referred to are entirely without foundation. It is a matter of deep regret to me that such extraordinary reports should be given currency. It becomes very difficult to catch up the lies once they have had such a big start. The proceedings of the Conference were, as is well known, confidential and they are not supposed to be broadcast. Occasionally, apparently, some newspapers guess what happened or get some bit of information and build a story upon it. Anyhow, it would be improper for me here or anywhere else in public to discuss the actual proceedings of the Conference, what somebody said and what somebody did not say. Naturally, they were frank and every subject was discussed from many aspects. But, the point is that ultimately agreements were arrived at and a statement embodying the unanimous opinion of the five Prime Ministers present there was issued and the House must have seen that statement. That is the important thing: not the discussions that went before. It is not for me to say or to discuss as to what part India took or whose was the greater initiative. I would say, all the countries took full part in these discussions and all the countries took the initiative at the right times. There is no question of rivalry about these matters in a Conference of this kind, or any attempt by one country to score off another. I would commend to this House and to the country not the unauthorised Press reports, but the statement issued by the Conference itself at the end.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL—*Contd.*

Mr. Speaker: The House will now proceed with the further consideration of the motion for referring the Criminal Procedure Code Amendment Bill to a Joint Committee along with the motion in the name of Shri S. V. Ramaswamy, and the various amendments.

Before we resume the discussion, I should like to invite the attention of the House once again to the important aspect of trying to satisfy the urge of a large number of Members to speak on such an important Bill. I have been receiving chits and requests. But, it is impossible for me to accommodate all unless those who get up to speak realise that others also should get an opportunity, and not repeat things, but just mention the points of importance without going into the details. One is not very willing to impose any time limit when a legislation is under discussion. But, I think, looking to the desire of a large number of Members to speak and the time at our disposal,—which, by the way, has been extended and as the House knows, we have now 7 hours at our disposal, including the time for the reply of the hon. Home Minister—some restriction may be necessary. I hope the hon. Home Minister will not take much time now. I would request the hon. Members to be short in their speeches and confine themselves to, say, 15 minutes and at the most not exceeding 20 minutes if it be the opinion that they have really to make out good points.

Shri D. C. Sharma (Hoshiarpur): May I submit, Sir, that the rule that you have laid down now that an hon. Member should restrict his speech to 15 minutes and at the most 20 minutes should apply whenever we discuss any Bill. I think this may be treated as a general rule of discussion.

Some Hon. Members: No, no.

Mr. Speaker: The rule will depend upon the exigencies of the situation each time. There cannot be a general rule in matters of this type. Now, Shri N. S. Jain.

Shri N. S. Jain (Bijnor Distt.—South): I am quite alive to the remarks of the Chair. But, I regret to say that if you impose a time-limit of 20 minutes for a Bill covering 600 clauses, I think it would not be possible to an ordinary speaker who is not well-versed in condensing his remarks and his ideas to a shorter time. So, I may be excused if I transcend a little the time-limit that you have suggested.

Mr. Speaker: I may tell the hon. Member that the point which I was making is this. Just as the Budget is discussed in two parts and in the general discussion of the Budget, one does not go into the details of every Grant or Demand that is asked for but discusses the general aspects, similarly, in a consideration motion, really speaking, it is not every little thing that is provided for in the Bill which should form the subject-matter of the discussion. That is the general rule of discussion on a consideration motion and this should be more particularly observed when the Bill is now going to be referred to a very large Select Committee. The hon. Members may touch the important aspects, but not the provisions, this or that provision. Otherwise, there will be no end.

श्री आर० डी० मिश्र (जिला बुलन्दशहर): On a point of order, मेरा कहना यह है कि जाबता फौजदारी कानून में क़रीब पांच, छः सो दफ़ायें हैं और उन दफ़ाओं में तबदीली करने के लिये यह बिल लाया गया है । हमें हाउस के सामने यह दिखलाना है कि कुल कानून के अन्दर बहुत बड़ी ग़लतियां हैं और कुल कानून को दुबारा सेलेक्ट कमेटी के सुपुर्द किया जाय ताकि हर दफ़ा पर गौर किया जा सके और जब तक हाउस यह नहीं समझेगा कि किस किस दफ़ा के अन्दर क्या क्या गलती है और वह ग़लती दूर की जानी चाहिये, तब तक यह हाउस कैसे जाजत देगा कि कुल बिल सलेक्ट कमेटी को जाय । जाबता फ़ौजदारी कानून जिसमें ६००, ७०० दफ़ायें हैं और जिस पर कुल मुल्क की जिन्दगी का दारोमदार है, जिस पर तमाम अदालतों और थानों का दारोमदार है और जिस पर ला एन्ड आर्डर का दारोमदार है, मैं नहीं समझता कि हम लोग कैसे पूरी तौर से पन्द्रह मिनट या पांच मिनट में हाउस को समझा सकेंगे कि यह बिल पूरा का पूरा सलेक्ट कमेटी के सुपुर्द करना चाहिये ?

Mr. Speaker: Such difficulties can always be urged. But, hon. Members will remember that the Select Committee will thoroughly go into all aspects of the question.

Shri R. D. Misra: I said...

Mr. Speaker: Now, I have heard the hon. Member. He should not interrupt. The only business at this stage, as I conceive it, is to point out for the benefit of the Select Committee the danger spots according to the Members, but not the entire details. I am trying to make a distinction between the important points that we would like to draw attention to and the details of every point. That distinction could be made without going into the details. A statute may have 600 clauses. That does not matter. Every clause is not important.

Shri R. D. Misra: That is not my point.

Mr. Speaker: I have heard the hon. Member. I shall go by what I have said. If the hon. Members will carry on for a long time, the only result will be that a number of hon. Members who wish to express their views, which on his own showing are important, will be crowded out. That is the only risk. I do not like, nor do I think that the hon. Members would like, the idea of barring out any Member from making such suggestions as he has. It is not that one Member who is in possession of the House must place before the House all that he feels, so that others may be barred out. That, I think is the point. It is a question of mutual convenience. No further argument on this point is necessary. Shri N. S. Jain.

Shri N. S. Jain: Yesterday, I was saying that there are three classes of

cases: sessions cases, summons cases and warrant cases. There are three separate procedures for all these cases. Before I enter into the amendments in the Bill to change that procedure, I would like to draw the attention of this House to article 20, 21 and 22 of the Constitution. As I was saying yesterday, we cannot overhaul the law in the way in which we are doing, because we are bound down by certain considerations laid down in our Constitution.

The first consideration is laid down in article 20(3) of our Constitution, which reads:

> "No person accused of any offence shall be compelled to be a witness against himself."

In other words, no oath shall be administered to an accused person. This is a very salutary principle. Whatever that may be, to my mind, it lays down a certain approach to the accused, rights in the Criminal Procedure Code or any other Code. That approach is that an accused person has got some special privileges. Personally, I would not give those privileges to the accused. The accused, being a member of society, should be asked, and I think rightly so, to say on oath what he knows about the facts of the case. He should not shield himself behind this article in the Constitution and say that he cannot take an oath. In fact, this question of oath is very important, and it is there that the legal practitioner comes in. Any way, the article being what it is, I take it that this article means that in criminal trials, certain different principles are to be applied than in civil trials.

