[Prof. S. Nurul Hasan]

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democratisation of an educational institution is that the universities' portals should be effectively open to the most down-trodden section of our people and not remain confined to the upper income brackets, that the Universities must work in a manner that they respond to the challenges of society. Finally, this country has chosen to give a particular form of democracy; that is to say, the people of this country have chosen to rule over themselves through their elected representatives, be they in the Parliament or in the Assemblies. Therefore, when any provision is made which lays the responsibility on an authority which is totally responsible to the elected representatives of the people, then it cannot be said that the rights of the people are being denied. I further wish to assure my friend from Bihar that we would like to do everything possible to encourage the forces of socialism and secularism in the University. With these words, I commend this Bill to the House.

MR. CHAIRMAN: The question is:
"That the Bill, as amended be passed".
The motion was adopted.

15.42 hrs.

CODE OF CRIMINAL PROCEDURE BILL

MR. CHAIRMAN: We will now take up the Code of Criminal Procedure Bill.

इस पर दस घंटे टाइम है, कितना जनरल डिस्कशन पर लेना चाहते हैं श्रीर कितना क्लाजेज के लिए टाइम चाहते हैं यह हम डिवाइड कर देना चाहते हैं।

SHRI DINESH JOARDER (Malda): There are only a very few amendments. So, the distribution of time should be seven hours for general discussion, two hours for clauses and one hour for third reading.

सभावि मही य : 7 घंटे हस के लिये, दो घंटे क्लाज ाइ कलाज डिस्कशन के लिये भीर एक घंटा थर्ड रीडिंग के लिये मैं रख रहा हैं। श्री मिर्धा।

SHRI DINESH JOARDER: Now that this Bill is being taken up for consideration, I want to raise a point of order. The Indian Penal Code, which is a substantive law, is going to be amended and in fact the amendment Bill has been referred by the Rajya Sabha to a Joint Committee. That Amendment Bill will come before the House either the next session or within a few months. The Criminal Procedure Code is only a procedural law, based on the Indian Penal Code. Now, it can very well happen that many of the provisions of the Indian Penal

Code will be either modified or even deleted by the Joint Committee or the House later. In that case, the reference in the Criminal Procedure Code Bill to those sections of the Indian Penal Code, which have been amended or deleted, will have no meaning and a further amendment of the Code of Criminal Procedure will become necessary. Therefore, I would suggest that the consideration of this Criminal Procedure Code Bill be derred until we consider the Bill relating to the Indian Penal Code first. Then we can take up this Bill, in the light of the amended or modified Indian Penal Code.

FHE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARTMENT OF PERSONNEI. (SHRI RAM NIWAS MIRDHA): The Bill to amend the Indian Penal Code has been referred, as the hon. Member mentioned, to a joint Select Committee. But, we need not hold up discussion, consideration and passing of this Criminal Procedure Code Bill till such time as that Bill has been considered by the Committee.

Firstly, care will be taken to see that there is no contradiction between the two. But, to hold up this Bill, which had gone through all the stages that are necessary for coming up to this stage will not be proper. If at all any amendments are necessary at a future date, they would be of a very minor and marginal nature and they will be taken care of. Therefore, I suggest that this Bill may be taken up.

भी मधु लिमये (बांका) : ग्रध्यक्ष महोदय, मेरा भी व्यवस्था का प्रश्न है। ग्राप मुझे माफ करेंगे कि दो साल मैं इस सदन के बाहर था, इसलिये ग्रगर तथ्यों के बारे में शायद कोई गलती होती है तो भ्राप उस को संशोधित कर दें। मैं यह जानना चाहता हं मंत्री महोदय से कि चौथी लोक सभा में जो विधेयक रखा था क्या उस से यह भिन्न है ? क्या इस के ऊपर कोई संयुक्त कमेटी बैठी थी ? भ्रौर क्या यह वह स्पष्ट करेंगे कि जो वर्तमान किमिनल प्रोसीजर कोड है इस से यह बिलकल भिन्न है ? यदि भिन्न है तो वर्तमान बिल के जो क्लाजेज हैं भौर इस के जो हैं-मैं बहुत सरसरी तौर पर देख रहा हं तो लगता है कि बहुत बदला गया है, तो उस की कोई तौलनिक तालिका वह बनायेंगे जिस से कि बहस करने में ग्रसानी हो ? यह बहुत जरूरी है क्योंकि एक क्रिमिनल प्रोसीजर कोड इस वक्त है, उस को वह बदलने जा रहे हैं तो हम को मालुम हो कि वर्तमान जो क्लाजेज

हैं भीर जो क्लाजेज इस के हैं उन में क्या परिवर्तन किया गया है। कोई टेबल बनाया जाय जैसे कि कांस्टीट्यूएंट असेम्बली के समय मैं दुआ था ; इाफ्ट कांस्टीट्यूशन श्रीर वर्तमान कांस्टीट्यूशन दोनों का कम्पेरेटिव टेबल बनाया गया था। तो बहस के पहले अगर इस तरह की कोई चीज हो जाय, कोई टेबल या चार्ट वह दे दें तो बहस करना हमारे लिये श्रासान हो जायेगा।

श्री राम निवास मिर्धाः श्रीमन्, यह जो विद्येयक था यह प्रवर समिति के समक्ष गया था श्रीर प्रवर समिति ने सारे जो प्रावधान हैं उन पर बहुत श्रच्छी तरह से विचार विमर्श किया था। . . . .

भी मधु लिमयें : संयुक्त समिति या प्रवर समिति ?

भी राम निवास मिर्धाः दोनों सदनों की संयुक्त प्रवर समिति थी ।

जहां तक माननीय सदस्य का यह कहना है कि कम्पेरेटिव टेबल कोई हो तो वह प्रब संभव नहीं है कि किया जाये। लेकिन प्रवर समिति के समक्ष जो भी क्लाजेज ये उस में जितने भी मेमोरेंडम हमारे पास प्राए उन के प्रावधान ये भीर पुराना जो हमारा कानून है वह प्रवर समिति के समक्ष था। क्या परिवर्तन किया जाना चाहिये, उस के लिये जो सुमाव भ्राए वह भी सब उस के सामने थे। तो सब बातों को देख कर कम्पेरेटिव तरीक से उस ने किया है भीर भ्राम सिपति यह है कि इस के बारे में हमारे पास इस समय कोई ऐसा चार्ट नहीं है। भ्रगर समय होता . . . .

श्री मधु लिमये: समय है, कल दे दीजिए।
श्री राम निवास निर्धा: इतनी जल्दी
हो सकता तो हम कर देते। लेकिन ज्यों-ज्यों
क्लाच धार्येंगे संयुक्त प्रवर समिति के प्रतिवेदन
को देखें तो उस में समिति की तरफ से दिखाया
गया है कि कितना परिवर्तन किया है धौर किस

दिशा में परिवर्तन किया है। लेकिन माम सारे का कम्पेरेटिव टेवल माज या कल में बनाना संभव नहीं है। इसलिए मैं माशा करता हूं कि माननीय सदस्य प्रवर समिति के प्रतिवेदन से काम लेंगे।

श्री मधु लिमयें : तो ग्रब मुझे बोलना पड़ेगा हर क्लाज पर ।

सभापित महोदय : घव पीछे बोलिएगा । ग्रभी तो जो ग्राप ने सवाल उठाया उस का जवाब उन्होंने दे दिया।

भी मधु लिमयें : नहीं, तो कल तक तालिका दे दें वह ।

15.50 hrs. [Shri N. K. P. SALVE in the Ch

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARTMENT OF PERSONNEL (SHRI RAM NIWAS MIRDHA): Mr. Chairman, Sir, I beg to move\*:

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

Hon'ble Members may recall that with the concurrence of this House, the Bill was referred to Joint Committee of both the Houses of Parliament in December, 1970. The Joint Committee started its work in April, 1971 after its due constitution. It submitted its Report to the Rajya Sabha on the 4th of December, 1972 and the Rajya Sabha passed the Bill as reported by the Joint Committee, on the 19th December last. I am sure, this House will join me in congratulating the Joint Committee for having completed the stupendous task of scrutinising a Bill of this magnitude and importance in such a short time.

As the House is no doubt aware, the Bill is a very lengthy one intended to replace the 75-year old Code which is the basic procedural law relating to criminal trials in our country.

As explained in the Statement of Objects and Reasons, it provides for several important changes in the existing law with a view to expedite trials and also to make it reflect current ideas. The provisions of the Bill naturally evoked great interest and on the whole they were welcomed. The Committee examined as many as 72 witnesses at various centres and 154 memoranda containing views and comments from various individuals including distinguished jurists. It held as many as 44 sittings

<sup>\*</sup>Moved with the recommendation of the President.

[Shri Ram Niwas Mirdha]

The expedition with which the work was completed by the Joint Committee is a record for a legislation of this length and complexity.

The Bill has been scrutinised with the greatest care and thoroughness by the committee. Members of the Committee took the most active interest in the matter and the changes made to the Bill which were mostly by way of improvement are very important. In recommending these changes, the Committee took due note of the need for protecting the interests of the accused and at the same time providing for ex-pendition in the investigation and trial of cases. Special attention has been paid to remove, as far as possible, the scope for abuse of powers by the police and pro-tect the interests of the innocent. If I may say so with respect, the Bill as it has emerged from the Committee and as passed by the Rajya Sabha is commendable piece of legislation. I need not recapitulate the various changes made by the Committee as they are all contained in the Report. I may just mention a few of these changes in the Bill as passed by the Rajya Sabha.

One of the chronic complaints which we have been hearing about criminal cases is that in many States there is inordinate delay in the investigation of cases by the police. Such delays are particularly harmful in cases where the accused is in custody during investigation. To keep a person in detention as an under-trial prisoner is obviously most objectionable and no effort should be spared to reduce the scope for this.

The main remedy for this is administrative action and better supervision, as the law even as it is, does not tolerate delays in this regard. However, to tighten the law further, other improvements were considered. The committee, after anxious consideration, proposed a change which will have the effect of keeping the investigating offi-cer on the alert. Under the new provision. in clause 167, an accused person is entitled to be released on bail during the investiga-tion if he had been in custody for 90 days and the investigation is not completed, unless for special reasons the magistrate orders otherwise. Where the investigation is not completed within 6 months in a case punishable with imprisonment for two years and less, the further investigation may even be stopped by the magistrate. Another provision is that the period of jail life undergone while on remand during investigation or trial will be deducted from the total period of imprisonment to which an accused may be sentenced. It is hoped that these changes in the Bill as passed by the Rajya Sabha would make the detention of a person in jail on remand for long periods a thing of the past.

