time. Please do not make it part of daily routine. Whatever is important, I allow. Do not ask for it as a matter of right.

SHRI P. G. MAVALANKAR: I am on a different point. We abide by your ruling. But several Members of the House, inspite of your ruling on a particular matter, take it up and are even supported by their leaders. Even when you are not permitting some Members, they get up and defy your authority and ultimately you give them permission.

MR. SPEAKER: You are also doing the same.

SHRI P. G. MAVALANKAR: Their leaders also plead for them and ultimately you give in. But what happens to people like us? We are not supported by any party. If you disallow something, you should not allow anybody to bring up that matter. Otherwise, people who defy your authority on the floor of the House, who shout and defy you get permission ultimately, while we sit silent, abiding by your ruling.

MR. SPEAKER: May I know you are doing now? I find only two solutions to your point of order. One is: I shall call you every morning and I will place all the 377s, call attention, etc. before you and accept your advice, which of them to admit. Secondly, I will nominate you on the Panel of Chairmen and see how you behave differently from me; then I will learn from you new standards. That will give me a barometer as to how far you are able to keep up the great traditions set up by your illustrious father I will have to nominate you and put you in the Chair. I wonder if you yourself will be able to do it or not; I shall stand to learn from you.

SHRI PILOO MODY: On the point made by Shri Vajpayee, he wanted a translation of the Treaty or accord or whatever it is that we have signed. Last time when the Indo-Soviet Treaty was signed, the Hindi translation was made in Moscow by Russians, and not in Delhi by Indians. I would like to know from Mr. Vajpayee whether he wants a translation this time from Islamabad or from Delhi?

SHRI ATAL BIHARI VAJPAYEE: Shall I reply to it?

MR. SPEAKER: I think we should not go into this controversy. Leave it to me. I will do it.

SHRI PILOO MODY: We want it in Hindi, not in Gurmukhi.

MR. SPEAKER: I am going to buy that dictionary whichever Madhu Limaye uses.

13.05 hrs

CODE OF CRIMINAL PROCEDURE BILL—*Contd.*

MR. SPEAKER: We shall now take up further consideration of the Code of Criminal Procedure Bill.

Shri M. C. Daga.

श्री मूल चन्द डागा (पाली): अध्यक्ष महोदय, 1973 के अन्दर सी० आर०पी०सी० मे आपने जो सशोधन किये हैं, उनके बाद भी आज पुलिस अधिकारी किसी भी आदमी को पकड सकता है, कितने घन्टो तक अपनी पुलिस लाकअप मे रख सकता है, सैक्शन 109 आज भी उस मे मौजूद है। उस सैक्शन के अन्तर्गत किसी भी आदमी को सस्पीशस सर्कमस्टान्सेज मे पकडने का अधिकार पुलिस अधिकारी को दिया गया है।

आप इस बात के लिए दावा करेंगे कि सी०आर०पी०सी मे आप ने सशोधन कर लिये हैं, लेकिन मैं इस मे कुछ ऐसी बात, बुनियादी बातें चाहता हूं जिससे गरीब

[श्री मूल चन्द दागा]

लोगों को सस्ता और सुगम न्याय मिले, शीघ्र न्याय मिले । आप ने माइनर आपरेशन्ज किये हैं मेजर आपरेशन्ज नहीं किये हैं । 109 के अन्दर आप आज भी किसी आदमी को पकड़ सकते हैं और हम ने कई बार देखा है—

"When a Judicial Magistrate of the first class receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and there is reason to believe that he is doing so with a view to committing a cognizable offence..."

अब 151 क्या कहता है —— वह भी यही बात कहता है । 151 में लिखा है——

"A police officer knowing of a design to commit any cognizable offence may arrest, without orders from Magistrate and without a warrant, the person so designing if it appears to such officer that the commission of the offence cannot be otherwise prevented."

जब यह प्राविजन यहां है तो आप 109 को क्यों रखना चाहते हैं, 109 की क्या जरूरत है । क्या आप चाहते हैं कि देश के अन्दर पुलिस वाले किसी भी आदमी को गिरफ्तार कर लें ? मैं कई बार देख चुका हूं—— 109 के अन्दर, 107 के अन्दर आज की पुलिस अधिकारों का कितना मिसयूज करती है—— इस लिए मुझे बतलाइये कि 109 की क्या जरूरत है । अगर आप कोई मेजर आपरेशन नहीं कर सकते हैं तो छोटी छोटी बातों के आपरेशन से कोई फायदा नहीं है । 151 मौजूद है उससे समस्या हल हो जायेगी । 109 की जरूरत ही नहीं है । इस देश में आर्थिक हालत इतनी ज्यादा खराब कब हुई है ? कोई भूखा आदमी है घूम रहा है उससे आप कह दें कि चालिए 109 में । इसमें आज गरीब आदमी को ही पकड़ा जाता है । 107 में एक प्राविजन रखा है लेकिन आज भी अदालत के सामने जाने के बाद एक गरीब आदमी कभी यह नहीं कहता कि पुलिस वालों ने मुझे मारा है । पुलिस वाले उसके पास खड़े रहते हैं, पब्लिक प्रासीक्यूटर पास खड़ा रहता है, थानेदार बाहर खड़ा रहता है । वह यह सकता है मुझे चोटें पहुंचाई है लेकिन नहीं । मुझे दुख है 54 में है ——

"The magistrate shall, if requested by the arrested person so to have an examination of the body ..."

मजिस्ट्रेट को चाहिए कि वह पुलिस वालों से कहे कि आप बाहर चले जाइये और उसको देखना चाहिए कि उसके कोई इन्जरीज वगैरह है या नहीं । आज मैं कहता हूं 25 साल के बाद भी पुलिस की वही हालत है, गरीब आदमी बोल नहीं सकता है, उसके मुंह में जबान नहीं है, वह हिम्मत नहीं कर सकता है कि मैजिस्ट्रेट के सामने यह कह दे कि पुलिस ने मुझे मारा । इसलिए मैजिस्ट्रेट को खुद एग्जामिन करना चाहिए और वह पुलिस वालों से कहे कि आप बाहर चले जाइये ।

167 में आप कहते हैं 90 दिन के लिए पुलिस कस्टडी में रखा जा सकता है । पुलिस कस्टडी में एक आदमी को 15 दिन रखने का मतलब उसकी मौत है, 20 दिन में उसकी जान निकल जाती है । फिर उसमें रहते कौन हैं चुन्नु मुन्नु ही वहां रहते हैं । वही गरीब आदमी जिनके कोई नहीं है वही वहां पर रहते हैं वरना बड़ा आदमी कोई भी पुलिस कस्टडी में नहीं रहता है । सिर्फ गरीब लोगों को ही हैरास करके वहां पर रखा जाता है । बड़ी अजीब बात है उसमें आप कहते हैं 90 डेज । कल अखबारों में निकलेगा कि

क्रिमिनल प्रोसीजर कोड मे बडे अमेडमेन्ट्स कर दिये लेकिन यह तो टिट बिट्स हैं । आप 167 मे रिमान्ड देते है ।

The police officer or the PSI comes to the magistrate and says "we want to make further enquiry; so, please give us a remand" The accused cannot defend himself because he is not entitled to the diary prepared by the police It is a secret If I say I am a counsel, I want to see it, the magistrate says "I am not going to allow you to see that document'

167 मे आप उनका पावर्स दीजिए कि वह डाकूमेंट्स को देख सकें । उसमे आप रखे कि यह डायरी उसको भी दी जाये । तभी तो समझा जा सकता है रिमान्ड के काबिल है । आपने 469 मे तीन महीने 6 महीने, वन ईयर की लिमिटेशन क्या फिक्स की है ? (व्यवधान) जब आप क्रिमिनिल प्रोसीजर कोड को अमेन्ड करना चाहते थे तो मैं चाहता था (व्यवधान) जो विटनेसेज है उनकी एफिडेविट्स ली जाये प्राइवेट मे, देन एड देयर कि कम्प्लेन्ट एक्म्पेनीट बाई आल एफिडेविट्स और एक्यूज्ड जो है उसको मालूम होना चाहिए कि मेरे खिलाफ एविडेन्स क्या है । आप उसको मौका दीजिए एक ऑर्डिनरी केस जो है वह 6 महीने, 3 साल, 10 साल तक चलता है । उसका ट्रायल डे टू डे होना चाहिए । लेकिन आपने मैजिस्ट्रेट को कब बाउन्ड किया है कि 6 महीने के अन्दर केस को खत्म करना चाहिए । उसको डे टू डे ले लेना चाहिए लेकिन उसका सवाल ही नहीं है । आजकल डे टू डे कोई भी केस नहीं चलता है ।

The Magistrate can even ask the other person, the police officer to make an investigation under Section 202 of the Cr P.C.

आप खुद इन्क्वायरी कर नहीं सकते, आप दूसरे को एन्ट्रस्ट कर रहे हैं ।

You are entrusting it to somebody else and then you are registering a case.

मैजिस्ट्रेट को अपने विटनेसेज को खुद एग्जामिन करना चाहिए । 202 मे रजिस्ट्रेशन करने का सवाल है ।

Why should be not make an inquiry so that he can examine the witnesses, whether they can be relied upon or not You are saying that he can entrust powers to others This should not happen.

मै अर्ज करूंगा जिसे मुमिफ मैजिस्ट्रेट है जडिशियल मैजिस्ट्रेट है उनको टाइपिस्ट, स्टेना दिये जाये जोकि पूरे बयान की तीन कापीज निकाले । एक कापी कम्प्लेनन्ट का एक रिकार्ड के लिए और एक सारी एक्यूज्ड को दी जाये । देन एड देयर कापीज होनी चाहिए ताकि मैजिस्ट्रेट अपनी गर्दन नीची करके लिखते न रहे । बाज वकील ऐसे होते है जो विटनेस से कह देते है कि मैजिस्ट्रेट गर्दन नीची किए लिख रहे है, तुम यह बयान कर दो । इस लिए इस बात का इन्तजाम होना चाहिए ।

162 मे एग्जामिन करने की बात है । मैं आपको नया प्रोसीजर बतलाना चाहता था वह मेरे दिमाग मे था कि ज्योंही कम्प्लेनन्ट बयान दिलाते है तो एक्यूज्ड को या उसके काउन्सल को सारी चार्जशीट दे दी जाए ।

He must give in writing or, after one or two months, he must be asked to give statement Then, you ask the Counsel not to proceed on the points which he has admitted That is done in civil cases also.

एक्यूज्ड को फर्स्ट हियरिंग मे चार्जशीट मिल जानी चाहिए क्योंकि तभी उसके बाद वह कह सकता है कि मैं इतनी बात को मानता हू और इतनी बात को नहीं मानता हूं । वरना फिर क्या होता है ? दो साल तीन साल लगते है

MR. SPEAKER Mr. Daga please wind up now.

श्री मूल चन्द डागा इसलिए मैंने कहा कि सिविल प्रोसीजर मे भी यही हुआ। आप कहेंगे इम्प्रासिविल है। बडा फाइन होने के बाद एग्जामिन करने की सुविधा मिलेगी तो आपको फायदा होगा। तो कम्प्रोमाइज करना था।

Suppose the father lodges a complaint and he dies The question is, whether his son can enter into a compromise whether his legal heir should not be allowed to enter into a compromise If the father dies his legal heir should be entitled to enter into compromise Otherwise, what will happen?

उसका कस चलता रहेगा। 325 मे लीगल रिप्रेजेन्टेटिव को आप पावर दीजिए। 147 148 वगैरह के ऐसे आफेन्सेज जिसमे कम्प्रोमाइज करने की बात है। आप कई बार सविधान की दुहाई देते है और कहते है कि इसान की कीमत बढ़नी चाहिये। लेकिन इस वक्त इसान की कीमत हिन्दुस्तान मे क्या है और यहा आपने क्या किया है? यहा आपने कहा है कि बाइज विद शोरटी। इन जमानतो के मामलो मे लोग बहुत पैसा कमाते है। अखबारो मे भी पढने का बहुत इसके बारे मे मिलता है। जो शोरटी स्टैंड करते है एक्यूज्ड के वास्ते वे 15, 20 और 40 रुपया महीना देते है। किसी आदमी की कीमत पहचानो। कहा भाग जाएगा वह?

If it is bond it is well and good.

वाइज विद शोरटी करते है। शोरटी का मतलब है कि उस बेचारे का खर्चा हो। बाड विद शोरटी का जहा तक सवाल है 107 का जहा तक सवाल है वह 109 को वाइप आउट करेगा। 151 काफी है। डेटूडे ट्रायल आप करें। उसके सिवा कोई चारा नही है।

जो बिल आया है इस मे पब्लिक सर्वेंट को अलग क्यो रख रहे है क्यो अलग समझ रहे है। पब्लिक सर्वेंट वे थप्पड मार दिया

Then, I cannot prosecute him unless and until I seek and get the permission

क्या डर है? क्यो उसको डिफेड आप करना चाहते है 23 साल के बाद भी?

Suppose a Municipal member has given a beating to a person you say that he cannot be prosecuted unless and until the local body has given the permission

197 मे पब्लिक सर्वेंट को प्रासीक्यूट नही कर सकते है। यह गलत तरीका है। इसको आप न रखे ता पब्लिक सर्वेंट ठीक हो जायगा उसकी तबीयत ठीक हो जाएगी।

Suppose I am a Pradhan I should not be prosecuted

बडी गडबड है। अध्यक्ष महोदय आपकी अध्यक्षता मे इस तरह की चीज पास होने जा रही है और एबेडमटस हो रही है। पुलिस किसी को अपनी कस्टडी मे रख सकती है, पीट सकती है लेकिन पब्लिक सर्वेंट को प्रासीक्यूट नही किया जा सकता है। डू टू डे हीयरिंग करके कम का डिसपाजल आप क्यो नही करते है।

MR SPEAKER If somebody other than a lawyer had been speaking, I could appreciate But a lawyer is speaking That is why I am surprised.

श्री मूल चन्द डागा 133 को आप देखें। एग्जीक्यूटिव मैजिस्ट्रेट को आपने बहुत पावर्ज दे दी है।

Why do you not give it to Judicial magistrate? Why do you give the power to the Executive Magistrate? इनको वह बहुत मिसयूज करेगा।

You must give power to the Munsif Magistrate.

आप इस बिल को जल्दी में पास करना चाहते हैं। मैंने जो बुरी इस में बातें है वही बताई हैं। जो अच्छाइया है ये मंत्री महोदय बतायेंगे। आप पुलिस के चंगुल मे से सी आर पी सी को नही निकाल सके है। मुकदमे लिगर आन होंगे। डे टू डे हीयरिंग उनकी होनी चाहिये। प्रासीक्यूशन को बाउड डाउन करना चाहिये। एक्यूज्ड का स्टेटमेंट पहले लेना चाहिये।

SHRI FRANK ANTHONY (Nominated-Anglo-Indian): Mr. Speaker, Sir, quite frankly, I had asked for many hours to be given to this Bill..

MR. SPEAKER: May I tell all the members not to keep sending chits to me. That is not very proper. All the members should send their names before and not during the discussion. I am not going to accept these.

SHRI FRANK ANTHONY: Mr. Speaker, I cannot possibly deal with the many matters I wanted to deal in the few minutes of time. As I look, in the little time that I have had at my disposal, at the Bill, I find that many of the provisions are going to come as a shock to the legal profession Some of them are good; for instance, Clause 125 providing maintenance in certain circumstances, even for parents, is, I think, quite good.

Clause 167 places a limit on detention during investigation—generally ninety days. I have had many cases where police had not completed their investigations for 2 to 2½ years. I had, recently, a case from Patna; a senior lawyer was kept in detention for 2½ years. But there may be a danger here. This is intended to be the outer limit—90 days for investigation. The danger is that they will take it as the minimum and they will take at least 90 days for completing the investigation, keeping every accused in custody for at least 90 days.

Then I think Clause 389 is good because it liberalises the bail provisions. That is, that those who have been convicted for three years or more, if they were on bail, they will continue. I want to say this. Quite wrongly, especially, the higher courts are tending to become more and more illiberal with regard to bail. Bail was never intended to be punitive. Bail was only intended to secure the presence of an accused. In some High Courts like the Delhi High Court, if a person is convicted for three years, he will never get bail and if he is a Harijan or if he is a poor person, he cannot defend himself. The Supreme Court, as a matter of course, will not give bail. I have heard of cases where people have not been given bail for three years. Then their case comes up after four years. They get acquitted after they have served the whole sentence. The whole thing is wrong. That is why I say this matter needs to be looked into. People are disabled. I know so many Harijans come—Inspectors of Police. Where are they going to raise the money if they are kept in jail? Some High Courts like the Allahabad High Court are very liberal. You get a life imprisonment, you are still given bail. I tried to get a bail for a nephew of a former Advocate-General. He was convicted to life imprisonment. Even then he was given bail. At least let them err on the right side so that at least somebody is able to defend them.

Then this other provision clause 28 that detention in jail should be set off against the sentence. That is good.

Now, I come to some of the bad provisions. I am only going to pick out some of them. I have had an opportunity of meeting my friend, Mr.

[Shri Frank Anthony]

Mirdha. I am sorry to say that I could not spare more time. I would like to have discussed this mater with him in much greater detail.

Clause 162—you intend to allow the Police to take signatures on statements in case diaries. That is a disaster. You have not done what is needed but you have left a lacuna. As I see it, they may now take signatures. As you know, under the old Sec. 162, signature on a case diary statement was prohibited. The law was that if you take signatures, the value would be impaired. Now, you even make it permissive. Now, in every case the Police will take signatures. They will bind down these ignorant people. As it is to-day, even with the prohibition, they bind them down and now the tendency is more and more to take the witnesses to the Magistrates and have them bound down on oath under Sec. 164. I would like to ask that the old provision be re-introduced. That is, at least do not allow the Police to take signatures on case diary statements.

Then I just look at clause 173(7) I have a lot of difficulty. Clause 173(4) as bad enough and 173(7) is extremely bad. This refers to investigations done by the Police where it is a cognisable offence or where it is sent by a Magistrate, that is, non-cognisable case. If there was an investigation by the Police, then the person was entitled to get copies. Under 173(7) you give the Police officer discretion to give him copies? What is happening? Police do the cases in different parts—some offences are cognisable; so the Police *suo motu* investigate Then because one or two offences may require a complaint, like a complaint by a Director of Enforcement or of imports and Exports, merely because a complaint has to be filed, they are not giving an accused person any of the documents which the Police have put into the case against the accused person, What is going to happen? I am doing cases. There are 150 witnesses. No statements are supplied to the accused because they said, 'No, because the Director has made the complaint. CBI has investigated the case.' I am arguing the matter in the Supreme Court that if there is an investigation, even though there may be a complaint, he should get the copies. Now, you give the discretion to the Police Officer. How can accused persons—there are 150 witnesses—as and when the accused is examined, how will he know as to what the Police case is? They will examine their most material witnesses in the end. You then convict him and say, 'You never put to the first set of prosecution witnesses your defence' How am I to know what defence to make when you keep all the Police statements under the table? We, the practising lawyers, know the position to-day.

Then we have this clause 275. I think Mr Mirdha has agreed to this. I say, for God's sake, do not have this. If the Magistrate is to write everything, what will happen? I know what used to happen when I used to defend a friend of mine in a court martial. A case which would last two days in the civil courts would last two days in the civil would last 22 days because they have to write everything. Now, you are going to make everybody write. To begin with, the accused would not get copies immediately and the trials instead of lasting for two or three days, will last five times that much. You might tighten the provision and do not allow the magistrate to have recordings of all cases at the same time. I agree. But do not say that he cannot have a stenographer. Otherwise you will destroy the very purpose of the Bill namely to expedite hearings.

13.30 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

Section 344 is extremely bad and this is regarding summary procedure for punishment of persons for contra-

dictory statements. It is all right to say we want to stop perjury. But this is going to lead to mass convictions of innocent villagers. Give the police little power and they abuse it, when they don't have power, they twist it and abuse it! What do you want them to do? I know what will happen. | More and more, they are binding these villagers and other people, under Section 164. You are giving summary powers to them to sentence upto three months and you are deleting the old provision in Section 79. Even if a person in a sense makes two contradictory statements, the courts after full enquiry may say whether it is in the interest of justice. Only recently there was a case. This was a case of a brother-in-law of a High Court Judge that he did something and he was caught on the basis of perjury but the High Court said it is not in the interest of justice that he should be prosecuted. Now you are leaving it to the Trial magistrate. Under 164 he has to convict him summarily, send him to jail for three months for perjury, etc.

Now, take Section 379. You have embodied in this the amendment of the Mulla's Act, enlarging of the Supreme Court jurisdiction. That is if a person is acquitted and then acquittal is set aside and he is sentenced to ten years, he has the automatic right of appeal. All to the good. But what is happening every day Competent courts have acquitted them. Competent courts have given punishment for 7 years or 6 years or 5 years under the Special Secrets Act. I went to the Supreme Court and I found that in two minutes special leave was dismissed. It is because the principle is all wrong. I say more and more, as a matter of course, the State is filing appeals against acquittals and more and more high courts are giving perfunctory judgments merely because they take a different view of the evidence and set aside them. But at least every civilised State must have this principle that they must have one appeal. A man's innocence has been affirmed; he has been acquitted; then he has been convicted; does he not have one right of appeal even? Do you say he will have right of appeal if he gets 10 years but if he gets 9½ years he will have no right of appeal? In Supreme court I have seen within 20 minutes 5 death sentence cases are dismissed. This was done in 20 minutes. I calculated them. Five death sentence cases are dismissed in special leave. That is what is happening. What is going to happen to these people? Have they not got one right of appeal? You will say you will be flooded with cases. Even if a man gets one month rigorous imprisonment even if he is fined surely he is entitled to one appeal somewhere but you don't give it to him.

Then I have put down the proviso here in Section 379 that in all death sentence there must be appeal. I do not want to point a finger at the Supreme Court; in the first case you don't have specially constituted criminal law judges, some of the judges are very great civil law judges but most of them, I say this without qualification and respect, have not an elementary knowledge of criminal I argue for 10 minutes and the judge does not know the difference between irregularity and illegality. It is to be learnt, illegality prejudices a person. The judge does not know, he shakes his head. I am telling you all this, because I know about death sentences in villages. I go before a court. I admit: Three men have murdered this man. The other three are innocent. But what happens? All the family is brought in. In the village five people may have committed the murder under Section 49 and convicted.

[Shri Frank Anthony]

The High Court judgments are extremely perfunctory. My real feeling is that in many cases, innocent people are sent to the gallows. On principle, I would not like to see the death sentences to go. But, while the death sentence is there, at least, let the Supreme Court adjudicate finally in the matter. I do not want to say anything on this. The death sentences made are perfunctory. The other day I got leave Thank God for that. In three typed pages, for four people, the death sentences were affirmed. Now, they have a duty cast on them to reassess the evidence But, this is what the high courts are doing in all death sentences wholesale without even re-assessing. In the Supreme Court, if you have got a good judge who knows laws, he will say 'Yes, but then, you know what the sessions courts judgments say?' What has the sessions court's judgment got to do with this? The High Court has to deal with this separately. The other day five death sentences were dismissed summarily in twenty minutes. That is all a man's life is worth in the Supreme Court to-day. I am not blaming them because the Supreme Court is under a tremendous pressure This is what is happening That is why I have said that at least in every death sentence case—the courts do not have the time—let the man who is to be hanged, let his case be finally heard by the Supreme Court.