It is with this difference in approach that we have to look to the criminal trials. In a civil trial, both the parties are equally ranged and have equal rights. But in the case of a criminal trial, the accused has got some better rights than the prosecution. So, the systems of weighing evidence in civil and criminal cases are naturally different. While in the civil cases, we have only to see the preponderence of evidence and weigh one piece of evidence against the other, in the case of criminal trials, however, the scale is weighed down by the fact that the accused has got to be considered innocent, and this presumption as to his innocence has got to be outweighed by the evidence which is put down before a court of law by the prosecution. That is the main difference, which we cannot ignore, while amending the procedure laid down in the Criminal Procedure Code.

The second consideration is laid down in article 21 of the Constitution, which reads:

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

This procedure is what we are discussing today. Fortunately for the framers of this Bill, the words 'due process of law' are not there in this article, for then it would have been possible for the judiciary to go into the wider principles of human justice, when considering whether the provisions which we are enacting today are *intra vires* or *ultra vires*.

The third consideration is laid down in article 22 which reads:

> "(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

So, that the legal practitioner should be of the choice of the accused is a part of the whole criminal procedure. I have already spoken something about legal practitioners yesterday, and I would not dilate on that subject today.

There is one other point which is auxiliary to these provisions, and that is the provision or rather the convention of the benefit of doubt to the accused. This principle of the benefit of

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doubt is such that it presupposes that the quantum of evidence to be produced by the prosecution is of such a high standard and the accused has got nothing to contribute to that evidence or inference, by his own efforts. Having regard to this state of things in our constitution with which, I may repeat, I personally do not agree, and to principles or conventions to which we are bound down, we cannot change the procedural law in any way we like.

With these limitations, I would like now to analyse the amendments which the framers of this Bill have proposed in this measure. As I was saying earlier, there are three categories of these trials. If we look to these three categories of trials, we find that the framers of the Criminal Procedure Code have kept in mind certain facilities to the accused, such as the right to cross-examine, the right to produce defence, and the right to withhold his statement before the court. These considerations have been taken into consideration, and have been applied to all these trials, according to the seriousness of the offence, and the quantum of punishment for every offence with which the accused is charged. When we look at the summons case, we find that as soon as the accused comes in the dock, he is told by the court, well, here are the charges against you, what have you got to say in the matter? He expects that he will be put that question and he is prepared to say: "I have committed this offence", or "I have not committed the offence". Then the prosecution witnesses are produced and they are cross-examined and the whole trial is over in a day or two. That is one way of dealing with a case. But the framers of the Criminal Procedure Code thought it wise that this method of treating the accused should not be allowed in a more serious case, when he is accused of an offence which is more serious than triable as a summons case. What do we find there? There we find that in section 252 the accused has got the right to keep mum. It is for the prosecution to say what it has say.

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

Section 252 says:

> "When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complaint (if any) and take all such evidence as may be produced in support of the prosecution."

In this, there is not much about cross-examination of the complainant or the witnesses. It only says he shall hear the complainant and hear the statements of the witnesses. Then, it is in section 256 that the Code says:

> "...at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken."

It means that at the first appearance of the accused in the case it is not necessary that the witnesses should be cross-examined, and I may tell for the information of the Members here that generally counsels do not cross-examine at this stage.

Shri Frank Anthony (Nominated-Anglo-Indians): Which stage?

Shri N. S. Jain: At least I do not, and I have seen that many senior counsels certainly advise and also act accordingly, that no cross-examination should be made at this stage.

The Minister of Defence Organisation (Shri Tyagi): So that they may change their story.

Shri N. S. Jain: I am sorry the hon. Minister knows nothing of law, and he should learn it before he intervenes.

The Minister of Agriculture (Dr. P. S. Deshmukh): Nor has he been accused.

Pandit K. C. Sharma (Meerut Distt. —South): Several times he has been accused!

Shri N. S. Jain: In this procedure it is presumed that at the first hearing if there is to be any cross-examination at all, it will be very little, and the main part of the cross-examination is to be under section 256. And why? It is after the charge has been framed.

Mr. Deputy-Speaker: Does not evidence mean both examination and cross-examination?

Shri N. S. Jain: It does mean, but emphasis is not laid on it, and rightly so. He has got a right, but generally he is not given so much time for cross-examination at this stage. I am going to tell you that we may amend it accordingly. That is what I am going to propose.

Now, in this case, you will also keep in view one thing more—at what time the cross-examination is necessary. Section 256 reads:

> "If the accused refuses to plead, or does not plead, or claims to be tried....."

It means the trial comes after the statements of these witnesses.

Pandit K. C. Sharma: After the charge is given.

Shri N. S. Jain: After the charge is framed. It is not before the charge is framed. At the first hearing of the accused, the trial does not begin. The trial begins when the charge has been framed, and I know of so many cases where the prosecution has given redundant evidence, given on many charges, but at the time of framing the charge, all that redundant evidence was thrown to the waste-paper basket and only specific charges were framed, and then only those witnesses who gave evidence regarding those charges were put in the witness-box for cross-examination. So, at this stage I may say that I would like the hon. Home Minister to consider this, that he may, if he likes, put in a clause here or an amendment here in section 252 that only such cross-examination would be allowed as the court may think fit, just as he has done with regard to section 256. He may rather do it with regard to section 252 and he may say in section 252 that only such cross-examination would be allowed as the court may think fit. But under section 256, *i.e.*, after the charge, that right must be absolute, because it is only then that the accused knows the case he has to meet and is prepared for cross-examination. And I think there is not much difference so far as the saving of time is concerned. After all, there are two cross-examinations. At one place you reduce it, and at the other place you keep it as it is. That will not make much difference as far as time or the question of delay is concerned.

Then, about amendment of section 257 I would only submit that in this case the words which the Bill is taking out, or rather is adding, are not necessarily in the interests of justice, because, if these words are allowed to be added, it would mean that the accused, even if the magistrate wants them to be recalled, shall not be allowed to summon those witnesses who had been put by the prosecution. Under section 257, the magistrate has discretion to allow or not such witnesses who have been put in by the prosecution to be cross-examined. It has been rarely used, and I think only in exceptional cases the magistrate allows it.

Now, I will try to be brief. I will refer to the sessions cases. In sessions cases the scheme of the old Criminal Procedure Code is just as it is in the case of the warrant cases. The first stage is under section 252 when the prosecution puts its case and its witnesses. So, in a sessions case, the prosecution puts its case and witnesses before the committing magistrate. There again cross-examination is allowed just as in section 252, and then after the framing of the charge, that part of the warrant case which is, I may say, done before the magistrate only is transferred to the sessions court. So, there is not much difference

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between warrant case procedure and sessions case procedure except that the latter portion of the work is transferred from the court of magistrate to the court of a sessions judge. And that is done because the crime is of such a serious nature that it is only triable by a court of sessions. I quite agree with the framers of the Bill that this procedure of committing the accused takes a long time. My suggestion is very simple, and it is this. Do not have any such thing as a sessions trial.