As regards security proceedings, an important change made in the Bill as passed by the Rajya Sabha is omission of the letter part of Section 109 (demand of security from persons who have no ostensible means of subsistence or who cannot give a satisfactory account of themselves which a satisfactory account of themselves) which has been almost an eye-sore to many persons. Further, a time limit has been prescribed for the disposal of security proceedings which shall stand terminated on the expiry of that limit. This provision has been made in the light of complaints that security proceedings are being dragged on for several months in some States keeping the person concerned in jail all the time. The Bill has also made a provision for demanding security from habitual black-marketeers, defaulters in payment of provident fund dues, persons committing off-ences under the Untouchability Offences Act and other anti-social criminals, Some of the other changes made are abolition of the system of Honorary Benches of Magistrates, right of maintenance to indigent parents and divorced wife, better enforcement of Probation of Offenders Act, better treatment of Jail appeals, liberalisation of bail provisions, confermentof powers of revision on Sessions Judges, prescribing periods of limitations for certain categories of offences, restriction on right of Government to appeal against acquittal, right to approach the Superintendent of Police in cases where the police refuse to register F.I.R., etc.

The above are only a few of the important changes recommended by the Com mittee and incorporated in the Bill now before the House. Hon. members will notice that the Committee spared no pains in per-fecting the provisions of this very impor-tant Bill. I venture to submit that the Bill now before this House has become as per-fect as can be made and the new Code of Criminal Procedure is bound to secure considerable improvement in the existing law and ensure efficient and speedy justice to all.

With these words, I commend the Bill for the consideration of the House.

MR. CHAIRMAN: Motion moved:

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

Shri Dinesh Joarder.

SHRI DINESH JOARDER (Malda): Mr. Chairman, Sir. the Code of Criminal Procedure, as framed and passed by the British imperialist power in 1898, was a colonial legislation intended to terrorise the population of this country by savage and brutal force, empowering the police and the executive bureaucracy with infetered powers to a degree undreamt of before and curtailing to the point of deprivation of the rights and liberties of the people of our country. We had no democratic rights at that time and the Criminal Procedure Code was framed in that light to deprive us of our democratic rights and liberties.

But, after the lapse of so much of time since independence when widespread demand for its thorough change and amendment was roused, this Bill which has now been presented by the Home Ministry still does not remedy the old state of affairs. Rather it increases the savagery of the old Code, and many of the provisions of the new Bill pro-pose further curtailment of the citizen's rights and liberties and offends the democratic norms and principles.

We have inherited these criminal laws and the police institution as a legacy of the British imperialist power who, for protecting the feudal Lords and in the interest of colonial exploitations had created them. We know how and in what brutality the national freedom movement was tried to be crushed under the application of the provisions of this Code of Criminal Procedure. Even after independence and in the pre-sent days, what we have seen is that the role of the police and the application of the various anti-people and anti-democratic provisions of the Code have been horrible and very deplorable too. After independence, the criminal laws and the police have been utilised by the ruling party to suppress the mass movements and to throttle the voice of the people. The provisions of the Criminal Procedure Code have been very liberally and arbitrarily used to oppress the popular demands, to curb the democratic rights, freedom of speech and association and similar other liberties of the citizens.

16 hrs

Sir, during the last two or three years, in the name of maintaining law and order and in the name of applying the provisions of the Criminal Procedure Code, the police, in certain States and more particularly in West Bengal, have unleashed a reign of terror. The ruling party in the Centre, Mrs. Indira Gandhi's Congress, have utilised the police force and applied them to the operation for elimination of the opposition. Being thus engaged, encouraged and patronised by the ruling Congress Party, the Police have started innumerable fake cases with help of the Jotedars, Landlords blackmarketeers and mill-owners in the villages against the peasants and ordinary villagers and also against the organised labour and toiling masses in the urban cities. The Police have issued warrants of arrest in those cases against about a lakh of people and have arrested many of them, put them in fail on false and motivated reports submitted to the courts and opposed bail. They have in the name of investigation and taking

steps under the provisions of the Code for maintaining law and order, beaten up thousands of citizens in their custody, they have arrested and detained many without warrant, killed a few hundreds of people inside the thana lock up and jail. They have raped women inside the Police stations. In the open streets they have cold-bloodedly shot down many citizens. The ruling Congress Party, with a view to wipe out the Opposition, formed a combined armed gang com-posed of the military, CRP and the Police and launched that famous combing operation in area after area in and around Calcatta and looted the household articles and valuables, killed the people and raped women. In the cases of murder, the Police have implicated and arrested hundreds of people falsely and without putting them to trial, have detained them in jaid. The Police in uniform and without unifom in plain clothes have served as congress volunteers to rig the General Elections of 1972 in favour of the Congress Party in West Bengal. They have been used to capture the Trade Unions, to resist the workers from living in their homes and joining their duties. Does this justify in any manner and under what procedure of law are they acting in fashion? Under these circumstances, the psychology and the motive of the entire perspective of the State power, the conduct of the Police and the misuse of the provisions of the Code of Criminal Procedure and ruthlessly abusing the power at its com-mand, we shall have to judge the new Code that the Home Ministry has presented in this House to-day.

The hon. Member will find that various provisions, their intent and the entire concept of the Bill are almost the same and in many cases, worse than the old Act. This Bill is a very big one and is a very im-portant Bill also. Most of the clauses concerning the power of the Police officers in the matter of arrests, investigation, search and seizure, taking preventive and prohibitive measures, the powers of the courts in the matter of trial, granting or refusing bail, etc., and various other provisions of the Code require detailed discussions and in many cases a thorough amendment. But as my time is very short, I will take up only a few important clauses that require attention and consideration of the Members of the House.

MR. CHAIRMAN: You have sufficient time. You can deal with all those aspects that you want to.

SHRI DINESH JOARDER: The uncontrolled application of Sections 144, 107, 145. etc. of the Criminal Procedure Code against the licences of vested land and Bhagcharis and organised labour and trade unions have become a routine affair to the administra[Shri Dinesh Joardar]

Section 108 of the amending Act is a new section and seeks to further restrict the civil liberties of the citizen.

Section 124A of the Indian Penal Code is a black provision in the Indian Penal Code under which Tilak was punished. Under the new section 108 of the Amending Code, a citizen can be bound over if the judicial Magistrate has information that any person disseminates or attempts to disseminate or abets the dissemination of any matter the publication of which is punishable under section 153-A of the IPS. This is against the Constitutional right of freedom of speech. I will read out Sec. 124-A of the IPS. It says:

Whoever by words either spoken or written or by signs or by visible representation or otherwise brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to 3 years to which fine may be added, or with fine.

Section 108 of the new Criminal Procedure Code says:

- "When a judicial Magistrate of the first class receives information that there is within his local jurisdiction, any person who within or without such jurisdiction—
- (i) either orally or in writing or in any other manner intentionally disseminates or attempts to disseminate or abets the dissemination of—
- (a) any matter the publication of which is punishable under section 124A or section 153B or section 295A of the IPC".

Now, under the provision nobody can speak against the Government or express opinion in opposition to the policy of the Government. If he says so, he can be brought under the purview of Clause 124A of the IPC and under Section 108 of the P.C. he will be tried. Section 108 of the new Penal Code should be deleted or amended accordingly.

Sections 107 and 117 (3) of the present code have been freely used by the authorities to suppress democratic movements and particularly to harass and arrest peasant and trade union leaders. The amending code not only retains those sections corresponding to section 107 and 116 in the amending code, but adds section 108 which is more dangerous for the citizen and more restrictive of civil liberties. Section 132 of the old code has been retained with little modifications. Section 152 says:

That means, Sir, if any authority or police or any other armed force, go beyond their power, and act in a vindictive manner, cause injury to the public or the citizen. the same cannot be proceeded with in any court. This section as well as present sections 196 and 197 of the code should have been removed from the statute book in as much as they thwart the action of a citizen against public servants who commit crimes against citizens. Section 197 has been made worse by the insertion of sub-sections 2 and 3 whereby any member of the armed forces is immune from prosecution and any member of the forces charged with the mainte-nance of public order such as police also may be immuned by notification. This is a new clause which has been provided in the new Bill.

Sir, I have already referred to Sections 144 and 145. These are retained in all their disturbing features. Section 144 one of the Sections under which many de-mocratic movements have been obstructed and suppressed. Now-a-days there is land movement in every part of our country. When peasants go to possess the surplus land under the licence given by the authorities the Joatdar comes to the SDO's court and files a petition saying that re-garding that land a breach of peace is apprehended and then Section 145 is ap-plied and the receiver is appointed. The landlord is made the receiver and ultimately that land goes in the hands of the landlord through the process of law. So, these Sections should be accordingly, amended or deleted. In this connection, I would like to mention that under Land Reforms Act of West Bengal eviction di Bengalees and share-croppers without due process of law, is a cognizable offence and the police has been given power to arrest the offending landlord and institute criminal case. There are innumerable cases of unlawful eviction from land. The agof unlawful eviction from faile. Are aggreed peasants go to police station to lodge complaint, but the Police officer never helps the peasants and take sides of landlords and help them to evict peasants. What action you propose to take against it? Nothing has been provided in the Code.

In fact, the powers of the police even in the present Code are not only retained but have also been extended. Sectson 41 retains the powers of the police officers to arrest with-

out warrant. The old Section was 54 of the old Code. The entire Chapter 13 of the old Code has been retained as Chapter II of the new Bill. In this chapter some preventive measures and powers of the police have been defined. Unfettered power has been given to the police in the name of preventive measures to maintain law order.

The new Section 167 of the amending Code has been made more onerous than the old Section 167. According to judicial pronouncements under Section 167 the Magistrate can order police custody of the offender but not for a period exceeding 15 days in the whole and further custody in jail can be ordered by remand orders under old Section 344 of the Code, now that is section 309 of the new amending Code. Under section 167 of the Code as sought to be amended, a Magistrate appears to have been given the power to cause a person to be detained in police custody even for as many as 90 days. Magistrate is also given the power to detain a person beyond 90 days, if for reasons recorded in writing, he is satisfied that his deten-tion beyond the period of 90 days is necessary.

Just now, the hon. Minister, Mirdha has said that a radical change has been brought about in this regard. If a person is innocent and if there is no valid reason for detaining him in custody, then why should he be detained for so long a period as 90 days three months, Sir, this is a very wrong law that has been provided in this section. In this connection. reference may be made to the new provisions for bail under sections 446 and 487. It may be noted that there is not much difference between the present sections 496 and 497 and an accused may be refused bail for months together if there appeal reasonable grounds for doing so. words appearing in the section are "appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life". Onthe basis of a police report that some complicity has arisen that such and such a person is involved in such and such a murder, rape or arson case or any other case the Magistrate will believe the report of the police and detain the person in custody. The Magistrate will act on the report of the police officer and the report is due to the vengeance of the police officer. he will put the innocent person in detention. This wording of the provision has made the law worse than before.