That is all I have got to say. I have not got the time to look into this. But, I want to ask Shri Mirdha to consider some of the points that I have raised. I feel that some of the provisions here are only going to play into the hands of the police. I do not know what personal experience, Shri Mirdha has got. It has become endemic with the police; even in a number of cases, how do you think, we got acquittals? In every case the police will bring in a false evidence; they will bring in a false discovery and they will bring in a false confession. Please, therefore, do not make it worse for an accused. There is the other provision which you have abolished. When I was a young lawyer, in quite a lot of murder cases in the original court, I used to cross-examine every witness in the committal proceedings and I used to fix my cases there. In nine out of ten cases, I used to get acquittals because of that. I know, many lawyers do not do it now. If that is going to be abolished, then I think that is going to be a tremendous dis-advantage. Now you have completely abolished the committal proceedings so that a person will have only one opportunity of cross-examining. I think this is going to be a tremendous disability

श्री राम रतन शर्मा (बादा) : उपाध्यक्ष महोदय, लगभग 80 वर्षों के पुराने जाब्ता फौजदारी कानून को बदल कर नया विधेयक लाते समय और इस विधेयक को प्रस्तुत करते समय मंत्री महोदय ने कहा था कि एक नया कानून वह ला रहे है जिस मे करेप्ट आइडियाज रेफ्लेक्ट होते है । परन्तु विधेयक को देखने के बाद यह स्पष्ट हो जाता है कि इस में करेप्ट आइडिया तो कोई है नही जो रेफ्लेक्ट करे । पुराने आइडिया मे जिस तरह से यह कोड बना था उस की भी रक्षा नही की गई ।

इस समय की सब से बडी माग सस्ते न्याय की थी । हम सब को पता है और खास तौर से उन आदमियो को जो कि इस वकालत के पेशे मे लगे है उन को मालूम है कि अधीनस्थ न्यायालयो मे गरीब आदमियो को कही न्याय नही मिलता । अमीरो को पैसे के बल पर वकील मिलते हैं, अच्छे से अच्छा वकील खड़ा कर सकते है । लेकिन गरीब जिस के पास खर्चने को पैसा नही है उस को किसी भी हालत में फौजदारी की अदालतों में न्याय नहीं मिलता । इस बात

को ले कर गवर्नमेंट आफ इंडिया ने ला कमीशन के पास एक चिट्ठी भेजी थी पहली जुलाई 1972 को । मैं उसे उद्धृत करना चाहता हू ·

In view of the divergent opinions on certain points which are being considered by the Joint Committee in respect of the said Bill, the Government would like to have the considered opinion of the present Law Commission on certain specific points hereinafter mentioned As the consideration of the Bill clause by clause has already been taken up by the Joint Committee of Parliament, it would not be necessary to refer the whole Bill for the opinion of the Law Commission afresh, but the Government would very much like to have the considered opinion of the Commission on a few specific vital points which have arisen for consideration

इस मे तीसरा प्वाइंट है—

the extent of the legal aid to the poor which may be provided for in the court.

इस के हिसाब मे इस बिल मे क्लाज 304 रखा गया है । मै क्लाज 304 की ओर सदन का ध्यान आकृष्ट करना चाहूगा । यह बात सही है कि अभी तक कैपिटल पनिशमेंट मे एमिकस क्यूरि, जो उस आदमी को जो वकील खडा नही कर सकता है जो बहुत गरीब है उस को सरकार देती थी, सरकार उस को वकील देती थी केवल कैपिटल पनिशमेंट के केसेज मे । आप ने इस बिल मे सेशन ट्रायल के जितने केसेज है उन पर उस को लागू किया है । परन्तु मेरा कहना यह है कि जहा आप ने इस बिल के प्रोविजो मे कहा है, इस के सब-क्लाज (3) को देखे :

"The State Government may by notification direct that as from such date as may be specified in the notification the provisions of sub-sections 1 and 2 shall apply in relation to any class of trials before other courts in the State as they apply in relation to trials before the court of sessions."

मेरा यह आग्रह है कि स्टेट गवर्नमेंट की जिम्मेदारी डालने की आवश्यकता नही है । इस को आप डायरेक्ट कर दे अगर वास्तव मे आप चाहते है कि जनता को सस्ता न्याय मिले । आप एक तरफ यह कहते हैं कि आपकी सरकार समाजवादी है, गरीबो को वह अपार्च्युनिटी मिलनी चाहिए जिस की सविधान गारटी करता है, जिस के लिए ला कमीशन ने कई पैराग्राफ मे स्पेसिफिकली कहा है तो उस को आप इस तरह से प्रोविजो मे न डाल कर और स्टेट गवर्नमेंट के ऊपर न डाल कर सब-क्लाज (3) को हटा दे और सम्पूर्ण ट्रायल चाहे 109 मे हो 107 मे हो या दफा 25 आर्म्स ऐक्ट मे हो अगर उस मे क्रिमिनल प्रोसीजर कोड का प्रोसीजर लागू हो तो उस मे सरकारी खर्चे पर गरीबो को वकील देने का प्रावधान करने की आवश्यकता है ।

मैं पैराग्राफ 23, 25, 26, 27 और 28 जो ला कमीशन की 48वी रिपोर्ट के है उन की तरफ आप का ध्यान आकृष्ट करना चाहता हू ।

"Providing equal justice for the poor and the rich, the weak and the powerful is an age-old problem.

MR DEPUTY-SPEAKER: Why don't you make your own points?

SHRI R. R. SHARMA: In making my points, it is essential to quote what the Commission has recommended and say that even though the Commission has so recommended, Government have failed to enact those provisions.

[श्री रामरतन शास्त्री]

लेकिन खैर, मैंने उन प्राविजस की तरफ ध्यान दिला दिया, मैं उन को अब वर्ड वाई वर्ड कोट नही करता हू। अब मैं यह आग्रह करता हू सरकार से कि कमीशन के कहने के अनुसार इस चीज की स्टेट पर वह न डाले क्या कि कमीशन ने इस बात को स्पेसिफिकली कहा है। मै उस बात को कोट कर दू

"It is in this spirit that we are recommending a wide provision. We hope the legal practitioners will also appreciate the spirit in which we are making this recommendation and will readily come forward to defend poor persons who cannot afford to pay The scheme can be worked successfully if the members of the bar, including senior members, co-operate in its working"

27 और 28 पैराग्राफ मे कमीशन ने स्पष्ट कहा है कि इस को किसी और पर न डाल कर इसी मे इसका प्राविजन बना देने की आवश्यकता है।

दूसरी बात जिस पर मै अपनी समालोचना प्रस्तुत करना चाहूगा वह लिमिटेशन के प्वाइट पर है। क्लाज 467 मे 473 तक एन्टायरली न्यू प्राविजन्स है। अगर इस बिल मे कोई नई चीज है इस इतनी बडी किताब मे सरकार ने कोई नई चीज निकाली है क्रिमिनल प्रोसीजर कोड मे केवल लिमिटेशन की चार दफाए है और वह लिमिटेशन है 6 महीने की सजा से ले कर 3 साल की सजा तक के आफसेज के लिए। अगर आप कोई लिमिटेशन प्रस्ताइब करना चाहते थे, चाहते थ कि कोई लिमिटेशन हो तो दस साल और 20 साल की जिस मे सजाए है उन मे कोई लिमिटशन है क्या नही प्रेस्क्राइब किया? जिस तरह से आप ने यह लिमिटेशन प्रस्ताइब किया है 467 स 473 तक की क्लाजेज मंत्री महोदय देख ले—एक अलग चैप्टर है, चैप्टर 36—लिमिटेशन फार टेकिंग कागनिजेंस आफ सर्टेन आफसेंज—इस मे पीरियड है 6 महीने, एक साल और तीन साल यह पिरियड है। बहुत आश्चर्य की बात है कि आफेस को कागनिजेबल और नान-कागनिजेबल और बेलेबल और नान बेलेबल आफेस मे भी बाटा गया है जैसा कि पुराना क्रिमिनल प्रोसीजर कोड मे था। अब अगर एक केस मे पुलिस इन्वस्टीगेट करती है कागनिजेबल आफेस को, थेफ्ट का केस है जिस मे तीन साल की सजा है कागनिजबल है, नान-बेलेबल है और तीन साल के बाद तक उस मे इन्वेस्टीगशन चलता है, कोई रिपोर्ट नही आती है पुलिस की एफ० आर० लाते नही है तब तक कम्पलेंट नही फाइल हो सकती। अगर कम्पेनेंट फाइल कर दी जायगी तो वह कम्प्लेंट जब पुलिस की रिपार्ट आएगी उस के साथ ट्रायल की जायगी। मेरा कहना है कि यह बडा आमक है और इस मे बहुत बडा लैकुना है। तीन साल तक पुलिस के साथ साठ गाठ करके एक्यूज्ड जितना लिमिटेशन है उस लिमिटेशन को खत्म करवा देंगे। मै आफसेज बतला सकता हू कि 379 है, 312 है, जिस मे तीन साल की सजा है 193—गिविंग और फैब्रिकेटिंग फाल्स एविडेंस है, 179 है जिस मे दो साल की सजा है, और बहुत से आफसेज है जिस मे एक साल से लेकर तीन साल की सजा है, जो कागनिजबल है और नान-बेलेबल है जिस मे कि पुलिस लिमिटेशन का अपराधिया के गिरफ्तार समाप्त कर देगी (व्यवधान) श्रीमन मेरे पास मेरी पार्टी का पूरा 10 मिनट का टाइम है। मेरी पार्टी का और कोई वक्ता नही है। मुझ पूरा टाइम लेने दें।

मैं आग्रह कर रहा था कि यह जो लिमिटेशन की बात है, जो आप न सी० आर० पीसी० म नई जोड दी है — हाई कोर्ट या सुप्रीम कोर्ट म च ह जा हा — लेकिन जहा पर गरीब बसते है, जहा पर गरीबो के विरुद्ध साठ-

गांठ ली जाती है, इस का इस तरह से लायर्स पैराडाइज न बना दें, उन बड़े आदमियों को खुली छूट न दें जिन के गुनाहों की चर्चा रोजाना अखबार में होती है। आप को मालूम होना चाहिये कि 302 में और 395 में, डकैती, रौबरी, डेथ-पैनल्टी जहां पर होती है, उन में पुलिस वाले साल-साल और दो दो साल इन्वस्टीगेशन में लगा देते हैं। फिर फाइनल रिपोर्ट आती है, उस के बाद चार्जशीट सबमिट करते हैं। कभी कभी ऐसा होता है कि मामला सी० आइ० डी० को दे दिया जाता है। इन सब में टाइम लगता है–इस को कैसे निकालेंगे, कैसे जस्टीफाई करेंगे यह बात इस मे साफ नही है, इस लिये मेरा आग्रह है कि कि आप इस को आल टुगेदर हटा दें, लिमिटेशन की बात न रखें। और किसी की सम्पत्ति चोरी कर ली गई है किसी को मारा गया है या उस को किसी से इन्जरी लगी है तो वह तुरन्त थाने मे आता है, एफ० आई० आर० करता है, पुलिस एक्शन लेती है, इस लिये इस लिमिटेशन की बात नहीं होनी चाहिये। इस मे यह आरग्यूमेन्ट देना कि कोई माइनर आफेन्स होता है तो साल भर के बाद उस के मस्तिष्क को शान्ति मिलनी चाहिये, यह अन-टेनेबिल है। जिस ने पाप किया है, उस को जिन्दगी भर शान्ति नहीं मिलनी चाहिये चाहे अपराध छोटा हो या बड़ा हो। छोटे छोटे आफेंसन्ज में अगर कोई बहुत विलम्ब से कम्पलेन्ट फाइल करता है, तो कोर्टस ज्यादा ध्यान नही देती थीं, कायनिजन्स नही लिया जाता था। इस के बारे में हाई कोर्ट की रूलिंग भी है – इस लिये मेरा अनुरोध है कि लिमिटेशन की बात को न उठायें।

अब इस मैं जो पहला क्लाज है, उस की ओर मैं, श्रीमन् का ध्यान दिलाना चाहूंगा जहां तक 2 और 3 सैक्शन है, उन को मैं क्लाज बाई क्लाज कन्सीडेशन के समय डील करना चाहूंगा। आप देखें–आप ने कहा है

"Clause 1:—It extends to the whole of India except the State of Jammu and Kashmir."

इस से आप लिख दें कि हम अभी संविधान का संशोधन नहीं कर रहे हैं, जब तक नहीं कर रहे हैं तब तक आप को यह करना पड़ेगा लेकिन इस में इण्डिया को डिफाइन क्यों करते हैं। आप ने "इण्डिया" को डिफाइन किया है – क्लाज 2, सब क्लाज एफ –

"India" means the territories to which this Code extends;"

Do not define India for God's sake

क्या इस का मतलब है कि जम्मू काश्मीर इस में नही है? इण्डिया को डिफाइन करने की इस एक्ट मे क्या आवश्यकता थी–यह बहुत ज्यादा भ्रामक बात है जो आप के खिलाफ कही भी कोट की जा सकती है। आप इण्डिया के डेफिनीशन को निकाल दीजिये, इस मे जम्म काश्मीर लगायें या न लगावें, जब जम्म काश्मीर की बाबत इनेक्टामेन्ट लायेंगे तब लगा देंगे, लेकिन यहा पर इण्डिया का डिफाइन न कीजिये– परमात्मा के लिये।

क्लाज 82 और 83 (जिन को पहले 87–88 कहते थे) बहुचर्चित क्लाजेज है – अब मैं इन को ओर आप का ध्यान आकर्षित करना चाहता हूं। क्लाज 82 में सेफगार्डस दिये गये हैं, यह बहुत अच्छी बात है, लेकिन क्लाज 83 के द्वारा उन सब को आप ने वापस ले लिया इस का क्या मतलब है? 82 में सेफगार्डस देते हैं और 83 मे ले लेते है ....

श्री दरबारा सिंह (होश्यारपुर) : एक हाथ दे। एक हाथ ले।

श्री राम रतन शर्मा : आप देखिये– क्लाज 82 में इन्होंने प्रोकलेमेशन और अटेचमेन्ट प्रोसीडिंगज की बात रखी है, ये सब बातें होंगी, लेकिन क्लाज 83 में कहते हैं–

[श्री राम सहाय पांडेय]

"The Court may issue a proclamation under section 82 and may for reasons to be recorded in writing at any time after the issue of the proclamation order the attachment of the property movable or immovable or both, belonging to the proclaimed person."

वे वकील जो लोअर कोर्टस् मे प्रैक्टिस करते हैं, जिला कचहरियो मे प्रैक्टिस करते हैं। उन को इस बात का ज्ञान है कि दरोगा ने जाकर इधर रिपोर्ट दी, एफ०आई०आर०आई० उस के साथ ही एक रिपोर्ट नत्थी कर दी जाती है कि वह भागने वाला है, एक कांड करने वाला हैं। हम को पकड़ने का अधिकार दीजिये। इसलिये 82 में जो सेफगार्डस् उस को दिये गये है उन को आपने 83 मे खत्म कर दिया है। मैं आप से यह भी निवेदन करना चाहता हूं कि कुड़की या अटैचमेंट की वारदात गरीबो के साथ हुआ करती है, अमीर के यहा कुडकी करने कोई नही जाता, क्योकि वह तुरन्त जा कर कोर्ट मे सरण्डर कर देता है, बैल मे लेता हैं। जिस आदमी को पता ही नही चलता कि उस के खिलाफ क्या जाल रचा गया है, उस को इस से कोई राहत नही मिलती। इसलिये मेरा आग्रह है कि सैक्शन 83 को बिल्कुल हटा दे, तभी कुछ न्याय की बात हो सकती है।

107 108, 109 110—मे भी बहुचर्चित दफाये है। बहुत दिन पहले से यह चर्चा थी कि सरकार क्या जाब्ता फौजदारी कानून बनाने जा रही है या अंग्रेजो द्वारा छोड़ी गई जो लिगेसी है, उसको सरकार बदलेगी और वह कानून जिसमे अंग्रेज हमारे भाइयों का दमन करते आये है, वह समाप्त होगा लेकिन मुझे दुख है, जिस तरह से अंग्रेजी पुलिस के बल पर, मैजिस्ट्रेटी के बल पर शासन करते थे उसी तरह से यह सरकार भी पुलिस और मैजिस्ट्रेटी के बल पर शासन करना चाहती है, अपना कोई विभाग नहीं लगाना चाहती है, कोई ऐसी प्रक्रिया या संहिता नही दे सकती जो उनसे अच्छी हो। इस संबंध में मैं अपना सुझाव बाद में दूंगा। कि वह संहिता क्या हो सकती है वह प्रक्रिया क्या हो सकती है लेकिन अभी मैं यह बतला रहा हूं कि दफा 107, 108, 109, और 110 की कोई आवश्यकता नही है। मेरे दोस्त डागाजी भी इस बात से सहमत है, वे कांग्रस पार्टी से सम्बन्धित है, कि 109 की क्या जरूरत है। इस लिये मेरा आग्रह है कि दफा 107, 108, 109 और 110 को खत्म कर दीजिये। आप को मालूम है कि दफा 109 मे झूठे मुकदमे बनाये जाते है। हर थाने मे पुलिस के लिये कोटा फिक्स है कि दफा 109 और 110 मे कितने कितने केसेज आने चाहिये। अगर नही वे आते है तो उन से जवाब तलब किया जाता हैं, एस० पी० जवाब तलब करते हैं। कोई आदमी कही घूमता हुआ मिल गया, उस को 109 मे पकड़ कर ले आते है। कोई आदमी घर पर सो रहा हो, कहा जाता है कि तुम छुपे हुए थे, बस 110 का मुकदमा बन गया। मुझे बतलाइये, इस से आप ने कौन सी नई बात की है, जिस मे हम उल्लसित हो।

श्रीमान्, दफा 151 भी दुर्भाग्यपूण है—इस को भी समाप्त किया जाना चाहिये। पहले 151 के बारे मे कान्ट्रोवर्सी थी कि बेल होगी या नही होगी, वह एक्यूज्ड की डेफिनीशन मे नही आता था, लेकिन इस बार आप ने 151 मे बेल का प्रावधान किया है—लेकिन मै तो इस दफा की आवश्यकता ही नही समझता इसको आप खत्म कर दें।

14 hrs.

उपाध्यक्ष महोदय, मेरी प्रार्थना है कि केस डायरी, 172 में जिसके बारे में आपने चर्चा की है, वह सबसे बड़ा और घातक वीपन्स है, पुलिस वालों के हाथ में। आफेन्स होने

महीनों बाद एक जगह बैठ कर एक्यूज्ड पर्सन्स से मिल कर कैमिपुलेट कर के केस डायरी आम तौर पर लिखी जाती है। जिस को चाहते हैं उसको फंसाते हैं। एक से पैसा लेते हैं और दूसरे को फंसा देते हैं। इसलिये आप 172 को ज्यो का त्यो रखे लेकिन एक सेफगार्ड कर दें कि अगर एक्यूज्ड कम्प्लेनेन्ट अपने इन्ट्रेस्ट के लिए लेना चाहते हैं तो सर्टिफाइड कापी मिले कोर्ट फीस वगैरह देने के बाद केस डायरी की सर्टीफाइड प्रतिलिपि ताकि हर आदमी को पता चल जाय कि मेरे खिलाफ दारोगा ने यह लिखा है और यह केस बनाने जा रहा है। (व्यवधान) मिसलेनियस लेने की कोई बात ही नहीं है। उस की कोई आवश्यकता भी नहीं है।

एन्टीसिपेटरी बेल के प्राविजन्स 438 में है। सरकार ने समझा है बहुत बड़ा तीर मार दिया है। नान बेलेबिल आफेन्स की बात है। लेकिन मैं बतलाना चाहता हूं कि यह प्राविजन भी गरीबों के हित में नहीं है। यह उन बड़े आदमियों के लिए, ब्लैक मार्केटियर्स के लिए और होर्डर्स के लिए है जिन्हें कोई भी आफेन्स करके पता चल जायेगा क्योंकि पुलिस उनसे मिली हुई है, मैजिस्ट्रेट मिले हुए हैं और वह तुरन्त पहुंच कर कह देंगे कि मुझे पता चला है कि उसमें इन्वाल्व्ड है इसलिए जमानत दे दी जाय। इसलिए मैं आग्रह करता हूं कि किसी भी तरह से इस तरह के जो जनविरोधी प्राविजन है 438 सरीखे उनको खत्म किया जाय।

अन्त में मैं कहना चाहता हूं कि यह ठीक है कि जजों की फौजदारी में कमी पूरी नहीं हो सकी लेकिन इसमें कोई संदेह नहीं है। मैं चाहता था जिस तरह से थाने हैं उसी तरह से 15-20 गावों के लिए एक मैजिस्ट्रेट नियुक्त कर देते ताकि जैसे ही कोई आफेन्स होता वैसे ही मैजिस्ट्रेट मौके पर जाकर के तुरन्त काम करते और इस तरह से बड़े बड़े अपराधों के तुरन्त निर्णय होते तथा तुरन्त ही न्याय मिल जाता। जो डिस्ट्रिक्ट कोर्ट्स है वह अपीलेट कोर्ट्स रखी जाय। देश के सामने कोई नयी चीज होती कोई नयी प्रक्रिया होती, कोई नयी विधि संहिता होती लेकिन सरकार इसमें फेल हो गई है, उसने कोई भी नयी बात नहीं की है। उसी पुराने ऐक्ट में दो धारायें इधर से काट दी और चार उधर से जोड़ दी। दूसरी तरफ ढोंग रचती है कि वह समाजवादी सरकार है वह ऐसी चीज दे रही है जो स्वर्ग से आ रही है और जैसे ही वह जमीन पर आ जायगी तो सम्पूर्ण लोक का हित हो जायगा। मुझे दुख है कि मन्त्री महोदय इस बात को समझ नहीं रहे हैं और यदि समझ नहीं रहे हैं तो मुझे पूर्ण विश्वास है कि जनता बहुत जल्दी इस बात को समझेगी और इसका उत्तर उन्हें देगी।

श्री मधु लिमये (बांका) अध्यक्ष महोदय, सब से पहले मैं मन्त्री महोदय से प्रार्थना करना चाहता हूं कि वे इस विधेयक को जल्दी में इसी सत्र में पास करवाने का प्रयास न करें। अभी मेरी राय है कि इस सदन में की नयी प्रवर समिति बननी चाहिए। और उस समिति को इसकी कई धाराओं को देखने का मौका मिलना चाहिए। आखिर-कार संविधान की 21 धारा के तहत हमको अधिकार है कि किसी भी व्यक्ति की स्वतन्त्रता या जान जो दण्ड प्रक्रिया के क्रमों के मताबिक बनी चाहिए। ये सारी दण्ड प्रक्रिया के बारे में इस सदन में विधान के मुताबिक मान लिया गया कि साधारण व्यक्ति की स्वतन्त्रता और अधिक उसी दण्ड प्रक्रिया से निर्धारित होते हैं। मैं एक बात और भी कहना चाहता हूं कि मैं आज अनसर्व्ड वकील रहा हूं। अभी यहां पर गल्पनी साहब बोले वे एक वकील के नाते बोले लेकिन मैं हमेशा इन कानूनों का शिकार रहा हूं इसलिए एक तो इस नाते बोल रहा हूं और अपनी वकालत मैं स्वयं करता हूं इसलिए सीमित अर्थ में मैं एक वकील के दृष्टिकोण से भी बोल रहा हूं हालांकि मेरा

[श्री भानु लिमये]

कानून और विधि की मिक्सम से कोई सम्बन्ध नहीं है ।

मेरा अनुभव तो यह है कि व्यवहार मे कि जितने हमको अधिकार दिये गये, जो संरक्षण दिये गये उनको तोडा जा रहा है । 1958 के अन्त मे श्री प्रताप सिह कैरो के राज मे जब मैं अपने पार्टी दफ्तर मे बैठा था तो बिला वजह मेरी गिरफ्तारी हुई । इसमे इसी से प्रारम्भ हुआ कि हम आपकी हैडकफिग करेगे तो मैंने कहा कि अग्रेजो ने, पुर्तगालियो ने नही किया और मैं करने नही दूगा तो अन्त मे जाकर बिना हैंडकफिग के मुझे जाने की अनुमति दी गई । तो इसके बारे मे भी इसमें कोई प्रावधान होना चाहिए, यह तो बर्बरता वाला कानून है कि आप हैडकफ करके साधारण लोगो को ले जाते है । हा, कोई भयकर व्यक्ति हो जो भागता है बार बार उसको हैडकफ करने है तो बात समझ मे आती है । इसलिए इस बर्बर और जगली रिवाज को गैर कानूनी करार देना चाहिए ।

