठी बैठक

समिति की बैठक मंगलवार, 30 अक्टूबर, 1969 को 10.00 बजे से 11.50 बजे तक हुई।

उपस्थित

श्री भि. च. चटर्जी - समापति

सदस्य

2. श्री सी. सी. देसाई
3. श्री शिवाजीराव एस. देशमुख
4. श्री श्रीचन्द्र गोयल
5. श्री तुलसीदास दासपा
6. श्री एस. एम. कृष्ण
7. श्री पी. गोविन्द मेनन
8. श्री बाकर अली मिर्जा
9. श्रीमती शारदा मुर्जी
10. श्री आनन्द नारायण मुल्ला
11. श्री के. आनन्द नम्बियार
12. श्री मृत्युंजय प्रसाद
13. श्री के. नारायण रेड्डी
14. श्री शिव नारायण
15. श्री तेन्नेटि विश्वनाथम्

विधि मंत्रालय के प्रतिनिधि

1. श्री पी. एम. बरखी, संयुक्त सचिव एवं विधि परामर्शदाता,
विधि मंत्रालय।
2. श्री पी. एल. गुप्त, अतिरिक्त विधायी सलाहकार,
विधि मंत्रालय।

3. श्री ए. जी. नम्बियार, उप विधि सलाहकार, विधि मंत्रालय ।
4. श्री एच. सी. गुप्त, सहायक विधि सलाहकार, विधि मंत्रालय ।

सचिवालय

श्री एम. सी. चावला - उप-सचिव

2. समिति ने विधेयक में उन संशोधनों पर आगे विचार आरंभ किया जिनकी सूचना विधि मंत्री द्वारा दी गई थी। अन्य बातों के साथ साथ मंत्री महोदय ने यह भी बताया कि दण्ड प्रक्रिया संहिता के संशोधन संबंधी विधि आयोग के प्रतिवेदन को देखते हुए जिसमें विधेयक की विषय वस्तु के बारे में उचित उपबन्ध रखने की सिफारिश की गई है, विधेयक पर आगे कार्यवाही करने से कोई लाभ नहीं होगा। उन्होंने प्रस्तावक से विधेयक वापस लेने का अनुरोध किया। सदस्यों की राय थी कि इस स्थिति में विधेयक वापस नहीं लिया जा सकता और काफी समय तक विचार का चुकने के बाद उन्हें इस पर विचार पुनः करना चाहिए। प्रस्तावक विधेयक वापस लेने के लिए तैयार नहीं हैं।

3. तत्पश्चात् समिति ने विधेयक पर खण्डवार विचार आरंभ किया।

4. खण्ड 2 - (एक) निम्न संशोधन स्वीकृत हुआ :-

पृष्ठ 2, पंक्ति 1,

अपील उच्चतम न्यायालय को की जा सकेगीके स्थान पर -

संविधान के अनुच्छेद 134 के खण्ड (1) के अनुसार उच्चतम न्यायालय को प्राप्त अधिकारों के बावजूद उच्चतम न्यायालय को अपील की जा सकेगी ;

(दो विधि मंत्री द्वारा रखे गए निम्न संशोधन स्वीकृत नहीं हुए :-

(क) पृष्ठ 2, पंक्ति 5-6

अथवा दस वर्ष या दस वर्ष से अधिक का कारावास हटा दिया जाए।

(ख) पृष्ठ 2, पंक्ति 10-11,

अथवा दस वर्ष या दस वर्ष से अधिक का कारावास
हटा दिया जाए

विधि मंत्री विधेयक के प्रस्तावक के इस मत से सहमत थे कि जहां उच्च न्यायालय द्वारा अपील पर अभियुक्त को दोषमुक्त किए जाने के आदेश को रद्द करके उसे आजीवन कारावास का दण्ड दिया गया है उसके विरुद्ध अपील की जा सकती है। वह इस बात से भी सहमत थे कि जहां उच्च न्यायालय ने उसके अधीन किसी न्यायालय द्वारा सुनवाई के लिए भेजे गए मामले को वापस लेकर अभियुक्त को दोषी ठहराते हुए उसे आजीवन कारावास का दण्ड दिया हो फिर भी ऐसे मामले की अपील उच्चतम न्यायालय में की जा सकती है। वह इन मामलों में से किसी में भी अपील का अधिकार देने के लिए सहमत नहीं थे जिसमें आजीवन कारावास से कम अवधि के लिए दण्ड दिया गया हो।

खण्ड 2, संशोधित रूप में, स्वीकृत हुआ।

5. खण्ड 1 - निम्नलिखित संशोधन स्वीकार कर लिया गया :
पृष्ठ 1, पंक्ति 3-4 के स्थान पर यह जोड़ा जाए :

(1) इस अधिनियम का नाम उच्चतम न्यायालय
(आपराधिक अपीलीय क्षेत्राधिकार का विस्तार)
अधिनियम, 1969 होगा।

खण्ड 1, संशोधित रूप में, स्वीकृत हुआ।

6. अधिनियम सूत्र - निम्न संशोधन स्वीकार कर लिया गया :--
पृष्ठ 1 में 'उन्नीसवें' के स्थान पर 'बीसवें' जोड़ा जाए।
अधिनियम सूत्र, संशोधन रूप में स्वीकृत हुआ।

4 पंक्ति 1

7. पुराना नाम पुराना नाम विना किसी संशोधन के स्वीकृत हुआ।

8. समिति ने विधार्ह परामर्शदाता को विधेयक छोटी-मोटी गलतियों को ठीक करने और आनुषंगिक तथा मसौदे संबंधी अशुद्धियां ठीक करने का प्राधिकार दिया ।

9. समिति ने निर्णय किया कि उनके समझ दिए गए राज्य कृपा कर समा-पटल पर रखा जाए ।

10. समिति ने यह भी निर्णय किया कि विधेयक पर उनको प्राप्त ज्ञापनों को समा-पटल पर रखा जाए और स्टर्न द्वारा अवलोकन के लिए इन्हें संसद ग्रंथालय में भी रखा जाए ।