Sir, if there are reasonable grounds for believing that a person is guilty of an offence punishable with death or imprisonment for life, such a person can be remanded to custody every 15 days, as is happening now in so many cases.

Sir, in the famous Burdwan case of rioting where two or three murders had taken place, about thousand persons were arrested. They were detained in jail for one year or such a long period; for one year or so. many of those persons are still detained in jail and they are not being put to trial. There is the infamous case of Burdwan in which Benoy Kumar and Gokulande Roy and about 1,500 others were arrested and many of them are still in jail without trial. And, this is what is happening under the provisions of the Criminal Procedure Code. How these provisions are being misused or abused by the police force!

Sir. I will now refer to the provisions of articles 19, 21 and 22 of the Constitution of India which are being contravened by the provisions of the Cr. P. C. Article 19 of the Constitution provides throughout the territory of India. Article 21 says that no person shall be deprived of his life or personal liberty except actions the personal liberty except actions and the personal liberty throughout throughout the personal liberty throughout the personal liberty throughout the personal liberty throughout the personal liberty throughout throughout the personal liberty througho cording to procedure established by law. Clause (1) of Article 22 says that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the ground of such arrest, nor shall he be denied the right to conpractitioner of his choice. If he is detained in jail and if he is kept behind the bars, how can he consult a legal practitioner of his choice? If he is not set at liberty, how can he go to the different lawyers and consult them and choose any of them to defend his cause?

Bail should be the rule and its refusal an exception. Only on mere suspicion, to detain a person or a citizen who is not a convict, indefinitely in jail is to deprive himof the freedom of rights provided int he Constitution. It goes against natural, moral and ethical justice.

Under the new sections 129, 130 and 131 of the new Code, in regard to maintenance of public order and tranquillity wide power has been given to the police and the Armed Forces to suppress mass movement and demonatic rights. These sections should be omitted.

|Shri Dinesh Jarder1

For instance, clause 129 reads thus:

"Any executive magistrate or officer in charge of a police station, or in the absence of such officer-incharge, any police officer not below the rank of a sub-inspector, may command any unlawful assembly or any assembly of five or more persons likely to cause a distur-bance of the public peace to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly".

If there is a labour movement or there is at trade union which is going on strike or if a procession is being led by a trade union, and if the owner or the employer wants the police to help him, he can be a procession to help him, he can be compared the police and this position was approach the police, and this section may easily be applied and an order for the dispersal of the lawful procession or lawful demonstration of the labourers could be made, and the assembly has to be dispersed.

Again, in the proposed new section 131 we find:

"If any such assembly cannot be otherwise dispersed and if it is necessary for the public security that it should be dispersed, the executive magistrate of the highest rank who is present may cause it to be dispersed by the Armed Forces".

If the Armed Forces come in, then it would mean that shooting would go on and bullets will be offered to the labouand butters will be offered to the trees who may lead a procession or go on strike. This clause has given the police wide and unfettered power, in fact, not only to the police but to the magistrates and other authorities also. Therefore, I would plead that these clauses should be omitted.

Under the proposed new section 266, the definition of persons detained includes persons detained including those preventively detained. It is curious that section 491 of the previous Code has been deleted. That was the only section giving an opportunity, to an aggrieved person to go to the High Court on a habeas corpus petition for his bail or release from custody.

Again, the proposed new section 397(2) prohibits a revision order against any interlocutory order. That should also be omitted.

The proposed sub-section (3) of sec. 397 is highly dangerous. It provides that if a revision application has been made to the Sessions Judge, no further application can be made to the High Court. I demand that the old provision, sec. 491 of the old Code, should be retained as it is in this code also

Now, coming to legal aid to poor persons against whom the State has started any case, they have very little opportuni-ty to defend themselves with better calibre of legal defence and legal practitioners. This matter of legal aid has been discussed in many forums and places. So a provision should be made in the code that the State should provide the assis-tance of legal practitioners appointed by the State to defend those persons against whom the State has started any criminal

The system of representing the State cases in courts by police officers, the police prosecution system, should be dis-pensed with and the State should be represented by lawyers and advocates in the interest of fair and balanced justice.

Finally, even if certain changes have been made in the Cr. P.C., unless you change the character of the police, you will not be able to deliver the goods to the people. The police has been given unfettered powers in this code to arrest persons and investigate cases. But what is the result of the investigation and trial of innumerable murder cases that took place in the last 3 to 4 years in different parts of the country, particularly West Bengal? I can mention some of these cases. The case of the murder of Hemanta Kumar Basu has not yet been finalised. The case of the stabbing of Justice T. P. Mukherjee is still undecided. No trial has been held till now. What is the result of the murder case, the murder of the elec-tion candidate Ajit Biswas? Then what about the case of Justice K. L. Roy? about the case of justice K. L. Royr What about the murder of the Vice-Chancellor of Jadavpur University? Then there is the case of the killing of the watch dealer Tarak Dutt, the CPI(M) leader. Mahadev Banerjee and Santosh Bhattacharjee, Bhabadish Roy, Jiban Maity and a few hundred cases of murder and organised killing. Among those is a case where a Headmaster was burnt alive in Durgapur. This case also has not been finalised and tried. Three or four years have clapsed, but the cases are not brought to trial. What is the action taken by the police against the rape committed on Shrimati Ashima Podder, Gita Chatter-jee and others? The truth will never come out because the members of the Congress

Party are involved in these cases. A few cases have been instituted by aggrieved citizens against some police officers on charges of murder rape etc. but instead of punishing them you are encouraging and rewarding them.

In conclusion, I say that in spite of vesting more and more power in the hands of and granting impunity to the police force and legislating more stringent penal and preventive laws, the incidence of crime is increasing and murders, robbery, looting, kidnapping and rape are the order of the day. The Government have totally failed even after the lapse of 25 years after independence to fulfil the promises they gave to the people. The misery, poverty and starvation of the people are increasing every day along with the people's discontent; at the same time, organised resistance, mass movements of the toiling people are also on the increase. So Government want to widen the scope of the anti-people and undemocratic criminal laws and the power of the police. You have still kept the emergency in force, liberally used the provisions of MISA, the Prevention of Unlawful Activities Act, the West Bengal Criminal Law Amendment Act etc. Has the quality of the police been improved? No. On the other hand, it has now become a corrupt anti-people, anti-national institution to wage uncivilised and brutal attacks on the people of the country. Unless the Government changed its attitude towards the entire system of justice, the functioning of the police and the application of the State power, nothing better can be expected from the rotten system of magisterial judi-ciary in the district courts, from the corrupt and immoral, anti-people police force and the undemocratic laws like the Code of Criminal Procedure.

MR. CHAIRMAN: Not only have you taken the entire time allotted to your party but much more than that. There will be no other speaker from your party, I am afraid.

SHRI JAGANNATH RAO (Chatrapur): Mr. Chairman, Sir, I rise to welcome this wholesome measure. This Criminal Procedure Code of 1898 underwent several changes. Several amendments were made in 1923 whereby basically the whole code was changed. Subsequently also, some sections were changed from time to time. But this Bill has gone too far in liberalising certain provisions which were found to be irksome and caused hardship to the accused. congratulate the Joint Committee for the good job they have done. They have taken great pains in recording evidence and examining the jurists and in coming to conclusions which are very wholesome indeed.

I am also glad that the Government has also agreed to the liberalisation of certain provisions, and for this I compli-ment the Minister in charge in the Home Ministry, Mr. Mirdha, for having con-ceded and having agreed to a certain liberalisation of the procedures which ordinarily the Government may not agree to.

One wholesome feature of this amending Bill is the separation of the executive from the judiciary. Offences which do not relate to law and order will be tried by judicial magistrates. Only offences as re-late to breach of law and order will be tried by the executive magistrates. Therefore, this is a very wholesome provision and even the appeal against these offences tried and triable by the executive magistrates will lie to the sessions courts. It is also very good because the district magistrate does not come into the picture at all. It is a very welcome provision.

Another redeeming feature which I find is certain sections of the old code which are well known to people even in the villages are retained. Their numbers are retained. For instance, section 144; it is known to everybody in the country, even in the villages. So also 145. So also 107, security proceedings.

М. SHRI RAM GOPAL (Nizamabad); What about 420?

MR. CHAIRMAN: No dialogue across the benches,

SHRI JAGANNATH RAO: I am not talking about 420.

MR. CHAIRMAN: Please address the Chair.

SHRI JAGANNATH RAO: referring to the sections in the Criminal Procedure Code which are very commonly understood by everyone in the countryside for instance, 107 and so on. Their numbers have not been changed. That is a good thing.

I also find in the trial of summons and warrant cases, the lengthy procedure has also been considered, and I find the old section 342, which deals with examination of the accused, where the magistrate is required to place any circumstances appearing against the accused and ask him to give explanation. has been retained. The language used by the accused in making that statement has to be recorded as far as possible. That is a good provision.

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Then another feature is the abolition of the committal proceedings. In these committal proceedings in respect of offences which are exclusively triable by the court of session, much time was being lost. The accused ordinarily was not being released on bail, and the committal magistrate is only a mere post-office. He had no power or authority to assess the evidence and come to a conclusion. In 99 per cent of the cases, no magistrate was bold enough to discharge the accused person. So, so much time was lost and it caused harassment to the accused in the committal proceedings. You find certain offences which are triable exclusively in the court of session. The magistrate will transfer the case to the court of session with all the records before him. That is a good provision.

Another very redeeming provision is contained in the new clause 304; it is a provision is new provision, regarding legal aid to the poor. Under the old code, in offences under section 302 IPC, where the accused person was not in a position to engage a lawyer to defend him, the State used to provide him with the services of a lawyer at the expense of the State. But now the liberalised section says that in any offence triable before a Court of session, not necessarily in offences punishable with death, where a Court finds the accused person is not in a position to engage a lawyer to defend himself the State will provide a lawyer for him. This liberalisation applies to cases triable before other courts also. The State Government is required to make rules in consultation with the High Court so that the defence law-ver could be made available to the poor at the expense of the State. It is a good provision and I welcome this.

In the old Code, as a lawyer, my experience has been that when you filed a revision petition the technical objection used to be taken by the Government saying that an appeal lies and the revision petition is not maintainable and it used to be dismissed. In this process the time for appeal used to run out. Therefore the accused used to be in a quandry. This provision has now been amended. Where a revision petition has been filed though technically a revision does not lie but the Court thinks that there are substantial grounds for intervention, the court can deliver the judgement and not merely dismiss it on the technical ground of non-maintainability. It is a wholesome provi-

Previously if an accused person was kept in custody pending trial for long months that period of detention as an undertrial prisoner was not taken into consideration and conviction and sentence used to be given. Under this new clause the time spent by the under-trial prisoner in jail will be taken into consideration in computing the sentence that is awarded. It is a very good provision.