पहला कानून यह टूटा कि 24 घटे मे सविधान का 22वी धारा के तहत, क्रिमिनल प्रोसीजर कोड की धारा मैजिस्ट्रेट के सामने रखा जाये लेकिन अक्सर होता यह है कि कभी भी मुल्जिम को मैजिस्ट्रेट के सामने पेश ही नही किया जाता, सीधे जेल मे ले जाते हैं और जेल के पास जो वारन्ट होता है उसके ऊपर मैजिस्ट्रेट पुलिस के कहने पर हस्ताक्षर कर देता है । बिहार विधान सभा की एक कमेटी ने अपनी रिपोर्ट मे कहा है कि गया मे एक मुल्जिम साढे 6 साल तक जेल मे रहा और उसको कभी भी मैजिस्ट्रेट के सामने पेश नही किया गया । मेरे बारे मे भी यह कानून टूटा । दूसरे इसमे कारण बताना चाहिए तो मुझे उन्होने केवल एक सेक्शन बता दिया' उसमे भी कानून टूटा । तीसरे जो वर्तमान क्रिमिनल प्रोसीजर कोड की 344 धारा है उसमे कहा गया है कि कारण बताना चाहिए, रिकार्ड का स्पष्ट आदेश होना चाहिए लेकिन क्या मत्री महोदय जानते हैं कि अक्सर मैजिस्ट्रेट तारीख देते जाते है और हवालात करते जाते हैं । तो क्रिमिनल प्रोसीजर कोड की और सविधान की जो धाराएं विद्यमान हैं उनका भी उल्लंघन हो रहा है । ऐसी हालत में हम लोगों को और सेफगार्ड्स और संरक्षण देने के बारे मे सोचना चाहिए न कि जो हमारे सरक्षण और अधिकार हैं उनको ही हम लोग खत्म करे ।

अब मेरे जो प्रमुख मुद्दे हैं उनके ऊपर मत्री महोदय का ध्यान दिलाना चाहता हू । पहले मेरा कहना है कि वर्तमान क्रिमिनल प्रोसीजर कोड मे 106, 109, 110 आदि जो धाराए है उनको एकदम खत्म करना चाहिए लेकिन मुझे अफसोस इस बात का है कि इन धाराओ को किसी न किसी रूप मे इन लोगो ने बनाये रखा है । 107 के बारे मे बाद मे बताऊगा लेकिन हैबिचुअल आफेन्डर वगैरह की जो धाराये है उनमे बडा जुल्म किया जाता है मै जानता हू जेलो मे काम के लिए भगी लोग नही मिलते है इसलिए यह जो हैबिचुअल आफेन्डर के नाम पर जो लोग है उनको जेलो मे केवल इसी तरह के गन्दे कामो के लिए जेल अधिकारी और पुलिस आपस मे मिल कर पकड कर लाती है । यह अनुभव की बात है । जो स्वतन्त्रता के दिनो मे जेल मे रहे है उनको इस बात का पता है । पुरानी 107 को खत्म करने के लिए तैयार नही हैं तो कम मे कम पुरानी जो 106, 109, और 110 है, उसी के अनुरूप जो नई धारायें हैं उनको कम से कम खत्म करे ।

107 के बारे मे मैं कहना चाहता हू । मुझे यह धारा बहुत अच्छी नही लगती है । उसको मैने सुप्रीम कोर्ट मे चुनौटी दी थी । लेकिन उसने इसको सवैधानिक ठहराया । होता क्या है ? जैसे किसी व्यक्ति को गिरफ्तार किया जाता है 151 मे करेगे लेकिन साथ साथ 107 चला देंगे, उसका नोटिस भी बढाया जाएगा और तुरन्त 117 के तरह उसके ऊपर जमानत या जेल यह आदेश जारी हो जाएगा । मेरे अपने बारे

मे बनारस का केस है । यह 1970 का है । मै हवाई अड्डे से आ रहा था । बिला बजह मुझे पकड लिया गया और 107 के तहत कार्रवाई हुई । सुप्रीम कोर्ट मे मैं गया । सुप्रीम कोर्ट का स्पेशल बैंच बैठा था 107 की वैधता के बारे मे विचार करने के लिये । इसको तो वैध साबित किया गया । लेकिन सुप्रीम कोर्ट ने एक मेरी बात को माना कि 117 (3) के तहत जो हुकम होता है और 107 और 112 का जो आर्डर होता है वह उसी के साथ नही होना चाहिये । यह सुप्रीम कोर्ट ने कहा उन्होने पैंडिंग कम्प्लीशन आफ इनक्वायरी की व्याख्या की है कि कम से कम एक बिटनेस आए, उसकी गवाही हो और उसको क्रास एग्जेमिनेशन करने का मौका मिलना चाहिये । अगर यह सुप्रीम कोर्ट की जजमेंट है तो क्या बजह है कि कम से कम इतना सरक्षण, इतना सेफगार्ड हम कानून मे न दें । मेरा केस होने के बाद भी सैकडो और हजारो केस चल रहे है उत्तर प्रदेश मे चल रहे है । समाजवादी युवजन सभा के भूतपूर्व जनरल सैक्रेटरी मोहन सिह का केस था । मेरे साथ इलाहाबाद जेल मे वह थे । सुप्रीम कोर्ट के पास समय ही नही था और उसके केस को खारिज कर दिया गया । फिर वह अपील मे सैशन कोर्ट मे गए । उसी बिना पर सैशन कोर्ट ने उनकी छोडा कि 117 (3) के तहत एक साथ आर्डर नही किया जा सकता है । कम से कम इतना सेफगार्ड तो दिया जाए ।

107 के बारे मे सुप्रीम कोर्ट ने कहा है कि यह आपतकालीन है । मान लो झगडा फसाद का खतरा है, व्यक्तिगत झगडा हो सकता है साप्रदायिक झगडा हो सकता है, राजनैतिक दगा फसाद होने का अदेशा हो सकता है तो तत्काल कार्रवाई के लिये 107 है, यह उनका कहना है । एक, एक, दो, दो और तीन-तीन साल मह जो मामला चलता है, क्या जरूरत है इसकी । लखीसराय की 1968 की बात है । मेरी सारी मागो को अन्त मे रेल मंत्रालय ने मान लिया । लखीसराय रेलवे का सुधार हो गया । लेकिन अधिकारियो ने दुष्टता का व्यवहार किया । ढाई साल तक मेरे खिलाफ यह केस जारी रखा । नतीजा यह हुआ कि दो-दो सुप्रीम कोर्ट की जजमेंटस हो गई । 1968 मे हुई 1970 मे हुई । फिर भी केस चलाया । 1971 मे शैलेट साहब के सामने यह मामला आया । उन्होंने कहा क्या मजाक है ? ढाई साल हो गए है और 107 की कार्रवाही कर रहे है और अगर मुकदमा वापिस नही लेते हो तो आपके खिलाफ अभी फैसला देना होगा । इस पर सरकारी वकील ने कहा कि हम तैयार हैं । उसको कहना पडा इसको इस तरह की बात होती है । 117(3) के बारे मे जो मौजूदा 116 धारा है इस मे इसको मान ले । हैबिचुअल आफन्डर खत्म करे । 107 मे जो अधिकार चाहते है वे आपके पास है । ईमानदारी से पुलिस और मैजिस्ट्रेट काम करना चाहते है तो 107 धारा अनिच्छा से मैं रहने दे रहा हू । मेरी इच्छा नही है कि रहने दू । अच्छा प्रशासन वह नही है जो ऐसा करता है । लेकिन अगर आपको रखनी है तो रखिये लेकिन बाकी की खत्म कर दीजिये जो समय है छ महीने, एक साल इसको तीन महीने कर दीजिये । यह काफी है । जो शन्ति के लिये खतरा है वह तीन महीने मे खत्म हो जाता है ।

अब मैं 144 के बारे मे कहना चाहता हू । मत्री महोदय जानते ही है कि सारे देश मे दफा 144 लगी हुई है । बीच मे मै मालेगाव गया था । मेरा वहा जाने का कसद यह था कि बुनकरो की स्थिति का मैं अध्ययन करू । मेरे वहा जाने से न अशान्ति होने वाली थी और न सप्रदायिक दगा होने वाला था । लेकिन जब एक निजी जगह मे कार्यकर्ताओ ने सभा रखनी चाही तो पुलिस वालो ने चारो ओर से उसको घेर लिया और किसी को वे जाने नही दे रहे थे । जब हम वहां पहुचे और कहा कि वह क्या तमाशा कर रहा है, तब जाने दिया । पूरे देश मे दफा 144 लगी हुई है । मैंने सशोधन दिया है । यह भी एक सकटकालीन दफा है । आजकल हमारे

श्री मधु लिमये :

देश में जो एमरजेंसी वाली चीज है वह भी नार्मल चीज हो रही है । मेरा सुझाव है कि जो पहला आर्डर होगा, जो इंटेरिम आर्डर होगा उसको आप 48 घंटे और 72 घंटे से अधिक न रखें ? यह कहिये मैजिस्ट्रेट को कि वह पब्लिक ही हीयरिंग करे, सार्वजनिक कार्यकर्ताओं को सुने और यदि उनको लगता है कि और इसको बढ़ना चाहिये तो पंद्रह दिन और अधिक से अधिक तीस दिन तक वह बढाएं । इस में कोई दिक्कत नहीं है । अमरीकी सुप्रीम कोर्ट के मैंने डिसिशंज इसके बारे में देखे हैं । जब सिविल राइट्स मूवमेंट चल रही थी तब प्रायोर रेसट्रेंट जिस को कहते हैं, उसको उन्होंने बहुत बुरा माना । दफा 144 प्रायोर रेसट्रेंट नहीं है तो क्या है ? क्या बोलता है, प्रदर्शन में क्या कहता है, भाषण में क्या कहता, है क्या अपराध करता है, इसका सवाल नहीं है । वह प्रचार करें ही नहीं जलूस निकाले ही नहीं सभा करे ही नहीं इसके वास्ते जो यह निर्बाध प्रतिबन्ध लगाया जाता है तो यह ठीक नहीं है । इसके बारे में सावधानी बरती जानी चाहिये । मेरा सुझाव है कि इंटेरिम आर्डर हो, दो तीन दिन में पब्लिक हीयरिंग हो । नियम बनाएं । उसके बाद भी यदि मैजिस्ट्रेट आवश्यक समझता है तो बढ़ाए । मैं यह भी चाहता हूं कि सभी एग्जैक्टिव मैजिस्ट्रेटस को और एस डी ओज को आप यह पावर न दें । आज जो आपने डी एम को दे रखी हैं वही रखें । आप कहते हैं कि मैं इसको और उदार बनाना चाहता हूं, लिबरल बना रहा हूं, । यह लिबरलाइजेशन है क्या ? सबूली मैजिस्ट्रेट को, एस डी ओ को अधिकार आप दे रहे हैं । मैं चाहता हूं कि एडीशनल डी एम को भी आप यह अधिकार न दें केवल डी एम को दें ताकि जिम्मेदारी से सत्ता का इस्तेमाल हो सके । अगर आप इसको मानने के लिए तैयार हैं तो ऐडी एम को भी रखें । लेकिन एस डी ओ, फर्स्ट क्लास मैजिस्ट्रेट की जो बात आपने कहीइसको आप खत्म कर दें ।

अब मैं सबसे महत्वपूर्ण सैक्शन पर आ रहा हूं और वह है 167 वर्तमान । इन्होंने कुछ लोगों की बैठक बुलाई थी और बहुत अच्छी हम लोगों की बातचीत हुई । इनके अफसरों का भी खुला मन मैंने देखा । आप समझते हैं कि मैं हमेशा अफसरों के खिलाफ बोलता हूं लेकिन ऐसी बात नहीं है । जो तर्क करते हैं, बहस करते हैं, उनको मैं पसन्द करता हूं लेकिन जो तर्क और बहस करने के बजाय यह कहते हैं कि हम ब्यूरोक्रेट है और हम करेंगे उनको मैं पसन्द नहीं करता हूं । अच्छी बहस हुई । चूंकि काम अधिक था और बैठकें नहीं हो सकी । मंत्री महोदय का इस में कोई दोष नहीं है । 167 को मैंने बहुत स्टडी किया है। इसके बारे में वर्तमान कानून बिल्कुल साफ है । चितले साहब की जो कमेंटरी है उसकी ओर मैं आपका ध्यान दिलाता हूं ।

"The longest period for which an accused can be ordered to be detained in police custody by one or more such orders is only 15 days. It was so held in a case arising under the corresponding section of 1961 Code wherein the time limit was not fixed, and similarly under the Code of 1882 wherein the words "in the whole" were absent

"Where even within the 15 days' time allowed under this section the investigation is not complete, the police may release the accused under section 169; or they may send him to the Magistrate having jurisdiction to try the case or hold an inquiry with a report under section 173; then the Magistrate may remand the accused under section 344. But such remand will not be to po-

lice custody. Detention under this section in the police custody for more than 15 days is illegal"

मंत्री महोदय का और इनके अफसरों का कहना था कि फैसलों की रोशनी में ऐसा किया जा रहा है । लेकिन होता क्या है ? 344 के तहत रिमांड देते चले जाते है । वह गलत काम है । लेकिन कम से कम उसमे यह सेफगार्ड है कि 344 मे जो रिमांड गलत है या सजा जो होती है वह जेल कस्टडी की होती है । पुलिस कस्टडी मे जहा तक पद्रह दिन की बात है, एक बार इनकागनिटो आप जाए एक ही दिन और पुलिस कस्टडी मे रहे तो आप को पता चलेगा कि इट इज वैरी डयल हैल । एक दिन से अधिक उसमे आप रात काट सके तो मै इनके सुझाव को मानने के लिए तैयार हू । मत्री महोदय पुलिस कस्टडी मे एक दिन के लिए इनको इनकागनिटो जा कर देख ले । वहा बहुत खराब हालत होती है । जानवरो के लिए बसाई गई बारे मिलती हालोनी मे जो स्टेबल बनाए गए है उनकी कडिशन उससे अच्छी है पुलिस कस्टडी मे । मेहरबानी करके यह नब्बे दिन वाला जो सवाल आपने उठाया है उसमे आप यह कर दे कि पद्रह दिन के आगे अगर केस का इनवैस्टीगेशन पूरा नही हुआ तो जेल मे रखा जाय और जरूरी हो तो उसी मे आप एक क्लाज बाद दे कि पुलिस कस्टडी मे भेज दे मुझे कोई एतराज नही है । मत्री महोदय का यह कहना था कि दफा 344 का दुरुपयोग होता है । मैने मान लिया । वह दुरुपयोग न हो, इसके लिए उन्होने कुछ सुझाव दिए । उनका मै स्वागत करता हू । अब सवाल यह है कि अगर पद्रह दिन मे इनवेस्टीगेशन पूरा नही हुआ, तो क्या करे । मैं कहता हू कि उसी के तहत यह प्रावधान किया जाये कि और कुछ दिन के लिए भेज सकते है, लेकिन जुडिशल कस्टडी दी जाये । मेहरबानी कर के पुलिस कस्टडी न दी जाये । मंत्री महोदय को बाकी जो कुछ भी पास करना है, वह करे, लेकिन जब तक मैं यहा हूं, मैं इसको मानने के लिए तैयार नही हू। इस पर डिविजन होगा ।

मेरी फिर एक दफा प्रार्थना है कि पुलिस कस्टडी मे पद्रह दिन काटना एक टारच्यूयर है और इस विधेयक मे नब्बे दिन की बात की गई है । यह मुझे जचता नही है । मत्री महोदय इस बारे मे सोचे ।

मैं उन धाराओं के बारे मे नही बोलना चाहता हू, जिनको दूसरे माननीय सदस्यो ने कवर किया है । श्री एन्थनी ने अपील, समरी ट्रायल और परजुरी के बारे मे जो कहा है; मै उससे सहमत हू । जहा तक अपील का सम्बन्ध है, एक दफा एक्विटल होने के बाद जब सजा होती है, तो एक भी अपील न रहे; यह अच्छी बात नही है ।

मत्री महोदय ने इस विधेयक मे लीगल एड के बारे मे एक अच्छा प्राविजन दिया है, जिसके बारे मे मैने पिछले सत्र मे दो-दो विधेयक रख थे । वह बडा अच्छा प्राविजन है, लेकिन मत्री महोदय ने उसमे एक बहुत बडा दोष रखा है । इस विधेयक की धारा के तहत हाई कोर्ट नियम बनायेगा "दिद दि प्रापर एपरुवल आफ दि स्टेट गवर्नमेंट', और वकीलो की नियुक्ति भी शायद सरकार ही करेगी । मत्री महोदय से मेरी प्रार्थना है कि वह मेरी एमेंडमेंट को स्टडी करे । मेरा सशोधन इस प्रकार है

"The High Court may, in consultation with the State Government..

मैने "एपरुवल" की जगह "कनसल्टेशन" रखा है ।

....prepare a panel of pleaders for each district from among whom the accused may select a pleader for his defence under sub-section (1); and also make rules providing for.."

[श्री मधु लिमये]

रूल्ज अलग कर दीजिये । हाई कोर्ट के द्वारा राज्य सरकार से सलाह कर के हर जिले के लिए एक पैनल बनाया जाये । नहीं तो क्या होगा ? सब लोग चमचागिरी करने लगेंगे, क्योंकि जिनकी प्रैक्टिस—वकालत—चलती नहीं है, वे सोचेंगे कि अगर हम सरकार की चमचागिरी करेंगे, तो उस पैनल में आ जायेंगे । इस तरह सरकार एक हाथ से जो अधिकार दे रही है, वह दूसरे हाथ से उसको वापिस ले रही है । मेरी एमेंडमेंट में कोई ग़लती नहीं है । मंत्री महोदय इस पर सोच और इसको मान लें । मेरे संशोधन यह है कि हाई कोर्ट के द्वारा राज्य सरकार की सलाह से हर जिले के लिए एक पैनल बनाया जाये और एक्यूज्ड को यह छूट हो कि वह उसमें से किसी को चुन ले ।

जैसा कि मैंने कहा है, मैं लीगल एड के प्राविज़न का स्वागत करता हूं । पिछली बार मैंने कहा था कि अमरीका में जो बुनियादी अधिकार हैं, वे तकरीबन हमारे जैसे हैं, लेकिन अमरीका की सुप्रीम कोर्ट ने पिछले तीन वर्षों में भाष्य या इन्टरप्रेटेशन से—कांस्टीट्यूशनल एमेंडमेंट से नहीं, लीगल प्राविज़न से भी नहीं– यह कहा है कि ग़रीब और कंगाल मुलज़िम को यदि वकील नहीं मिलता है, तो वह मौलिक अधिकारों का हनन है । सुप्रीम कोर्ट के फ़ैसले के अनुसार अब सरकारी खर्चे से वकील मिलता है । सरकार ने यह जो शुरुआत की है, मैं उसका स्वागत करता हूं । लेकिन इसमें चमचागिरी, खुशामद या प्रशंसा के लिए मौका न दिया जाये, क्योंकि वैसे ही न्यायालय की स्वतंत्रता के बारे में लोग हल्ला करने लगे हैं । इसलिए मंत्री महोदय मेरे इस सुझाव को मान लें ।

चार्ज के बारे में इस विधेयक में कहा गया है कि वह अदालत की भाषा में लिखा जायेगा । मैं उसमें यह संशोधन चाहता हूं कि अदालत की भाषा, या हिन्दी, या प्रादेशिक भाषा, या मुलज़िम को जो भाषा समझ में आये, उसमें उसको चार्ज मिलना चाहिए । एक सूबे का आदमी दूसरे सूबे में भी हो सकता है । अगर उसको चार्ज का ऐसा अनुवाद मिल जायेगा तो वह समझ जायेगा ।

मैं दो तीन बातें धारा 107 और तत्सम धाराओं के बारे में भी कहना चाहता हूं । मैं मंत्री महोदय को बताना चाहता हूं कि जब पिछले साल मैं इलाहाबाद में गिरफ्तार हुआ, तो मेरी रिट पेटीशन की सुनवाई के लिए मुझे दिल्ली के तिहाड़ जेल में भेज दिया गया । उपाध्यक्ष महोदय, यह एक दर्दनाक कहानी है । एक दिन मेरे वार्ड में कुछ नौजवान लड़के सफ़ाई करने के लिए आये । जिन लोगों को स्कूल-कालेजों में होना चाहिए था, उनको जेल में देख कर मैं दंग रह गया । मैंने उन लोगों को बुला कर पूछा कि यहां क्यों आये भाई; चोरी, डकैती, बलात्कार, क्या किया । वे बोले, कुछ नहीं, हम 55/107 में बन्द हैं ।

उनमें से एक का नाम था रामसिंह । वह बोला कि मैं अनाथ हूं, मेरे मां-बाप नहीं हैं, बड़े भाई के यहां कानपुर में रहता था, भाभी मुझ से बहुत काम लेती थी, भूखा रखती थी, इस लिए मैं भाग गया । उसके पास टिकट था । जब वह दिल्ली स्टेशन पर उतरा, तो रेल कांस्टेबल ने उसको छेड़ा और पूछा कि तुम कहां के हो । उसने कहा कि मैं अनाथ हूं, नौकरी की खोज में दिल्ली आया हूं । कांस्टेबल ने कहा कि अनाथ हो, चलो तुम को 55/107 में गिरफ्तार किया जाता है । उपाध्यक्ष महोदय, यह सब राजधानी में हो रहा है । जेल में उसको कहा गया कि पचास रुपये दो, तब तुम्हें छोड़ेंगे । उसने कहा कि मेरे पास पचास रुपये नहीं हैं । तब उसकी तलाशी ली गई और जो दस बारह रुपये मिले, वे

छीन लिये गये । उसको तीन दिन तक मैजिस्ट्रेट के सामने पेश ही नही किया गया और बाद मे पद्रह दिन का रिमाड ले लिया गया ।

दूसरे का नाम ललित कुमार था और वह सहरसा, बिहार का था । उसने बताया कि मैं काल्का मेल की डाइनिंग कार मे रोटी बनाने का काम करता था, जब डाईनिंग कार दिल्ली मे रहती थी, तो पुलिस वाले आ कर तग करते थे कि खाना खिलाओ, मैं उनको बचा हुआ खाना दे देता था, एक दिन ऐसा हुआ कि मेरे सुपरवाइजर ने मुझे डाट दिया कि ऐसे खाना क्यो देते हो । तो उसने कहा कि अब मैं नही दूगा । दूसरे दिन जब वह काश्मीरी गेट से साबुन खरीद कर आ रहा था, तो पुलिस वालो ने उसकी गर्दन पकडी और कहा कि तुम को 55/107 मे गिरफ्तार किया । वह रोने लगा कि मुझे यहा से छुड-वाइये, मैं फिर दिल्ली नही आऊगा, यह बडी अयकर नगरी है, मैं वापिस बिहार चला जाता हूं ।

तीसरा लडका छिदवाडा, मध्य प्रदेश, का रहने वाला था । 55/107 मे जेल या जमानत की जो कार्यवाही होती है, उसके तहत वह एक साल के लिए जेल मे था और नौ महीने की सजा काट चुका था । वह एक गरीब आदमी था । मैंने उससे कहा कि जमानत क्यो नही देते । उसने कहा कि मैं जमानत कहा से लाऊ, अगर मैं अपनी बीबी को बुलाऊगा, तो उसके आने-जाने मे पांच सौ रुपये खर्च हो जायेगे, मेरे पास पैसा नही है । जब मैने पूछा कि क्यो पकडा, तो बोला कि नौ महीने पहले—वह मालिश करने वाला था—मै दिल्ली के राजपथ पर खडा था, तो दो पुलिस वाले आये और उन्होने टोका कि क्या कर रहे हो । वह बोला कि जैसे दूसरे लोग राजपथ पर टहलने के लिये आये है, वैसे मै भी आया हू । कहा के रहने वाले हो ?—मैं छिदवाडा, मध्य प्रदेश का रहने वाला हू । यहां कहा रहते हो ?— मेरा कोई घर नही है, जैसे हजारों लोग किसी पेड की छाया मे या इमारत के किनारे रहते है, वैसे मै भी रहता हू । जब उसने कहा कि मैं बेघर आदमी हू, तो पुलिस वाले बोले कि यह 55/107 के लिये फिट आदमी है । मैजिस्ट्रेट के सामने जाकर उन्होने कहा कि एक पार्क की हुई फियट कार पर उसकी बुरी नजर थी । इस देश मे 55/107 के तहत क्या क्या होता है ।

मैंने सोचा कि यह 55/107 क्या बला है । मैंने क्रिमिनल प्रोसीजर कोड को खोल कर देखा । 55 मे क्या था?—"नो आस्टेंसिबल मीन्ज आफ सबसिस्टेस" । तीन साल से सत्तारूढ दल के लोग यह हगामा कर रहे हैं कि निर्देशक सिद्धान्तो के कार्यान्वयन मे फडामेटल राइटस बाधक बन रहे हैं । संविधान कहता है कि राज्य का यह कर्तव्य है कि सब लोगो को काम दिलाया जाये, रोजगार दिलाया जाये । लेकिन यह सर-कार रोजगार तो देती नही है और जिनके पास रोजगार नही है या आस्टेसिबल मीन्ज आफ सबसिस्टेस नही है, उनको जेल मे बन्द कर देती है ।

SHRI B. R SHUKLA (Bahraich) That has been deleted.