11. इसके पश्चात समाप्ति ने समिति का ध्यान प्रक्रिया नियमों के अधीन अध्यक्ष द्वारा विभिन्न टिप्पणों के बारे में जारी किए गए निर्देशों के निर्देश 87 की ओर समिति का ध्यान दिलाया और यह घोषणा की कि सदस्य यदि कोई विभिन्न टिप्पण देना चाहें तो सोमवार, 17 नवम्बर, 1969 को 10.00 बजे तक दे सकते हैं ।

12. समिति ने प्रारूप प्रतिवेदन पर विचार करने के लिए अपनी आगामी बैठक शनिवार, 15 नवम्बर, 1969 को 16.00 बजे करने का निर्णय किया ।

13. इसके बाद समिति की बैठक समाप्त हुई ।

सातवीं बैठक

समिति की बैठक शनिवार, 15 नवम्बर, 1969 को
16-00 बजे से 16-45 बजे तक हुई।

उपस्थित

श्री नि. चं. चटर्जी - सभापति

सदस्य

2. श्री कृष्ण कुमार चटर्जी
3. श्री शिवाजी राव एस. देशमुख
4. श्री तुलसीदास दासप्पा
5. श्री विक्रम चन्द महाजन
6. श्री भोला नाथ मास्टर
7. श्री पी. गोविन्द मेनन
8. श्री बाकर अली मिर्जा
9. श्री डी. ना. मुकजी
10. श्री आनन्द नारायण मुल्ला
11. श्री मृत्युंजय प्रसाद
12. श्री ज्ञान नारायण
13. श्री तेन्नेटि विश्वनाथम

विधि मंत्रालय के प्रतिनिधि

1. श्री पी. एल. गुप्त, अतिरिक्त विधाई सलाहकार,
विधि मंत्रालय।
2. श्री दलीप सिंह, उप-विधि सलाहकार।

सचिवालय

श्री मेहर चन्द चावला - उप सचिव ।

2. समिति ने संशोधित रूप में विधेयक पर विचार किया और उसे स्वीकार किया ।
3. इसके पश्चात समिति ने प्राकर प्रतियेदन पर विचार किया और इसे बिना किसी संशोधन के स्वीकार किया ।
4. सभापति ने घोषणा की कि समिति का प्रतियेदन लोकसभा को 17 नवम्बर, 1969 को प्रस्तुत किया जाएगा ।
5. सभापति ने यह भी घोषणा की कि सदस्य द्वारा यदि कोई विमर्च टिप्पण देना चाहें तो वे लोकसभा सचिवालय को सोमवार, 17 नवम्बर, 1969 को 10-00 बजे तक भेजे जा सकते हैं । सदस्यों को अपने विमर्च टिप्पणों को, यदि संभव हो तो, चार प्रतियाँ भेजने का अनुरोध किया गया ।
6. समिति ने सभापति और उसकी अनुपस्थिति में श्री तेन्नेटि विश्वनाथम् को यह अधिकार दिया कि वह प्रतियेदन प्रस्तुत करें और सदन तथा समिति द्वारा प्राप्त आपर्ना।अव्यावेदनों का सेट 17 नवम्बर, 1969 को सभा-पटल पर रखें ।
7. इसके बाद समिति की बैठक स्थगित हुई ।

LOK SABHA
SELECT COMMITTEE
ON
THE ENLARGEMENT OF THE APPELLATE
(CRIMINAL) JURISDICTION OF
THE SUPREME COURT BILL, 1968
BY SHRI ANAND NARAIN
MULLA, M. P.

EVIDENCE



LOK SABHA SECRETARIAT
NEW DELHI

November, 1969/Kartika, 1891 (Saka)

Price: 25 Paise

**SELECT COMMITTEE ON THE ENLARGEMENT OF THE APPELLATE
(CRIMINAL) JURISDICTION OF THE SUPREME COURT BILL, 1968
BY SHRI ANAND NARAIN MULLA, M.P.**

COMPOSITION OF THE COMMITTEE

Shri N. C. Chatterjee—*Chairman.*

MEMBERS

2. Shri Krishna Kumar Chatterji
3. Shri C. C. Desai
4. Shri Shivajirao S. Deshmukh
5. Shri Shri Chand Goyal
- *6. Shri Tulsidas Dasappa
7. Shri S. M. Joshi
8. Shri S. M. Krishna
9. Shri Krishnan Manoharan
10. Shri Vikram Chand Mahajan
11. Shri Bhola Nath Master
12. Shri P. Govinda Menon
13. Shri Bakar Ali Mirza
14. Shri H. N. Mukerjee
15. Shrimati Sharda Mukerjee
16. Shri Anand Narain Mulla
17. Shri K. Ananda Nambiar
18. Shri Mrityunjay Prasad
19. Shri K. Narayana Rao
20. Shri Sheo Narain
21. Shri Tenneti Viswanatham
22. Chaudhuri Randhir Singh.

LEGISLATIVE COUNSEL

1. Shri P. L. Gupta, *Additional Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*
3. Shri H. C. Gupta, *Assistant Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

*Appointed on the 14th May, 1969 *vice* Shri K. Hanumanthaiya resigned.

Witness Examined

Sl. No.	Name of Witness	Date of hearing	Page
I.	Shri A. S. R. Chari, Senior Advocate, Supreme Court of India.	19-7-1969	I

**SELECT COMMITTEE ON THE ENLARGEMENT OF THE APPELLATE
(CRIMINAL) JURISDICTION OF THE SUPREME COURT BILL, 1968 BY
SHRI ANAND NARAIN MULLA, M.P.**

**MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE ENLARGEMENT OF
THE APPELLATE (CRIMINAL) JURISDICTION OF THE SUPREME COURT BILL, 1968 BY
SHRI ANAND NARAIN MULLA, M.P.**

Saturday, the 19th July, 1969 at 16.00 hours.