Just as you have got first-class magistrates and second-class magistrates, similarly you have got a sessions court. Just as this procedure is followed in the first-class magistrate's court in warrant cases, the same procedure may be followed in a sessions court, the only exception being that the accused is put right before the sessions court and there he is allowed the same privilege as an accused in magistrate's court in a warrant case is allowed. If the present provisions of the Bill were allowed to go, what it would mean is this—I want to emphasise this point. Today the accused has got a right to hear evidence against him in the court of a magistrate and to cross-examine him, all the time keeping mum. And then after the charge has been framed, he has got a right to go to the sessions court and there have the right to cross-examine the witnesses who are produced there *de novo*. But now you are taking away the right of this accused to hear the statements of these witnesses or of the prosecutor either in the magistrate's court or in the sessions court before framing of the charge. Now what the framers of the Bill want is that the charge should be framed before the accused has an opportunity of hearing the statements of the witnesses of the prosecution, accompanied by his counsel, and you frame the charge. He has nothing to say about the charge. Then he goes to the sessions court and there he has to face the trial and cross-examine the accused at once. Instead of doing this, why don't you do this? Do away with the committal proceedings altogether—I quite agree. But then you keep that right of the accused to cross-examine his witnesses two times. Just as in a warrant case, repeat that section 252 in the sessions trial and you say when an accused appears before a sessions court and there the witnesses are put before him, he is allowed to cross-examine to a limited extent, and then after the charge is framed in his presence there, he should be allowed to cross-examine all those witnesses again as under section 256. That will obviate many of the difficulties, many of the delays of which we are all so conscious. Perhaps it might be said that the accused would be put this whole story before him all of a sudden and he will not have so much time to look for his defence. I agree. So in that case, a certain procedure should be followed by which the copies of the statements under section 161 may be given to the accused and also the proposed charge and other concerned documents may be given to the accused to prepare his case and to prepare his defence. But what I am anxious is that his right to cross-examine the witnesses should not be curtailed and he should have full opportunity.....

Shri Raghubir Sahai (Etah Distt.—North East-*cum*-Budaun Distt-East): What is the present practice?

Shri N. S. Jain: In the Sessions Court, first there is the committal proceedings and in the committal proceedings, he has got full opportunity to cross-examine the accused in the magistrate's court.....

Shri Raghubir Sahai: Cross-examine the witnesses.

Shri N. S. Jain: I am sorry. Yes, Then he has got a right to cross-examine them in the sessions court.

Shri Raghubir Sahai: I just wish to put it to you whether it is the present

practice to cross-examine the witnesses of the prosecution in the committal court.

Shri N. S. Jain: It is.

Shri Raghubir Sahai: Very rarely it is done.

Shri N. S. Jain: I am sorry about what I am hearing. I do not know whether there is a different procedure in Budaun.

The Minister of Home Affairs and States (Dr. Katju): The right is there. But you said that you never cross-examine as a matter of practice.

Shri N. S. Jain: I am talking about sessions trial.

Dr. Katju: He is asking whether before the committing magistrate, you have got the right to cross-examine him.

Shri N. S. Jain: I was talking about warrant cases. There is a confusion between the two. In warrant cases, we do not do it generally. We only put certain questions just to elicit information. In the sessions court, I do not mean that there should be an elaborate cross-examination and so I am not insisting here too. I am only saying that you give a limited right of cross-examination, just as under section 252, and then you give the fuller right after the charge is framed.

Mr. Deputy-Speaker: The hon. Member must conclude now. There are other hon. Members who want to speak. The hon. Speaker just told me when he was leaving that he had already told the House that the time-limit should be observed.

Shri N. S. Jain: Let me make my suggestions. I have the greatest objection to one thing and it is that the witnesses' statements should be recorded under section 164. I would not argue this matter any further because I think we are all agreed on that point practically. I have got these papers containing the opinions on the Bill with me which were supplied to me yesterday and I think that as far as that problem is concerned, that is practically settled. The Inspector General Special Police Establishment says that it may be dropped for the reason given by the Intelligence Bureau. Here it is given in a much better way and I will only read these four or five lines.

> "The proposal should be dropped on the following grounds:
>
> 1. The witnesses have to come from long distances and wait to get their statements recorded.
>
> 2. It will impose heavy burden on the Magistracy.
>
> 3. How will the Court S. I. examine the witnesses properly without a full brief of the case?
>
> 4. It will entail heavy expenditure to pay the cost of witnesses.
>
> 5. The Investigating Police officer may lose all incentive and zeal for making a successful investigation.
>
> 6. Lastly, there is a great disinclination on the part of the public to give evidence in a Police case and the proposal will further increase this disinclination which is detrimental to the investigation".

As far as thing is concerned, if the framers of this Bill wanted that these statements under section 164 should be taken as a committal proceeding, I oppose it tooth and nail. There will be miscarriage of justice if this proposal is allowed to go through.

Mr. Deputy-Speaker: Regarding the other point the hon. Member may prefer to send a memorandum to the hon. Minister. I forgot to tell hon. Members that they can send memoranda to the Select Committee, they can appear before the Select Committee and take part in the proceedings and argue except in the matter of voting. Therefore, all hon. Members may state the most important points here and

[Mr. Deputy-Speaker]

for want of time they may put the other things to the Select Committee.

Shri Barman (North Bengal—Reserved-Sch. Castes): Generally, the Select Committee meets during the off-session period and it is very difficult for Members to come and appear before it. I ask whether it will be possible to hold the Select Committee meetings during the session. Then all Members can place their points of view before it.

Mr. Deputy-Speaker: Let them sit tomorrow. What is the objection?

Shri N. S. Jain: I will be very brief. I will take only ten minutes more.

Mr. Deputy-Speaker: I am afraid the hon. Member has already taken a long time.

Shri N. S. Jain: I have got something to say about it.

Shri Velayudhan (Quilon - *cum*-Mavelikkara—Reserved—Sch. Castes): Allow only two minutes more, Sir.

Shri N. S. Jain: One thing which I am very much perturbed about is this—the summary procedure for perjury. As far as that thing is concerned, I will not take much time of the court.....,I will only refer to pages 113 to 115 of the memorandum of opinions on the Bill given to us in which it has been clearly, practically, unanimously said that this proposal instead of curing the disease will rather worsen it. Justice in trials would be very difficult because no witness would be prepared to come to the court.

Pandit K. C. Sharma: Why?

Shri N. S. Jain: I have no time.

Pandit K. C. Sharma: Go on.

Shri N. S. Jain: Then again they have suggested that it is only perjury not regarding the points at issue, not regarding the facts at issue, but regarding matters which have nothing to do with the issue which should be tried summarily. This exactly what one of the High Courts has differed with and said that if there is to be any such trial that trial for perjury should be regarding the points in issue. What is the use of beating about the bush? A man might have forgotten that he was convicted ten years ago. Because he says in the witness-box that he was never convicted while it is true that he was convicted, you say he should be charged with perjury. I do not think this sort of thing is needed to instil confidence in courts of law. I do not wish to take much time of the House on this point, because it has been amply refuted by the opinions which have been circulated to us.

One important point within I wish to say is regarding defamation cases. I welcome the proposed change. I think this is a move in the right direction. I wish there should be some amendments about it. The words used are "or any other public servant in the discharge of his public functions." If anybody says about a Minister, or about an officer that he is a debauch, that he is immoral, that he was seen the other day in a night club or something of that type, which derogates him in the public eyes. I think those things also should be included.

Shri Velayudhan: In other countries are there such provisions?

Shri N. S. Jain: Against this sort of defamation, whether it is in the discharge of his public functions or in the discharge of his private functions, whatever it may be, he should be protected.