श्री मधु लिमये : वह मैं जानता हू । मैने यह कहानी इसलिये सुनाई है कि मैं जो सेफगार्ड माग रहा हू, और जिन धाराओ को काटने के लिये कह रहा हू, मला महोदय उनके बारे मे गम्भीरतापूर्वक सोचे । मैने एक फ्रेन्ड के नाते उनके लिये रिट पेटीशन किया । अभी तक जेल मे जो बन्द है उसका फ्रेन्ड बाहर से कर सकता है, लेकिन पहली बार जेल मे एक कैदी के द्वारा दूसरे कैदी के लिये रिट पेटीशन किया गया । मैंने कहा कि इस दुष्ट और क्रूर, जगत मे मेरे अलावा इनका और कौन दोस्त है? इसलिये मैं कह रहा हू और उस समय जो जज थे द्विवेदी साहब वह डायरेक्टिव प्रिसिपल पर लेक्चर दे

[श्री मधु लिमये]

रहे थे फडामेंटल राइट्स के केस मे । मैंने कहा कि निदशक सिद्धान्तो के गीत गाते है और इनको इसमे गिरफ्तार किया जाता है । जब मेरा पेटीशन गया तो वह ऐडमिट हुआ और एक आदमी को तो उन्होने छोड दिया और दूसरे को सुप्रीम कोर्ट के जजेज छोडने जा रहे थे तो उन्होने कहा कि सात दिन की मियाद दीजिये और सात दिन के बाद उनको भी छोड दिया गया । लेकिन वह राम सिह मालिश वाला अभी तक जेल काट रहा है । शायद एक साल पूरा हुआ होगा तो छूट गया होगा । इसलिये इस तरह का दृष्टिकोण यह रखे । मेरी अपनी यह राय है, मै ऐसे न्यायालय चाहता हू, मै वह दिन देखना चाहता हू कि जब सुप्रीम कोर्ट के जजेज आर्थिक और सामाजिक मामले मे जो विधि मडलो के प्रगतिशील कानून है उनका तो समर्थन करेगे लेकिन जहा व्यक्तिगत स्वतन्त्रता का सवाल आएगा वहा निर्भयता के साथ राज्य का, स्टेट का मुकाबिला करके व्यक्तिगत स्वतन्त्रता के हक मे फैसले देगे जैसे अमरीका मे वारेन कार्ट ने किया क्योकि वारेन कोर्ट का यह अनुभव है कि सिविक राइट के बारे मे क्रिमिनल प्रोसीजर के बारे म, व्यक्तिगत स्वतन्त्रता के बारे मे मैजिस्ट्रेट भी प्रतिक्रियावादी हो सकता है । आप लोग जो बार बार कहते है कि इन सस्थाओ के सम्बन्ध बिगड गये है, आज कार्यपालिका प्रतिक्रियावादी है, विधि मडल प्रतिक्रियावादी है और न्यायालय भी प्रतिक्रियावादी है । जब तक इनके रिश्तो को नही सुधारेगे और उदारवादी, स्वतन्त्रतावादी दृष्टिकोण नही अपनायेगे, क्रिमिनल प्रोसीजर मे सही माने मे कोई परिवर्तन नही होगा ।

SHRI EBRAHIM SULAIMAN SAIT (Kozhikode): Mr. Deputy-Speaker, Sir, to-day the eighty-years' old Code of Criminal Procedure is sought to be amended. I feel that this is a forward step which can guarantee personal liberty of the citizens of the country. Justice should be assured to all sections of the population in the shortest possible time. I feel that when we are having this new Code of Criminal Procedure, we should not attempt to disturb the established personal law of any community. I am not going to deal at length with the various other provisions contained in the Code of Criminal Procedure which is before the House This has come from the Select Committee and also has been passed by Rajya Sabha. But, one thing which I would definately like to point out is this. I consider it my duty to point out this with regard to Section 125 of Chapter IX of this Bill This is, with regard to the explanation of the "wife" It is stated here that 'wife' means 'a woman' who has been divorced by or has obtained a divorce from her husband and has not re-married This, I consider, to be a very very wrong definition of 'wife' which is not only against common- ense but also goes fundamentally against the provisions of Muslim personal law I desire to point out about the provisions of the Muslim personal law to the august House. I consider it to be my duty to point this out to the hon. Minister also so that he may kindly consider this and see that at least this definition is deleted from this Bill. If he cannot do that at least the Muslim community which is guided by the Muslim personal law should be exempted from the purview of this explanation given in the Bill

It is very strange to describe a divorcee to be a wife. I cannot accept that definition I would like to point out here that, as far as Muslim personal law is concerned, it has laid down a specific procedure with regard to all matters concerning life of a Muslim As far as special life of the Muslims is concerned, these directives have been laid down not by any person but by 'God' himself in the Koran. It is, therefore, not possible for us as Mussalmans to go against the directions given in Koran and as an expla-

nation of the directives of the prophect. Here, I would like to point out that as far as Muslim personal law is concerned. When a divorce is given to a lady, then the provisions regarding the payment of maintenance is very clearly put down. Apart from the fact that it is strange to term a 'divorcee' as a wife, this provision erodes the provision of the Muslim personal law under which the period for which a woman is entitled to maintenance after severance of marital ties, either through divorce or through judicial separation, is fixed at her completing three monthly courses or three months in case she is either a minor or past the age of menstruation. In the case of a divorce to a pregnant woman, the woman is entitled to maintenance till the pregnancy is over This is how the period for which she can claim maintenance has been fixed and laid down under Muslim personal law When she is pregnant after the pregnancy is over, the claim for maintenance completely stops and she cannot claim any maintenance and if the lady is not pregnant the claim for maintenance ceases after three periods For the other cases also, the period for which she can claim maintenance has been specified. Moreover, there is also provision of Meher that is dower which has to be paid on divorcing the wife.

But under this Bill, a lady although divorced, can claim maintenance from her husband until she is remarried; or dies. This means, the divorce would have taken place because both could not agree, and divorce has been granted but the husband has to pay for her maintenance for her entire life if she does not get remarried. This is completely against the provisions of the Muslim personal law, and, therefore, I oppose this Explanation. I would request the hon. Minister to see that this Explanation is deleted and does not find a place in the Criminal Procedure Code.

So long as this Explanation remains on record, it is not possible for us to support this Criminal Procedure Code particularly this section in the Bill

I would bring to the notice of the hon. Minister that we have had repeated assurances from the Prime Minister of this country that there will be no interference with the Muslim personal law. She has been giving this assurance repeatedly all the time. Only two weeks ago, I had met her, and she told me also the same thing; I mentioned to her about this clause and also the Adoptions Bill which is at the Select Committee stage, and she gave the assurance that there would be no interference with the Muslim personal law. Recently, the Muslim leaders, led by Maulana Mufti Ateequir Rahman, President of the Muslim Majlis Mushawarat met her on a delegation, and again the Prime Minister had given them the assurance that there would be no interference with the Muslim personal law

You may be aware that some time back, the Congress Parliamentary Party also declared in very clear terms that they did not intend to interfere with the Muslim personal law. In spite of these declarations, if this kind of provision comes here in this Bill, we are afraid that we may have to conclude that while they do make such declarations, that they do not intend to interfere with the Muslim personal law, yet they try to interfere through back-door methods. That is what we shall be forced to infer. Therefore, I would once again request that the definition given here or the Explanation given in the Bill of the wife should be changed. My hon. friend Shri F. H. Mohsin can very well understand the implication of this provision. Letters have been sent to the Prime Minister by the religious heads of various institutions pointing out this defect. Maulana Mufti Ateequir Rehman and Maulana Mohamed Yusuff Amir Jamait i-Islami and others have written letters. They have clearly pointed out that it is wrong to say that 'wife' means a person who has been divorced by or has

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obtained a divorce from her husband and has not remarried.

Therefore, I would request the hon. Minister to have this Explanation in regard to 'wife' deleted, because it is not only against commonsense but it is against the principles of justice and it goes fundamentally against the Muslim personal law.

SHRI SHAMBU NATH (Saidpur) There is difference between *talaaq* and divorce Divorce is obtained from court, but *talaaq* is obtained under customary law.

SHRI EBRAHIM SULAIMAN SAIT. But maintenance is claimed in both cases, whether it be judicial separation or divorce. Let not my hon. friend expose his ignorance. Here, judicial separation and divorce mean the same thing. In both cases, maintenance has to be paid under this Code to a woman until she remarries or until she dies. It is wrong. Maintenance cannot be claimed to anybody who has been divorced, for period more than what is prescribed by Muslim personal law. As for others, you can do what you like. They are not governed by personel laws. But as far as the Muslims are concerned, they are governed by the Muslim personal law and they have to follow it.

If a period is fixed for giving maintenance, we cannot say that the period should be exceeded and nobody who has been divorced can claim maintenance for a period much more than that. I hope the Minister will consider these points and also keep in view the assurances given by the Prime Minister and also the Congress Parliamentary Party members and various other leaders of Congress.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARTMENT OF PERSONNEL (SHRI RAM NIWAS MIRDHA): We have had a very useful discussion on some aspects of the present Bill which is before the House. Members gave expression to their views from their respective viewpoints and I am grateful to them for whatever opinion they have expressed on some of the changes we have made.

The whole approach in framing this Bill has been that we should try to strike a balance between the needs of a better order on the one hand and the rights of an individual to freedom and to enjoy his property and to the other things that go with these on the other. It sometimes becomes a very difficult exercise. When I heard members interpret some clauses in a manner which was in the nature of an extreme view, I felt that they were speaking from a very limited angle.

Shri Madhu Limaye made an eloquent plea for protection of rights of the citizen, his dignity and the enjoyment of his rights enshrined in the Constitution. He also narrated his personal experience. It is not only a matter of his personal experience. He has definitely made some contribution in the evolution of our thinking, of judicial thinking, on some very basic aspects of the Code.

Many of the things that were said here would again have to be repeated when the clause by clause discussion takes place. I will broadly touch on the viewpoints expressed and try to reply to the arguments raised by hon. members.

Much has been said about security provisions like sections 107, 108, 109 and 110. It has been said that they are very repressive and should not find a place in our statute-book. The needs of society do demand that under certain circumstances some extreme measures have to be taken, some measures which have to be drastic and those that have to be taken on the spur of the moment when there is an imminent danger of breach of peace. In those contingencies, it may not always be possible to go to a judicial magistrate or

any magistrate for that matter and try to get an order from him. To say that the police should not have powers to arrest a person even when he is being apprehended in an act of committing an offence is also to take an extreme view. But we have tried to tone down some of the rigours of the provisions and to make them more limited and to provide more and more safeguards so that there would be very little scope for the abuse of these provisions.

Sometimes the debates took a turn which shows a complete lack of faith not only in the police but the judiciary, the subordinate judiciary or even the higher judiciary. Many of the suggestions that hon. Members have made really stem not so much from the provisions as such but the way they are interpreted in actual practice in some extreme cases. We cannot go about in the formulation of a Code of this nature by keeping in view only extreme cases or trying to make provisions so that they may never occur. That is just not possible. What is possible and practicable is that we should have a Code which should provide protection for the aggrieved individual as well as for an accused person, to see that he is not detained and put in jail for a day more or an hour more than is absolutely necessary; and to provide whenever possible that the discretion should be vested in the court in cases which were earlier within the purview of the police. So, the approach should be that whatever limitations are being sought to be put on the liberty of an individual should be balanced against possibilities of abuse of power, whether by the police or the magistracy, in a negative way. But to take an extreme view that all the security provisions should be taken away, I think, would not be in the interests of society. Situations arise when these steps have to be taken and so these have to be made available. On the whole, these provisions have worked in a proper way and on innumerable occasions, but for these provisions, complete chaos would have resulted and the liberty of the individual would have been endangered and sometimes even the stability of society would have been in jeopardy.

I will not go into the details as to what refinements and improvements we have introduced in this Bill. They will come in when we come to the amendments, but our general approach is that, firstly, we have taken some of the security provisions from the executive magistrates and given them to the judicial magistrates who under this Code are independent of the executive. The separation of the executive and the judiciary is something which we all, greatly desire, and under this Code, for the first time, a uniform scheme is being laid down for the separation of the executive and the judiciary. Before this, the position was that the situation differed from State to State. Some had statutory sanction to the separation; other States had just some administrative arrangements. But after this Code there will be a statutory demarcation of functions between the judiciary and the executive, and that would set the whole thing in a proper frame.

In addition, we have also transferred some powers conferred in some States on the executive Magistrates to the judicial magistrates. That would also ensure greater confidence.

It would not be proper always to distrust the police force which is doing a difficult task under very difficult circumstances, and if there are aberrations we should find administrative and other measures to deal with them. When remarks are made about the judiciary itself, I cannot go into this because we have to take for granted that our judiciary is independent, that it acts in an independent manner and that it is free from executive interference, and that is why we have separated the executive

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and the judiciary on a statutory basis in this Code. So, to have a spirit of distrust all along the line will not make for proper administration of justice or even the proper running of the administrative system. I shall touch two or three points which have been raised; I shall start by referring to legal aid. It is true that equity before law is more or less illusory if legal aid of a competent nature is not made available to a person who seeks redress in a court of law. It is with that end in view that we have incorporated in this Code a provision that an accused person would be entitled to legal aid at Government cost in all cases that are triable by a court of sessions. This is considerable advance from the previous situation. Some of us would have wished to go further also but the whole thing is that the cost of the running of the legal aid system will fall on the State Governments. So, we thought that as a beginning, let us make it incumbent or compulsory for the State Governments to provide legal aid to all accused persons in a court of sessions and after this system had worked for sometime and if the State Governments feel that the resources warrant it, we have made an enabling provision that they could extend the ambit of the legal aid to any extent they like. To make a compulsory provision to cover all types of legal aid would not be possible. Shri Limaye mentioned about the amendment of which he has given notice; he felt that there might be some sort of an abuse and therefore in the Code itself we should say that a list should be prescribed from which the person should be chosen. This would be more or less an administrative arrangement for which the High Court can make rules. I think it would be desirable to make it incumbent upon any person who practices law to serve under the legal aid system. We say this is a noble profession; it is lucrative as well. Senior lawyers particularly should give some part of their time so that the scheme could work well. The point is whether the bar associations could come with some voluntary scheme or whether some legal compulsions should be introduced that a practitioner should give some part of his time for legal aid to the poor. These are ideas which could be thrashed out on some other occasion or in some other forum.

The problem of legal aid is a serious one and it is time that we in this House and the society as a whole went deeper into this matter we should not give sub-standard legal aid to the accused persons. How is it to be done? Merely making a law as suggested by Shri Limaye would not solve the problem. We shall have to put a legal obligation on every lawyer to serve in this and then make a roaster so that he can come turn by turn according to the roaster. This could be taken up separately. The Law Commission has given a separate report on legal aid which the Government is considering and we can seriously think over this matter further and see how it could be made effective.

The provision that we have made is a sufficient advance from the present situation. We have an enabling provision by which the State Governments can take it further if they so desire and if their experience with this system is satisfactory. I do not think it would be advisable to go beyond this at this stage.

As regards limitation, that is also a new idea that has been brought in here. We shall see how it works. To say that the police will collude or prompt to see that limitation expires is not correct because we have made an additional provision here, clause 154, which says that if some person goes to register FIR in a police station and it is not registered there he can go in addition to going to a magistrate to a superior officer and find a remedy. If he wants to get it regis-

tered with the police authority, it will be registered; we have made a small provision in that respect also.

Shri Sulaiman Sait said that the Explanation to section 125 would interfere with the personal law of the Muslims. We have to see what is the purpose of the whole clause. It says "Order for maintenance of wives, children and parents". This comes into effect only in case of extreme hardship when a wife has been neglected and her husband is not maintaining her. The clause gives her a right to go to court and get an order for maintenance against the husband. The Explanation says:

> "'Wife' includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried".

It has no effect on the civil status of the wife, husband or the divorcee. It has nothing to do with the personal law. If divorce has taken place and is valid under the existing law of divorce, either personal law or otherwise, that is not at all interfered with here. There have been cases and we have received a lot of representations which show that after divorce, women are generally in a very bad plight and it is a very difficult social and humanitarian problem. To cover that category also, we have said that if other conditions are satisfied, a divorced person can also get the benefit of this section. There is no intention to interfere with the personal law of Muslims in any way. This is a humanitarian approach which I think would be found by hon. members to be in consonance with the basic humanitarian traditions of Muslim personal law also. In a situation like this where there is a helpless lady, if we try to help her a little along with other categories of persons, I think this should be welcomed. I do not think Muslim personal law in any way comes into the picture.

SHRI DINESH JOARDER (Malda) You have not replied to the points made by members who spoke in the last session.

SHRI RAM NIWAS MIRDHA: The major points made in last session were about removal of security provisions. That I have touched in a general way, saying those provisions are necessary. We have tried to modify the rigours of this provision and provided more safeguards so that they will not be abused. The possibilities of abuse have been lessened.

15 hrs.

Mr. Anthony mentioned about police powers and committal proceedings Committal proceeding was a thing which we discussed very seriously in the Select Committee. We took a lot of evidence also on that It was felt that committal proceedings are nothing but a repetition of what will ultimately happen in the sessions court. Mr. Anthony said that by rigorous cross-examination at the committal stage he has got a large number of people acquitted. I do not think the purpose of any criminal procedure law should only be that as many people as possible should be acquitted. What we have to see is that the accused gets a proper opportunity to defend himself and, at the same time, to ensure that people who have been properly found to be guilty of certain offences do not go unpunished. That balance can be struck only when we reconcile the two things. Therefore, the removal of committal proceeding was something which was very much welcomed. Even now it is a very important decision that we have taken. It would simplify the procedure. Repeatedly hon. Members have said here as well as outside that the procedure should be shortened and that they should not take too much time because delay defeats justice. This is one of the ways in which the length of the trial would be lessened, the complexity would be lessened and at the same

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time, would preserve the basic approaches which means a proper opportunity to the accused person to defend himself.

With these words I would request that the House may take this motion into consideration. I would like to explain some of the clauses in more detail when we take up the clause by clause consideration.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill to consolidate and amend the law relating to Criminal Procedure, as passed by Rajya Sabha; be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER: We will now take up clause-by-clause consideration.

Clause 2.— (*Definitions*)

SHRI DINESH JOARDER: I beg to move:

Page 2, line 21,—

for "without warrant" *substitute*—

"under order of an appropriate court, the accused against whom a *prima facie* case is established to the satisfaction of the said court" (205)

Page 3, line 8,—

add at the end—

"after establishing a *prima facie* case against the accused to the satisfaction of the court" (206)

Clause 2(c) says:

'"cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;'

As I mentioned in my speech on the consideration motion, I am objecting to this clause that any police officer may arrest any person without warrant whenever he thinks fit. My fear is that this provision will be used in the interests of big landlords, jotdars and big capitalists and the peasants and labourers who are launching trade union and peasant movement would become the victims of arrest by police without warrant. So, I request that my amendments may be accepted.

SHRI RAM NIWAS MIRDHA: These amendments seek to remove the difference between cognizable and non-cognizable offence, particularly with a view to deprive a police officer of his right to arrest a person without warrant. We cannot agree to this because there are circumstances when a crime is being committed or is about to be committed in front of a policeman. To expect him in such a situation to go to a magistrate and get a warrant of arrest is unrealistic and would result, if I may say so, in complete lawlessness in certain circumstances.

SHRI DINESH JOARDER: As is prevailing in other countries, a suspect may be asked to stay in a particular area, he may not be allowed to go away without the permission of the police. In the mean time, the investigation can continue and if there is a *prima facie* case the police can seek the permission of the court to arrest him.

SHRI RAM NIWAS MIRDHA: So far as I am aware, this power of the policeman to arrest a person without a warrant is available in most of the countries of the world. What is more that we have a difference between cognizable and non-cognizable offences. Most countries do not have that difference also which means that even in non-cognizable offences, in other countries, the policeman can

arrest a person. What happens after arrest? He is well protected and he is produced before the Magistrate within a certain time.

To remove this will be most unrealistic and unacceptable to the Government.

MR. DEPUTY-SPEAKER: Now, I put Amendments No. 205 and No. 206 moved by Shri Dinesh Joarder to the vote of the House.

Amendments Nos. 205 and 206 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 2 stand part of the Bill"

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—(*Construction of references*)

Amendments Made:

Page 4, line 4, *for* "any", *substitute* "an". (14)

Page 4, line 5, *omit* "and". (15)

(*Shri Ram Niwas Mirdha*)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 3, as amended, stand part of the Bill"

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4 and 5 were added to the Bill.

Clause 6- (*Classes of Criminal Courts*)

Amendment Made:

Page 5, line 22, *for* "Magistrate", *substitute* "Magistrates".

(*Shri Ram Niwas Mirdha*)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 6, as amended, stand part of the Bill"

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Clause 7— (*Territorial divisions*)

Amendment Made:

Page 5, line 30, *for* "division and district", *substitute* "divisions and districts" (17)

(*Shri Ram Niwas Mirdha*)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 7, as amended, stand part of the Bill"

The motion was adopted.

Clause 7, as amended, was added to the Bill

Clause 8 (*Metropolitan areas*)

Amendment Made:

Page 6, line 10, *for* "exclusion", *substitute* "reduction" (18)

(*Shri Ram Niwas Mirdha*)

MR DEPUTY-SPEAKER: The question is:

"That Clause 8, as amended, stand part of the Bill"

The motion was adopted.

Clause 8, as amended, was added to the Bill.

Clause 9—(*Court of Session*).

Amendment Made

Page 6, line 23, *before* "other" *insert* "the". (19)

(*Shri Ram Niwas Mirdha*)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 9, as amended, stand part of the Bill"

The motion was adopted.

[Mr. Deputy-Speaker]

Clause 9, as amended, was added to the Bill.

Clauses 10 to 12 were added to the Bill.

Clause 13—(*Special Judicial Magistrates*).

SHRI DINESH JOARDER: I beg to move:

Page 7, line 39,—

after "affairs" insert—

"and has served in the judiciary for a period not less than five years with or above the powers of a Magistrate first class". (227)

In this clause, the High Court has been given the power to appoint any person who holds or has held any post under the Government to act as a member of the judiciary or to act as a Judicial Magistrate:

Here, I want to add the words·

"and has served in the judiciary for a period not less than five years with or above the powers of a Magistrate first class".