A new provision has been put in this Bill for admission of documents without proof. It is open to the prosecution or the accused to file a list of documents on which both the parties want to rely and if the documents are unimpeachable, if they are genuine no proof was required. That is done in Civil cases. A similar provision has been introduced here also which really helps both the prosecution and the accused so that the documents could be taken as exhibits.

Under the old Code, there was nothing like oral arguments. No provision was there specifically for the prosecution or the accused. A separate clause has been inserted for oral arguments and also for written arguments. It is a good thing.

Another new feature introduced in the proceedings is the question of limitation. If the prosecution cannot be filed within that period the limitation is barred Under the old criminal law there was no question of limitation. Now under the amended Code a period of limitation is introduced in respect of certain offences and if the prosecution is not launched within a certain period of time, the pro-secution cannot be launched later. It is a very good provision.

In the old code there used to be Section 526 according to which if an accused person, in the course of the trial, would intimate to the magistrate that he wants to move for transfer of the case from that court to another court and if he wants to move the High Court for that purpose, the magistrate is bound to adjourn the case.

When this Bill was introduced, that provision was not there. But, the Joint Committee, in its wisdom, insisted on that similar provision being included. And that is how section 407 is included. Under that section, the magistrate is bound to adjourn the case when the accused gives in writing that he wants to move the High Court for the transfer of his case from one court to another.

Another provision is this. Under Sec. 438, a person can move the high court for an anticipatory bail. In the old code such an anticipatory bail provision was not there. Now that provision has been made. There are two or three other provisions in the amending bill which are really wholesome provisions. Even the Opposition will admit that. A complaint has been made by my hon, friend from the C.P.M. Group that

he wants total elimination of Section 144 dispersal of people. Also a complaint has been made against sees. 107 and 145 of the code—this is about breach of peace in respect of immoveable property. All these provisions are of course irksome to him and his party colleagues. But, Sir, in a society, there has to be some such provision. According to me, some such cases may occur from time to time. You know that in the countryside, there are land disputes. There is bound to be a breach of peace. And it is the duty of the police to see that they prevent the commission of any such offence. They may have to interfere in such a case. These are very good provisions. The hon, Member was complaining about the powers of the police. That is where they have been given a handle to exercise the powers. When the people do not give any scope for the police to exercise the powers, why should we complain about the police. It is our primary responsibility to give the police wide powers and also to see that no such oflences are committed by the people giving scope to the Police. I would not agree with my triends that the police should not be given such powers under this section.

Now I come to Section 144. This is regarding the dispersal of unlawful assembly of persons by the police. When a prohibitory order is issued under Sec. 144 prohibiting the assembly of five or more persons, the police have to exercise the powers for prohibiting the assembly of persons unlawfully. Everyday we have been noticing what is happening near Parliament House. So, there is no good complaining about this provision. Another hon, Member spoke about the deletion of old section 491 relating to habeas corpus applications. You would remember that under the Govern-ment of India Act, no provision existed for moving the High Court for the writ of habeas corpus. This was introduced in our Constitution in 1950. A specific provision had to be made in the old code under section 491 giving powers to the accused person in custody to move the court for the habeas corpus. Now that a special provision is made in the Constitution to move the High Court under Article 226 and Supreme Court under Article there is no need to retain the provision. In the States the investigating officer is not allowed to conduct prosecution. You know there are a number of officers, called 'Prosecuting Inspectors'-there are also 'Assistant Public Prosecutors' taken from the bar who alone are to conduct the government cases. There are different officers for conducting the prosecution. The accused need have no fear of the Police when deposing. Fortunately, some of the provisions made here have been very much liberalised.

These amendments will go a long way to remove the hardships caused to the accused. I also welcome the provisions made in the Bill and the manner in which they are made. If the provisions made are put into practice, the House will appreciate the liberality with which the provisions are made. It is for others too to appreciate them. I appreciate the provisions as a lawyer.

SHRI PILOO MODY (Godhra): It is impossible for any of us to go through this Bill and arrive at any reasonable conclusion or argument. We do not know the difference between this and the prior Bill. The numbers of the clauses also have been changed. How can we have any purposeful discussion on this Bill without a comparative statement between the old Bill and the new Bill?

श्री मधु लिमयें : सभापति महोदय, ग्राप मुझे भी सुन लीजिए ।

सभापति महोदय : ग्राप ने यु सवाल खुद पहले उठाया था, इस पर बहस हो चुकी है।

श्री मध्र लिमये : ग्राप मुझे सुन लें।

MR. CHAIRMAN: The Minister has explained that at this point of time when the Bill has been taken up for consideration, it is physically impossible to furnish parallel tables.

SHRI MADHU LIMAYE: Under Rule 109 I move for adjournment of the debate.

MR. CHAIRMAN: There will be no further discussion on this point. When the Bill has been taken up for consideration, at this point of time, the Minister has expressed his inability to provide a parallel table. He has pointed out that in fact, such a table was given to the Joint Committee. The difficulty pointed out by the minister is a genuine difficulty and the Bill cannot be held up because of this.

भी मधु लिमये : सभापति महोदय, तब मैं 109 के घन्तर्गत बहस स्थान प्रस्ताव करता हूं, ग्राप मुझे बोलने दीजिए।

समापति महोदयः 109 में कौन सा मसला है।

श्री मधु लिसये : मैं चाहता हूं कि इस विवाद को स्थिगित किया जाय । MAY 9, 1973

श्री मधु लिमयें : वे लोग बिना सोचे-समझे पास करते हैं तो मैं क्या करूं ? मैं तो इस के लिये तैयार नहीं हूं । मैं यहां राज्य सभा की कोई चर्चा नहीं करना चाहता हूं, उन्होंने ध्रपनी विस्डम से इस को किया होगा।

सभापित महोदय: इस प्रश्न पर मैंने प्रपनी व्यवस्था देदी है, इस को छोड़ कर कोई दूसरी बात हो तो बताइये।

भी मध् लिमयें : मैं 109 के प्रन्तर्गत विवाद स्थगित करने की मांग रख रहा हूं। ग्राप मेरी बात सुन लीजिए, मैं कोई फालतु बात नहीं कर रहा हूं। जैसा मंत्री महोदय ने कहा--मुझे ज्वाइंट कमेटी की रिपोर्ट दी गई। मैंने इस रिपोर्ट को देखा- ज्वाइंट कमेटी कहती है - क्लाज 13, मारिजनल क्लाज 15, क्लाज 20--म्रोरिजनल क्लाज 22 - जो जानकारी ग्राप संयुक्त समिति को दे सकते हैं, तो जब हम विधेयक पास करने के लिये यहां भाये हैं तो हम को यह जानकारी नहीं दे सकते । यह मेरा दोष है क्या ? टेबिल किस को तैयार करना है ? सभापति महोदय, **अ** दर्जनों बार इस क्रिमिनल प्रोसीजर कोड के चलते जेल जा चुका हं ग्रौर हर बार सुप्रीम कोर्ट भौर हाई कोर्ट से जीता हूं। मैं एक एक भनुच्छेद की जांच-पड़ताल करने जा रहा हूं भीर उस के ऊपर बोलने जारहाहूं। जब तक मुझे यह तुलनात्मक सूची नहीं मिलेगी तब तक इस बहस को नहीं चलने दंगा ....

सभापित महोबय : मुझे झफसोस है, मधु जी, मैं झाप, के मोशन को स्वीकृति नहीं दे सकता। यह मेरी कन्सेन्ट पर निर्भर करता है झौर मैं स्वीकृति नहीं दे रहा हूं।

I appreciate your difficulty. I know you are studious and you want to be thorough. But he has explained his difficulties.

श्री मधु लिमयें: उन की डिफिकल्टी से हम को क्या मतलब है ? इस समय स्थिगित कर दीजिए, रात को वे ग्रपने स्टाफ़ के साथ बैठें। एक दफ़ा उन्होंने टेबिल तैयार किया है, ग्रगर उस में कोई परिवर्तन है तो फिर से बनायें। वरना ग्राप इस के ऊपर वोट कराइये।

सभापति महोदय : इस में वोट का प्रश्न नहीं उठता ।

श्री मधु लिमयें : ग्राप किस कारण स्वीकृति नहीं दे रहे हैं ?

सभापति महोदय : मैंने श्राप को ग्राउंड बता दिये हैं।

श्री मधु लिमये : मैं उम्मीद करता हूं भाप कोई विवेकहीन ढंग से बात नहीं करेंगे। भ्रपने विवेक को रीजनेबली इस्तेमाल कीजिए।

SIIRI SHYAMNANDAN MISHRA (Begusarai): May I make a submsson? You will recall that when the Aligarh Muslim University Bill was being bull-dozed through this House, at that time also, the Government took a stand that it was being done in a regular way. Now, we are all sorry for it and the way in which it was done. Are we rushing through in the same manner with regard to this measure so that later on we repent that we did not do it in a proper way? Let the House be enabled to have a useful and meaningful discussion on it.

SHRI PILOO MODY: The way the Bill is being presented to us right now, it looks that the Lok Sabha is only to rubber-stamp the Bill passed by the Rajya Sabha. I appeal to you, as the Chairman of this august House, that this is a sort of cavaliar fashion in which the Lok Sabha is being treated and they present us with a fait accompli and then to advance an argument—I would like you to ponder on this—and say that the Rajya Sabha has already considered it and, therefore, you just go through the formality of approving it is, I think, a gross neglect on our part. We should not permit it under any circumstances. After all, there are certain procedures laid down. Nothing is going to happen if this Bill is not pursued at the moment. If I remember correctly, even in the Business Advisory Committee meeting, this Bill was postponed for the next session. I do not know why this is being rushed through in this manner.

SHRI K. S. CHAVDA: Sir, your discretion is not equivalent to a veto. So, please use your discretion properly.

MR. CHAIRMAN: I appreciate the difficulty which has been expressed both by Mr. Madhu Limaye and Mr. Piloo Mody. I can assure them that this House is supreme in its own right and it can never be a rubber-stamp of anybody. It was not the intention of the Minister, when he said that it was difficult for him to furnish a parallel table, to say that it is rubberstamp of what has been done there. I would request the Minister to make available the papers which were made available to the Joint Committee to Mr. Madhu Limaye.

DINEN BHATTACHARYYA (Serampore): I strongly protest against this. This is not the way. You are disposing of the issue as if it is a personal matter. (Interruptions).