Shri M. P. Mishra: (Monghyr—North-West): It is shielding!

Shri N. S. Jain: It is not shielding. It is exposing the man.

Shri Debeswar Sarmah (Golaghat-Jorhat): This is lop-sided interpretation that we hear.

Mr. Deputy-Speaker: I am afraid the hon. Member has taken forty minutes. I cannot allow him any more time.

Shri N. S. Jain: The hon. the Home Minister said in the course of his

speech that the idea of this provision is that Government would take serious notice of those delinquents who are not prepared to clear themselves in a court of law. If that promise is kept intact I think this is a very important provision. It would be interesting to watch how this works. If there is a Minister, or if there is a public servant who is obnoxious, then, naturally there will be so many public-spirited people who would be prepared to come forward and say how he is behaving. What will happen? A prosecution would be launched against him and that man will have to come in the witness-box. I hope this clause presupposes that the man defamed shall have to come to the witness-box. Prosecution shall not be allowed to be launched without the defamed person being brought to the witness-box. If he comes to the witness-box, I think our purpose would be served, because I know as a criminal practitioner of persons very highly placed who shudder to come to the witness-box. There are so many things which would be exposed there, of which they are afraid.

An Hon. Member: Lawyers make a nuisance of themselves!

Shri N. S. Jain: It is lawyers who have protected your honour and maintained your dignity intact up to now; otherwise you would have been in the winds. So, I think this is a very wholesome provision.

The right of the District Magistrate to transfer cases has not been touched, though it is right that they have given the right to sessions judges to transfer cases. How are the two provisions to be reconciled? There cannot be two forums for getting cases transferred. I would suggest that suitable amendment should be made in section 528 so that the right of District Magistrate to transfer cases should no longer be there. Then there is the right of the District Magistrate to hear appeals under section 406A. While all other rights of appeal have been taken away, this right has not been taken away. It should be taken agency.

Last, Sir, I want to say that there is one lacuna about which there has been so much argument—whether a private person in a public prosecution, or State prosecution, has got any place or not. A man who has been injured, a man who is aggrieved, has he any place, has he any say? A very recent ruling of the Allahabad High Court says that he has got no right even to demand a transfer of the case. I think that that right should be given to him with proper safeguards. Similarly he should also be given the right of appeal against acquittals and I would say that it is a very right move on the part of the sponsors of this Bill to have given them that right. But they have given them that right at too distant a place, that is the High Court. I would suggest that in all cases where sessions courts can adequately be given this right, or this jurisdiction, they should be given the jurisdiction to hear these cases of private appeals.

In the end I hope that the hon. Home Minister would look into this amending Bill and would suggest before the Select Committee that he is not anxious to have it passed as it is and he is also not anxious to hurry it up. He would give sufficient time and as suggested earlier, after the Select Committee has had its say privately, should call some Members who are interested in it and who have made certain suggestions, while the House is in session and give them an opportunity of placing their points of view before the Committee.

Shri Frank Anthony: Mr. Deputy-Speaker, I feel that this amending Bill has not been adequately circulated. My own impression is that public opinion has not been sufficiently canvassed. The hon. Home Minister has told us that he has consulted the State Governments, that he has consulted the judges of the High Courts and that he has consulted the Chief Justices. They may all be good. But that consultation, in my opinion, is not enough. I am not pointing a finger at any judge; but it is a matter of common knowledge that many of our most eminent judges,

[Shri Frank Anthony]

many of our eminent jurists and distinguished lawyers, have not got one day's experience of criminal work, or one hour's experience of work in the original criminal courts. That is why I feel that at least the more important Bar Associations should have been consulted. My opinion is that there is not a single bar association in this country which would have done anything but condemn some of the proposed major amendments. For instance, I believe that no Bar Association would accept the proposed amendment in respect of committal proceedings. I also believe that no Bar Association...

Shri A. M. Thomas (Ernakulam): No, no.

Shri Frank Anthony: My hon. friend has had some Bar Association up his sleeve, because he is smiling rather cynically. I should have prefaced it by saying that no informed Bar Association would have endorsed this proposal regarding committal proceedings. Most of the persons who have spoken have spoken with a certain amount of authority stemming from personal experience on the original side.

Shri A. M. Thomas: A lawyer like Pandit Thakur Das Bhargava has supported the abolition of committal proceedings.

Shri Frank Anthony: Because experience is different. Although I am aware of the profundity of my hon. friend Pandit Thakur Das Bhargava's knowledge, on the criminal side, perhaps my experience has been as profound, having defended thousands of cases in the original court, including scores of murder cases, with success.

Shri Algu Rai Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): In the criminal field your experience is wider!

Shri Frank Anthony: I welcome some of the amendments proposed, and I would congratulate the Home Minister to that extent. For instance, the proposal to do away with trial with the aid of assessors. I think that system was an anachronism, and its abolition is very welcome.

I join issue with some of the lawyers who have not welcomed the amendments relating to disputes concerning immovable property. I think the amendment of section 145 is a very welcome one.

I believe that the amendment of section 488 which enhances the amount of maintenance payable to a wife, is also a very welcome amendment.

I would particularly congratulate the Home Minister with regard to the amendment in respect of bail provision in section 497. If I had the time I would propose other amendments in respect of this provision where it has now been laid down that if a trial is not concluded within six weeks, then an under-trial prisoner should be enlarged on bail. I think that is a very progressive provision.

After that I am bound to underline the fact that I feel perturbed by some of the amendments. I am implacably opposed to some of them. With great respect to the Home Minister I say, he does not intend that this measure should be reactionary in character, but some of these amendments are reactionary in effect. And the only consequence would be this, that there would be encroachments on the invaluable rights of the accused, while the proposed amendments will strengthen the hands of the police and enable them to get quicker and cheaper conviction. It has been alleged that the main motive of this Bill is to secure cheap and quick justice. I would ask my friends not to be overborne by slogans and cliches. We are given over much to slogan-mongering and also overborne by slogan-mongering. I am going to analyse these assertions of cheaper and quicker justice and see to what extent the Bill will achieve these objectives.

I was a little touched by the Home Minister's professed solicitude for the sufferings of the accused person. His

conscience was troubled by the fact that the accused people spend money unduly, and he is wanting to save the accused persons from this and save their wives from pledging their ornaments and generally impoverishing themselves. Is there any validity in this plea that the abolition of certain valuable rights—and I emphasize the word 'rights'—the abolition of these rights of the accused will achieve cheaper justice? This is an assertion which, I believe, is utterly untenable. What is happening? Two rights—I am concentrating on these two particular aspects— two vital rights of the accused have been abolished. Cross-examination after charge-sheeting is being abolished. Cross-examination in committal proceedings is also being abolished. The Home Minister has asked us to believe that by taking away these two rights, cheaper justice will be secured to the accused persons. I say this with all respect, can any one who is not completely ignorant of the actual practice in criminal courts make such an allegation? What is the average practice on the original side? On the original side, even leading lawyers do not charge fees on a daily basis. Usually, on the original side they charge fees on a lump sum basis. On the original side 99 per cent. of the leading lawyers charge fees on a lump sum basis. And merely because some valuable right of the accused has been taken away, does the Home Minister believe that a leading lawyer like my hon. friend Pandit Thakur Das Bhargava will reduce his fees to that extent? He will say: No, the hands of the police have been so strengthened that the case of the accused has been made more precarious; so I will charge you now more than I used to charge before; merely because I have to cross-examine only once, I am not going to reduce my fees. The fee charged by a lawyer is not ratable. After all, we charge according to the paying capacity of the accused. We charge also according to the section. If a person can pay ten thousand rupees to be defended in a murder case, merely because committal proceedings have been truncated, is it a valid contention that we will charge only seven thousand five hundred rupees? The proposition is preposterous. On the other hand, leading lawyers will say: No, the procedure is a police procedure, it is a police pattern, the pattern of an executioner; and so to defend the accused is more difficult; in one cross-examination in which I am taken by surprise I will have to put in much more effort and much more ability than I did before; to that extent I will charge you higher fees. Merely because you take away the two rights from the accused, it does not by one iota reduce his expenses in respect of fees.