The clause, as it reads is·

"The High Court may, if requested by the Central Government or State Government so to do, confer upon any person who holds or has held any post under the Government all or any of the powers conferred or conferable by or under this Code on a Judicial Magistrate of the second class "

Any person who is a government officer may be appointed as a judicial magistrate, whether he has any judicial knowledge or not Therefore I want to amend that as " . and has served in the judiciary for a period not less than five years with or above the powers of a First Class Magistrate" Otherwise, the judiciary will be only a mockery; any person will come and sit on that seat and deliver judgment, whether he thinks fit It would, therefore, be expedient if the Minister can accept this amendment.

SHRI RAM NIWAS MIRDHA: These are special judicial magistrates for which provision is being made in Clause 13, and they would be appointed in special circumstances. Formerly there used to be honorary Benches of magistrates and justices of peace, which we have done away with then. We thought that if special type of cases, particularly petty cases, are to be disposed of in an expeditious way, one way could be to appoint people who are experience in administration and things like that. Therefore, this provision has been made.

SHRI DINESH JOARDER: You must prescribe some qualifications for that person. You have not mentioned any qualifications You only say, 'any government officer'.

SHRI RAM NIWAS MIRDHA: We have said that the High Court will appoint. That, I think, gives enough protection from any possible mischief

MR DEPUTY-SPEAKER: I shall now put amendment No 227 to Clause 13 to the vote of the House

Amendment No 227 was put and negatived

MR DEPUTY-SPEAKER· The question is·

"That Clause 13 stand part of the Bill"

The motion was adopted

Clause 13 was added to the Bill

Clause 14 was added to the Bill

Clause 15—(*Subordination of Judicial Magistrates*).

Amendment Made:

Page 8. line 6, *for* "or", *substitute* "or give". (20)

(*Shri Ram Niwas Mirdha*)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 15, as amened, stand part of the Bill."

The motion was adopted.

Clause 15, as amended, was added to the Bill.

Clauses 16 and 17 were added to the the Bill.

Clause 18—(*Special Metropolitan Magistrates*)

SHRI DINESH JOARDER I beg to move

Page 8, line 31,—

after 'affairs" *insert*—

"and has served in the judiciary for a period not less than seven years" (228)

Here the contention is the same, Sir The person who is going to be appointed as a pecial magistrate must have ome qualification to try the cases

MR DEPUTY-SPEAKER He has replied to that.

I shall now put amendment No 228 to Clause 18 to the vote of the House

Amendment No 228 was put and negatived

MR DEPUTY-SPEAKER I shall now put Clauses 18 to 24, altogether to the vote of the House

The question is

That Clauses 18 to 24 stand part of the Bill"

The motion was adopted

Clauses 18 to 24 were added to the Bill"

Clause 25—(*Assistant Public Prosecutors*)

Amendment Made

Page 10, line 28, *for* 'as", *substitute* 'as an" (21)

(*Shri Ram Niwas Mirdha*)

MR DEPUTY-SPEAKER The question is

"That Clause 25, as amended, stand part of the Bill"

The motion was adopted

Clause 25, as amended, was added to the Bill.

Clauses 26 to 40 were added to the Bill

Clause 41—(*When police may arrest without warrant*)

SHRI DINESH JOARDER. Sir., I move

Page 15,—

for lines 17 and 18, *substitute*—

'41 (1) Any police officer, on receiving an order from a Magistrate having the appropriate power in this respect, who after considering the report of the said police officer has been fully satisfied and has recorded the reasons therefor, that a person is to be arrested and has issued a warrant to that effect may arrest any person—' (146)

About arresting persons by Police without a warrant I have already tated while discussing my amendment on clause 2(c) that the person should not be arrested without a warrant in any circumstances I again stress my point on this issue

MR DEPUTY-SPEAKER He has replied to that

Now, I will put amendment No 146 to he vote of the House

Amendment No 146 was put and negatived

MR DEPUTY-SPEAKER Now the question is

"That clause 41 stand part of the Bill"

The motion was adopted

Clause 41 was added to the Bill

Clauses 42 to 45 were added to the Bill

[Mr. Deputy-Speaker]

Clause 46—*(Arrest how made).*

SHRI DINESH JOARDAR: I move:

Page 17,—

omit lines 11 to 16. (207)

MR. DEPUTY-SPEAKER: I will put his amendment to the vote of the House.

Amendment No. 207 was put and negatived.

MR DEPUTY-SPEAKER: Now, the question is:

"That clause 46 stand part of the Bill."

The motion was adopted.

Clause 46 was added to the Bill.

Clause 47—*(Search of place entered by person sought to be arrested).*

SHRI DINESH JOARDER: I move:

Page 17, line 22,—

add at the end—

"without applying any force or causing any hurt to any inmates the womenfolk of the said prebody or damaging or looting away any property of the inmates or wounding the religious sentiment of the inmates or outraging modesty or molesting any member of the womenfolk of the said premises" (208).

Page 17—*omit* lines 23 to 41 (209).

Generally what we see in cases where Police search places for persons sought to be arrested, there take place some excesses. In this case the Police has been given the power to search any place to arrest any person who is wanted by the Police. The Police has been given the power to search any place and enter into any place and generally, at the time of searching the Police become very much violent and they torture the inmates and sometimes they assault the inmates also, outrage the modesty of the womenfolk of that place and that is why I want to move this amendment that without applying force they may search any place. My amendment is:

"without applying any force or causing any hurt to any inmates of the premises or beating anybody or damaging or looting away any property of the inmates or wounding the religious sentiment of the inmates or outraging modesty or molesting any member of the womenfolk of the said premises."

These things generally occur when the Police force go to any place for searching any accused person. In the name of search they do generally commit all these offences themselves. So, there should be specific provisions as to under what circumstances they can go and search a place and also they cannot search without limitations. They cannot conduct search everywhere and all the time. So, there should be some limitation to prevent police excesses. So, I move this amendment.

SHRI RAM NIWAS MIRDHA: This amendment is on the same lines as amendment to clause 46. It means that Police will not use force. The Police will in no case use excessive force. It may use that much force which is warranted by the circumstances. These are not the only things. There may be many more things which should be prohibited from the Police. It is understood. It is not necessary. They will not be done in the normal course.

SHRI DINESH JOARDER: But you have not provided any remedy in the Code against such Police excesses. The Police always do such things which amounts to a commission of an offence every time. But there is no provision in the Code where you can get the Police to the court or you can have some remedy against the Police. You should consider also these things.

SHRI RAM NIWAS MIRDHA: You can't have provision for every act that a policeman does. There are superior officers. He works under their disci-

plinary control and if there is any lapse of the normal official conduct, administrative action could be taken. He is liable for civil action and therefore I am unable to accept the amendments.

MR DEPUTY-SPEAKER: I will now put amendments Nos. 208 and 209 to the vote of the House.

Amendments Nos 208 and 209 were put and negatived.

MR. DEPUTY-SPEAKER: Now the question is:

"That Clause 47 stand part of the Bill."

The motion was adopted.

Clause 47 was added to the Bill.

Clauses 48 and 49 were added to the Bill.

Clause 50—(*Person arrested to be informed of grounds of arrest and of right to bail*)

SHRI DINESH JOARDEP: I move my amendments Nos. 210, 211 and 212.

Page 18, line 4,

omit "without warrant" (210)

Page 18, line 4,—

omit "other" (211)

Page 18, line 5,—

omit "than a person accused of a non-bailable offence." (212)

Police are given power to arrest any person without warrant. Police should not arrest any person without warrant. Even if he is arrested under order of court he should then and there be given bail. When a person is arrested under police custody he is beaten up, he is asked to give something to oblige the police officials, he is tortured. If he is arrested under order of the court he should be given bail then and there.

SHRI RAM NIWAS MIRDHA: The same thing I have said already. I have pointed out all these things. We cannot agree to this.

MR. DEPUTY-SPEAKER: I am putting all these amendments Nos. 210, 211 and 212 to the vote of the House.

Amendments Nos 210, 211 and 212 were put and negatived.

MR DEPUTY-SPEAKER: The question is:

"That Clause 50 stand part of the Bill."

The motion was adopted.

Clause 50 was added to the Bill.

Clauses 51 to 56 were added to the Bill.

New Clause 56-A

MR. DEPUTY-SPEAKER: There is a new clause 56-A. Are you moving your amendment?

SHRI DINESH JOARDER: Yes, I move:

Page 19,—

after line 26, *insert*—

"56A. Any person arrested by police under any provisions of the Indian Penal Code or under any other penal or prohibitive laws shall not be beaten or tortured so long as he remains under the police custody." (232)

Sir, I have to put this very categorically under this New Section 56A that any person arrested by police under any provision of the IPC or any other penal or prohibitive laws shall not be beaten up or tortured, so long as he remains under Police custody. This is the specific provision I want to make here. This is a routine affair in police administration everywhere, in all parts of the country and poor people, peasants and labourers who demand certain rights against landlords or employers are beaten up and tortured at

[Shri Dinesh Joarder]

the instance of these people by the police; these police officials collide with them, and these labourers, peasants etc. are tortured in the thana brutally This should not happen. We should protect our poor people, our peasants trade union workers, etc. and this provision should be incorporated.

SHRI RAM NIWAS MIRDHA: Well, Sir, that is not at all necessary to insert this clause. Even now it is not permissible. If any person is tortured or beaten by the police, the policeman can be hauled up for causing hurt. There have been cases where even in cases of murder, if some torture has been on the person while in custody had been proved, the policeman can be hauled up. I do not think that they will generally act like this.

MR. DEPUTY-SPEAKER: I shall put amendment No. 232 to the vote.

Amendment No 232 was put and negatived.

Clause 57—(*Person arrested not to be detained more than twenty-four hours*)

MR. DEPUTY-SPEAKER: Now, we shall take up Clause 57 There is an amendment—amendment No 193. Are you moving Shri Madhu Limaye?

SHRI MADHU LIMAYE I beg to move:

Page 19—

after line 32, *insert*—

"Provided that after the passing of any order as to remand the appending of the signature or thumb impression of the person remanded below the order shall be made mandatory.". (193)

उपाध्यक्ष महोदय, इस पर मैं जानबूझकर नहीं बोला था समय बचाने के लिये कि जब वह क्लाज आएगा तब मैं बोलूंगा। मेरी वास्तव में दो तरमीमें है। एक मैंने दी नहीं है, लेकिन अगर मंत्री महोदय राजी हो जायें तो दी जायेगी और दूसरी तरमीम तो मैंने लिख कर दी है। यह बहुत ही महत्वपूर्ण क्लाज है।

हमारे संविधान के पास होने के पहले साधारण नागरिकों को केवल क्रिमिनल प्रोसीजर कोड का जो वर्तमान सेक्शन 61वां है उस के तहत प्रोटेक्शन था। उसके बाद 1950 में 26 जनवरी को हम लोगों ने संविधान लागू किया। अब संविधान की जो 22(2) है और क्रिमिनल प्रोसीजर कोड की जो धारा है उनमें क्या फर्क है, वह मैं बताता हूं। कांस्टीट्यूशन इस प्रकार है :

"Every person who is arrested and detained in custody, shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate".

अब वर्तमान जो सेक्शन है क्रिमिनल प्रोसीजर कोड का जिसको उसमें रिप्रोड्यूस किया गया है वह इस प्रकार है

"No police officer shall detain in custody a person arrested without a warrant for a longer period than, in the circumstances of the case, is reasonable and such period shall not, in the absence of the special order of a magistrate, under Section 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court".

अब क्रिमिनल प्रोसीजर कोड के प्रेजेन्ट सेक्शन 61 में और आपके क्लाज 57 में

जो अब है, तथा कांस्टीट्यूशन में फर्क यह है कि कांस्टीट्यूशन में विदाउट वारंट शब्द काट दिया गया है और क्रिमिनल प्रोसीजर कोड में विदाउट वारंट है। उसका महत्व यह है कि स्टेट आफ पंजाब वर्सेस अजायब सिंह नाम के एक फैसले में सुप्रीम कोर्ट ने जो ओबिटर डिक्टा इसके बारे में पास किया है उससे बड़ा खतरा उत्पन्न हो गया है हालांकि वह फैसला नहीं है, ओबिटर डिक्टा है, लेकिन उससे कन्फ्यूजन उत्पन्न हुआ है। सुप्रीम कोर्ट ने कहा है कि क्रिमिनल प्रोसीजर कोड में और कांस्टीट्यूशन में कोई फर्क नहीं है, यह सही बात नहीं है। क्योंकि विदाउट वारंट शब्द क्रिमिनल प्रोसीजर कोड में है और वह कांस्टीट्यूशन में नहीं है। इसका मतलब है कि मैजिस्ट्रेट वारंट के ऊपर भी गिरफ्तारी हो जायगी तो गिरफ्तारी तो एक्स-पार्टी हो गई, उन्होंने एक्स-पार्टी लिख दिया, एक्यूज्ड या अरेस्टेड परसन को तो सुना नहीं। इसलिये यह अधिकार संविधान का है और मेरी राय में इसके बारे में कोई दो राय नहीं हो सकती कि यह अधिकार चाहे विद वारंट या विदाउट वारंट जिन लोगों को पकड़ा गया है उन सभी लोगों के लिये है। क्योंकि मैजिस्ट्रेट के सामने लाने के बाद उसको मौका मिलेगा कहने का कि आपने वारंट इश्यू करते समय सारे तथ्यों का विचार नहीं किया और हो सकता है कि उनको सुनने के बाद मैजिस्ट्रेट किसी दूसरे नतीजे पर पहुंचे। इसलिये वह सुप्रीम कोर्ट का ओबिटर डिक्टा कि क्रिमिनल प्रोसीजर कोड में और संविधान की धारा में कोई फर्क नहीं है, यह ठीक नहीं है। इससे कन्फ्यूजन पैदा हुआ है।

इसलिये मेरी आपसे सलाह है कि आप इसको मान जाइये, इस में इम्प्रूवमेंट करने के लिये। मैं इस क्लाज का विरोधी नहीं हूं, लेकिन इसमें "विद और विदाउट वारंट' जोड़ दीजिये, इससे संविधान और सी० आर० पी० सी० में समानता पैदा हो जायेगी।

दूसरा सुझाव—मैं बसु के वाल्यूम 2 की ओर आपका ध्यान दिलाना चाहता हूं—इसमें उन्होंने कहा है कि—

"Firstly, the above pronouncement of the Supreme Court is in the nature of an obiter inasmuch as the decision of the court that 'arrest' in article 22(1)(2) refers to 'arrest' upon allegation or accusation of criminal or quasi-criminal nature was sufficient to dispose of the case before the court, because no such accusation was involved when an abducted person was taken into custody under the Abducted Persons Recovery and Restoration Act, 1949.".

आगे सुप्रीम कोर्ट ने भी कहा है कि धारा 22 के बारे में हमारा यह अन्तिम भाष्य नहीं है। इसलिये जो कन्फ्यूजन उत्पन्न हुआ है, उसको दूर कर दें, विद-और-विदाउट-वारन्ट जोड़ दीजिये तो सब के लिये प्रोटेक्शन हो जायेगा।

दूसरा सुझाव मैंने लिखित दिया है—मैं मानता हूं कि केवल सन्देह के ऊपर कोई क्रिमिनल प्रोसीजर कोड नहीं चल सकता है, लेकिन एक-दो एक्स्ट्रीम केसेज नहीं हैं, हजारों केसेज ऐसे होने लगे हैं। मेरे मित्र, जितने भी लायर्स यहां हैं, चाहे कांग्रेस पार्टी के हों या दूसरे हों, इस बात से इन्कार नहीं करेंगे कि पुलिस वाले गिरफ्तार करके जेल में ले जाते हैं और मैजिस्ट्रेट का हस्ताक्षर करा कर ले आते हैं—ऐसी हालत में इसमें क्या दिक्कत है? मेरी अमेंडमेंट इस प्रकार है :

"Provided that after the passing of any order as to remand the appending of the signature or thumb-impression of the person remanded below the order shall be made mandatory.".

उसको प्रोड्यूस किया गया है, सामने लाया गया है, इसका यह सुबूत मिल जायेगा। इस के बारे में कुछ लोग कह सकते हैं कि जबर-

[श्री मधु लिमये]

दस्ती बाद मे बम्ब-इम्प्रेशन लिया जायेगा, लेकिन वह अलग बात है। इसकी मशा यही है कि जो वास्तव मे अधिकारी हैं उसको सरक्षण देना चाहते है। इस धर्मी को पूरा करने के लिये ये दो अमेडमेंट्स रखे गये है।

इसलिये मत्री महोदय और आपसे प्रार्थना है कि इस पर विचार करे। मै आपसे अनुरोध करूगा कि मत्री महोदय को विचार करने का मौका देने के लिये आप इस पर वोटिग को विदहोल्ड कीजिये।

MR DEPUTY-SPEAKER: There is only one amendement which he has tabled to this clause Where are the two amendments that he speaks of?

श्री मधु लिमये : एक दिया है, लेकिन एक जबानी कर दिया है, अपकी परमीशन से ऐसा हो सकता है। उपाध्यक्ष महोदय, मै इसी लिये समय माग रहा था क्योकि कल सवा तीन बजे तक मै अमेडमेंट्स लिखता रहा, लेकिन वह रह गया, हर चीज जल्द-बाजी मे हो रही है।

SHRI RAM NIWAS MIRDHA Let him kindly see amendment No 124 to clause 167

SHRI SHIVANATH SINGH (Jhunjhunu) May I just say a word?

MR DEPUTY-SPEAKER Why shou d there be any argument now? Let the hon Minister reply to that amendment

SHRI SHIVANATH SINGH I want to support his argument If the hon Minister accept the amendment, then I have no objection, but I want to support Shri Limaye's argument

MR. DEPUTY-SPEAKER: I think it is not necessary now.

श्री शम्भू नाथ . उपाध्यक्ष महोदय, जिस तरह की अमेडमेंट न० 124 है, उसी तरह की मेरी अमेडमेंट है जो इस प्रकार है

"The production of the accused person as required under proviso (b) may be proved by the signature of the accused person on the order authorising detention"

इस अमेडमेंट से परशज सर्व हो जाता है।

SHRI MADHU LIMAYE Unless it is made mandatory, how is it possible? Unless the signature is made mandatory, how is it possible?

MR DEPUTY-SPEAKER· Since this is an important amendment, I shall allow Shri Shivanath Singh to speak

श्री शिवनाथ सिंह · सरकार की यह मंशा है कि किसी आदमी को अरेस्ट किया जाय तो उसको इमीडिएटली मैजिस्ट्रेट के सामने पेश किया जाय। जिस आदमी को अरेस्ट करने के लिये वारन्ट इश्यू किया जाता है, उसमे मैजिस्ट्रेट 10 रोज या 15 रोज का समय देता है कि उस समय तक उस एक्यूज को मेरे सामने पेश करो इसके मायने है कि उसको पेश करने की वैलिडिटी 15 रोज है, पुलिस उसको अपनी कस्टडी मे 15 रोज तक रख सकती है। इसलिये यह बहुत जरूरी है कि जैसे ही मैजिस्ट्रेट वारन्ट आफ अरेस्ट इश्यू करे और वह आदमी पकडा जाय उसके 24 घटे के अन्दर उसको पेश किया जाय जिस तरह से विदाउट-वारन्ट मे होना है। इसम इस बात की वैलिडिटी होनी चाहिये। इसलिये मै मधु लिमये जी की अमेण्डमेंट को सपोर्ट करता हू।

श्री मधु लिमये मैं चाहता हू कि आप इस पर वोटिग को विद-होल्ड कीजिये। मैं मत्री महोदय से बात कर लूंगा और मुझे

विश्वास है कि वह मेरी बात को मान जायेंगे । आप मुझे उनसे बात करने का मौका दीजिये ।

MR. DEPUTY-SPEAKER: Order, please. The only thing I can do is to hear a few more Members on this, before I call the Minister.

श्री मधु लिमये : आप कभी कभी क्लाज को विद्-होल्ड करते है । इसमे किसी को विरोध नही होगा—मै उनसे बात कर लूगा ।

MR. DEPUTY-SPEAKER: That is correct, but I have to do it with the consent of the House. I cannot just do it arbitrarily. Anyway it seems to be an important amendment and so I will hear a few more Members. Shri Jagannath Rao.

SHRI JAGANNATH RAO (Chatrapur): While I appreciate the doubts expressed by Shri Madhu Limaye, I feel that clause 57, as it stands, does not prohibit cases where a person is arrested under a warrant. Where a person is arrested under a warrant he has to be produced before a magistrate within 24 hours, and the magistrate has the jurisdiction. Having issued a warrant the person has to be produced within 24 hours. This clause specifically relates to cases where a person is arrested without a warrant. The omission of the words "with or without" is not necessary.

SHRI B. R SHUKLA (Bahraich): I fully support the suggestion made by Shri Madhu Limaye because if a person is arrested even under a warrant he may not be detained for more than 24 hours. Otherwise, the police is likely to abuse this lacuna because instead of arresting the person by themselves the police might move the magistrate and secure a warrant and in pursuance of that warrant a person is arrested and he may not be produced. So, that would be rather in conflict with the Constitution itself and that would also be contrary to the spirit of the law. Therefore, I endorse the suggestion made.

SHRI C. M. STEPHEN (Muvattupuzha): There could be no difference of opinion with regard to the compelling applicability of article 22. That is there as supervening provision. The purpose of this particular section is to ensure that a person who is arrested without warrant comes at the earliest moment under the jurisdiction of a magistrate. Therefore, it is stated that he must be produced within 24 hours, but a contingency is contemplated where he need not be produced, namely, the magistrate after taking cognizance of it permits the production before him, which may be delayed beyond 24 hours. Now, the contingency in which a person is arrested under a warrant is different. That is provided for under section 76. The arrest takes place under a warrant, and the moment the arrest takes place the person comes under the judicial jurisdiction and the cognizance of the magistrate. Clause 76 says:

> "The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person."

Therefore, the only thing is, here, it is stated "unnecessary delay". The question whether the delay is necessary or unnecessary is a matter for decision by the magistrate concerned. What I am submitting is the spirit of the law is—both the provisions—that the person must come under the judicial cognizance of the magistrate. As arrest takes place without a warrant in the former section, the specific provision becomes necessary that within 24 hours production may be effectuated. In the other case, that is not necessary at all because it is under a warrant that the arrests take place; immediately before this, without unnecessary

[Shri C. M. Stephen]

delay it is asked for. What I am submitting is in the other case the delay beyond 24 hours will be permissible only if, and if a permission is got from the authorities.

MR. DEPUTY-SPEAKER The point is clear.

SHRI C. M. STEPHEN: I am finishing. In the subsequent case that is provided for Therefore, the spirit of the provision is that he must come under the jurisdiction or cognizance of the magistrate. As section 67 takes care of it, an additional provision is not necessary because that will flur the distinction between the two sections. Section 67 takes care of particular contingency.... (*Interruptions*).

MR. DEPUTY-SPEAKER Order, order. The only question that worries me also is whether this provision in the Constitution, 22(2) contemplates any distinction between 'arrest without a warrant, and 'arrest with a warrant'

SHRI SHANKAR TEWARI (Etawah): In this provision, it is only said, in section 57, that when you arrest without a warrant you have to produce him before a magistrate within 24 hours When a magistrate issues a warrant you give a licence to the police to keep a man in custody for any number of days and perpetuate any atrocity in his hands.

MR. DEPUTY-SPEAKER: That is a point of view which has been made before by others also.