CHAIRMAN: It is a limited question. He wants certain information in an intelligible manner. My ruling on that limited question is that the debate will go on and the Minister will make available the information that was made available to the Joint Committee to Mr. Madhu Limave and to any other Member who wants it.

Shri Bhogendra Jha.

SHRI P. M. MEHTA (Bhavnagar): On a point of order, Sir.

MR. CHAIRMAN: Not on this question. Please sit down. After my ruling, there cannot be any more discussion on it.

SHRI P. M. MEHTA: I want to make a submission . . . .

MR. CHAIRMAN: On the same point, after I have given my ruling, you cannot raise a point of order. On this point, I have given my ruling and I have asked the Minister to make available the papers that were made available to the Joint Committee which contained parallel table.

SHRI P. M. MEHTA: I want a clarification.

MR. CHAIRMAN: Any member who wants it will get it.

P. M. MEHTA: The papers should be circulated to all the members of the House. How can you say that the papers will be given to Mr. Madhu Limage only? (Interruptions).

MR. CHAIRMAN " I will explain to you the rationale. Mr Madhu Limaye, in order to be able to comprehend the Bill and to be able to speak properly, wants a parallel table. Any one who asks for it will get it.

SHRI P. M. MEHTA: No; it should be available to all. It is not correct to say that the papers will be given to those who ask for them and that the other members will be deprived of their right to have the papers.

MR. CHAIRMAN: If you do not agree, we agree to disagree.

Shri Bhogendra Iha.

SHRI BHOGENDRA JHA (Jainagar): Once you have given a ruling that the parallel chart with regard to the sections in the original Code is to be presented. then it is reasonable that we postpone the discussion on this. We can resume the discussion on this tomorrow.

MR. CHAIRMAN: The Minister of Parliamentary Affairs wants to say something.

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): I have just now mentioned to some friends on the other side-and, I think, they are agreeable to this course-that the debate may now go on and tomorrow by the time this Bill is taken up, we will have it cyclostyled and circulated, (Interrubtions).

SHRI PILOO MODY: I want the House and the Chairman to notice how we survive at the mercy of the Government.

SHRI BHOGENDRA JHA: Will it be circulated to all the members? What is your ruling. Sir? Why can we not postpone the discussion?

MR. CHAIRMAN: The debate will go

SHRI BHOGENDRA JHA: 'We wan' the parallel chart.

MR. CHAIRMAN: If you are unable to participate on this account, then you can sav so.

SHRI BHOGENDRA JHA: After your ruling. I think, this House can rightfully demand that only after the chart is circulated, we can resume our discussion on

MR. CHAIRMAN: You are aware that nobody can perform this miracle. The whole thing cannot be made available the moment it is asked for.

SHRI BHOGENDRA JHA: I know, Sir. I was a member of the Select Committee.

MR. CHAIRMAN: Then you must be having papers with you. Please co-operate and start your speech.

SHRI BHOGENDRA JHA: I think, the members can rightfully demand now that the discussion could be resumed only after it is circulated.

MR. CHAIRMAN: It is not possible to postpone the debate. If you do not want to participate now, I will call the next member.

SHRI BHOGENDRA JHA: I am ready to speak.

17 hrs.

श्री मधु लिमयें: सभापित जी, मंत्री महोदय की कृपा से नहीं, श्राप के निर्णय से हम को संरक्षण मिलेगा, इसलिये, मेरी बात सुन लें।

सभापित महोदय, ग्रभी माननीय भोगेन्द्र झा कह रहे थे कि जब तक यह टेबिल तैयार नहीं होता तब तक इस बहस को स्थगित कर दिया जाय। मेरा दूसरा सुझाव यह है की जब विधेयक पर विचार करने का प्रस्ताव ग्रा जाता है तो उसके पहले सारे संशोधन देने पड़ते हैं। ग्रभी पेपर ग्राने के बांद ही हम संशोधन दे पार्येगे। इसलिये पंशोधन देने के लिये हम को समय बढ़ाना गढ़ेगा।

सभापति महोदय : हां ठीक है वह बढ़ा देंगे । प्रमेंडमेंट के लिये समय बढ़ा दिया जायेगा ।

SHRI K. S. CHAVDA (Patan): On a point of order. All the offences under the Indian Penal Code are investigated, inquired into and tried under the Code of Criminal Procedure. Now, here . . .

MR. CHAIRMAN: What is your point of order?

SHRI K. S. CHAVDA: Please hear me fully and then give your decision.

MR. CHAIRMAN: If you purely want to interrupt the debate, it is not fair.

SHRI K. S. CHAVDA: That is not my intention, Sir.

MR. CHAIRMAN: Should you not have raised this point at the stage of introduction? Was not that the appropriate moment?

SHRI MADHU LIMAYE: I raised it, but nobody listened to it.

MR. CHAIRMAN: That is not my fault.

SHRI K. S. CHAVDA: On a point of order. . . . .

MR. CHAIRMAN: Under what rule you are raising the point of order?

SHRI K. S. CHAVDA: It is not required that every time I should mention the Rule.

MR. CHAIRMAN: Please sit down.
Mr. Iha.

Procedure Bill

SHRI K. S. CHAVDA: From tomorrow I will raise point of order according to the Rules because every time the rule is violated in this House and you want me to quote the rule at once. I will raise it tomorrow and you will find. Tomorrow you will know.

MR. CHAIRMAN: Mr. Bhogendra Iha.

श्री भागेंन्द्र भा (जयनगर): सभापित जी यह विधेयक हमारे पूरे राष्ट्र के लिये बहुत ही महत्वपूण है श्रीर जैसा कि लोग कह रहे थे हम में से शायद ही कोई होगा जिन्होंने स्वतंत्रता संग्राम में हिस्सा न लिया हो या श्राजादी के बाद इस पूंजी-वादी व्यवस्था के श्रन्दर जिन्होंने श्रमिकों क लिये संघर्ष न किया होगा। शायद ही कोई होगा जो, इस पूरे कोड के मातहत श्रत्याचार से वंचित होगा।

मैं प्रवर समिति का सदस्य था भीर इस विधेयक के उद्देश्य में था कि सम्पूर्ण किमिनल प्रोसीजर कोड का संशोधन करने जा रहे हैं, नया कोड देने जा रहे हैं, भ्रौर बड़ी उम्मीद से हम इस में शामिल हए थे, देश उम्मीद कर रहा था कि क्या परिवर्तन हम करते हैं। क्योंकि जो पराना कोड था उस को ब्रिटिश साम्राज्यवाद ने भ्रपने उद्देश्य के लिये, पलिस राज्य कायम करने के लिये देश के लोगों को कचल कर, दबाकर रखने के लिये उस कोड को रखा था। भौर यह स्वाभाविक है कि स्वतंत्रता प्राप्ति के बाद, एक तरह की पुंजी-वादी व्यवस्था के भ्रन्दर ही सही, जनतांत्रिक प्रणाली ग्रपनाने के बाद हम इस सिंहिता में कुछ मौलिक परिवर्तन करें जिस से हमारे विकासशील जनतंत्र को बढने में मदद मिले। सभापति जी. इसलिये, मौलिक परिवर्तन की भावश्यकता थी, पुलिस राज्य के बदले में एक जनतांत्रिक राज्य व्यवस्था के लिये जनतांत्रिक प्रणाली के इसलिये संहिता से उस में सहायता नियो नेकित क्यार देशा जान तो जैया मानतीन 🗓

जगन्नाथ राव जी ने पुरानी संहिता के बदले में यहां वहां कछ प्रगति दिखाने की कोशिश की। मैं समझता हूं कि प्रानी संहिता के मुकाबले में कई महों पर इस में कुछ सधार हुआ है, लेकिन सवाल है कि हम मापदंड क्या रखते हैं, क्या हमारे जनतंत्र के विकास के लिये यह समचित है ? क्या जो हमारा मापदंड है उस के मताबिक है ?

मैं भ्रपने क्षेत्र में गया, वहां कुछ जमीदारों ने एक किसान की हत्या कर दी, माननीय श्यामनन्दन मिश्र जानते हैं, यह खिरहड की बात मैं बता रहा हं, जिस की हत्या हो गयी उस के समर्थकों में 99 म्रादमियों के खिलाफ 107 की कार्यवाही की गयी. श्रौर जिला मैजिस्टेट ने मझ से कहा कि चूंकि हत्या करने वाले तो भ्रब बदला लेना नहीं चाहते, बदले का गस्सा होगा खेत मजदरों में, इसलिये जिन में गुस्सा होगा उन्ही को बांधना जरूरी है। तो 99 म्राद-मियों के खिलाफ़ दफ़ा 107 की कार्यवाही की गयी। मैं पहुंचा भ्रौर जब भाषण देना शुरू किया कि हत्या के द्वारा बदला लेने की भावना न बढ़ने पाये तो एक मैजिस्ट्रेट भ्राया भौर उस ने कहा कि हम 144 लगा रहे हैं। मैंने कहा कि मेरे बोलने से शान्ति होगी, हत्या नहीं होगी। लेकिन उन्होंने मुझे बोलने से रोका । मैंने कहा कि नहीं, भगर में रुक जाऊंगा तो भौर भी हिंसात्मक वातावरण बढेगा, क्यों कि म्राप ने मिल कर खन कराया। मैं बोला तो मेरे खिलाफ़ दक्ता 188 चली भौर मेरे साथ 86 पर वह कार्यवाही चल रही है। माननीय मिर्घा साहब समझते होंगे कि शायद ग्रब उन को यह दिन देखना नहीं है । लेकिन कोई गारन्टी नहीं कर सकता कि उन के खिलाफ़ भी ऐसी कार्यवाही नहीं चल सकती।

मैं रेणुकूट, मिर्जापुर जिले में गया था वहां पर बिडला जी के हुन्म से सरकारी कर्मचारी काम करते हैं, वह मुझ<sup>\*</sup>से कहने आये कि हम 144 लगा रहे है, जब मैंने माइक ले लिया था। मैंने

कहा कि देर हो गयी। इस पर डिस्ट्विट मैजिस्टेट ने कहा कि आप को अरेस्ट करते हैं, भीर मझे मिर्जापुर ले गये, रात में रखा, उस के बाद जमानत पर ग्राया । ग्रभी भी वहां से सम्मन भीर वारन्ट भ्रा रहे हैं। तो मापदंड क्या रखते हैं। जो बढने वाला जनतंत्र है, जिस के लिये हम देखते हैं कि सुप्रीम कोर्ट के फ़ैसले के चलते लोक सभा को भंग कर के चनाव कराना पड़ा. जिस के लिये सप्रीम कोर्ट के जजों के चयन की पुरानी प्रणाली को बदल कर नई प्रणाली लागी गयी, वहां दुसरी श्रौर इस संहिता में नये परि**–** वर्तन खोजने की कोशिश करते हैं तो हमें निराशा ही हाथ लगती है। चिक यह सहिता सारे देश के लिये भ्रावश्यक है जहां ऐसी शक्ति प्रदान की गयी है कि 5 या अधिक व्यक्ति जहां इकटते हों उन को भंग करने का म्रादेश पलिस देगी, नहीं तो गिरफ्तारी की कार्यवाही शरू कर देगी। तो इतनी बड़ी शक्ति पुलिस को देना क्या ठीक है ? श्रगर चनाव के ही जरिये राज्य परिवर्तन करना चाहते हैं, सरकार इस व्यवस्था में विश्वास करती है तो क्या इतने व्यापक म्रधिकार पलिस को दे कर भ्राप लोगों की रक्षा करा सकते हैं। भौर उस की सीमा तय करने का ग्रधिकार वया स्थानीय पुलिस ग्रधिकारी को देना जरूरी है ?