PRESENT

Shri N. C. Chatterjee—*Chairman.*

MEMBERS

2. Shri Shri Chand Goyal
3. Shri Tulsidas Dasappa
4. Shri Vikram Chand Mahajan
5. Shri Bholu Nath Master
6. Shri P. Govinda Menon
7. Shri Bakar Ali Mirza
8. Shri Anand Narain Mulla
9. Shri K. Ananda Nambiar
10. Shri Mrityunjay Prasad
11. Shri Sheo Narain.

LEGISLATIVE COUNSEL

1. Shri P. L. Gupta—*Additional Legislative Counsel, Ministry of Law.*
2. Shri A. G. Nambiar, *Deputy Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Shri A. S. R. Chari—*Senior Advocate, Supreme Court of India.*

(The witness was called in and he took his seat).

MR. CHAIRMAN: I would like to mention about our rule here which says that the Chairman shall bring it to the notice of the witnesses that their evidence would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire

their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. I thank you for having come to give evidence. I think, you have seen Mr. Mulla's Bill. That was endorsed by the whole of India excepting three. One is Mr. Lal Narain Sinha. You may please have a look at his Opinion. Two judges of the

Allahabad High Court have gone against the Bill saying that it will reduce the Supreme Court to the status of a court of criminal appeal. These are the two opinions. I ought to read it to you to have your evidence.

SHRI CHARI: I wish to be enlightened on one point. Is it permissible for me to make a reasonable criticism of their view? I am not attacking.

SHRI NAMBIAR: You can say for and against the Bill. There will be no objection.

SHRI CHARI: First of all I must apologise for not having been able to submit a Memorandum. It would have been much better if I had planned to do so but I was kept busy during vacation.

I will open by expressing what I consider the fundamental insufficiency in the attitude towards criminal cases which is to be found expressed in the Constitution itself and which is mostly shared by many judges, by many people who have been administering justice in our country. This fundamental insufficiency arises from the fact that we have taken the restrictive provisions in respect of criminal cases which exist in England. This inadequacy on our part arises out of an unwillingness to recognise that in England the whole of justice is administered on the basis of the principle laid down in the Magna Carta, no freeman's liberty or property shall be taken away except according to the law of the land and the judgment of his peers. Both in Civil and Criminal cases in England jury is empanelled—whether it is a charge of offence or whether it is a civil dispute such as libel.

I think trial by jury is very good progressive procedure because the law as we all know, does not change according to the social conscience, according to the various developments that have taken place, with the result

that administration according to law of justice may not accord with the sense of justice that has developed in Society itself. That is why in England the verdict by the jury is binding upon the judge, however great the judge may be and, however, compared with him, the jurors may be of lesser intellect. This provision which exists in the administration of justice in England does not exist in our country now. However, in the past, a High Court judge trying a case with the jury on the original Criminal side in the High Court was bound by a unanimous verdict of the jury. That was final. Except for this all the jury's verdict in our country could be disregarded by the trial judge if he thought that it was perverse and refer the matter to the High Court. There is a provision by which the High Court gets jurisdiction to look into such cases.

The second aspect is this that the Criminal Appeal Act, 1907 in England constituted the court of Criminal Appeals where even verdicts by juries were brought up before the Court of Criminal Appeal if the Court of Criminal Appeal was satisfied that the jury has been mis-directed, and would look into the case where justice has suffered as a result of mis-direction. But one of the most important aspects of the law is the possibility of error in human judgement specially where the guilt of a person is held proved and a man is to be hanged. This responsibility is so grave that in England there is a provision by which if one appeals for mercy, and if the Secretary of State looking into the case thinks that there are certain aspects of the case that should be reconsidered, he could refer it to the Court of Criminal Appeal.

This is from Volume X, Third Edition Halsbury at page 523. I shall with your permission, read this portion.

"The criminal appeal Act of 1907 does not affect the prerogative on mercy by the Secretary of

State on the consideration of any petition for the exercise of the prerogative or of any representation made by any other person with reference to the conviction of a person or indictment or to the sentence (other than sentence of death) passed on a person so convicted, may at any time refer the whole case to the court of Criminal Appeal and the case must then be heard and determined by the Court as in the case of an appeal by a person convicted; or if the Secretary of State desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, he may refer any point arising, in such a case to the Court for their opinion and the Court must consider the point so referred and furnish the Secretary of State with their opinion. The Secretary of State may refer the case or any point arising on the case to the Court whether or not the convicted person has petitioned for the exercise of mercy. On a reference of the whole case the court receives fresh evidence more readily than on an appeal in the ordinary way".

Such a person gets the opportunity once again of having the case completely dealt with by the Court of Criminal Appeal. Such a provision exists in order that any point which has not been noticed, may be looked into. After all, they are human problems and one aspect may strike one person sharply and it may not strike another person so sharply. So all these considerations come into play. In the light of such a provision in England, I would like to place before you with your permission, an incident here by way of Contrast. It is a case, a very important matter which came up before the Supreme Court of India from Gujarat. A certain person was charged with having murdered another and as you know when charged with murder there is ordinarily no bail, he is in

jail. He did not have relatives who were financially strong enough to assist him in the trial. He was unaided. According to our Law, where there is possibility of sentence of death then the accused can have a counsel provided by the State. A list of persons who are willing to do such case is maintained and the (the court) nominates the counsel for the accused. That took place a day before the instant case was to begin. The lawyer nominated, accepted the nomination given by the Court, but he was obviously unprepared, and did not cross-examine 2 or 3 of the most important witnesses in the case on the very first day nor did he ask for time to further study the case or to take instruction. At the end of the day the accused, realising that the counsel nominated for him was unable to cross-examine the witnesses, put in an application and said: I do not want this counsel; he has not cross-examined the main witnesses and I want this counsel to be discharged." On this application—curiously enough—the Public Prosecutor said: I do not agree with this suggestion. The Counsel who appeared for him also said, I do not agree with the suggestion. The accused said: Give me time to move the High Court in this matter. Remember, he was in jail all along and no other person assisted him. He said: I want time to go to the High Court. This was on a Thursday evening. On Friday morning he said. I want to go to High Court. The Session Judge said, I give you time but unless you get stay order on Monday I will go on with this matter. The person was in jail. Saturday and Sunday were holidays. It was quite impossible to bring any writ from the High Court on Monday.