श्री राम रतन शर्मा : उपाध्यक्ष जी, क्लाज 56 और क्लाज 57, दोनों जगह वर्डस—विदाउट वारन्ट, आय हैं। मार्जिनल नोट आप देखें, हमको ऐसा लगता है कि यह कुछ जानबझकर नहीं हुआ बल्कि कुछ ओमिशन हो गया है क्योंकि मार्जिनल नोट में यह लिखा हुआ है। यहां पर जो मार्जिनल नोट है, दोनों क्लाजेज के सामने उसमें—पर्सन अरेस्टेड—है, विद और विदाउट वारन्ट नही लिखा हुआ है। इसलिये मैं समझता हूं, विद और विदाउट वारन्ट दोनों जगह पर आ जाना चाहिये 56 मे और 57 मे।

श्री शम्भु नाथ 57 के नोट मे है—पर्सन अरेस्टेड नाट मोर दैन 24 आवर्स—इसमे क्लियर है कि 24 घटे से ज्यादा 57 मे डिटेन नही कर सकते है। अगर 24 आवर्स वर्ड्स है तो मैजिस्ट्रेट के सामने पेश किया जायेगा। तब आता है 167 और उसमे हमारा यह अमेन्डमेन्ट हुआ है जिसको गैने पढ़ा है। तो उससे वह पूरा हो जाता है और जो बिल का पर्पज है वह भी हल हो जाता है।

MR. DEPUTY-SPEAKER. Let us hear the Minister. I would just call the attention of the Minister to this because Mr. Limaye had made this point and it worries me also, whether 22(2) of the Constitution contemplates any distinction between arrest with warrant and arrest without warrant that is a very valid question If it does not contemplate that, then whether this provision will not come in conflict or seek to override the constitutional provision—I think this a very valid question.

SHRI RAM NIWAS MIRDHA Clause 57 refers to a person arrested without a warrant, what would happen in that case. Clause 76 provides that a police officer or any other person executing a warrant of arrest shall without unnecessary delay. . .

PROF. MADHU DANDAVATE (Rajapur): In this clause, it says 'unnecessary delay'. It should be dropped; make it 24 hours.

MR. DEPUTY-SPEAKER: It is vague.

SHRI RAM NIWAS MIRDHA: These are complementary to one another. He cannot retain him even for 24 hours. The right to keep a person for 24 hours is not available to him in 76, he has to do it at the earliest. He is going

on behalf of a warrant of arrest issued by a court and he has to do it at the earliest.

AN HON. MEMBER: What is the harm if the language is made clearer?

SHRI RAM NIWAS MIRDHA: It will create complications.

MR DEPUTY-SPEAKER: 'Unnecessary delay' is a very subjective term; it may mean within 24 hours; it may mean more than 24 hours.

SHRI RAM NIWAS MIRDHA: The Supreme Court has discussed this point and they have held that article 22 does not apply to arrests with warrant.

SHRI MADHU LIMAYE That is an obiter, I cited the case, it is not a decision.

MR. DEPUTY-SPEAKER: Here it is a point of controversy. Whereas the Minister says the Supreme Court has pronounced a judgment on it, Mr. Limaye contests it. Let me hear the minister fully. If there is a controversy on fact about what the Supreme Court has said, it is necessary to look into that.

SHRI C. M. STEPHEN: If at all, an amendment has to be made in clause 76 and not in clause 57.

SHRI DINESH JOARDER: On the pretext of arresting a person without warrant, the police officers are infringing the fundamental rights of the individuals and unnecessarily detaining the accused persons in the police lock-up without any reason.

SHRI RAM NIWAS MIRDHA: I would like to assure you and through you the House that I am completely in one with hon. members so far as the basic idea is concerned, namely, this protection should also be available. I am told that this is already covered and this is not necessary. But still whether it should be here or in clause 76 is a problem. If you like, you can keep it pending for a short time.

MR. DEPUTY-SPEAKER: In exercise of rule 89, I postpone the consideration of clause 57. We can go on with the other clauses. From clauses 58 to 81 there are no amendments, but now a new element has come in because clause 76 is interlinked with clause 57. Let me break it.

The question is:

"That clauses 58 to 75 stand part of the Bill".

The motion was adopted.

Clauses 58 to 75 were added to the Bill.

MR DEPUTY-SPEAKER: The consideration of clause 76 is postponed

The question is:

Clauses 77 to 81 were added to the Bill.

The motion was adopted.

Clauses 77 to 81 were added to the Bill.

Clause 82—(*Proclamation for person absconding*).

SHRI DINESH JOARDER: I beg to move:

Page 24, line 9,—

after "has" *insert* "sufficient" (213)

Page 24, lines 9 and 10,—

for "whether after taking evidence or not" *substitute* "(after taking satisfactory evidence)" (214)

Page 24, line 26,—

after "proclamation" *insert*— "being fully satisfied after taking evidence" (215)

Clause 82 deals with the proclamation. What we generally find is that police officers are over-burdened with cases of peasant movements, labour, trade union and political movements. They do not generally inform the accused person or try to locate and

[Shri Dinesh Joarder]

find out the accused person and inform him that he is wanted. As a matter of routine the police officers appear before the court and seek a proclamation of attachment. The court also without going into the details and without trying to find out the truth of the report issues the proclamation order. The result is that the poor people suffer under this proclamation order. My amendment says that the court before issuing such a proclamation order should take evidence and be satisfied that there are sufficient reasons for issuing a proclamation. I hope in the interests of the rural peasants and the poor people the hon. Minister will accept my amendment.

SHRI RAM NIWAS MIRDHA: Clause 82 itself says:

> "If any Court has reason to believe (whether after taking evidence or not) that any such person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."

SHRI DINESH JOARDER: The clause says "whether after the taking of evidence or not". I want to make it obligatory on the court to record evidence before a decision is taken on the issue of the proclamation.

SHRI RAM NIWAS MIRDHA: There would be some circumstances when the taking of evidence would take such a long time that it would defeat the purpose for which the proclamation is issued. It will defeat the very purpose. Let us leave it to courts. I am sure, they will exercise their discretion in a proper way.

MR. DEPUTY-SPEAKER: I put Amendment Nos. 213, 214 and 215 moved by Shri Dinesh Joarder to clause 82 to the vote of the House.

Amendments Nos. 213, 214 and 215 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

> "That Clause 82 stand part of the Bill".

The motion was adopted

Clause 82 was added to the Bill.

Clause 83—(*Attachment of property of person absconding*).

SHRI DINESH JOARDER: I beg to move:

> Page 24, line 32,—
>
> *after* "in writing" *insert*—
>
> "being fully satisfied after taking appropriate evidence to the effect" (216)
>
> Page 24, line 36,—
>
> *after* "affidavit" *insert*—
>
> "and through evidence" (217)
>
> Page 25,—
>
> *omit* line 38. (218)
>
> Page 25,—
>
> *omit* line 17. (219)
>
> Page 25, line 25,—
>
> *after* "thereof" *insert*—
>
> "in presence of a Judicial Magistrate". (220)

Sir, it is a case of attachment. I want that without taking any proper evidence to the effect, even after issuing the proclamation, that the accused person has not appeared before the court or the court being fully satisfied that the police has gone to the place of residence of accused person and has tried to arrest him or has tried to find out the accused person, without taking all this evidence, no attachment should be made.

Generally, what happens is that the police issue attachment order of the cattle and the immovable property of the poor villagers and, with the help of that attachment order, they loot away all the belongings the cattle, the chikens and hens and all other things. The police also loot away the ornaments and other things with the help of this order. So, this order should be very rarely issued by the court after taking proper evidence to their full satisfaction.

SHRI RAM NIWAS MIRDHA: Clause 82 was regarding the issue of proclamation for absconding persons. Similarly, clause 83 is about attachment of persons absconding. The difficulty is the same, as I mentioned before. If we take the evidence, the main purpose, that is, expedition would in some cases be lost. That is why, I say, let us leave it to the discretion of the court and that would be satisfactory.

MR DEPUTY-SPEAKER: I put amendment Nos. 216, 217, 218, 219 and 220 moved by Shri Dinesh Joarder to clause 83 to vote.

Amendments Nos. 216 to 220 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 83 stand part of the Bill"

The motion was adopted

Clause 83 was added to the Bill.

Clauses 84 to 91 were added to the Bill.

Clause 92—(*Procedure as to letters and telegrams*).

Amendment Made:

Page 28, line 13, *for* "of a",

substitute "of a District Magistrate," (22)

(*Shri Ram Niwas Mirdha*)

MR DEPUTY-SPEAKER: The question is:

"That Clause 92, as amended, stand part of the Bill."

The motion was adopted.

Clause 92, as amended, was added to the Bill.

Clause 93 was added to the Bill.

Clause 94—(*Search of place suspected to contain stolen property forged documents, etc.*)

Amendment Made:

Page 28, line 42, *omit* "his" (23)

(*Shri Ram Niwas Mirdha*)

16 hrs.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 94, as amended, stand part of the Bill."

The motion was adopted.

Clause 94, as amended, was added to the Bill.

New Clause 94A

MR. DEPUTY-SPEAKER: Mr. Dinesh Joarder, are you moving your amendment No. 233?

SHRI DINESH JOARDER: Yes, Sir. I beg to move:

Page 29,—

after line 24, *insert*—

"94A. While in case of searching any place including dwelling houses no police officer or any body acting under him or authorised by him shall loot away the property, molest or outrage the modesty of or rape women or beat inmates of the house or the place under search." (233)

I have already mentioned what happens in the name of search of persons wanted by the police for arresting.

Under this Clause also I would like to point out what happens. We generally see that, in the name of search of places for stolen properties, the police officers, without any notice or information, even in the middle of the night, enter, in gang and sometimes

[Shri Dinesh Joarder]

even with goondas, into the dwelling places of the villagers and also of other citizens and in the dead of the night create panic in the village Sometimes in the name of search of stolen properties in the name of search of properties, looted away by breaking open wagons, etc, instead of going to the actual accused persons, the police officers go in the dead of the night to the places of peasants and also of persons against whom they have a grudge and with a view to reaping vengeance loot away their belongings and sometimes even commit outrages on the modesty of the womenfolk and also beat the inmates of the house This provision will act as a check on the unfettered powers of the police officers Therefore, I suggest that this Clause be incorporated

SHRI RAM NIWAS MIRDHA This is on the lines of the amendment that the hon Member moved proposing incorporation of a new Clause, Clause 56A. My reaction to this is also the same

MR DEPUTY-SPEAKER The question is

"Page 29,—

after line 24, *insert*—

"94A While in case of searching any place including dwelling houses no police officer or anybody acting under him or authorised by him shall loot away the property, molest or outrage the modesty of or rape women or beat inmates of the house or the place under search." (233).

The Lok Sabha divided

Division No. 6] **[16.00 hrs.**

AYES

Bade, Shri R V

Banera, Shri Hamendra Singh

Banerjee, Shri S M

Bhagirath Bhanwar, Shri

Bhattacharyya, Shri Dinen

Bhattacharyya, Shri S P

Dandavate, Prof Madhu

Deb, Shri Dasaratha

Dutta, Shri Biren

Haldar, Shri Madhuryya

Halder, Shri Krishna Chandra

Hazra, Shri Manoranjan

Joarder, Shri Dinesh

Kalingarayar, Shri Mohanraj

Koya Shri C H Mohamed

Limaye, Shri Madhu

Madhukar, Shri K M

Manoharan, Shri K

Mohammad Ismail, Shri

Mukherjee Shri Samar

Pandeya, Dr Laxminarain

Reddy Shri B N

Saha, Shri Ajit Kumar

Saha, Shri Gadadhar

Sait, Shri Ebrahim Sulaiman

Sen, Dr Ranen

Sharma Shri R R

Singh, Shri D N

Vajpayee, Shri Atal Bihari

Verma, Shri Phool Chand

NOES

Ahirwar, Shri Nathu Ram

Ambesh, Shri

Azad, Shri Bhagwat Jha

Barman, Shri R N

Barupal, Shri Panna Lal

Basumatari, Shri D

Besra, Shri S C.

Bhattacharyyia, Shri Chapalendu

Bist, Shri Narendra Singh

Butta Singh, Shri
Chakleshwar Singh, Shri
Chandra Gowda, Shri D. B.
Chandrika Prasad, Shri
Chhutten Lal, Shri
Daga, Shri M. C.
Desai, Shri D. D.
Deshmukh, Shri K G
Dwivedi, Shri Nageshwar
Engti, Shri Biren
Gandhi, Shrimati Indira
Gangadeb, Shri P.
Gautam, Shri C. D.
Gomango, Shri Giridhar
Goswami, Shri Dinesh Chandra
Gotkhinde, Shri Annasaheb
Gowda, Shri Pampan
Hansda, Shri Subodh
Hari Singh, Shri
Ishaque, Shri A K M.
Jha, Shri Chiranjib
Kadam, Shri J. G.
Kader, Shri S. A
Kalias, Dr.
Kakodkar, Shri Purushottam
Kamakshaiah, Shri D.
Kavde, Shri B. R.
Kedar Nath Singh, Shri
Kotoki, Shri Liladhar
Krishnan, Shri G. Y.
Kulkarni, Shri Raja
Laskar, Shri Nihar
Mandal, Shri Jagdish Narain
Mirdha, Shri Nathu Ram
Mishra, Shri Bibhuti
Mishra, Shri G. S.
Mishra, Shri L. N.
Modi, Shri Shrikishan
Moshin, Shri F. H.
Murthy, Shri B. S
Naik, Shri B V.
Negi, Shri Pratap Singh
Painuli, Shri Paripoornanand
Pandey, Shri Damodar
Pandey, Shri Krishna Chandra
Pandey, Shri Tarkeshwar
Pandit, Shri S T.
Panigrahi, Shri Chintamani
Partap Singh, Shri
Pradhan, Shri Dhan Shah
Raghu Ramaiah, Shri K.
Ram Swarup, Shri
Rao, Shri Jagannath
Rao, Shri M. S. Sanjeevi
Ravi, Shri Vayalar
Ray, Shrimati Maya
Reddy, Shri M Ram Gopal
Richhariya, Dr. Govind Das
Roy, Shri Bishwanath
Saini, Shri Mulki Raj
Salve, Shri N. K. P.
Samanta, Shri S. C.
Sarkar, Shri Sakti Kumar
Shailani, Shri Chandra
Shambhu Nath, Shri
Shankar Dev, Shri
Shankaranand, Shri B.
Sharma, Shri A. P.
Sharma, Shri Madhoram
Shivnath Singh, Shri
Shukla, Shri B. R.
Sohan Lal, Shri T.

Stephen, Shri C. M.

Sunder Lal, Shri

Swaran Singh, Shri

Tewari, Shri Shankar

Tiwari, Shri Chandra Bhal Mani

Tombi Singh, Shri N.

Verma, Shri Ramsingh Bhai

Verma, Shri Sukhdeo Prasad

Virbhadra Singh, Shri

Yadav, Shri Karan Singh

Yadav, Shri R. P.

MR. DEPUTY-SPEAKER: The result* of the division is: Ayes—30; Noes—92.

The motion was negatived.

MR. DEPUTY-SPEAKER: Now, the question is:

"That clauses 95 to 105 stand part of the Bill."

The motion was adopted.

Clauses 95 to 105 were added to the Bill

Clause 106—(*security for keeping the peace on conviction*).

SHRI DINESH JOARDER: I move: Page 33,—

for lines 13 to 21, substitute—

"(2) The offences referred to in sub-section (1) may be any offence which consists of, or includes, assault or hurt endangering human life or committing mischief." (147)

For keeping peace and maintenance order, sometimes the Police officers issues prohibitory orders under Sec. 144 and other sections. So, who are the victims of these prohibitory orders? Generally, the labourers under trade union movements want to realise some of their demands and they assemble at the gate of the factor or industry, or peasants or labourers organise themselves and they go and demonstrate and organise processions and meetings for realising their demands. These prohibitory orders are generally used against them. So, I move this amendment that the offences referred to in sub-section (1) may be any offence which consists of, or includes, assault or hurt endangering human life or commiting mischief. It should be clearly mentioned as to which are the the types of offences against which these prohibitory orders may be issued. When a human life is endangered or there is any apprehension of assault or commiting mischief, in that case only these prohibitory orders should be issued.

SHRI RAM NIWAS MIRDHA: The Clause itself says that it will be a court of sessions or first-class magistrate who will pass this order. The court will pass only after it is convinced about it and it will not pass any order blindly.

MR. DEPUTY-SPEAKER: I will now put amendment No. 147 to the vote of the House.

श्री मधु लिमये इस पर मुझे बोलना है ।

MR. DEPUTY-SPEAKER: The Minister has replied. Now I have to put it to the House. You are too late. You were busy reading somethings you did not follow what was going on. He moved an amendment and the Minister had replied to it. So, that stage is over now and I am only to put it to the House now.

श्री मधु लिमये नहीं उपाध्यक्ष महोदय, मुझे इस पर बोलने दीजिये । अमेंडमेंट पर बोलने दीजिये ।

MR. DEPUTY-SPEAKER: You are having an amendment under the next clause, 307.

*The following Members also recorded their votes;
AYES: Sarvshri Sarjoo Pandey and Bijoy Modak;
NOES: Shri Appalanaidu.

श्री मधु लिमये उपाध्यक्ष महोदय, इतनी किताबे इतने रेफरेंसेज देखने पड रहे है कि हम तो उसमें उलझ गये । हम ने इसके ओमिशन का अमेंडमेंट दिया था लेकिन टेक्निकली ओमिशन का अमेंडमेंट प्रिन्ट नही किया जाता है । इसीलिए मैंने कहा था कि इसको प्रिन्ट कीजिए ।

MR. DEPUTY-SPEAKER: Why do you compel me to do something irregular? All right. As an exception I will do it. But if there is going to be a furore over it, I will not do it.

श्री मधु लिमये : इर्रेगुलर नही है, आप प्रोसीजर की बात जरा समझ लीजिये । . . . (व्यवधान) . . मेरा प्वाइंट आफ आर्डर है ।

MR DEPUTY-SPEAKER: All right What is the point of order?

श्री मधु लिमये मै प्रोसीजर पर बोल रहा हू । बात यह है कि हम ने एक अमेंडमेंट ओमिशन का दिया था । लेकिन यहा पर रिवाज यह है कि ओमिशन का अमेंडमेंट प्रिन्ट नही किया जाता है । मेरा यह सुझाव है कि ओमिशन का अमेंडमेंट प्रिन्ट किया जाए और आप हमें बोल करने दीजिये ताकि हमे पता चल सके और आप को भी बुलाने मे सुविधा हो । मैंने ओमिशन का जो अमेंडमेंट दिया था उनकी जानकारी होनी चाहिए थी ।

MR DEPUTY-SPEAKER: This is a new procedure. Kindly sit down. If you had given in time I don't see why it could not be printed and circulated. Order please. I don't follow Hindi very well. Now I have under stood it. You have given an amendment in time. But your amndment is to remove a certain clause and that is Garred, by the rules. That is the point. Under our rules an amndment shall not be moved which has merely the effect of a negative vote.

श्री मधु लिमये लेकिन बोलने का मौका तो मिलना है ।

मै बोल नही कर रहा हू । . . . (व्यवधान) . . . . .

I am also misled by the order paper.

MR. DEPUTY-SPEAKER: Let us not have a controversy on this. I would have allowed you if you had stood up in time. It is not my intention not to allow you, but now, the point is this. He has spoken; the Minister has replied.

SHRI N. K. P. SALVE (Betul): If it is an important point, let him be allowed to say a few words.

MR. DEPUTY-SPEAKER: Any way let us make this exception to the rule. It cannot be a precedent. So, you please speak.

श्री मधु लिमये मै इस पर क्यो बोलना चाहता हू । जब यह मामला सुप्रीम कोर्ट में आया था तो मैंने क्रिमिनल प्रोसीजर कोड के पूरे इतिहास का अध्ययन किया था । मुझे यह मिला बहुत पुरानी बात है, 19वी शताब्दी की सरकार की रिपोर्ट थी और उसमे यह विचार किया गया था कि जिनने केसेज 106 के तहत होते है उसमे कितने लोग जमानत या बाड दे पाते है, इसकी उन्होंने जाच की और जाच करके यह निर्णय दिया कि बहुत कम ऐसे लोग है जो जमानत दे पाते है क्योंकि अधिकतर गरीब लोग पकडे जाते है जिनका जीवन स्तर बहुत निम्न होता है और उनके लिये जमानत देने के लिये कोई तैयार नही होता । जमानत का धन्धा आज कल चलता है दस प्रतिशत, पन्द्रह प्रतिशत लिया जाता है । तो ऐसी हालत में जहां तीन

साल का प्रावधान किया गया है उस का सीधा मतलब यह होता है कि बिना ट्रायल और बिना किसी जुर्म के क्योंकि वह जमानत नहीं दे सकता है इसलिये हजारों गरीबों को तीन साल जेल में रहना पड़ेगा । अगर इसके ऊपर आप पुनर्विचार करने के लिए तैयार नहीं है तो न कीजिये मैं बैठ जाता हूं ।

MR DEPUTY-SPEAKER Now, the Minister's reply is the same as he has replied He says that he does not have anything more to say I am physically nearer to the Minister and by his signs I can understand that he does not have anything to say Don't take it in any metaphorical sense

I shall now put amendment Number 147 to vote

Amendment No 147 was put and negatived

MR DEPUTY-SPEAKER The question is

"That Clause 106 stand part of the Bill"

The motion was adopted

Clause 106 was added to the Bill

Clause 107—(*Security for keeping the peace in other Cases*

MR DEPUTY-SPEAKER Now we take up clause 107 Are you all moving your amendments?