10 A.M.

Then the Home Minister has lyricised about this proposed amendment. We talk of taking religion to the people. Now we are going to take justice to the people. We have provisions for the so-called mobile courts. Is this going to make justice cheap? After all, who have to be considered? I say that the cardinal motive which must inspire your approach to the criminal jurisprudence is the rights of the accused, which should not only be the dominant motive but the only motive. We have a provision which is going to consult—whose convenience—the convenience of the prosecution, the convenience of the witnesses, and the convenience of the accused presumably. Everyone's convenience is now going to be consulted, first that of the police, then of the witnesses, and lastly and least of all that of the accused. What is going to happen? I know your magistrates and the police will avail themselves of this provision. They will get so much extra travelling allowance. Between them the magistrates and the police live on one another's pockets. If one dak bungalow is available, one prosecution witness will go there, and the magistrate and the police officers. And they will go for *shikar*—but now the magistrates do not do much *shikar*, at least not big game hunting. So one dak bungalow they will occupy. The accused will have to live under a tree, if a tree is available. My objection to the provision of mobile courts is that it will be used deliberately to cripple the

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accused person. Today the accused, because the trial is at the headquarters of the court, can on a reasonable fee enlist the services of a leading counsel. Leading counsel, as I say, take payment on a lump sum basis when the case is heard at the headquarters because they are usually in four or five other cases. But when the trial is held outside, they will take daily fee. They will take fees on account of the expenses. Therefore, where a man could have probably secured the services of a leading lawyer on a lump sum basis which would be within his capacity at the headquarters, he will have to pay a daily fee to the counsel when it is held outside. He will never be able to pay a daily fee, nor will a leading lawyer be able to come out to a mobile court. This is a reactionary, retrograde provision, and it will be used by the police in order to cripple an accused person. When they find that an accused person is a person of moderate means who could deserve the services of a leading lawyer, they will deliberately have the case heard outside so that he will be prevented from engaging that leading lawyer.

Shri Dhulekar (Jhansi Distt.—South): You are quite right.

Shri Frank Anthony: Well, I am talking from experience; some of my friends may not agree with me.

Mr. Deputy-Speaker: The sub-divisional magistrates go on tour and dispose of cases not in headquarters.

Shri Frank Anthony: This is done more as an exception; it is only one in fifty cases. Here we are encouraging them now to get extra T.A.; the police officials and the magistrates will get more T.A.

Shri A. M. Thomas: It is only an enabling provision and not a compulsory provision.

Shri Frank Anthony: It may be an enabling provision, but it is going to encourage people. It will, I say, operate adversely and in some instances disastrously against the accused person.

Sir, the other plea has been the plea of quick justice. I am trying to agree that if these provisions go through, it will mean that the accused will get a short shrift; that will be quick to that extent.

An Hon. Member: Cheap and quick injustice.

Shri Frank Anthony: I am not denying for one moment, as my friend Pandit Thakurdas Bhargava says, that there is delay. I agree that we have got delays; inordinate delays and inequitous delays. The hon. Home Minister himself may be under self-deception, but he is not going to delude us. Does he honestly believe that merely because he takes away two valuable rights, he is going to expedite criminal procedure? What is the core of the problem? The core of the problem is this. First and foremost, your magistrates are over-loaded with miscellaneous work. You will note that the treasury magistrate has to spend most of his time on treasury work. Sometimes he is invested with section 30. Six prosecution witnesses are present, he examines one and then he adjourns the case. This goes on. He gives priority to revenue work. This is one of the main reasons for delays; certainly not because of the accused and it is only because the magistrates are over-loaded with work. (*An hon. Member:* And wait on V. I. Ps. etc.) As my hon. friend says, he has often to wait on V.I.Ps. and Parliamentary Secretaries. That also is an additional reason. But, Sir, the greater reason is that they are over-loaded with work. If the hon. Minister really wants to expedite criminal justice, then he will have to achieve radical reforms in a different direction. He will have to attack not only the work, but the whole institution of the magistracy. I am not going to point a finger at our magistrates; some of them are excellent persons. But, by and large

—of course, the conditions may vary from State to State—the magistrates are an easy-going, almost shiftless class of persons. An average magistrate goes to the court at eleven o'clock. In smaller places, sometimes he goes at twelve o'clock. Then he gets somebody to bring his *pan dabba*. Some of them continue smoking, exchange *pan* with the prosecuting inspector and almost all kinds of gossip go on. Then they break for lunch and at four o'clock he goes home. The average man hours put in by an average magistrate in India is not three hours a day. This is the curse of the system. I mean, they are Nawabs in their own rights. They do not care for anything. The judges may expedite matters, but a magistrate is a lord unto himself so far as the procedure is concerned. That is the reason why you have these inordinate delays in disposals. Some sessions judges are no better. I am only giving an example which happened recently. I was appearing before the District Sessions Judge in Mhow. It was an *ex parte* case. I examined four witnesses; I argued the things and the whole thing of evidence was completed in three hours. The district sessions judge took three months to deliver a four page judgment. This is what they do. He must have forgotten the whole evidence, the demeanour of the witnesses and other things. For a case which was finished in three hours, the judge takes three months to deliver his judgment. This is where we are going to expedite criminal justice; where the Home Minister will have to apply his reforming zeal.

Sir, I could have dealt with the amendments at even greater length than my friend Pandit Thakur Das Bhargava, but I do not propose to deal with them. I would like to deal with some more important and radical proposals. First of all, there is a proposal in clause 20 which seeks to amend section 161 of the Criminal Procedure Code. I shall deal with that first as it refers to committal proceedings. So far as committal proceedings started on a police report are concerned, the police officer is under obligation to examine the material witnesses. This is obviously, part of the police investigations. Under section 161 neither the accused nor his counsel will be able to foresee what is going to happen. This is not only reactionary, but it is an inequitous provision. Even the person who is going to record this, even the qualification that he should have been specially empowered, that has been done away with. Now, no second class magistrate will be able to record these statements. What will happen? The prosecution investigating officer will go to the *Tehsildar*. They live in one another's pocket. He will say: 'I have come here to record the statements.' The *Tehsildar* will give a statement and the prosecution investigating officer will ask him to translate it into English. He will just change it here and there and then write it down. It is then alleged to have been made on oath. There is not one single safeguard against the unscrupulous, unprincipled investigating officer, to check that police minion from framing the case before it starts against the accused. What is going to happen? You will have this cast iron mould, where evidences, particularly fabricated evidences will be put into a cast iron unbreakable mould. I say this not only with regard to committal proceedings, but also with regard to warrant cases. The investigating officer will take special pains to produce home the tutored witnesses he has secured. The witnesses will all be led like lambs to slaughter. We know what the unfortunate villager is. There is no one to help him. He will be told:

यह तुम्हारा हलफ़ी बयान है। अगर तुम इससे एक लफ़्ज़ भी हटेगा तो हम तुमको फौरन कोर्ट से ९ महीने का सज़ा दिलवायेगा।

That is what is going to happen. He will be told that he is making a statement of everything that he has to say. However much he may be forced, he will not say anything more than what the statement says. He will be afraid of summary conviction on perjury. I say, this is another violation. I do not say that it is being done deliberately. I do not believe that the

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hon Minister wants that this Bill should fall into the hands of the public prosecutors; and so far as the service people who have actually no experience whatsoever.....