MR. CHAIRMAN: He was being tried in....

SHRI A. S. R. CHARI: Gujarat. He had to go to Bombay, at that time, I think. But I am not sure. I do not remember exactly. He wanted time to go to High Court. He was unable to produce any writ on Monday. He

proceeded with the same counsel. It resulted in a sentence of death passed against him. When the case came up, in high court the same lawyer who appeared for him so far appeared for him in the appeal. The sentence of death against him was confirmed. The matter came up in the Supreme court by way of special leave. One of the judge was in favour of granting special leave on the ground that the fellow does not seem to have had proper opportunity and let us consider the whole case ourselves whether there is miscarriage of justice. Two other judges said, no. And, presiding judge, Mr. Gajendragadkar said, reject it. Then Justice Madholkar said "I want my dissent to be noted" and then the presiding judge said, "rejected by a majority". Then the condemned man sent mercy petition to the President setting out the whole case and that mercy be shown to him. The President was Dr. Radhakrishnan. He thought that the fundamental right of the accused under the constitution to have a counsel of his choice had been denied to him. And therefore he instructed the Law Ministry to do something in the matter. A review petition was filed on behalf of the person in the Supreme Court. Review petitions have to go before the same Bench. That is the rule. It went before same bench. The then Additional Solicitor-General Mr. Gupte was instructed by the Law Ministry to appear for the Union Government and say we support the application by the accused for a review. Justice Gajendragadkar said, what is this review for? If you are not inclined to consider that it should be reviewed; then, treat it as a writ petition claiming that one's fundamental right has been violated by the judicial process. To this Justice Ganjendragadkar was very emphatic when he said "nothing of the kind. This is a most important question of fundamental right. We shall decide this in another case." But there could not be a better case than this. Mr. Gupte, then got up and said "I am instructed on behalf of the Government of India

to say that we support it that there should be a review of the case" Supreme Court was adamant. It rejected the petition.

I think the President exercises this power only in emergency and I want just to emphasize two things—firstly the man who is sentenced to death can be allowed to be sentenced to death even though there may be a very good point in his case and even though the Supreme Court exercises the special powers for granting a special leave.

Secondly, in so far as we do not have for such heinous crimes the remedial provisions as we had when the Secretary of State could refer a case to the court to re-hear, there must be at least a restriction, if I may be permitted to put it—the discretionary power—to reject a petition.

Now I come to Shri Mulla's bill straightway. If you turn to Art. 133(1) of the Constitution, it says:

'An appeal shall lie to the Supreme Court from any judgment decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

- (a) that the amount of value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or.
- (b) that the judgement, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or.
- (c) that the case is a fit one for appeal to the Supreme Court.

These are the three conditions. Further it says:

"and, where the judgment, decree or final order appealed from

affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law."

It is further said:

"(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court."

It would be observed from above that where the value is Rs. 20,000 and where an appeal is sought against a reversing judgment of the high court there is a right of appeal. The Supreme Court has to hear that as a regular appeal.

SHRI MRITYUNJAY PRASAD:
There is no right for a special leave.

SHRI A. S. R. CHARI: Not as a matter of right. As far as article 134 is concerned it deals with criminal appeals. It says:

"134(1)). An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

- (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or,
- (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or,
- (c) certifies that the case is a fit one for appeal to the Supreme Court;

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require."

In the case of death sentence, it can certify that it is a fit case for appeal to the Supreme Court. But you will see the distinction made here. The person has got a right of appeal to the Supreme Court only if that is a case of reversal of an order of acquittal and passing of a death sentence on a person. I wish to raise one fundamental question as to why should Rs. 20,000 of a rich man be more valuable than 10 years' of man's life?

SHRI MRITYUNJAY PRASAD:
Was the appeal heard in the Supreme Court in the case cited?

SHRI A. S. R. CHARI: It was a case of special leave for appeal. Regular appeals are not permitted. It was not even a reversal of an order.

SHRI MRITYUNJAY PRASAD:
It was not a question of conviction after acquittal.

SHRI A. S. R. CHARI: This was not a case of conviction after acquittal. I only wanted to show how the Supreme Court exercises its power while granting special leave. It is not the case as if your rights are protected. There are many cases where it does not give special leave. Special leave is granted in exceptional cases. This is a discretionary power of the Supreme Court. Even some practising judges may say that a crime seems to have been committed. Let him go to the jail. Why should we hear his case? I am only saying that there are several points which require consideration. That is the point.

MR. CHAIRMAN: You have seen Shri Govinda Menon's statement the other day. There is an agreement more or less on this question.

SHRI A. S. R. CHARI: I agree with that.

MR. CHAIRMAN: He says that the Bill as introduced in the past had the provisions for regular appeals in case where the sentence was for ten years or more. There will be a large number of cases coming to the Supreme Court.

SHRI A. S. R. CHARI: I think that Mr. Menon's note said that where it is a reversal from acquittal, he agrees that there should not be any such provision but not with respect to ten years' sentence or over when it is only a confirmation. That is a different point. But it is not clear when he says 'if this is passed'. Whether 'if' means regular appeals in all cases of ten years and twenty years or it is restricted to cases of reversal of acquittals and passing of sentences over ten years or of withdrawal of cases. Mr. Menon's note may not mean that in all cases where a person is sentenced for ten years by a High Court there should be regular right of appeal. I would not agree with this.