SHRI SHAMBHU NATH I beg to move

Page 33 line 32—*omit* "with or" (118)

SHRI C D GAUTAM (Balaghat): I beg to move

Page 33, line 32,—

Omit "with or without sureties," (127)

SHRI DINESH JOARDER: I beg to move:

Page 33, line 26,—

for "an Executive" *substitute* "a Judicial" (136)

SHRI DINESH JOARDER I beg to move

Page 33,—

for Clause 107, *substitute*—

"107 Any Magistrate having appropriate power, receiving information that any person who is a habitual offender and has been previously convicted for any offence relating to human body or life or for theft burglary, robbery or decoity and is likely to commit such offence at any time and is of opinion that there is sufficient ground for proceeding, may, in the manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond" (148)

Page 33 —

for lines 31 to 34, *substitute*—

"hereinafter provided require such person to show cause why a proceeding should not be started against him in the matter" (149)

Page 33,—

Omit lines 35 to 40 (150)

SHRI MADHU LIMAYE I beg to move:

Page 33, line 33—

for "one year" *substitute* "six months" (194)

श्री शम्भूनाथ . उपाध्यक्ष महोदय, यह अमेंडमेंट नं० 118 पेज 33 लाइन 32 में है । इसमें बहुत सिम्पल सा अमेंडमेंड है—विद और विदाउट, विदाउट जो है वह प्रिन्ट नहीं किया गया था, मिस्टेक हो गई थी तो उसका अमेंडमेंट दिया है कि विद और विदाउट बिलकुल निकाल दीजिये । इसका कारण यह है कि, यह कहा गया है कि पुलिस मिसयूज करती है, तो ऐसी हालत में गरीब आदमी ज्यादातर जमानत वगैरह नहीं दे पाते, क्योंकि इकोनामिक हालत उनकी अच्छी नहीं होती और वह गरीब होने के कारण परेशान होते है । दूसरी तरफ लीगल पहलू इसका यह है कि जिस आदमी से ब्रीच आफ पीस होता है वह उसके लिये जिम्मेदार हो । समाज के लिये अगर उसमें ब्रीच आफ पीस है तो या तो वह जेल में रहे और नहीं तो उसके एवज में दूसरे लोग जो उसके परिवार के है वह सफर न करे । इसी के ऊपर और भी हमारा अमेंडमेंट है कि जमानत के कारण से पूरा परिवार रूइन न हो और इसको पूरा था रोली कमेटी में डिस्कस किया गया था और मेरा खयाल है कि उस समय ऐग्री भी हो गय थ, तो मैं उम्मीद करता हू कि मंत्री महादय इसका स्वीकार करेंगे ।

श्री मधु लिमये उपाध्यक्ष महोदय मैं शम्भूनाथ जी के संशोधन का भी समर्थन करता हू और मे अपना संशोधन भी रखता हू ।

श्री दिनेश जोरदार हमारा भी है ।

श्री मधु लिमये अगर है तो मैं उसका भी समर्थन करता हू ।

उपाध्यक्ष महोदय , मैं सभी संशोधनो का समर्थन कर रहा हू । इसमें दो मुद्दे हैं—पहला—विद-और विदाउट-स्योरिटी । जैसा 106 के बारे में मेरा मुद्दा था, जमानत देना गरीबों के लिये असम्भव है, एक तो 10–15 प्रतिशत की लूट करो या जेल में बन्द रहो । इसलिये मेरा अनुरोध है कि इनके संशोधन को मान लिया जाय ।

यदि 107 आपातकालीन धारा है तो इसमें हैबिचुअल ओफेन्डर्स का कोई सवाल नहीं है जिनको पहले सजा हो चुकी है, उनकी बात भी नहीं है । इसलिये आपातकालीन धारा को देखते हुये एक साल की क्या जरूरत है एक साल की जगह 6 महीने कर दें । इससे शान्ति के लिये, अमन के लिये जो खतरा है उसका भी मुकाबला कर सकेंगे और जो बेकार उन लोगों की स्वतन्त्रता एक साल के लिये छीन रहे हैं, वह नहीं छीनी जायगी । इसलिये एक साल की जगह 6 महीने कीजिये ।

दूसरी बात—"विद-स्यारिटी" वाली बात काट दीजिये ।

SHRI DINESH JOARDER I have moved some specific amendments to these causes Clause 107 is a very notorious clause This applies to the offences mentioned in chapter VIII of the IPC, namely offences against public tranquillity This is the chapter which prohibits the assembly of persons which assembly in the eyes of the Government and in the eyes of the police particularly very often turns out to be an unlawful assembly, and it relates to unlawful assembly being a member of an unlawful assembly, joining an unlawful assembly etc

This chapter dealing with offences against the public tranquillity is generally meant for curbing the democratic and trade union movements and peasant movements of the down-trodden people We know under what circumstances the provisions of section 144 and other provisions of the IPC and section 107 of the Criminal Procedure Code are applied

Nowadays, the condition of the poor people is becoming very critical day by day due to the price rise and other things, and consequently, trade union

[Shri Dinesh Joarder]

movements and the movements of the workers and peasants are being intensified day by day These provisions have been incorporated again in this Bill with a view to having some power to curb these movements Actually this Chapter should have been totally dropped But since we are not able to move amendment seeking to delete the entire chapter VIII of the Criminal Procedure Code corresponding to chapter VIII also of the IPC to which these provisions generally apply since those amendments would be negative in character, therefore, in a round about way we have put forward some amendments to these clauses 106, 107 and 108

Under section 107 of the Criminal Procedure Code a group of peasants or workers can be issued notice asking them why they should not be ordered to execute a bond to maintain peace and tranquillity What do Government want? They only want to protect the interests of the employers and the landlords They do not want that the peasants and the workers should unite together and assemble and demonstrate and organise processions and hold meetings for realising their demands and therefore these provisions in section 107 etc are generally applied against those persons Never have we seen these provisions being applied against the real criminals or real miscreants or blackmarket eers and hoarders or anti-social elements or economic and social criminals of our society But the police officers in the name of maintaining law and order when they find that some labourers and peasants are organising themselves and going in a procession promulgate section 144 and they issue orders under section 107 asking them to execute a bond and to maintain peace and they adopt all these oppressive measures I want the provisions of clause 107 deleted altogether

Clause 107 (1) reads like this

"When an Executive magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity ."

Why executive magistrate? In almost all the States the judiciary has been separated even at the magisterial level. Why then the executive magistrate? At least if there is any order to be issued by a magistrate, it should be by a judicial magistrate Regarding clause 107, I have also moved a substitute amendment which reads thus

For clause 107, *substitute*—

"Any magistrate having appropriate power, receiving information that any person who is a habitual offender and has been previously convicted for any offence relating to human body or life or for theft burglary, robbery or dacoity,—"

MR DEPUTY-SPEAKER Well has it not been circulated?

SHRI DINESH JOARDER I want to put it on record

" and is likely to commit such offence at any time and is of opinion that there is sufficient ground for proceeding may in the manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond'

In these limited case and also in the case of the hoarders and blackmarketeers the court may issue orders for keeping the peace and tranquillity so that they may not recur In the food riots what is happening now is that because of the food hoarders the riot is happening In that cas they are not using even the provisions under 107 against them But the poor people and workers and peasants are victimised under this provision So, I commend that all these amendments to clause 107 be accepted by the House

SHRI R V BADE (Khargone): I support the amendments of Shri Joarder, because this section is already

misused by the police and is used against the Opposition. Whenever we organise a *marcha*, they misuse this section and so I think this section is already misused not against the peace-breakers but against the peace-lovers. When we go in a *marcha*, they say it is against the Government and so we are arrested and the powers are given to the sub-divisional magistrate. A sub-divisional magistrate is a Deputy Collector, he is also the administrative officer. He just issues it without saying the reasons. Only the police officer says that a warrant should be given. Because under the provisions of section 107(3) only the Opposition members are arrested I support Mr. Joarder in this case.

SHRI RAM NIWAS MIRDHA: Sir, I would accept the amendment moved by Shri Shambu Nath which would read thus; that is, these words would be delated—"with or without sureties,"—There is a slight mistake in printing It does not make sense.

MR. DEPUTY-SPEAKER: That is Shri Gautam's

SHRI RAM NIWAS MIRDHA: After this, I hope—

MR. DEPUTY-SPEAKER: Which amendment are you accepting? 127 or 118?

SHRI RAM NIWAS MIRDHA: Both are the same.

MR DEPUTY-SPEAKER: The first one is very ambiguous.

SHRI RAM NIWAS MIRDHA: The second one—127.

MR. DEPUTY-SPEAKER: "With or without sureties,"?

SHRI RAM NIWAS MIRDHA: These four words should be removed.

MR. DEPUTY-SPEAKER: The wording of amendment 127 is, "with or without sureties,".

SHRI RAM NIWAS MIRDHA: Line 33. It means that the bond could be without sureties now. With this, I hope Shri Madhu Limaye would not press for "six months" or "one year". The main difficulty is that Mr Joarder's amendments are very restrictive because they impose certain conditions under which this would operate. But we feel that the present wording is better. It covers a much wider situation.

It would be invoked only when there is danger or breach of peace.. (*Interruptions*).

SHRI DINESH JOARDER: Even at the time of passing MISA Act you said it would not be applied to political workers, but almost all the prisoners under that Act are political workers. You do not keep to what you say in Parliament.

SHRI RAM NIWAS MIRDHA: In that case, clause 122 also will have to be amended after I have accepted Shri Gautam's amendment.

SHRI MADHU LIMAYE: You will have to amend clauses 111 and 116 also.

MR. DEPUTY-SPEAKER: Now I shall put amendment No. 127 to the vote of the House.

The question is:

Page 33, line 32,—

Omit "with or without sureties," (127).

The motion was adopted.

MR. DEPUTY-SPEAKER: I shall now put all the rest of the amendments to clause 107 to the vote of the House.

Amendments Nos. 118, 136, 148, 149, 150 *and* 194 *were put and negatived.*

SHRI DINESH JOARDER: I wanted to challenge the voting on one amendment.

MR. DEPUTY-SPEAKER: You did not object to the procedure when I said that I would put all the rest of the amendments to the vote of the House. Kindly understand the procedure. Voting can be challenged only with reference to one amendment, not to all the amendments together. Please be alert next item If you want any particular amendment you may say that you would like that particular amendment to be put to the vote of the House separately I shall now put clause 107 to the vote of the House

The question is:

"That Clause 107, as amended, stands part of the Bill"

The motion was adopted

Clause 107, *as amended, was added to the Bill.*

MR DEPUTY-SPEAKER We shall now take up clause 108.

Clause 108—(*Security for good behaviour from persons disseminating seditious matters*)

SHRI DINESH JOARDER Sir, I have got certain amendments Nos 137, 151, 152, 153, 154.

Page 33 line 48,—

Omit "section 124A or" (137)

Page 33,—

Omit lines 47 to 49 (151)

Page 34, line 1,—

Omit "(b)" (152).

Page 34, *line* 6,—

for "such as" *substitute* " ", (153).

Page 34,—

Omit line 7 (154).

Clause 108 deals with security for good behaviour from persons disseminating sedicious matters. I have said previously also that clause 108 relating to any matter or publication which is being punishable under section 124(A) is very objectionable. Because 124(A) of the Indian Penal Code says that nothing can be said against the Government. It says:

"Whoever by words either spoken or written or by signs or by display or representation or otherwise brings or attempts to bring in hatred . or attempts to excite or create a disaffecion towards the Government established by Law shall be punishable."

It means we are not able to criticise the policies of the Government and held meetings and speak against the Government. Even if we propagate something about our ideology which goes against the existing Government, the provisions of clause 108 can be applied This is a very undemocratic provision and it should not exist in a free society That is why through my first amendment I want the words "section 124A or" should be removed from clause 108(1)(a) As regards the other amendments I want that no person should be asked to execute a bond unless he is a convicted criminal.

These are my amendments and I hope the Minister will accept them

श्री मधु लिमये उपाध्यक्ष महोदय, मेरा भी संशोधन इसी तरह का है। 124-ए के बारे मे जो उन्होंने तर्क दिया है उससे मैं सहमत हू और अगर पीनल कोड मे आश्वासन देंगे कि गवर्नमेंट की जगह पर स्टेट लायेंगे तो उसके बारे मे हम पुनर्विचार करने के लिये तैयार हैं। मंत्री महोदय को मालूम होगा कि लोकमान्य तिलक, महात्मा गांधी आदि लोगो को इसी दफा की तहत 6-6 साल की सजायें दी गई थी। पूरे राष्ट्रीय आन्दोलन ने इसकी मुक्तकंठ से निन्दा और आलोचना की है। अभी अभी मणीपुर के बारे में एक केस आया था, 124-ए के बारे में कार्यवाही की गई थी तो

मणीपुर विधि समिति की बैठक में मैंने केस उठाया था और श्री कृष्ण चन्द्र पन्त ने इस बात को माना कि एक आदमी के खिलाफ 124-ए का चार्ज लगा था और उसको उन्होंने विदड्रा किया। तो ऐसी हालत मे 124 को रखने का कोई मतलब नही है। वैसे तो पूरे सेक्शन को खत्म करने के पक्ष मे हू लेकिन उसको खत्म करने के लिये आप तैयार नही है तो 124-ए की बात मान लीजिये। इसमे कोई बात ही नही है, राजनीतिक आन्दोलन की गरिमा है।

DR. RANEN SEN (Barasat): I want to speak on this clause because years ago, in 1934 I was a victim of this section 124A. One can understand if it is disaffection against the State, because 'State' is a higher concept than the Government. Today we are seeing that most of the Congress Governments are toppling down because of the Congress members themselves. So, why say 'Government'? We have every right as citizens of this democratic country—we call our country as democratic—to criticise the Government of a State or the Central Government. I can understand objection against criticism of the Indian Republic. But if we claim to be a democratic country and with a democratic Government, every citizen should have the right to criticise the Government if he thinks that the Government is going in a wrong direction. The Minister should try to understand the difference between "State and "Government".

SHRI RAM NIWAS MIRDHA: This clause is used under very exceptional circumstances and the orders under this section can be passed only by a judiciary magistrate to take security for good behaviour from persons disseminating seditious matters. Regarding the suggestion that section 124A should be deleted, my submission is that it has no effort on the right to make speeches or exercise the freedom of speech. This section has never come in the way of this government or any other government being criticised to any extent.

Then, as regards the definition of "Government" and "State" the Select Committee on the Indian Penal Code would consider this suggestion.

श्री मधु लिमये : एक केस मे सुप्रीम कोर्ट ने यह निर्णय दिया है कि इट शुड बी रेट डाउन। उनको-स्ट्राइक डाउन करना चाहिए थे लेकिन आम-तौर पर यह स्ट्राइक डाउन नही करती है। इस रोशनी मे उनको सरकार की ओर से आश्वासन देना चाहिए। इसमे क्या तकलीफ है ?

SHRI RAM NIWAS MIRDHA: It is not proper to demand an assurance for a Bill which is pending before a Select Committee. The Supreme Court has already held that mere speeches do not come within the ambit of the Act. This section has been interpreted to mean that mere making of speeches is not actionable but only these speeches that lead to public disorder come within the mischief of this section. So, the fear of the hon. Member that any criticism of the Government would come within the ambit of section 124A is not correct.

SHRI DINESH JOARDER: The hon. Minister has referred to the definition of the word "Government". The Indian Penal Code says "The word 'government' denotes the Central Government or the Government of a State." That will mean the State of India as well.

Secondly, he said that only those speeches which create disorder will come within the mischief of section 124A. It is misleading to say that only speeches which create disorder will come under thi section.

There is no such thing in Clause 124A.

SHRI RAM NIWAS MIRDHA: I am not misleading the House. I say, with all sense of responsibility, the

[Shri Ram Niwas Mirdha]

Supreme Court has interpreted this Section to mean that "public order" is involved.

MR. DEPUTY-SPEAKER: Now, if you want any particular amendment to be put to the vote of Houe separately, you tell me.

SHRI DINESH JOARDER: Amendment No. 137.

MR. DEPUTY-SPEAKER: The question is:

Page 33, line 48,—

Omit "section 124A or" (137)

The Lok Sabha divided:

Division No. 7] **[16.49 hrs.**

AYES

Bade, Shri R. V.
Banera, Shri Hamendra Singh
Bhagirath Bhanwar, Shri
Bhattacharyya, Shri Dinen
Bhattacharyya, Shri S. P.
Bhaura, Shri B. S.
Chaudhary, Shri Ishwar
Deb, Shri Dasaratha
Dutta, Shri Biren
Haldar, Shri Madhuryya
Hazra, Shri Manoranjan
Joarder, Shri Dinesh
Koya, Shri C. H. Mohamed
Limaye, Shri Madhu
Modak, Shri Bijoy
Mohammad Ismail, Shri
Mukherjee, Shri Samar
Pandey, Shri Sarjoo
Patel, Shri H. M.
Saha, Shri Ajit Kumar
Saha, Shri Gadadhar
Sen, Dr. Ranen
Sharma, Shri R. R.
Verma, Shri Phool Chand

NOES

Aga, Shri Syed Ahmed
Ambesh, Shri
Ansari, Shri Ziaur Rahman
Appalanaidu, Shri
Banamali Babu, Shri
Barman, Shri R. N.
Besra, Shri S. C.
Bhuvarahan, Shri G.
Bist, Shri Narendra Singh
Chakleshwar Singh, Shri
Chandra Gowda, Shri D. B.
Chandrika Prasad, Shri
Chaudhary, Shri Nitiraj Singh
Choudhury, Shri Moinul Haque
Das, Shri Dharnidhar
Deshmukh, Shri K. G.
Dwivedi, Shri Nageshwar
Engti, Shri Biren
Gautam, Shri C. D.
Gokhale, Shri H. R.
Gomango, Shri Giridhar
Goswami, Shri Dinesh Chandra
Gotkhinde, Shri Annasaheb
Hansda, Shri Subodh
Hanumanthaiya, Shri K.
Ishaque, Shri A. K. M.
Jaffer Sharief, Shri C. K.
Jamilurrahman, Shri Md.
Jha, Shri Chiranjib
Kadam, Shri J. G.
Kailas, Dr.
Kakodar, Shri Purushottam
Kavde, Shri B. R.
Kedar Nath Singh, Shri
Kotoki, Shri Liladhar
Kotrahetti, Shri A. K.
Krishnan, Shri G. Y.
Kulkarni, Shri Raja
Kushok Bakula, Shri
Lutfal Haque, Shri
Mahajan, Shri Vikram
Majhi, Shri Kumar
Mandal, Shri Jagdish Narain

Maurya, Shri B. P.
Mirdha, Shri Nathu Ram
Mishra, Shri L. N.
Modi, Shri Shrikishan
Mohsin, Shri F. H.
Murthy, Shri B. S.
Naik, Shri B. V.
Negi, Shri Pratap Singh
Painuli, Shri Paripoornanand
Pandey, Shri Damodar
Pandey, Shri Krishna Chandra
Panigrahi, Shri Chintamani
Partap Singh, Shri
Patil, Shri Krishnarao
Patil, Shri T. A.
Patnaik, Shri Banamali
Pradhan, Shri Dhan Shah
Qureshi, Shri Mohd. Shafi
Raghu Ramaiah, Shri K.
Ram Surat Prasad, Shri
Ram Swarup, Shri
Rao, Shri Jagannath
Rao, Dr. V. K. R. Varadaraja
Roy, Shri Bishwanath
Saini, Shri Mulki Raj
Sankata Prasad, Dr
Sayeed, Shri P. M.
Shambhu Nath, Shri
Shankaranand, Shri B.
Sharma, Shri Nawal Kishore
Shivnath Singh, Shri
Shukla, Shri B. R.
Stephen, Shri C. M.
Sudarsanam, Shri M.
Sunder Lal, Shri
Tayyab Hussain, Shri
Tewari, Shri Shankar
Tiwari, Shri Chandra Bhal Mani
Tula Ram, Shri
Unnikrihsnan, Shri K. P.
Venkatasubbaiah, Shri P.
Verma, Shri Ramsingh Bhai
Verma, Shri Sukhdeo Prasad
Virbhadra Singh, Shri
Yadav, Shri Karan Singh
Yadav, Shri R. P.
Zulfiquar Ali Khan, Shri

MR. DEPUTY-SPEAKER: The result* of the division is: Ayes—24; Noes—90.

The motion was negatived.

MR. DEPUTY-SPEAKER: I will now put the rest of the amendments to Clause 108 to the House.

Amendments Nos, 151 to 154 *were put and negatived.*

MR. DEPUTY-SPEAKER: The question is:

"That Clause 108 stand part of the Bill."

The Motion was adopted.

Clause 108 *was added to and the* Bill.

Clause 109—(*Security for good behaviour from Vagrants and suspected persons*

Amendment Made:

Page 34, in the marginal heading,

omit "vagrants and" (24)

(Ram Niwas Mirdha)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 109, as amended, stand part of the Bill."

The Motion was adopted.

Clause 109, *as amended was added to the Bill.*

*The following Members also recorded their votes for 'NOES'. Sarvashri Kartik Oraon, K. Chikkalingaiah, Aziz Imam, Jagannath Mishra and Prof. Narain Chand Parashar.

Clause 110—(*Security for good behaviour from habitual offenders*).

SHRI DINESH JOARDER: I beg to move:

Page 35,—

for line 6, *substitute*—

"(g) the Customs Act, 1962;

(h) the payment of Wages Act;

(i) the Bonus Act;

(j) the Companies Act;

(k) the Factories Act;

(l) the Land Reforms Act (if operating in any State);

(m) the Estates Acquisition Act (if operating in any State):

(n) any Act or Acts of any State Government which may from time to time by notification include the same under this sub-clause; or" (155)

Page 35, line 9,—

after "corruption," *insert*—

"any taxation, exercise or customs laws." (156)

Page 34,—

omit lines 40 and 41 (167)

In clause 100, security for good behaviour from habitual offenders has been sought. But in sub-clause (f) it has been stated that when a Judicial Magistrate of the first class receives information that there is within his local jurisdiction a person who:

"habitually commits, or attempts to commit or abets the commission of—

any offence under one or more of the following Acts namely,

the Drugs and Cosmetics Act, 1940;

the Foreign Exchange Regulation Act, 1947;

the Employees, Provident Funds Act, 1952;

the Prevention of Food Adulteration Act, 1954;

the Essential Commodities Act, 1955;

the Untouchability (Offences) Act, 1955;

the Customs Act, 1962; or....."

These are very welcoming provisions no doubt. But some other important Acts have been left out. I want that the following Acts also should be incorporated in the above provision, namely, the Customs Act, 1962, the payment of Wages Act, the Bonus Act, the Companies Act, the Factories Act, the Land Reforms Act, the Estates Acquisition Act and similar other Acts affecting the rights and interests of peasants, labourers, employees and toiling masses. These Acts should also be incorporated in this provision with appropriate provision for inclusion of new Acts also after passage of this Criminal Procedure Code Bill.

Now I come to my amendment No. 156. Here in the Bill it is stated:

"any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption...."

These are very good and welcoming provisions. Here it should also be added:

"any taxation, excise or customs laws".

There is no provision here to deal with these who are not paying income-tax or who are flouting income-tax law or who are concealing income tax or excise duty, who are violating the provisions of taxation, excise and customs laws; their cases are not incorporated in these penal provisions. I want that these cases should also be incorporated.

My amendment No. 167 relates to omission of the following:

"habitually commits, or attempts to commit, or abets the commission of offences, involving a breach of the peace, or"

I do not know why 'breach of the peace' has been brought here.

There are other provisions.

So, I want that these amendments should be made accepted by the Minister.

SHRI RAM NIWAS MIRDHA: I would like to make it clear that it was very carefully considered as to what offences should be brought within the ambit of this clause—one is a person who is by habit a robber, housebreaker, thief or forger, or (2) who is by habit a receiver of stolen property knowing the same to have been stolen, etc., etc., I think this list has the approval of the Select Committee and it was done after a great thought and I do not see whether we should add to this. These are the more important of the provisions and it was thought only they should be included in this.

So far as these Acts are concerned, to which a reference has been made, no doubt, they are also of a nature where a provision of this nature would have been helpful. But, at this stage, without knowing what exactly their provisions are and in what way they are being contravened, it is not possible for me to accept this amendment.

As regards other amendments....

SHRI DINESH JOARDER: You can assure the House that after going through these Acts.....

SHRI A. K. M. ISHAQUE (Basirhat): All those Acts have their own penal provisions.

SHRI RAM NIWAS MIRDHA: I do not know what difficulties they will create. The whole Committee went into this and one of the reasons was the one mentioned by the hon. Member now. While I have sympathy for what he is saying, it is very difficult for me to accept these.

MR. DEPUTY-SPEAKER: Now, I will put amendments Nos. 155, 156 and 167 to the vote of the House.

Amendments Nos. 155, 156 *and* 167 *were put and negatived.*

MR. DEPUTY-SPEAKER: The question is:

"That clause 110 stand part of the Bill."

The motion was adopted.

Clause 110 *was added to the Bill.*

Clauses 111 *and* 112 *were added to the Bill.*

Clause 113—(*Summons or warrant in case of person not so present.*)

SHRI DINESH JOARDER: I move: Page 35,—

Omit lines 29 to 35 (168).

In this case if a person is not present in the court, who is supposed to commit a breach of peace, the Magistrate may issue summons requiring him to appear. That part is all right. But the latter part where it is said that that person may be arrested also when such breach of peace cannot be prevented otherwise then by the immediate arrest of such person, is not acceptable to us and we object to it. Generally, who are the victims of these provisions? As I have already said, it is the trade union workers, the peasants and the political workers and if a person is required to appear before the court and if he is arrested then and there without giving him an opportunity to appear himself before the court, it is objectionable and this latter part of the Sec. 113 should be deleted.

SHRI RAM NIWAS MIRDHA: The operative part here is that the Magistrate can order immediate arrest of the person only when such breach of peace cannot be prevented otherwise than by arrest. That is the main important thing and only when finds that there is no other way but to order his arrest, he would have to resort to this. The amendment of the hon. Member is not acceptable to the Government.

MR. DEPUTY-SPEAKER: I will put the amendment to the vote of the House.

Amendment No. 168 was put and negatived.

17 hrs.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 113 stand part of the Bill."

The motion was adopted.

Clause 113 was added to the Bill.

Clauses 114 and 115 were added to the Bill.