यह विधेयक संयुक्त प्रवर समिति के सामने था ग्रौर उस ने विचार कर के कुछ परिवर्तन किये। सरकार का जहां तक रूख है सिवाय इस के कि ला कमीशन ने जो सुझाव दिया था उस का समावेश हो जाय भीर कोई विचार नहीं था। उस सुझाव में देश की बदलती हुई स्थिति का कोई भी खाका नहीं है। वया ला कमीशन के सुझाव में जरा भी इस बात का ख्याल है कि इस देश में हजार में से 999 मादमी जो श्रमजीवी हैं क तम और फावडे के उन का भी इस जनतंत्र की चलाने में, इस कानून को कायम रखने में उन क भी निहित स्वार्थ हम पैदा करें कि वे भी शान्ति की रक्षा करने वाले कार्य में सहयोग दें भीर सोचें

## [श्री भोगेन्द्र झा]

कि उन का भी इस में हित ग्रा जाता है ? लेकिन उन सुझावों को भी सरकार मानने के लिये तैयार नहीं थी जिस से इस में परिवर्तन ग्रा सके । इसलिये हमें निराशा होती है । मैं ग्राशा करता हूं कि कांग्रेस दल के सदस्य जो बोलेंगे वह इस बात को जल देंगे कि सरकार ग्रभी भी कुछ ऐसे परिवर्तन करेगी जो परिवर्तन ग्रावश्यक हैं ।

श्रव तक धारा 109 का इस्तेमाल इस लिये किया जाता रहा है कि जो व्यक्ति श्रपनी रोजी के बारे में संतोषजनक जवाब नहीं दे सकता है उस को धारा 109 के श्रधीन पकड़ कर जेल में बन्द कर दिया जाता रहा है। इस विधेयक के द्वारा उस श्रंश को हटा दिया गया है, यह स्वागत योग्य बात है।

धारा 107 बहुत खतरनाक है। जिस क्षेत्र का मैं प्रतिनिधित्व करता हूं, वहां पुलिस ने मैंजिस्ट्रेटों ने धौर हम ने भी गिनना छोड़ दिया है कि धारा 107 के घ्रधीन कितने वारंट जारी किये गये हैं। मैं ऐसे गांव को जानता हूं, जहां ग्यारह बारह केसिज धारा 107 के घ्रन्तगंत चलाये गए हैं। ऐसा क्यों होता है ? इस लिये होता है कि हम कानून को लागू, रने का प्रयास करते हैं।

लेकिन में निवेदन करना चाहता हूं कि सम्पूणे देश में यह कानून है कि महाजन लोग 12 प्रतिशत सालाना से ज्यादा सूद नहीं लेंगे। लेकिन दिल्ली सहित सारे देश में एक भी स्थान ऐसा नहीं है, जहां महाजन भौर सूदखोर इस कानून का खुला उल्लंघन न करते हों भौर पच्चीस साल की भाजादी के बाद सारे देश में एक भी ऐसा उदाहरण नहीं है कि पुलिस ने कानून तोड़ने वाले किसी महाजन के खिलाफ मुकदमा किया हो, उस को गिरफ़तार किया हो भौर उस का सजा दिलाई हो। इस से प्रकट होता है कि राज्यसत्ता उन्हें लोगों की है जो कानून तोड़ कर सूदखोरी करते हैं। तब पूरी पुलिस मणीन भौर संहिता

को लकवा मार जाता है और कानून तोड़ने वाले सूदखोरों के खिलाफ़ कोई कार्यवाही नहीं की जाती है। देश में राजधानी सहित ऐसा कोई स्थान नहीं है, जहां यह कानून लागू होता है।

वही स्थिति घ्सखोरी के बारे में भी है। क्या धारा 107 स्रीर धारा 151 का उपयोग किसी एक भी ग्रफसर के खिलाफ़ किया गया है, जिस के बारे में सरकार जानती है कि वह घस ले रहा है, लेकिन वह पकड़ में नहीं म्राता है। वहां संहिता को लकवा मार जाता है । जैसे श्रंग्रेजी साम्राज्यवाद ने इस देश को गुलाम बनाये रखने के लिए इस संहिता का उपयोग किया था, वैसे ही शासक दल द्वारा देश में पंजीवाद को कायम रखने के लिए इस संहिता का उपयोग किया जा रहा है। क्या माननीय सदस्य कोई ऐसा उदाहरण दे सकते हैं कि देश के किसी इलाके, किसी राज्य या किसी क्षेत्र में धारा 107, धारा 144 श्रीर धारा 151 का उपयोग उन शोषक तत्वों के त्रिलाफ किया जा रहा हो, जो कानन को तोडते हैं?

पूर्वी भारत में बंगाल, स्रासाम, उड़ीसां स्रौर बिहार में देश के स्रौर हिस्सों में भी-काश्तकारी कानूनों के मुताबिक जो जमीन जो ता है, उस को बेदखल नहीं किया जा सकता है। लेकिन वहां एक भी ऐसा गांव नहीं है जहां कानून को तोड़ कर ऐसे लोगों को बेदखल न किया जाता हो। काश्तकारी कानूनों का पूरा उल्लंघन कर के बड़े बड़े भूस्वामी जमीन जोतने वालों को बेदखल करते साये हैं सौर साज भी कर रहे हैं। लेकिन एक भी ऐसे कानून तोड़ने वाले भूस्वामी के ख़िलाफ धारा 107, धारा 144 सौर धारा 151 का इस्तेमाल नहीं हुसा है।

इसी तरह श्रमिकों के हित में जो कानून वने हुए हैं, शोषक वर्ग खुले-माम उन का उल्लंघन कर रहा है, लेकिन पूरी संहिता वहां पंगु हो जाती है, उस को लकवा मार जाता है । फिर भी शासक दल यह दावा करता है कि हमारा मकसद समाजवाद स्थापित करना है । 269

इस लिए मैं चाहंगा कि माननीय सदस्य इस पृष्ठ भूमि में इन धारात्रों पर ग़ौर करें। मैं जानता हं कि श्री मिर्घा के श्रधीन काम करने वाले केन्द्र के बड़े बड़े ग्रफ़सर, विभिन्न राज्यों के गृह विभागों के बड़े बड़े ग्राफ़सर भीर ब्राई० जी० पी० इस सम्बन्ध में कोई परिवर्तन नहीं चाहते हैं। लेकिन प्रश्न यह है कि क्या हमने कानन के द्वारा देश म परिवर्तन लाना है या इस बात की इन्तजार करनी है कि काननों को तोडा जाये, देश में ग्रशान्ति, ग्रसंतीष भौर तफ़ान उठ खडे हों भौर उसके परिणाम-स्वरूप परिवर्तन हो । मैं समझता हं कि माननीय सदस्य भ्रीर सरकार इस परिवर्तन की भावश्यकता को महसूस करेंगे भीर सरकार इस बात पर नहीं ग्रडी रहेगी कि चंकि लोगों ने उस को बहुमत दे दिया है, इस लिए वह कोई परिवर्तन नहीं करेगी।

भव में जब्ती-कुर्की के विषय पर कुछ कहना चाहता हूं। जो मेहनतकशों के खिलाफ लूट का रूप ले लेती है। अभी केवल ग्याहर दिन पहले मुझे अपने क्षेत्र के एक मुखिया की दस हजार रुपये की जमानत देनी पड़ी। जब्ती-कुर्की के अन्तर्गत पुलिस अफ़सर उन का सारा सामान लूट कर ले आये। जब मैंने कहा कि वह हाजिर होंगे, यह मुकदमा झूटा है और जब मैंने दस हजार रुपये की सिक्योरिटी दे दी, तब बैल आदि उन का सामान छोडा शया।

घारा 82 में किसी व्यक्ति कं फरार घोषित करने से पहले तीस दिन का समय दिया जाता है ताकि मगर किसी को मालूम न हो कि उस पर कोई मुकदमा—झूठा मुकदमा—हो गया है, तो एक नोटिफिकेश्न जारी कर दिया जाये जिस से उस को पता चल सके कि उसके खिलाफ बारंट है, उसको झाजिर होना है, और वह व्यक्ति तीस दिन की मची में हाजिर हो जाये। लेकिन घारा 83 के मधीन मिस्तूचना जारी होने के बाद तत्काल ही, या उस के बाद कभी भी, मैजिस्ट्रेट जब्ती—कुकी का मादेश है सकता है। यह ऐसी मत्याचारपूर्ण झारा है सकता है। यह ऐसी मत्याचारपूर्ण झारा है

कि किसी व्यक्ति को यह मौका नहीं दिया गरा कि उस को पता चले कि उसके खिलाफ़ वारंट है या नहीं, उसको हाजिर होना है या नहीं, उस को हाजिर होने के लिए ग्रौर उस को फ़रार घोषित करने के लिए तीस दिन की ग्रविध ग्रव ग्रभी बाकी है, लेकिन तत्काल उस की जब्ती कुर्की का ग्रादेश दे दिया जाता है।

भ्रगर कोई व्यक्ति एफ़िडेविट दे दे. तो उस पर भी जब्ती कुर्की की जा सकती है। यह कितनी म्रतर्कसंगत बात है कि यदि में एफिडेविट दे दं कि मिर्घा साहब गायब हो जायेंगे, या भ्रपनी सम्पत्ति गायब कर देंगे, तो उनकी जब्दी-कर्की हो जाये। श्री मिर्धायह न समझें कि कल यह धारा उन पर लागू नहीं होगी । बदलती हुई व्यवस्था में सब को इस बात के लिए तैयार रहना चाहिए कि यह संहिता सब के लिए है। ध्रगर जब्ती-कर्की हो गई. तो उल्टी बात कैसे साबित होगी, उस एफ़िडेविट को ग़लत साबित करना कैसे संभव होगा ? यह वाहियात बात है। सरकार कम से कम यह तो कर सकती है कि तीस दिन की प्रविध बीत जाने के बाद भी भ्रगर कोई व्यक्ति हाजिर न हो तो उसके बाद जब भी मनासिब समझा जाये, तब जब्ती-कुर्की की जाये।