MR. CHAIRMAN: Mr. Menon says that you should not bring to Supreme Court any regular criminal appeal. Article 134(1) merely says that an appeal shall lie to the Supreme Court in a criminal proceeding.

SHRI A. S. R. CHARI: I shall make my position clear. In the Bill as introduced by Shri Mulla, you will see that appeal lies only in cases where on reversal of acquittal the sentence is 10 years or more or death sentence.

SHRI A. N. MULLA: I say that the number of cases is only 51 in eight years. In eight to nine years ten is the maximum number of cases that have gone on appeal to the Supreme Court.

SHRI NAMBIAR: By doing so, the Supreme Court is not going to be overburdened with a lot of work.

SHRI A. S. R. CHARI: We shall now come to the question of the views expressed by Mr. Lal Narain

Sinha, Advocate General of Bihar and some of the judges of the Allahabad High Court. If there is any criticism on Mr. Mulla's bill, the basic point seems to me to be that there is no need and the Supreme Court can be trustee to grant special leave only in proper cases. That is how the attitude of the Supreme Court should be with regard to this. The fundamental question in this Bill is this. So far as Mr. Mulla's Bill as drafted is concerned, it is a necessary correction against gross discrimination that that should be introduced by means of a special appeal in respect of a judgment of reversal. You get the right of appeal even in a criminal case.

That is the point. That is the first point. This has nothing to do with the question whether Supreme Court can be trusted to give special leave because our constitution expects Supreme Court to function as a vigilant watch-dog of the people's liberties, their right to life and property. That is why provision is made in Mr. Mulla's Bill to bring the liberty of the person on a proper footing and not have this disproportionate view of property being considered more sacred than liberty or life of the citizen. That is my first submission. Speaking for myself I do not see why we should not have a provision in the bill itself because nothing is more sacred to our constitution and our people than each individual citizen. Why should we not have a provision that before any citizen is deprived of his life the Supreme Court should review his case and affirm the death sentence.

SHRI NAMBIAR: I have been under the impression that it is automatically done.

SHRI MRITYUNJAY PRASAD: High Court confirms every death sentence. Unless the high court confirms the district judge's orders are not final. It is not a question of appeal. Confirmation itself is in a sense an appeal.

MR. CHAIRMAN: Even if there is no appeal there will be a confirmation.

SHRI MRITYUNJAY PRASAD: Confirmation itself is in a way an opportunity of appeal to the accused.

MR. CHAIRMAN: I am speaking for myself. I see no reason why the citizen of India whose life is to be taken away should not ask of the Parliament, why should I not get an opportunity of the highest Court in the land to determine whether I should lose my life. Why I should not have a right? What will be your answer? Well, you say some other court has determined. Why do you make the Supreme Court for?

SHRI MRITYUNJAY PRASAD: You want to add that so far as high court is concerned it automatically looks into it but so far as the Supreme Court is concerned it has got to look into it provided the convict wants it to look into it.

SHRI A. N. MULLA: I may explain it. In every case of death there is confirmation by the High Court. It being a sentence of death the person who is convicted and is to be deprived of his life, should get a chance to go to Supreme Court and get justice from it. He is giving his personal opinion.

SHRI A. S. R. CHARI: For the last 10 years I have been handling the majority of death sentence cases. It is true that in 80 per cent of the cases the Supreme Court is not likely to decide anything different from what the High Court has done. In 20 per cent I have seen there are very good matters with very good points which Supreme Court can go into. There are two approaches possible. These judges read judgements of the high court. A judge can ask himself what do I feel, I mean, guilty or not-guilty. A judge may say, I am satisfied on reading the judgement. His attitude will be whatever point you say, he will say, there are eyewitnesses, they

have been believed, and that is the end of the matter. This is how one judge may react. Another may react on reading the judgement: I think the man is guilty but I won't make up my mind till I hear the counsel who speaks for the person. And if he is able to make out a good point I will grant special leave. Both the types exist in the Supreme Court. In all cases of death sentence the condemned man comes with that hope to the Supreme Court. Any citizen may feel, that where a person is under sentence of death there is no reason why the Government cannot appoint more judges if necessary and see that such cases are reviewed by the highest courts in the land and wherever there is death sentence there should be confirmation by the Supreme Court just as confirmation by the High court.

SHRI NAMBIAR: It can be amended in such a way. I got the impression the automatic right was there. It is not there. We can move amendment to Mr. Mulla's Bill.

SHRI A. S. R. CHARI: In case where special leave is granted you will find that there are several judgements confirming it but there are judgements which upset the concurrent findings and Supreme Court acquits the person. It means, it is not sufficient safeguard to see that high court confirms a death sentence. The very fact that Supreme Court acquits on a review means that a condemned man may say: "Look, here a person was sentenced, but the Supreme Court has acquitted. How do you know they will not do it in my case? Why don't you give me a chance?" Sufficient attention has not been brought to bear on that point. Look at the position even where a High Court grants a certificate. Then it says, "All right, we give you certificate."

There is this leading case of Khusal Rao, Appellant v. State of Bombay. I will read from page 25 of the 1958 AIR—Supreme Court. This is

by three judges: Sinha, Govinda Menon and Kapur. It is very important. "At the outset we must repeat what this court has observed in a number of appeals coming up to this court on certificates of fitness granted by High Courts, mainly on questions of fact. The main ground for the grant of the certificate may be reproduced in the words of the High Court itself.

"The main ground is that there is not enough evidence against the accused and that there is an error in our judgment in holding that there was no evidence to show that Khushal whose absconding has been able to corroborate the dying declaration, was involved in a liquor case. During the course of the argument neither side drew our attention to the documents which were in record; nor was any point made of it, though we questioned why the absconding should not be taken into consideration. Now it seems that there are one or two defence exhibits in which it has been shown that Khushal was not found in his house when he was wanted in a liquor case after a search on 5th February, 1956. In view of the fact that there is this error and the sufficiency of the evidence might be a matter for consideration in the light of this additional evidence, we think this is a fit case for a special certificate under Art. 134(1)(c) of the Constitution."