Dr. Katju: I am responsible for it and I do not want the hon. Member to abuse the public prosecutors, public inspectors and all that.

Shri Frank Anthony: Then I am sorry. But, what is the motive? The fate is that the Home Minister has produced a hangman's pattern in this proposed criminal procedure. What is going to happen here?

Dr. Katju: Heavens will fall.

Shri Frank Anthony: Definitely, so far as the accused person is concerned.

Shri Algu Rai Shastri: The welfare State will be reduced into a police State.

Shri Frank Anthony: It has been reduced. This is the third and the final nail in the coffin of liberty. We have that evil running through this legislation as well. First we had the Preventive Detention Act, then the Press Objectionable Act and now comes the Criminal Procedure which shackles the accused person. Whether it is the intention of the Home Minister or not, he has been unfortunate in that he produces these unfortunate results.

An Hon. Member: Never learns from experience.

Shri Frank Anthony: Then, my greatest objection is this. The matter has been canvassed adequately as to the pernicious and evil provisions of section 161, this proposed amendment and the abolition of section 162. What I say is this: if this provision goes through, the Home Minister will be perverting what was intended to be a fundamental principle and which is outlined in section 162. What is section 162? It says, that first of all a person should not sign his name in a statement that has been produced. But, that covers all statements either recorded by the police or otherwise except for section 164 where a confession has been put in—a clause by itself—but in any statement made in the course of an investigation either by the police officer or otherwise which includes the magistrate also, it should not be signed because our courts, our legislators and our judges know the extent to which the police are prepared to go on with their machinations; because to that extent a man may have been obliged to put his signature to something which was false and he would not be prepared to retrieve it because morally he has signed it. Now, what are we doing? We are going to go one step further. We have put in a provision with regard to signature. It is only a sort of a conventional concession. We are now going to bind him hand and foot and make him make a statement on oath. This is against the whole spirit of section 162, that is, no statement could be made in the course of investigation and even if it is made, it should not be signed. This question has been raised already and I wish to raise it again categorically. Section 162 contained something which was very vital and which was a fundamental principle of our criminal jurisprudence, that any statement made in the course of investigation was intended for the benefit of the accused person and it can only be used by the accused under section 145 of the Evidence Act for the purpose of contradiction. It can never be used for corroborative purposes. It was the fundamental principle, a principle basic to the structure of our criminal jurisprudence, that it could be used only for the benefit of the accused. If you have this provision in section 161, I say it is an iniquitous thing. If you have this in section 161, the logical corollary of this principle is this. Since it was made in the course of investigation, it cannot be used against the accused person and it could only be used in terms of section 162, that is for the purpose of contradiction under section 145 of the Evidence Act. I say that if you are going to make a provision

contrary to this, it will be a piece of short practice perpetrated on the Criminal Procedure Code and the recognised right of an accused. If you are going to allow any statement to the police to be permitted to be used corroboratively, I say that it is not permitted under the specific clear implication of section 162. Except for a confession recorded under section 164, every other statement recorded by the police or otherwise, which includes those recorded by a magistrate, can only be used in terms of section 162, by the accused person for the purpose of contradiction. If you say that that is the intention, I will withdraw my objection to the provisions of section 161. I have stated what the clear intention of section 162 is. On the other hand, if the intention is to make the statement recorded under section 161 admissible corroboratively, I say you will prostitute and pervert the whole right given to an accused person under section 162. I am putting this very seriously with all the earnestness at my command. If you insist on section 161, I say it can only be used by the accused for his benefit to contradict the witness and can be used in no other way.

श्री अलगूराय शास्त्री : अध्यक्ष महोदय, माननीय सदस्य होम मिनिस्टर साहब को यू यू कर के ऐड्रेस कर रहे हैं और चेयर को ऐड्रेस नहीं कर रहे हैं।

Shri Frank Anthony: I am making use of 'You' with an apostrophe or inverted commas.

Mr. Deputy-Speaker: "You" may refer to me also. We will assume that section 162 is not there and section 161 with some qualifications is there. What happens? How can the police use section 161? We can understand section 164. What about 161?

Shri S. V. Ramaswamy (Salem): Section 157 of the Evidence Act is still there and it can be used for corroboration. We have not abrogated section 157 of the Evidence Act.

Mr. Deputy-Speaker: His contention is that it cannot be used.

Shri Frank Anthony: After all, the intention of section 162 was to shut out any statement recorded in the course of the investigation, whether recorded by the policeman or by anyone else, except that it was meant for the benefit of the accused person. It was meant only for the purpose of cross-examination, to be used in the way prescribed. I say, if we have section 161, this convention which was embodied in section 162 must be applied to any statement recorded even by a magistrate.

First of all, let us try to follow the pattern here. I presume it is the intention of this Bill that a statement recorded under section 161 should be used. As somebody said, we are fixing the witnesses. In my opinion, we are fixing the accused. What is the next step? I would ask you to look at the way in which this pattern is evolved. I say that the whole effect will be to hang the accused even before he is permitted to defend himself. What is the next provision? Take section 207A. This is examination of an accused person by the magistrate. What is going to happen? An accused person is going to be examined by the Magistrate. His statement is going to be taken by a Magistrate. At what stage? This statement is going to be taken by the magistrate before he has heard the evidence.

Dr. Katju: He has, of course. He is supplied with all the copies.

Shri Frank Anthony: That is seeing evidence.

Dr. Katju: I see.

Shri Frank Anthony: That is not hearing evidence.

Dr. Katju: Very good; I withdraw.

Shri Frank Anthony: There is a vast difference between hearing and seeing evidence.

Dr. Katju: I see.

Shri Frank Anthony: That is one of my radical objections and I shall deal with it later on.

Dr. Katju: There may also be embracing of evidence. That stage comes later.

Shri Frank Anthony: I shall deal with that too. But, I am quite certain that that is not going to brace this Bill.