जहां तक मवेशियों का सम्बन्ध है, मवेशियों को तुरन्त नीलाम किया जा सकता है। हम जानते हैं कि एक हजार रुपये का बैल सौ, सवा सौ रुपये में निलाम हो जाता है, क्योंकि जिस की जब्ती-कुर्की की जा रही है, या तो उस को पता नहीं है और या मान लीजिए कि वह फरार है इस लिए वह तो माता नहीं है; वे लोग म्राते हैं, जो पुलिस से मिले हुए होते हैं भौर वे सौ पचास रुपये में बैल ले जाते हैं। किसानों के लिए यह व्यवस्था बहुत मातंकपूर्ण है। सरकार बोर-बाजारी, यूसकारी ग्रीर बढ़ती हुई महंगाई को तो नहीं रोक पा रही है, लेकिन इस मातंकपूर्ण धारा को वह रखे हुए है भौर मब तो उस ने इस को भौर पुष्ट कर दिया है।

## [श्री भोगेन्द्र झा]

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जहां तक धारा 107 का सम्बन्ध है, मैं भाग्रह करूंगा कि यह सदन भीर शासक दल इस सम्बन्ध में साहस करे। यह शासक दल वह नहीं है, जो परानी परम्परा से बैलों की जोडी के चनाव-चिन्ह को ले कर यहां स्राया है, बल्कि एक तरह से बगावत के स्राधार पर, जनता की जनतांत्रिक भावनाम्रों से भ्रपील कर गाय-बछडे के नये चनाव-चिन्ह के ग्राधार पर यह शासक दल बना है। इस लिए वह यह कहने का दूस्साहस न करे कि सौ फ़ीसदी पूरानी साम्राज्यवादी परम्परा को कायम रखा जायेगा। तो 107 को हटा दें पूरी तरह से तो कछ भी संहिता में कमी नहीं ग्राएगी । क्योंकि किसी भी तरह से ग्रगर शांति को खतरा हो, शांति भंग हो या त्रंत भंग होने का खतरा हो ऐसी कोई बात नहीं है, तो उस हालत के लिए भ्राप देखिए:

When an executive Magistrate receive information that any person in likely to commit a breach of the peace.

इस लाइकलीहड के म्राधार पर म्राप कार्यवाही शुरू करते है ग्रौर कार्यवाही शुरू करने पर भी श्राप सिर्फ बांड नहीं लेते हैं। ग्राप एग्जीक्युटिव मैजिस्ट्रेट को यह श्रधिकार देते हैं। 110 में श्रगर मैं किमिनल हं, श्रय पूरी सम्पत्ति मैंने म्राजित कर ली है जुर्म के जरिए म्रीर उस पर ग्रगर चलाते हैं, ज्यादातर नहीं चलते क्योंकि मैं जानता हं कि ऐसे बहत से लोग हैं जिन से सीधे हिसाब मांग लिया जाय सम्पत्ति को जिस में कुछ मिनिस्टर भी हैं, कुछ एम० पी०, एम ॰ एल ॰ ए भी हैं, मैं इस में दोनों का नाम नहीं ले रहा हूं, हो सकता है कि कुछ ही दल बाकि हों, तो ऐसे लोगों के खिलाफ तो भ्राप 110 नहीं चलाएंगे, लेकिन जिन पर भी चलायेंगे, उन के लिए प्राप्त जुडिशियल मैजिस्ट्रेट की व्यवस्था की है। लेकिन 107 जिस में केवल ग्राशंका है कि कहीं शांति भंगन हो जाये उस के लिए भाप जुडिशियल मैजिस्ट्रेट को भी नहीं देते हैं, एग्जीक्यटिव मैजिस्ट्रेट को भ्रधिकार दे रहे हैं

इसलिए में समझता हं कि यह पूरा असंगत है। यह पूरी संहिता का जो ाण है, जो उस की समझ है उस के खिलाफ जाता है। उसी तरह ग्रांप ने बांड की मांग की है ग्रौर साथ ही स्योरिटी की व्यवस्था भी की है। मझ पर शांति भंग का खतरा है ग्रौर मझे ग्रगर ग्राप बलाने हैं जवाब देने के लिए तो उस में क्या यह ब्रावश्यक है कि मैं बांड दं श्रीर स्योरिटी भी द ? श्राप तो बांड रुपये के रूप में लेते हैं, हजार लीजिए, दो हजार लीजिए, पांच हजार लीजिए, रुपये के रूप में लेते हैं ग्रीर मैं दूसरों को लाऊं, मेरा एतराज इसलिए है कि बहुत से ऐसे लोगों को मैं जानता हं जो मेहनत करने वाले हैं, खेत मजदूर हैं, गरीब किसान हैं, तो उन को दूसरों को लाना पड़ता है सम्पत्ति वालों को स्योरिटी के लिए । वह सादे कागज पर निशान मांगते हैं उनसे कि तुम यह हमें देदो तब हम तुम्हारे लिए स्योरिटी भेजेंगे। तो ग्राप का मकसद यह नहीं होना चाहिए कि उप को बन्धक रख दें। लेकिन उस को ग्राप बन्धक रखते हैं दूसरों के हाथ में श्रौर नहीं तो वह जेल में रह कर के मफ्त में खाना श्राप का लारेगा। ग्रधिकांश जेलें श्राप की भरी हई हैं, जहां पर थोडा भी भ्रान्दोलन होता है वहां यही होता है। तो कम से कम वहां ग्राप बांड रखिए क्यों कि हम ने जुर्म नहीं किया है इसलिए स्योरिटी की ग्रावश्यकता नहीं है। ग्राप को ग्राशंका है, मुझे शांति रखनी है तो उस के लिए व्यक्तिगत बांड काफी होना चाहिए।

ऐसे ही इस सवाल पर जो झागे यह दिमा गया है कि छः महीने के बाद उस को भी बाद में कुंठित कर दिया गया है कि कार्यवाही मुरू होने के बाद । मैं अभी भी आग्रह करूंगा कि या तो इस को हटा दीजिए और या अगर रखना ही है, आप समझते हैं कि इसके बगैर व्यवस्था नहीं चलेगी क्योंकि यह पुलिस की विरफ्तार करने की और नजरबन्द करने की ताकत है, यह जो एक निसा अभी एक माने में रह हुमा, यह पुलिस

मिसा है, पुलिस को बिना किसी जुर्म के गिरफ्तार करने की ताकत है, तो उस में यह दिया गया है कि छ: महीने कोई जेल में रहेगा तो उसके बाद भंग हो जायेगा । मैं समझ रहा हं कि वकील लोग ग्रुब इस में यह राय देंगे कि शाँति का खतरा जहां हो तब मत ग्राग्रो जेल में, शांति भंग कर दो. किसी का सिर फोड कर, लाठी चला कर, गंडासा भाला चला कर तब ग्राम्रो वयोंकि तुम जर्म कर दोगे तो 323 चलेगा उस में दो महीने की, तीन महीने की सजा हांगी श्रीर तुम जुर्म नहीं करोगे, शांति भंग नहीं करोगे तो 6 महीने जेल में रहोगे। इस सदन में भी वकील लोग हैं। वह भी राय देते हैं। वह भी यही राय देंगे कि शांति भंग का खतरा ले कर मत जाम्रो, शांति भंग कर के आस्रो हिंसा कर के ग्राम्रो । तब सजा कम होगी भौर जमानत भी श्रासानी से हो जायेगी 323-324 की भ्रौर कुछ नहीं करोगे तो बेवजह 6 महीने जेल में रहोगे। तो में समझता हं कि एक तो इसकी ग्रावश्यकता नहीं है कि जेल में रहना पडे । बाँड ले कर छोड़ दीजिए । रखना है तो एक महीने काफी हा सकता है। कोई ऐसी व्यापक घटना हो जाय गांति भंग करने के लिए, कोई ऐसा खतरा ही गांति के लिए तो उस के लिए एक महीना काफी समय होना चाहिए । छः महीने का समय कार्यवाही शरू होने के दिन से काफी होना चाहिए उस को रद्द करने के लिए मैं इस पर ज्यादा समय नहीं लुंगा।

इसी में संबंधित धारा 151 है जिस में पुलिस किसी को कहीं बेवजह गिरफ्तार कर सकती है भ्रौर ऐसे लोंग गिरफ्तार होते हैं। मेरे लिए तो गिनना कठिन है कि कितनी बार गिरफ्तार हुन्ना हुं न्नाजाद भारत में । पहले भंगेजों के जमाने की बात छोड़ दीजिए। इसलिए भेरा आग्रह है कि 151 दफा को रखने की जरूरत नहीं है भीर इस का दुरुपरीग पुलिस बडे पैमाने पर सिर्फ श्रपने लिए नहीं करती है बल्कि जो शोषक तबके के लाग हैं

वह इस का उपयोग कराते हैं। ऐसी स्थिति में क्या आप चाहते हैं कि जो आम देश के बनाने वाले हैं, निर्माता हैं, मजदूर हैं, किसान हैं, वे चुप रहें, कुछ बोलें ही नहीं ग्रौर ग्राप के ये सुदखोर महाजन, बड़े बड़े भस्वामी भौर यें गल्लाचोर जो हैं इनके खिलाफ वह कोई भावाज उठाएं ही नहीं ? भौर उठाएं तो पुलिस 151-107 में जेल में इन को रख देगी। बाद में कुछ नहीं होगा। रिहा होते रहिएगा। एक रिहाई का मधु जी ने उदाहरण दिया है भीर में खुद कह रहा हूं, भेरे लिये चार-चार बार ऐसा हमा है कि पुलिस की हिरासत से मुझे लोगों ने पकड़ कर छड़वा लिया है। दो बार में जेल की दीवार फांद कर निकला हूं भौर सभी बार रिहाई हुई क्योंकि गैर-काननी यह किया गया था । मैंने कहा कि यह गैर-काननी है, मैजिस्ट्रेट ने कहा कि चलिए जेल में देखेंगे। दीवार फांद कर मैं निकला और पूरी रिहाई के बाद मैंने रिहाई हासिल की । रिहाई करने पर जेल से नहीं निकला। मुकदमें से रिहाई हुई। श्रापने फिर बन्द कर दिया दूसरे कानून के मातहत । वह भ्रापके हाथ में है । मैं इसलिए म्राप्रह करना चाहता हूं कि बाद की रिहाई का इस से कोई मतलब नहीं होता है। वेबजह लोग जेल में रख दिए जाते हैं।