A fairly considerable point. It is clear that they dealt with the whole case, called several persons and then confirmed the sentence. Then, the question came up on the certificate. And the High Court felt that a different view could be taken.

Then the Supreme Court says: "It is clear that the High Court granted the certificate of fitness under Article 134(1)(c) of the Constitution not on any difficult question of law or procedure which it thought required to be

settled by this Court, but on a question which is essentially one of fact, namely, whether there was sufficient evidence of the guilt of the accused. The latest reported case of this Court bearing on this aspect of this appeal, is *Haripada Dey v. State of West Bengal*, 1936, SCR639; (S) AIR 1956 SC757-(A), to the effect that a High Court exceeds its power of granting a certificate of fitness under that article, if the certificate discloses that the main ground on which it was based, related to a question of fact, and that the High Court is not justified in sending up such a case for further consideration by this Court which does not, ordinarily, concern itself with deciding more questions of fact, unless such questions arise on a certificate granted under els. (a) or (b) of Art. 134(1) of the Constitution."

This is the law. That is the position. I have full support for Mr. Mulla's Bill. I also humbly suggest to you that you should have a provision with respect to the death sentence even if there are concurrent findings as to guilt and even if it means adding to the number of judges in the Court.

SHRI SHRI CHAND GOYAL: So far cases of reversal by the High Court are concerned, there are three views held. One, the scope of the Bill should be confined to cases in which sentence of death has been awarded, and not to the cases in which ten years or transportation of life has been awarded. This is the first view. Mr. Mulla's view is that it should relate to cases of 10 years or more. Now, the third view that has been expressed by some others is that this period should be revised even from ten years to, say, seven years.

With regard to these three views, which one, do you think, is desirable in the present circumstances of the society?

SHRI CHARI: In all cases of reversal and passing of sentence, ten years is a proper period, and a reasonable period. The question would not have arisen if the Supreme Court never acted as a final court of appeal in any matter. Then it would have been useless to give them the jurisdiction. At any rate, Rs. 20,000 should be equated at least to 10 years.

SHRI GOYAL: This view which is being expressed that if it is extended to 10 years or more, it is likely to bring more cases to the Supreme Court and increase its volume of work. Now we gather that such cases are not likely to be in great number.

SHRI CHARI: This is a question of reversion only. It need not be so comprehensive that Supreme Court will be flooded.

SHRI GOYAL: Where is the objection in bringing more appeals to the Criminal Court when similar cases can be brought to civil courts?

SHRI CHARI: I want to put not on the higher side but on the level of civil case. Why 20,000 rupees should be regarded as more important than 10 years of human life?

SHRI P. GOVINDA MENON: Regarding Rs. 20,000 in civil matters being the limit fixed for appeals, the Government's point of view on that matter would be this. This is for historical reasons. We know under the Privy Council Appeal Rules it was Rs. 10,000. When the Constitution was framed it was thought that the value of money having gone down, it should be fixed at Rs. 20,000. Now my thinking is that it should be raised to Rs. 50,000. There is a provision for that in that Article itself. Parliament may by legislation change that rule. I am fully aware of the importance of the point taken by Mr. Mulla, interpreted by you, with such supreme force. That Rs. 20,000 is referred to under Article 133.

Regarding Criminal Appeal the position is this. We have asked the Law Commission to draft a new Criminal Procedure and I had a discussion this morning before I came to this Committee with one Member of the Commission as to when it would be ready. He has promised to submit the report by the end of this month and our intention is to see that the Bill is introduced at least in the Winter Session of Parliament. Regarding this matter the High Court may in original jurisdiction convict persons. Although the original jurisdiction was taken away by Bombay and Madras and it is likely to be taken away by Calcutta by pronouncement there, it is open to the High Court to withdraw a case and try and pass a sentence. As it is there is no provision for an appeal where the High Court convicts and sentences a person to imprisonment, say for one year or six months. Therefore, in the new code which we are contemplating, we are providing that any such convicts on trial held by the High Court may appeal to the Supreme Court. When the sentence is six months or less, it may be treated as a petty case. Therefore, in that respect we are giving what is contained in Mr. Mulla's Bill. In Mulla's Bill it is 10 years or more—the appeal will lie. With respect to that matter the question which is intriguing me is this—whether there should be second appeal because there is Session Court Judgment. There is a High Court which has the first appeal. Supreme Court becomes the court of second appeal. In the Court of Civil Procedure, no second appeal lie to High Court under Articles 100 and 101 unless there is a question of . . .

SHRI CHARI: At present, Munsif Court or Lower Court and then District Court, High Court, High Court on second appeal, Supreme Court with Rs. 20,000—all this makes the fourth appeal in civil cases.

SHRI P. GOVINDA MENON: We are restricting. There will be no appeal to the High Court. That would be

revoked under 150 which under present decision are restricted in Court. Therefore, what Government feel is that the Supreme Court shall not be the Court of Second Appeal in criminal cases except in the matter of capital offence. That is why we say where on reversal a person is convicted and sentenced to death or even for transportation if life, we can introduce this. I will support Mr. Mulla's Bill to that extent although I will be requesting him to consider whether in view of the fact that we are making this Bill, he would refrain from going ahead with that Bill.

SHRI CHARI: In all industrial matters they come directly under 136. There is no intervening body now, after the Labour Tribunal has been dispensed with. If the idea is that the Supreme Court should not be a court of appeal, as such, regular appeal for any purpose is a different matter.

SHRI P. GOVINDA MENON: I said, a court of Second Appeal.

SHRI CHARI: I can say at least it has a merit of uniformity, but I will not, speaking for myself, be prepared to reconcile myself to the position that in certain matters it will function as the Court of Appeal but not as a Court of Second Appeal in criminal matters.