He is going to examine the accused at a stage before the case is heard. I say that that strengthens the police pattern. First, the police frame their case. They put forward their witnesses tutored and untutored, fabricated and unfabricated and they are examined on oath. There is that cast iron matrix which is going to be relayed to the gallows. Next, you have a further strengthening of the hangman's rope. I am going to be examined by a magistrate. I was not examined before. Look at the terms and conditions in which I am going to be examined. While, read with section 342, the super-policeman of India seems to have applied his mind to it. Every safeguard intended for the accused has been deliberately taken away. The accused is examined. Why? He is to be examined in respect of the circumstances appearing against him. The examination of the accused was for the benefit of the accused person. It was never meant to be a cross-examination. It was never meant to be any inquisition. Now, we deliberately delete the words "in respect of circumstances appearing against him". What do we do? We go one step further. First of all, he is going to be examined without hearing the evidence. Then, he is going to be examined not only in respect of the circumstances appearing against him, but he is going to be examined at large. Look at this. The pattern is consistent. It is the executioner's pattern. It is going to be the suggestion of whom?—the prosecution. Of course, the Home Minister will say: "Why are you objecting? The defence can make their suggestion." We do not want to make our suggestions in respect of the examination of the accused. Before this, it was a matter within the sole discretion and competence of the magistrate. Now, we have sneaked in the suggestion. First, I am examined before I know what the case is against me, before I know it fully. Then, I am not only examined in respect of circumstances appearing against me, but I am examined at the suggestion of the prosecution. No police State could have produced a more comprehensive anti-accused Bill than this. Every step, step by step, has been calculatedly taken in order to destroy the position of the accused person.

Mr. Deputy-Speaker: What will happen if no statements are recorded under section 164? It is not obligatory on the part of the Police. May I ask the hon. Minister what will happen if no statements are recorded under section 164 and this procedure is adopted?

Shri S. S. More (Sholapur): The police diary will be there.

Dr. Katju: May I say one word? Of course, I am listening to all this. Inasmuch as commitment proceedings were being done away with—that was the proposal—we wanted to simplify the warrant cases procedure. We wanted that before the case is started, the accused should have a complete picture in so far as written record was concerned,.....

Shri Debeswar Sarmah: What is that complete picture?

Dr. Katju:...and what was going to be the charge against him.

Mr. Deputy-Speaker: My difficulty is this. It is not obligatory on the part of the police to get the statements of the witnesses recorded before a magistrate under section 164.

Dr. Katju: Today?

Shri Frank Anthony: Even here.

Mr. Deputy-Speaker: Under the Bill. They can do so if they like.

Shri Altekar (North Satara): So far as important witnesses are concerned.

Shri Kirolikar (Durg): Sub-clause (5) of clause 20 of the Bill reads:

> "The Police officer may, in any cognizable case and shall, in all cases of offences triable by the Court of Sessions, require the attendance before a Magistrate of all such persons whose evidence, in the opinion of the police officer, will be material at the time of the inquiry or trial, to have their statements recorded under section 164; and such persons shall attend as so required."

The word "shall" is there.

Shri Frank Anthony: "The police officer may, in any cognizable case and shall, in all cases of offences..."

Mr. Deputy-Speaker: That will be *prima facie* evidence.

Shri Frank Anthony: Still, the discretion is given to the police officer.

Dr. Katju: Now that I have interrupted, may I say one word? My hon. friends have said that this statement under section 161 should never be used for any purpose other than that of contradicting the witness. But, I tell you now as a practising lawyer what happens. The prosecution witness comes. The accused has got a copy of the diary statement, and supposing during the evidence of that prosecution witness in the examination-in-chief and in the cross-examination that prosecution witness is not confronted with the diary statement, then the inference that everybody draws, including the judge and in argument, is that the witness has stuck to the version which he placed before the investigating Inspector, because if he had diverted in any way, if he had either developed or withdrawn or something, he would have been confronted with the diary statement. Therefore, the object is served. Every man says: 'Here is this prosecution witness being examined before the committing magistrate after six months, before the sessions judge after twelve months, and he has not been contradicted by his diary statement, by the statement which he made within two days of the investigation." The result is that this prosecution witness is sticking to what he said before the investigation, and that is virtual corroboration.

Shri Sadhan Gupta (Calcutta-South-East): My experience is considerably less, but I think any judge will shut out such an argument.

Dr. Katju: Very good.

Shri Frank Anthony: A person who is a real judge cannot, even at the back of his mind, think of this as virtual corroboration.

Dr. Katju: Of course, it is.

Shri Frank Anthony: He is not supposed even to think in terms of the diary.

Dr. Katju: He may say so, but he reads the diary.

Shri Frank Anthony: But here, there will be real, substantial corroboration. My objection to it is this. We are playing into the hands of the police in every possible way, and section 161 can only operate against an accused, never in his favour. As I have said, the police officer would only produce those witnesses whom he feels are fabricated witnesses, to prevent them from resiling from their positions and from speaking the truth later on. Then, what will he do? They are clever people. I do not under-estimate the intelligence of the police investigating officer. He will be there. He will dictate to the *Naib Tehsildar* what wants to be taken down and he will only take down so much as will indicate the outline of the case. He will allow ample room to be added to, to be improved upon, or even to be patched up. And that is my further objection.

As I say, you take my statement—at what stage? One of my friends argued that it was not his practice in committal proceedings to cross-examine. It may be his practice. My practice and

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the practice of other people is quite different, because we have found this to be a vital right, and I say this. The practice of people who have defended scores of murder cases and have probably lost one or two of them is to cross-examine in the committal proceedings. Why? Because we know that if we were going to make a statement it was always safe to pin down the prosecution witness, to Cross-examine him in terms of the proposed defence statement, so that there could never be any improvement by the prosecution. That used to be the cardinal technique of people like myself. Dr. Katju may say: "It is not necessary. Lots of people reserve their defence." I know lots of people reserve their defence, but I say that is a dangerous thing. I do not know what the practice is in some States now, but I know in Madhya Pradesh where the incidence of crime is the highest in India—it was the land of the *thugs* and their descendents—people like me used to defend two or three murder cases on an average a month.

Mr. Deputy-Speaker: I do not know what the experience of the hon. Minister is. Normally, if the accused is not able to fix up as to what line of defence he has to take, then he bides his time and does not cross-examine. Otherwise, he has the chance of destroying, and even at the earliest he cross-examines.

Shri Frank Anthony: It is dangerous.

Dr. Katju: If he has no line of defence, he is guilty. He ought to go to jail.

Shri Frank Anthony: After all, your defence has to be put to the prosecution, and you always put your defence to the prosecution. Every sane lawyer does that before he makes a defence statement. But, what are you asking me to do now? A few witnesses are produced before the *Naib Tehsildar* and you are asking me to disclose my defence. The point I wish to make is this. In certain States the Public Prosecutor always says: "The accused had an opportunity of making a statement. He has not made it. An adverse inference should be drawn from the fact that he did not take the first opportunity of making a statement." So, you will damn me. I know some courts do not, but other courts have drawn an adverse inference because an accused has not disclosed his defence.

Mr. Deputy-Speaker: Will the hon. Member be satisfied if the accused is not asked to state his case on all the evidence in the preliminary investigation proceedings before the trial and the committal proceedings, and copies of these proceedings are given to the accused?

Shri Frank Anthony: It may be less reprehensible. If he is only allowed to make a statement after he has cross-examined all the witnesses, certainly that would be fairer.

Mr. Deputy-Speaker: Will it do away with committal proceedings?