Clause 116—(*Inquiry as to Truth of Information*).

SHRI SHAMBHUNATH: I beg to move:

Page 36, line 11,

for 'Pending' *substitute*—

"After the commencement and before" (119)

MR. DEPUTY-SPEAKER: Amendment No. 128 is the same as No. 119 which has already been moved. Mr. Shambu Nath has already moved it.

SHRI DINESH JOARDER: I beg to move:

Page 36,

omit lines 11 to 28 (169).

Page 36,

omit lines 41 to 44 (170).

SHRI MADHU LIMAYE: I beg to move:

Page 36,

(i) line 28, *add* at the end, and

(ii) after line 28, *insert*—

"Provided further that no such order shall be made unless at least one witness has first been examined and allowed to be examined by the Magistrate concerned." (196)

Page 36 line 43,—

for "six months" *substitute* "three months." (197).

MR. DEPUTY-SPEAKER: These amendments are before the House. Shri Shambunath.

SHRI SHAMBHUNATH: My amendment says:

Page 36, line 11, *for* "Pending" *substitute*—

"After the commencement and before"

107 से लगातार जितने और सेक्शन हैं 116 तक उसके परिणाम-स्वरूप यह है। कोई ब्रीच आफ पीस होता है तो उसके बाद में और उसमें जब मैजिस्ट्रेट प्रोसीड करता है, शुरू कर देता है टु एन्क्वायर दि ट्रथ, उस दरमियान में अगर यह होता है तो उसके लिये यह है कि आफ्टर दि कमेन्समेंट ऐंड बिफोर दि कम्लीशन आफ दि एन्कवायरी। मैं उम्मीद करता हूं कि मंत्री महोदय इसको स्वीकार करेंगे।

SHRI DINESH JOARDER: An order under Section 111 is there and it is explained under section 112. A person is brought before a magistrate. There is concurrence of magistrate. This comes to him under prevention of breach of peace. Under section 113

power is given to arrest the person. But again Sir, when Section 116 is there there is enquiry and magistrates have proceeded to enquire into the truth of the information upon which action is taken, and to take further evidence as may be necessary Such enquiries shall be made as fully as may be practicable, in the manner provided. Pending that completion of enquiry, if the magistrate thinks that immediate measures are necessary for keeping the peace, he may detain him until bond is executed. Even during enquiry when they try to find out the truth against a person whose offence for breach of peace is enquired into, the magistrate can order detention of the person. How is this to be done? Are we not having our democratic rights? An enquiry is going on against me. The police has given a report against me. On the basis of the police report he wants to detain me in custody. He will send another report saying the man has become violent and should be put in jail pending enquiry. I will not be given opportunity to appear before the enquiry which magistrate has taken up. I will not be able to defend myself. I will be detained in custody. Is this democracy? What sort of democracy is this? I oppose this provision totally, of detaining a person in custody while enquiry is going on. Lines 11 to 28 should be omitted from this provision.

श्री मधु लिमये : अध्यक्ष महोदय, यह इस क्रिमिनल प्रोसीजर कोड की एक महत्वपूर्ण धारा है और यदि जोरदार जी का सुझाव मंत्री महोदय मानने के लिये तैयार नही हैं तो कम से कम मेरे जो दो संशोधन है उनको तो मान लें । उसका कारण मैं बताता हूं । अपने संशोधन के द्वारा मैंने कोई नई चीज इनसे नही मांगी है । टाइपोग्राफिकल एरर है उसको दुरुस्त किया जाय ।

"Provided further that no such order shall be made unless at least one witness has first been examined and allowed to be examined by the Magistrate concerned."

फास शब्द उड़ गया है । इसका कारण यह है कि 1970 मे जब मुझे बनारस मे गिरफ्तार किया गया था तो मामला मैं सुप्रीम कोर्ट मे ले गया था । उसमें सुप्रीम कोर्ट के दो डेसीजस हुये । स्पेशल बेच ने पुराने सेक्शन 117 (3) की व्याख्या की—पेंडिंग कम्लीशन आफ एन्क्वायरी और उसमे उन्होने साफ कहा है कि जब तक कि जांच शुरू नही होती है तब तक 117 (3) यानी अब नयी धारा 116(3) का इस्तेमाल नही कर सकते हैं । लेकिन उसके बाद भी यह इस्तेमाल होता रहा है । सुप्रीम कोर्ट के जो डेसीजस हुये हैं, उनके भी कुछ हिस्से मैं पढ़ कर सुनाता हूं । यह जो मैरिट्स पर केस था मधु लिमये वर्सेस स्टेट आफ यू०पी० उसमे से मैं उद्धरण दे रहा हूं :—

"It appears, therefore, that the magistrate used the powers under Section 117(3) without commencing to enquiry into the truth of the information. No sworn statement of any kind was obtained by him and he adjourned the cases for the examination of the petitioners without summoning the witness in support of the information. He, however, asked the petitioners to furnish an interim bond or go to jail."

"It appears to us that the powers of the magistrate to ask for an interim bond were not properly exercised in this case and consequently, the order to the petitioners to furnish interim bond could not be made. That stage had not been reached under the scheme of the Code of Criminal Procedure, The magistrate could only ask for an interim bond if he could not complete the enquiry and "during the completition of the enquiry" postulates the commencement of the inquiry, which means commencement of a trial according to the summons procedure. It was not given to the magistrate to postpone the cases and hear nobody and yet ask the petitioners to

[Shri Madhu Limaye]

furnish a bond for good conduct. The magistrate should have made at least some effort to get a statement from Brij Mohan or Ved Murti Bhatt or any of the witnesses named in the challan. Nothing of this kind was done. Therefore, the proceedings for asking for an interim bond were completely illegal."

"It is quite clear that the magistrate was too much in hurry. He did not read the law to inform himself about what he was to do. Having the petitioners before him and having read to them the order under Section 112 it was his duty either to release them unconditionally or to ask them to give an interim bond for good conduct but only after he has started enquiring into the truth of the information. It was for this reason that we held that the magistrate did not act according to the law and his action after August 9, 1970 in detaining the petitioners in custody was illegal. As the petitioners had already become free by reason of the remand having expired, we declared them to be free."

इसलिये मैं इनमें इतनी ही मांग कर रहा हूं कि यह प्रोविजो वह जोड़ें ।

"Provided further that no such order shall be made unless at least one witness has first been examined and allowed to be examined by the Magistrate concerned."

और दूसरा मेरा सुझाव यह है कि अगर यह आपातकालीन धारा है तो 6 महीने की मियाद क्यों जरूरी है ? 6 महीने को घटा कर 3 महीने कर दीजिये । इसमें तो कोई ऐसी बात नहीं है । यह तो सुप्रीम कोर्ट का निर्णय है यह कोई बहुत क्रान्तिकारी और प्रगतिशील निर्णय था ऐसी कोई बात नहीं है, उसको कम से कम संरक्षण दे दें क्योंकि मेरे मामले में निर्णय के बाद भी सैकड़ों ऐसे केसेज उत्तर प्रदेश में और बिहार में मैंने देखे हैं जिसमें 117(3) की जो परिभाषा सुप्रीम कोर्ट ने की है उस पर अमल नहीं हो रहा है और 112 के बाद तुरन्त सुना देते हैं और इंटेरिम आर्डर्स जारी हो जाते है । तो इतना तो वे मान लें । हम लोगों के आबजेक्शन के बाद उन्होंने स्वीकार किया था कि इस पर वह सोचेंगे ।

SHRI RAM NIWAS MIRDHA: Well, Sir, after the Supreme Court judgment in Shri Madhu Limaye's case, even now the position is that orders of detention cannot be issued without commencing an inquiry. But in view of the difficulty mentioned by Shri Madhu Limaye and out of a desire to clarify the matter still further, I am inclined to agree to the amendment of Shri Shambu Nath which is the same as this.

The present wording is 'Pending the completion of the enquiry under sub-section (1)'. In place of 'Pending' what we are now saying is 'After the commencement and before the completion of the enquiry' which means that he cannot issue an order without starting an enquiry. He has to start an enquiry, and starting an enquiry would mean much more than examining one witness or cross-examining him; the magistrate has to commence it. So, in the spirit of the amendment moved by the hon. Member opposite, I am accepting this amendment.

श्री मधु लिमये : क्यों, क्यों ? उसमें क्या दिक्कत है ? क्या ऐसे ही बिना एन्क्वायरी के 6 महीने रख देंगे । तीन महीने मान लीजिये—आपकी बात भी हमने मान ली है ।

SHRI DINESH JOARDER: At least for one witness being examined, why should he not provide? The change made is also absolutely vague.

SHRI RAM NIWAS MIRDHA: The term 'enquiry' is a well known concept.

SHRI DINESH JOARDER: There is no difference between this amendment and the original provision. Therefore, he should accept at least the amendment moved by Shri Limaye.

SHRI RAM NIWAS MIRDHA: We have examined the matter and consulted our legal experts and they say that this amendment reflects more than clearly intention of Shri Madhu Limaye and Shri Dinesh Joarder.

SHRI DASARATHA DEB (Tripura East): Legal experts are only legal experts. They have never suffered in life. That is why they are living in this paradise.

SHRI RAM NIWAS MIRDHA: As regards the period being changed from six months to three months also, I am unable to accept the amendment.

MR. DEPUTY-SPEAKER: So, he is accepting the amendment of Shri Shambu Nath?

SHRI RAM NIWAS MIRDHA: Yes. I am accepting amendment No. 119.

MR. DEPUTY-SPEAKER: The question is:

Page 36, line 11, *for* "Pending" *substitute*
"After the commencement and before" (119)

The motion was adopted.

SHRI MADHU LIMAYE: I would like amendment No. 197 to be put separately. I want division on it.

MR. DEPUTY-SPEAKER: I think I might as well say this that at 5.30 p.m. the hon. Minister of Finance will make a statement on the Third Pay Commission's Report

The question is:

Page 36, line 43, *for* "six months" *substitute* "three months". (197)

The Lok Sabha divided:

Division No. 8 **17.16 hrs.**

AYES

Bade, Shri R. V.
Banera, Shri Hamendra Singh
Bharigrath Bhanwar, Shri
Bhattacharyya, Shri Dinen
Bhattacharyya, Shri S. P.
Chandrappan, Shri C. K.
Chaudhary, Shri Ishwar
Dandavate, Prof. Madhu
Deb, Shri Dasarath
Dutta, Shri Biren
Haldar, Shri Madhuryya
Hazra, Shri Manoranjan
Joarder, Shri Dinesh
Kachwai, Shri Hukam Chand
Koya, Shri C. H. Mohamed
Limaye, Shri Madhu
Mavalankar, Shri P. G.
Modak, Shri Bijoy
Mohammad Ismail, Shri
Mukherjee, Shri Samar
Pandey, Shri Sarjoo
Pandeya, Dr. Laxminarain
Patel, Shri H M.
Pradhan, Shri Dhan Singh
Rao, Shri M. Satyanarayan
Reddy, Shri B. N.
Saha, Shri Ajit Kumar
Saha, Shri Gadadhar
Sen, Dr. Ranen
Singh, Shri D. N.
Verma, Shri Phool Chand

NOES

Ansari, Shri Ziaur Rahman
Appalanaidu, Shri
Awdesh Chandra Singh, Shri
Bajpai, Shri Vidya Dhar
Banamali Babu, Shri
Barman, Shri R. N.
Besra, Shri S. C.

Bhattacharyyia, Shri Chapalendu
Bist, Shri Narendra Singh
Chakleshwar Singh, Shri
Chandra Gowda, Shri D. B.
Chandrakar, Shri Chandulal
Chandrika Prasad, Shri
Chaudhary, Shri Nitiraj Singh
Chikkalingaiah, Shri K.
Choudhury, Shri Moinul Haque
Das, Shri Anadi Charan
Das, Shri Dharnidhar
Desai, Shri D. D.
Dwivedi, Shri Nageshwar
Engti, Shri Biren
Gautam, Shri C. D.
Gomango, Shri Giridhar
Goswami, Shri Dinesh Chandra
Gotkhinde, Shri Annasaheb
Gowda, Shri Pampan
Hansda, Shri Subodh
Hari Kishore Singh, Shri
Hashim, Shri M. M.
Ishaque, Shri A. K. M.
Jaffer Sharief, Shri C. K.
Jamilurrahman, Shri Md.
Jha, Shri Chiranjib
Joshi, Shrimati Subhadra
Kadam, Shri J. G.
Kailas, Dr.
Kakodkar, Shri Purushottam
Kedar Nath Singh, Shri
Khadilkar, Shri R. K.
Kotoki, Shri Liladhar
Krishnan, Shri G. Y.
Kushok Bakula, Shri
Lakkappa, Shri K.
Laskar, Shri Nihar
Mahajan, Shri Vikram
Majhi, Shri Kumar
Mandal, Shri Jagdish Narain
Maurya, Shri B. P.
Mishra, Shri G. S.
Mishra, Shri Jagannath
Mohsin, Shri F. H.
Murthy, Shri B. S.
Naik, Shri B. V.
Negi, Shri Pratap Singh
Oraon, Shri Kartik
Painuli, Shri Paripoornanand
Pandey, Shri Damodar
Pandey, Shri Krishna Chandra
Parashar, Prof. Narain Chand
Pratap Singh, Shri
Patil, Shri Krishnarao
Patil, Shri T A.
Raghu Ramaiah, Shri K.
Ram Sewak, Ch.
Ram Swarup, Shri
Rao, Shrimati B. Radhabai A.
Rao, Shri M. S Sanjeevi
Reddi, Shri M. Ram Gopal
Reddy, Shri P. Narasimha
Richhariya, Dr. Govind Das
Roy, Shri Bishwanath
Saini, Shri Mulki Raj
Sayeed, Shri P. M.
Shambhu Nath, Shri
Shankaranand, Shri B.
Shenoy, Shri P. R.
Shukla, Shri B. R.
Stephen, Shri C. M.
Sudarsanam, Shri M.
Suryanarayana, Shri K.
Swaran Singh, Shri
Tewari, Shri Shankar
Tiwari, Shri Chandra Bhal Mani
Tula Ram, Shri
Unnikrishnan, Shri K. P.
Venkatasubbaiah, Shri P.
Venkataswamy, Shri G.
Verma, Shri Ramsingh Bhai
Verma, Shri Sukhdeo Prasad
Virbhadra Singh, Shri
Yadav, Shri Karan Singh
Yadav, Shri R. P.

MR. DEPUTY-SPEAKER: The result of the division is:

Ayes—31; Noes—92.

The motion was negatived.

MR DEPUTY-SPEAKER I shall now put the rest of the amendments to the vote of the House

Amendments Nos 169, 170 and 196 were put and negatived

MR DEPUTY-SPEAKER The question is

"That clause 116, as amended, stand part of the Bill"

The motion was adopted

Clause 116, as amended was added to the Bill

Clause 117—(*Orders to give Security*)

SHRI DINESH JOARDER I move

Page 36, line 50, *omit* "Keeping the peace or" (171)

Page 36, line 50, *omit* ", as the case may be," (172)

Clause 117 deals with the order to give security It reads

"If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour as the case may be that the person in respect of whom the inquiry is made should execute a bond, "

Here I object to the wording 'keeping the peace" Generally, this is applied against the trade union workers, the poor peasants and the political workers These provisions are very often applied to these categories of people of our country For maintaining good behaviour", as in clause 110, in respect of the hoarders and adulterators and profiteers they may be asked to give bond for maintaining good behaviour it may be accepted in such a case For that reason I have not asked to omit maintaining good behaviour' That may be retained But keeping the peace' and "as the case may be" wherever these words appear here should be omitted Unless this is done the authorities would not allow the opposition, or the politically opposed parties and also the trade union and peasant movements to organise themselves and hold demonstrations or processions to achieve their demands "Keeping the peace will go against them I therefore want the words "keeping the peace' to be omitted

SHRI RAM NIWAS MIRDHA I do not accept these amendments

MR DEPUTY-SPEAKER I shall now put amendments Nos 171 and 172 to the vote of the House

Amendments Nos 171 and 172 were put and negatived

MR DEPUTY-SPEAKER The question is

"That Clause 117 stand part of the Bill"

The motion was adopted

Clause 117 was added to the Bill

Clause 118—(*Discharge of person informed against*)

SHRI DINESH JOARDER I move my two amendments Nos 173 and 174 to clause 118

"Page 37, line 12,—

Omit "keeping the peace or" (173)

"Page 37, lines 12 and 13,—

Omit ", as the case may be," (174)

MR DEPUTY-SPEAKER I shall now put amendments 173 and 174 to clause 118 to the vote of the House

Amendments Nos 173 and 174 were put and negatived

MR DEPUTY-SPEAKER The question is

That Clause 118 stand part of the Bill"

The motion was adopted

Clause 118 was added to the Bill

Clause 119 was added to the Bill

Clause 120— (*Contents of bond*)

SHRI DINESH JOARDER I have got two amendments, 175 and 176 to clause 120 of the Bill There should be no bond to be executed by any person and I want these words should be omitted I move.

[Shri Dinesh Joarder]

Page 37, lines 25 and 26,—

Omit "to keep the peace or" (175).

Page 37, line 26,—

Omit ", as the case may be," (176).

MR. DEPUTY-SPEAKER: I shall now put amendments 175 and 176 to the vote of the House.

Amendments Nos. 175 and 176 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 120 stand part of the Bill".

The motion was adopted.

Clause 120 was added to the Bill.

Clause 121 was added to the Bill.

Clause 122—(*Imprisonment in default of security*).

MR. DEPUTY-SPEAKER: We take up clause 122 of the Bill. There are two amendments, 120 and 121.

SHRI RAM NIWAS MIRDHA: I accept these amendments. They are consequential amendments.

Amendments made:

Page 38, line 1,—

for "(1)" *substitute* "(1) (a)" (120).

Page 38,—

after line 7, *insert*—

"(b) If any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor in office, to have committed breach of the bond, such Magistrate or successor in office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be lible in accordance with law." (121).

(*Shri Shambhu Nath*)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 122, as amended, stand part of the Bill".

The motion was adopted.

Clause 122, as amended, was added to the Bill.

Clauses 123 and 124 were added to the Bill.

Clause 125—(*Orders for maintenance of wives, children and parents*).

MR. DEPUTY-SPEAKER: We now take up clause 125.

SHRI RAM NIWAS MIRDHA: I have two amendments Nos. 25 and 26. I move:

"Page 40, line 28,—

after "child" *add* "if married" (25).

"Page 40, line 29,—

for "sub-section" *substitute* "Chapter" (26).

SHRI EBRAHIM SULAIMAN SAIT: I have an amendment to this clause which seeks to delete the explanation.

MR. DEPUTY-SPEAKER: Your amendment is not before me. May be, it is time barred.

Mr. Sait if your amendment is just to delete something which means it is only to have a negative effect, that is barred by the rules. That kind of amendment cannot be accepted. You have already spoken.

SHRI EBRAHIM SULAIMAN SAIT: Mr. Koya also wants to speak on it.

MR. DEPUTY-SPEAKER: First I will put the Government amendments to vote.

The question is:

Page 40, line 28, *after* "child" *add* "if married" (25).

Page 40, line 29, *for* "sub-section" *substitute* "Chapter" (26).

The motion was adopted.

SHRI C. H. MOHAMMED KOYA: (Manjeri): As Mr. Sulaiman Sait pointed out, this 'Explanation' is against the Muslim personal law. It says,

"wife includes a woman who has been divorced by or has obtained a divorce from, her husband and has not remarried."

This is against the Muslim personal law. Mr. Mirdha merely said that it is not against the Muslim personal law. He did not explain why it is not against the Muslim personal law. Apart from personal law, even from the common sense point of view, why should I maintain my wife even after I divorce her? After divorce, she ceases to be my wife. It is not my duty to find a husband for her again.

SHRI EBRAHIM SULAIMAN SAIT: The Muslim personal law is based on the Koran, Hadis, the sayings of Prophet. What Mr. Mirdha said that it does not affect the Muslim personal law is wrong. It does affect the Muslim personal law. I would like this clause to be held over, so that we can discuss this matter with the religious heads and advocates. The Prime Minister herself gave us a clear assurance the other day that Muslim personal law would not be interfered with. At least, she should intervene in the matter and see that her assurances are honoured.

MR. DEPUTY-SPEAKER: You can oppose the acceptance of this clause. I will put it to the House. The question is:

"That clause 125, as amended, stand part of the Bill."

The motion was adopted.

Clause 125, *as amended, was added to the Bill.*

Clause 126—(*Procedure*)

Amendments made:

Page 41, line 33,—

(i) *for* "whether", *substitute* "where",

(ii) *for* "raised" *substitute* "resided" (27).

Page 41, line 36,

for "husband, father, mother or child as the case may be," *substitute* "person against whom an order for payment of maintenance is proposed to be made" (28).

Page 41, line 39,

for "husband, father, mother or child" *substitute* "person against whom an order for payment of maintenance is proposed to be made". (29)

(*Shri Ram Niwas Mirdha*)

MR. DEPUTY-SPEAKER: The question is:

"That clause 126 as amended, stand part of the Bill."

The motion was adopted.

[Mr. Deputy Speaker]

Clause 126, as amended, was adopted to the Bill.

Clauses 127 and 128 were added to the Bill.

MR. DEPUTY-SPEAKER: I think we shall interrupt the proceedings on this Bill for a little while and hear the Finance Minister on the Report of the Third Pay Commission.

17.30 hrs.

STATEMENT RE: DECISION OF GOVERNMENT ON REPORT OF THIRD CENTRAL PAY COMMISSION

THE MINISTER OF FINANCE (SHRI YESHWANTRAO CHAVAN): With your permission, Sir, I rise to make a statement on the Report of the Third Central Pay Commission.

As the House is aware, the Third Central Pay Comission, which was set up in April, 1970, submitted its final report to the Government on 31st March, 1973, which has already been laid on the Table of the House. During the course of its deliberations, the Commission submitted three interim reports in September 1970, November, 1971 and September, 1972, recommending payment of interim relief to employees in the specified pay ranges. These recommendations were accepted by the Government involving an expenditure of about Rs 175 crores.

The Commission has itself estimated that the additional expenditure for implementing its recommendations, apart from the expenditure on interim relief of about Rs. 175 crores per annum, would be of the order of Rs 145 crores per annum which would increase further in subsequent years due to normal increases both in pay scales and pensionary benefits. This amount is exclusive of the expenditure which might be incurred in implementing the recommendations relating to improvement suggested by the Commission in respect of a few allowances and facilities and in extending the decisions of Government on pay scale etc. to the employees of these autonomous bodies which are at present governed by the rules aplicable to Central Government employees. If all this is taken into account, the total additional expenditure per annum is expected to be more than Rs 150 crores, and about Rs. 800/900 crores for the 5-Year Plan perid.

This House had an apportunity recently to discuss the report. The representatives of Staff side made a number of suggestions when they met the Group of Ministers on the 6th July, 1973. The Group of Ministers met them again today. Since the receipt of the Report, the representatives of Class III and IV employees have been demanding that Government should take decisions on the recommendations of the Commission after discussions with the Staff side of the Joint Consultative Machinery. This request has been considered in the light of the provisions of the JCM Scheme. The interpretation of clause 20(ii) of the Scheme is that if once any particular recommendation of the Commission is re-opened or Government takes a decision even more favourable than the recommendations of the Commission, then such an issue would become referable to arbitration in the event of disagreement The Staff side representatives, while taking note of this difficulty, have agreed that the Staff side will not insist on arbitration, if Government modifies certain recommendations in a manner more beneficial to the employees. Welcoming this positive response from the Staff side, Government has decided that such discussions should take place with the representatives of the Staff side on the points raised by them in their first meeting with the Group of Ministers before Government takes decision on the Report of the Pay Commission. Government has also accepted their suggestion that four major issues relating to minimum wage, pay fixation formula, the dearness allowance formula and date giving effect to the recommendations relating to pay and pensions should be discussed first. Government is very anxious that these dis-