SHRI P. GOVINDA MENON: In criminal matters and in civil matters there is a reversal. In civil matter if the judgements are concurrent, even if it is Rs. 20 lakhs there is no appeal to the Supreme Court. Where the High Court reverses a judgement of the District Court and passes an order and if the subject matter in dispute is Rs. 20,000 and more, an appeal is provided under that Article. I appreciate the point raised i.e. Rs. 20,000 is so important compared to sentence of imprisonment for 10 years and more, we want to change to Rs. 50,000.

SHRI CHARI: I do not think you will be able to place an equitable value to a man's life.

SHRI P. GOVINDA MENON: That is a different matter. If Supreme Court goes wrong, what will you do? That is a point. So, High Court when sitting in appeal comes to a decision, unless reverses and sentences a man to death or transportation for life may make it Rs. 50,000. In order to give finality to this matter, Government will be helping in this Bill when it comes to Parliament.

SHRI A. N. MULLA: I thank you for the lucid and learned opinion which you have given to us as a very experienced lawyer on the criminal side. The first thing on which I would like to have your opinion is whether—cases in which the sentence of imprisonment for life or the appeals when finally they are represented by the lawyers—are they in greater percentage than the cases in which the sentence awarded to the accused is less than 20 years!

SHRI A. S. R. CHARI: Broadly speaking the risk is greater. If the case involves lesser risks...

SHRI P. GOVINDA MENON: If a rich man is sentenced he will come.

SHRI A. S. R. CHARI: Even if it is 6 months he will come.

SHRI A. N. MULLA: The provision is this. When an appeal is unrepresented the High Court judges can dismiss it in their chambers. It is not necessary that they should summon the record. They can dismiss it under judgment in the chambers.

SHRI A. S. R. CHARI: In general that is not my experience.

SHRI P. GOVINDA MENON: That is not my experience.

SHRI A. N. MULLA: That is my experience.

SHRI A. S. R. CHARI: I want to put the two questions separately. Suppose appeal from jail comes. There is no counsel. High Court does not order the man to be brought. It

looks into the judgement first to see whether there is any point. If there is no point they dismiss it. That is one point.

The second is this. There are such cases. On notice being given to accused, accused is represented by a counsel but they don't send for record. They hear argument and dismiss it. They come for special leave. They get special leave on the ground that the case raises arguable points and it should not have been dismissed without sending for the records...

SHRI A. N. MULLA: In unrepresented appeals the judges dismiss without even giving a spoken order.

SHRI CHARI: In Bombay it is done openly.

SHRI A. N. MULLA: I am saying it for certain reasons which I will place before the committee. In criminal cases in which sentence of less than 20 years are awarded to the offenders and they are unrepresented they have hardly come for hearing of their appeals even at the High Court stage, so that...

SHRI CHARI: That is so. I believe we are expanding the scope too much.

SHRI A. N. MULLA: In the years succeeding one after another, is it a fact that gradually the order of acquittal are now being equated with orders of conviction and high courts approach an appeal against a conviction almost in the same manner as an appeal of acquittal?

SHRI CHARI: I will state two things. There is no doubt at all that in the last 20 years after we attained our freedom the number of State appeals against acquittals is enormous. That has not been the case prior to independence. That is the point. What the reasons are, I am unable to say, but that is what happens, namely the general prevalence of more appeals against acquittals. The Supreme Court itself by shifting

the original test of the Privy Council which said that only for substantial and compelling reasons should the court of appeal interfere with the order of acquittal. They say, the powers of the High Court, whether it is appeal against acquittal or appeal against conviction, remains the same. In the exercise of the powers, however, the High Court would be required to deal with the reasons which the Session Judge gave for acquittal. That is the present stage in which you are left Mr. Mulla is right when he says appeal against acquittal are treated like appeal against conviction.

SHRI A. N. MULLA: Do you think that if special leave petitions presented to Supreme Court are not dismissed then there will be quite a number of appeals in which interference would be made by the Supreme Court?

SHRI CHARI: I will not say, appreciable. 80 per cent of the cases, whether admitted or rejected, do not require counsel at all. Cases speak for themselves. No counsel is needed. In 20 per cent of the cases, the counsel has a role to play. He can point out certain points in the case. But I think I will be failing in my duty if I do not express my view with respect to 20 per cent. The Supreme Court tends to be rather narrow, restrictive in its approach to granting special leave that I have spoken to the judges themselves and I wish to make it publicly.

MR. CHAIRMAN: Thank you.

SHRI VIKRAM CHAND MAHAJAN: It is stated that the Supreme Court should not become a court of second appeal. In many cases the Supreme Court is a court of second appeal. What is the basic objection?

SHRI CHARI: That is the question which you have to address to Mr. Menon. If the Supreme Court is permitted or required to act as a court

of second appeal in any case they should be allowed and they should be required to act as court of second appeal, I mean, final appeal in criminal cases also. I see no reason why discrimination should be made.

SHRI VIKRAM CHAND MAHAJAN: About the period of 10 years, can it be brought down to 7 or 5 years?

SHRI CHARI: Ten years is reasonable.

SHRI VIKRAM CHAND MAHAJAN: What is the principle?

SHRI CHARI: There is, whether you like it or not a natural sense of proportion in the crime and the punishment. There is the provision of that kind. We cannot ignore it altogether. We cannot say that the Highest Court in the land must be occupied with regular appeals for the sentence of 3 or 4 or 5 years as regular appeals, for that, you have to have a certain limit as you have a certain limit for everything else.

SHRI VIKRAM CHAND MAHAJAN: Under Art. 136, there is no such escape.

SHRI A. S. R. CHARI: Yes, there is no escape.

SHRI VIKRAM CHAND MAHAJAN: Why should this discretion be there under 136?