ऐसी स्थिति में शांतिपूर्ण समाधान का रास्ता निकले भौर खतरे के लिए भी मेरा माग्रह है कि जो कुछ संशोधन प्रवर समिति<sup>:</sup> में हम ने दिए थे, प्रवर समिति का भी ख्याल ऐसा था लेकिन सरकार ग्रह गई, इसलिए मैं माग्रह करुंगा कि सरकार भड़े नहीं। उस में कुछ ऐसा रास्ता निकाला जा सकता है जिस से कि उस में कुछ परिवर्तन लाया जाये।

## [श्री भोगेन्द्र झा]

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ऐसे ही इस में भीर भी बहुत सी धाराएं हैं। जहां तक वकील रखने का सवाल है सैशन के लिए ऐसा है, ग्रौर पहले भी था लेकिन जो हमारे देश की हालत है कि वाजाब्ता भारत के संविधान के मताबिक, इस प्रकिया संहिता के मताबिक देश में न्याय बिक रहा है. मैं घस की बात नहीं कर रहा है, कानन बिक रहा सर्टिफाइड कापी बिना पैसे के नहीं /मिलेगी, वकील बिना फीस के नहीं रखे जाएंगे, कोई काम बिना पैसे के नहीं होगा । बाजाब्ता न्याय बिक रहा है । इसलिए बैंक के मालिक भीर राजा महाराजा लोग सप्रीम कोर्ट से फैसला ले लेगें। लेकिन साधारण जन के लिए सप्रीम कोर्ट पहुंचने में पनद्रह हजार लग जाएंगे निचली कोर्ट से सुप्रीम कोर्टतक भ्राने में। जीत हार की बात तो जाने दीजिए। तो जहां खले ग्राम न्याय बिक रहा है वहां क्या भावश्यकता है या नहीं कि कछ सीमा ऐसी कर दें कि जिसकी सालाना श्रामदनी उस से ज्यादा है उस को छोड कर बाकी सभी के लिए डिफेंस का भार्थिक सरकार भीर राज्य ले ? जो भी कानन आप बनाते हैं उस के मातहत कम से कम यह स्विधा उस को हो कि यह ग्रार्थिक भार-नकल या बकील इस तरह का भार उस का ले लिया जाए नहीं तो फिर यह न्याय की बात करना बेकार है, रुल ग्राफ ला की बात करना बेकार है क्योंकि एक को निहत्था भ्राप कर देतें है भौर दूसरा जो शीर्षक है वह लैंक मनी के म्राधार पर,चोरी के पैसे के ग्राधार पर बड़े बड़े बैरिस्टर को ले जाता है जो की झुठको सचकरते हैं क्योकि यह रेशा तो वैश्य-वृति का पेशा है क्योंकि जो पैसा वह लेते है वैरिस्टर लोग वह सच को झूठ करते हैं भीर इस में कोई हिचक उन को नहीं होती है। वह समझते हैं कि वह झठ नहीं बोल रहा है, पैसा झुठ बुला रहा है । यह भी सच साम्राज्यवादी **भ्यवस्था है । मैं ईमानदारी की बात कर रहा** हं, बईमानी की बात नहीं कर रहा है। वह बड़ी ईमानदारी से झठ बोलना कर्तेब्य समझते हैं

जाल फरेब करना कर्तव्य समझते हैं। इसीलिए इस में यह तय कर दें कि इस म्राधिक म्रामदनी की कतार के पीछे के जो लोग हैं उन के लिए सरकार का भार रहेगा वकील भौर कागजात वगैरह मुहैया करने का।

इसी प्रसंग में जमानत की बात ग्राती है। इस में एक बहुत ही भयंकर धारा जोड़ी गई है -438 भौर में यह समझता हूं कि म्रंग्रेजी सरकार ने यह दस्साहस नहीं किया था जो भारत के पुंजीपतियों, मनाफाखोरों भ्रौर चोर-व्यापारियों के सरक्षण के लिए हम करने जा रहे हैं संद्विता में। यह नयी धारा है 438 और इस का मतलब है कि खन करने वाला ब्लैक वालाया ग्रभी जो नया कदम भ्राप ने उठाया गेहंके थोक व्यापार को हाथ में लेने का, उस के खिलाफ चलने वाला, ये जितने भी हैं स एंटिसिपेटरीं ले लेगें। म्रपनी जुडिशियरी को भ्राप जानते हैं। सभी जज ईमानदार हों तब भी जिस तरीके से व; जज बनते हैं. जिस वर्ग से वह झाते हैं, वह बड़ी ईमानदारी से बेईमानी करने को मजबर हैं वह उसी को ग्रपना ग्रधिकार भी समझते हैं ग्रीर न्याय भी समझते हैं। जैसे ग्रभी ग्रापने देखा कि हेगड़े साहब नहीं हए सुप्रीम कोर्ट के चीफ जस्टिस तो उन्होंने कहा कि जनतंत्र खतरे में मा गया है उन के लिये प्रलय भागई है भारामें। ऐसी स्थिति में ग्राप ग्रधिकार दे रहे हैं एंटिसिपेटरी बेल का जो वह हाई कोर्टया उसी कोर्टसे ले लेगा। उस में भ्राप ने खुन को ग्रपवाद नहीं रखा, उस में भाप ने किसी भी एकानामिक भार्फेंस को भपवाद नही रखा। तो जितने भी ये मालिक हैं जितने भी गल्ला चोर हैं सब के लिये भ्राप ने छट छोड दी। मैं भाग्रह करुंगा कि जब मधा पर वारंट का खतरा होगा या घाम साधारण जनता पर वांरट का खतरा होगातो भ्राम साधारण जन हाईकोर्ट नहीं दौड पाएगा कि उस के लिए दस हजार पांच हजार पहले ही खर्च कर र्दे। यह तो होगा नहीं। तो केवल चोर व्यापारियों को, सदखोरों को, दसरों की मेहनत पर

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मीज करने वालों को श्राप यह मौका दे रहें हैं कि तम वेल ले लो, एंटिसिपेटरी वेल ले लो, वारंट से गिरःतार होने के पहले ही ले लो । मैं समझता हं कि यह एक जर्महम करने जारहें हैं। जो नीतियां सरकार भ्रपना रही है जो भ्रपनाने का दावा करती है, उस सब को हम 438 के जरिये खत्म कर दे रहे हैं।

इसलिए मैं समझता हं कि यह सदन इस पर गौर करे कि इस दफा को खत्म करना जरुरी है या नहीं ? या रखना जरुरी है तो भ्रपवाद कर दीजिये कि खन वाले या एकोनामिक नहीं श्राफेंस वाले जो जर्म होगें उन में यह एंटिसि-पेटरी बेल नहीं मिलेगा । . . .

भी मल खन्द डागा (पाली): जब तक गुनाह साबित न हो जाय तब तक उस की गुनाह न मानें।

श्री भोगेन्द्र झा: एक दम सही बात है। इसीलिये मेरा ग्राग्रह है कि सबों जमानत मिल जाय । मैं उम्मीद करता हं-डागा साहब िम्मत कर के बोलेगें कि साबित होने के पहले कोई गुनाहगार नहीं है, इसलिये सब को जमानत मिल जाय ।

सभापति महोदय, इतने थोडे समय में मैं पूरी बातें नहीं कह सकता हूं लेकिन कुछ धाराभ्रों के विषयों में कहना चाहता हूं। एक बहुत बड़ा जर्म यह होता है कि पलिस की डायरी का जिन को मनुभव है वे सभी जानतें है कि डायरी दो महीने बाद एक महीने के बाद, पन्द्रह दिन के बाद एक ही साथ लिखा ली जाती है। पलिस पहले से सोच लेती है, क्या लिखना है, घुस लेकर या किसी प्रभाव में ग्रा कर डायरी लिखी जाती है, बयान लिखे जाते ह, ग्रीर उसकी नकल नहीं दी जाती है। मेरा आग्रह है भौर मैंनें प्रवर समिति में भी कहा था कि बयान देने के लिये 24 घटा, 48 घटा मौर यदि उस में भी सम्भवन हो तो 72 घन्टा दे दीजिये भीर उस के बाद पैसा देकर वह उस की नकल ले सकें ऐसी व्यवस्था कीजिये। इस से डायरी समय पर

लिखी जायेगी भौर यह खतरा नहीं रहेगा कि दो तीन महीने बाद एक दिन बैठ कर 25 दिन की डायरी तैयार कर ली जाय। इस से सरकार की ग्रामदनी भी बढ़ जायेगी ग्रीर ग्रपने खर्च पर महालय कापी ले सकेगा। मैं जानता हं कि पैसेवाले तो भ्रब भी ले जाते हैं, हजार रुपये में. दो हजार रुपये में, डायरी बिकती है, लेकिन इस तरह से गरीब भादमी भी नकल ले सकेगा। जब संशोधनों पर विचार होगा तामै बाकी बातें मर्ज करूं।।

17.32 hrs.

AGREEMENT BETWEEN GOVERN-MENT OF INDIA, THE CHOGYAL OF SIKKIM AND LEADERS OF POLITICAL PARTIES OF SIKKIM

THE MINISTER OF STATE IN THE OF EXTERNAL MINISTRY **AFFAIRS** (SHRI SURENDRA PAL SINGH): I beg to lay on the Table of the House a copy the agreement between the Government of India, the Chogyal of Sikkim and the leaders of the political parties of Sikkim, signed on 8th May, 1973.

CODE OF CRIMINAL PROCEDURE BILL. —contd.

SHRI DINESH JOARDER (Malda): May I know the time by which amendments will have to be given notice of?

MR. CHAIRMAN: You can give them upto 12 O'clock tomorrow. Now we shall take up the next item of business.

17.31 hrs.

## HALF-AN-HOUR DISCUSSION

IMPLEMENTATION OF LAND REFORMS

MR. CHAIRMAN: Before I call upon Mr. Samar Guha, I have to say this. Mr. Samar Guha has requested time for fifteen minutes. There are four more participants. I request him to be as brief as possible.

श्री भेःगेन्द्र क्षा (जयनगर) : सभापति महोदय, इस सवाल पर मैं भ्रपना नाम नहीं देसका हं, क्या इस समय कुछ प्रश्नों के लिये धनमति देंगे ।

सभापति महोदय: धनमति इस लिये नहीं देसकता कि इस पर पहले ही 9 नाम ग्राये ये भीर 4 वैलेट हए हैं।