SHRI A. S. R. CHARI: The point is that under Art. 136 the right is not given but a duty is cast upon the Supreme Court to interfere in all cases where they think that their interference is necessary. They exercise the plenary powers to see that justice is done. I do not quarrel with 136.

SHRI P. GOVINDA MENON: Sometimes they used to say that this was done on some general principles.

SHRI A. S. R. CHARI: I am not very much in favour of laying down the general principles because these general principles tend to become fixed and the discretion becomes frozen.

SHRI P. GOVINDA MENON: That has been done only in industrial disputes cases.

SHRI NAMBIAR: Kindly let the Committee know as to what is the position now prevailing in America—whether all death sentence cases are being appealed against and is the right of appeal given to the Supreme Court? I find from news-papers—my knowledge of law is very limited—that there is appeal there.

SHRI A. S. R. CHARI: I would not off-hand give an opinion because I have not studied their procedure at all. Most of the cases that go to the Supreme Court relate to the constitutional question. For that there is an open door. Once the door is open, then the Supreme Court comes into it.

SHRI A. N. MULLA: In America so far as the cases of reversal against an order of acquittal are concerned, in some States, there is a provision to come in appeal against an order of acquittal. But in a majority of the States, no appeal can be filed against an order of acquittal. Even where the provision is there that an appeal can be filed against an order of acquittal, the percentage of appeals that is filed is very small. That is the American Law.

SHRI P. GOVINDA MENON: In criminal cases the decisions of the courts of appeal are final except where questions of constitutional law are involved.

SHRI A. N. MULLA: In South Africa, against an order of acquittal, it is permissible for the State to go in an appeal only to elucidate that the law was not correctly laid down. It

would not affect the case that has been decided. In future if such a case comes, this should be the law.

SHRI NAMBIAR: Mr. Chari, you told us just now that from your experience out of so many cases that come to the Supreme Court for special leave, special leave is not granted in 80% of the cases. That means roughly in 20% of the cases, special leave is granted.

SHRI A. S. R. CHARI: It is not like that. What I said was that the Supreme Court, in the case of a person who is sentenced to death, if he comes and says that the court should do some justice then it looks into it. But out of this, 80% of the cases are such that on a reading of them, the judges are able to make up their mind whether they should admit or reject them. For that even the Counsel cannot do anything. He cannot do anything more. He is not a magician. Whatever is existing in the case, if there are points which are arguable, the Supreme Court can go into them to determine whether justice has been done or not. In other cases also I say that there is reluctance on the part of the Supreme Court judges to grant special leave.

SHRI NAMBIAR: In my opinion, in almost all such cases by way of special leave if the matter reaches the doors of the Supreme Court, they do look into them.

SHRI A. S. R. CHARI: Yes. I am happy that you used the word 'doors'. In the case of a person who is under sentence of death, he is entitled to come to the door of the Supreme Court and say that the Supreme Court may listen to his case, but he will not come by the back door. Special leave means that door can be opened or closed according to the discretion of the judges.

SHRI NAMBIAR: Here the Minister of Law says that these cannot

be accepted in the Bill. This is a restriction.

SHRI A. S. R. CHARI: Suppose I knock at the Supreme Court's door. If the door is open, I can get in and say 'listen to my appeal'. If the door is not open, I could imagine that some judge is saying from inside 'what is it?' If I say that I have been sentenced to death for killing my wife and so I want you to hear my appeal, he may say 'no, go away'. If there is a right of an appeal, I have got a right to go to the main gate and ask the judge to listen to my case thoroughly. That is the difference between the right of appeal and grant of special leave for appeal.

SHRI NAMBIAR: The desire of the people is that some justice is going to be meted out at the doors of the Supreme Court. But there they find something in a different manner. Therefore, it is all the more necessary to grant that right to the expectation of the person. Is this your opinion?

SHRI A. S. R. CHARI: To what case should that right be restricted is the question.

SHRI MRITYUNJAY PRASAD: The High courts have got their original criminal jurisdiction I suppose.

SHRI A. S. R. CHARI: There is only one High Court that has that jurisdiction and that is in Calcutta.

SHRI MRITYUNJAY PRASAD: Not in other High courts?

SHRI A. S. R. CHARI: Only Calcutta has got it at present. All the main presidency towns had the original criminal jurisdiction; that was within the limits of Madras, Bombay or Calcutta. The Sessions Court in Calcutta only has retained that jurisdiction now.

SHRI MRITYUNJAY PRASAD: Is there a right of appeal against a High Court judgment or not?

SHRI A. S. R. CHARI: As the Law Minister pointed out this is the provision which they want. Where a High court acts as a trial court and convicts a person, there should be a right of appeal. That is what he was pointing out.

SHRI MRITYUNJAY PRASAD: At present it is not there.

SHRI A. S. R. CHARI: No please.

SHRI P. GOVINDA MENON: There is original Section 411(a) under which they can go to a bench of two judges. This is a complicated provision. They want to make it clear and give the right of appeal.

SHRI MRITYUNJAY PRASAD: What is the maximum sentence that the Calcutta High Court can pronounce?

SHRI A. S. R. CHARI: Death sentence can be pronounced by them.

MR. CHAIRMAN: Mr. Chari today is the last day. After that we shall

be busy with Parliament session. We shall have to ask for extension of time. After that we shall fix another date.

SHRI A. S. R. CHARI: So far as I am concerned I have finished what I wanted to say. If you will permit me I can suggest that there are many members of the Bar who are prepared to assist you in your task. In many of your sub-committees you may have them. The Bar Associations do not become proper forums for a discussion of these subjects because they have no powers and nobody takes any interest. If this were a Parliamentary sub-Committee like this then we all realise that they have got all the powers.

SHRI BAKAR ALI MIRZA: This door is always open to you. You are welcome here.

SHRI NAMBIAR: You persuade your other Members to come before us and give valuable suggestions. You are all welcome.

(The witness withdrew and the Committee then adjourned.)