Shri Frank Anthony: It is an argument which is applied also to the abolition of the right of cross-examination after the charge. I say it is absolutely necessary to have two opportunities of cross-examination. I do not care how eminent a counsel is. With regard to this right of cross-examination after the charge, what is the position? I will have to cross-examine once. I am talking of warrant cases. What does it mean? I know that Dr. Katju will say that the magistrate has got the right to defer the cross-examination. But it is a discretion. The magistrates are not going to be asked to exercise that discretion as a matter of course. After all, it was said, there was the third alleged right of cross-examination, but as my hon. friend Pandit Thakur Das Bhargava pointed out, no lawyer ever invoked it, because we know that we should not rest the liberty or the life of the accused on the discretion of the

magistrate. We want certain rights, but now we only have one right of cross-examination and that is at the time the case is unfolded, after the charges in the case diary are given to the accused. The case diary, as you know, is never a complete record. Sometimes, two or three witnesses' statements run into a single statement. So, section 161 is not going to give a complete record, because as you yourself have pointed out, it will contain the statement of only those witnesses who are the minions of the police officers. Moreover, they will record only summaries, in order to prevent the tutored witnesses from changing except under pain of going to jail. So, they will never elaborate their evidence under section 161. So it is not correct to say that I shall have the full picture before me. I never have the full picture before me until the police officers in their prosecution examination-in-chief put their case before me. Then, what happens in a warrant case? After all, I am a human being, and when the case unfolds one witness after the other, I am listening to his evidence to the best of my ability; but am I going to listen to the witnesses just orally, and am I going to be able to remember every word and then am I going to be asked to cross-examine on specks, so to speak? As you know well, people have been saved not only from jails, but even from the gallows, on the turn of one single word. But it is going to be an extempore cross-examination now, and I shall have the summary with all their statements in the case diary, but for the first time, when the prosecution case is unfolded before me, and the witness goes into the witness-box, I am taken by surprise. As has been pointed, it is common knowledge that some witness comes last, and he says something which has a vital bearing on the statement of the first witness. What is to be done in such case? Of course, Dr. Katju will say that I can recall him. But my whole point is this. I can venture to say that ninety per cent. of the acquittals in warrant cases are secured by a careful cross-examination. We cross-examine first, but that cross-examination is never a full cross-examination; we see certain deficiencies and certain lacunae, and then we have a cross-examination for a second time. It is that second opportunity to cross-examine which leads to an innocent man being released in ninety per cent. of the cases. I do not understand why, if the man has a right which leads to his acquittal, the Home Minister should resent it. After all, surely, he must presume that everyone who is acquitted should be given the benefit of doubt. But why take away these vital and valuable rights from an accused person? I say that it is a very valuable right with regard to the whole proceedings. There are counsels who have been extremely successful in the defence of summons cases, and their technique is this. Why do we cross-examine at length? It is because we choose to give a detailed defence statement in the lower court, and I for one have always found it to pay. I will tell another reason, which may be personal. I find on an average that a public prosecutor is a much abler man than a police prosecuting inspector. A police prosecuting inspector, in spite of his best attempts to patch up the prosecution case, does not succeed, and an able counsel will throw all the answers and all other things in the course of the cross-examination in the committal proceedings. But if we do not fix the prosecution case in every important detail, then you get a capable prosecutor in the sessions court, who patches up the whole prosecution case. If the accused had made a statement, the prosecutor will patch it up in such a way that the accused is condemned from the very moment he has made a statement. That is my objection. I say this right of the accused is a valuable right, and people who have succeeded have succeeded because of that detailed cross-examination in committal proceedings. I join issue squarely with people who say that we get away with it. I know there are counsels who reserve their defence, and who will make a statement in the other court, but there are also people who feel that this is a valuable right.

[Shri Frank Anthony]

Then there is the other major amendment in respect of section 435. What is the argument for this? As you know, this is a valuable right with regard to the correctness and the propriety of an order, finding or sentence. But now the hon. Home Minister says, we will confine it only to legality, and what is his argument? He says, we are wasting the time of the judiciary. I say that if revision has led to the acquittal of one single person in a year, you can never stigmatise it as waste of time. The hon. Home Minister himself has said that seventy per cent. of the people are acquitted in the sessions, and out of the remaining, twenty-five per cent. are acquitted by the High Court. And that is his grievance. So many people are being acquitted, and he believes that everyone who is acquitted is being wrongly acquitted. He believes that in spite of the people being acquitted, they are guilty, because the police put them up. The whole approach, the premises or the processes of thought of the hon. Home Minister are wrong. He resents people being acquitted in this way, and so he is going to truncate the opportunities for acquittal. So, he says, we will restrict the opportunity for revision, or the ground for revision, under section 435. This is an absolutely reactionary step.

And look at the argument that the hon. Minister has adduced. He has said, we will save the money of the accused. A more perverted line of argument it is difficult to conceive. Here is a man who is concerned with his liberty, his freedom and his life, but the ultra-tender conscience of the Home Minister is concerned with his money. He is concerned with saving the widow from pledging her jewellery, in order to save the accused. This is the solicitude of the hon. Home Minister. What is he going to do now? He is going to make it more and more difficult for the accused.....

Mr. Deputy-Speaker: How is she a widow, before the person is hanged?

Shri Frank Anthony: He must have said, his wife or his prospective widow. I do not understand the logic of his argument. Today, the hon. Home Minister is deliberately making it more difficult for the accused to save what is more important in the life of an accused, namely his liberty. Does he think that people are going to save money at his behest, and stay in jail? They will spend much more money, in spite of the difficulties that he is placing in the way of the accused, when they feel they are innocent, and therefore they should be acquitted.

And what is the dictum to which we are being treated by the hon. Home Minister? It is this, the sessions judges are experienced people, they are going to hear appeals, they are going to be the second court of appeal in respect of facts, so, why not accept that as final. But do we not know the actual state of affairs? I shall come to that later. But here I may say this that I never accept the finding of fact by a magistrate, because it is the finding of fact on behalf of the police. They are the minions, marionettes and creatures of the police. Your sessions judges.....

Dr. Katju: On a point of order. My hon. friend has just now characterised all magistrates as minions of the police.

Shri Frank Anthony: I shall make a concession, and I shall preface my remarks by saying that there are some very good magistrates also.

Dr. Katju: But just now you said all magistrates are minions of the police.

Shri Frank Anthony: I say that the institution of magistracy is a limb of the police in this country. It is nothing but a limb of the police in this country, and the sessions judges are—thanks to that exception—not subordinate to the police. I say with all respect that some sessions judges are able men; they are men who command my profoundest respect, but then what of others? I would ask you just to

see the judgment of the High Courts or the Supreme Court. See the latest certificate presented by the Chief Justice, Mr. Mahajan of the Supreme Court, to one of your sessions judges or magistrates. He has spoken about a sessions judge who did not understand language, who understood less of law, and who had been spending his time showering encomia on a magistrate whose language he did not understand. These arrant ignoramuses, people who cannot understand law, who are perverse and are mentally dishonest, are the kind of people into whose hands you want to trust the final adjudication of an accused person. I say that if you are going to inspire respect in your system of justice, you must enlarge the revisional jurisdiction, or if you do not want to enlarge it, leave it as it is. You must make the jurisdiction of the High Court as large and as wide as is humanly possible. I say this that to the extent that your judiciary commands respect, it commands respect only because of your High Court judges, and your judges in the Supreme Court. Your magistracy and even your sessions judges by and large, do not create confidence or inspire respect upon the public.

Now, may I say a word about section 417? My hon. friend there who spoke before me has said that this is a very progressive measure, because it extends the right of appeal against acquittal. I say this with all humility that I regard section 417 as an uncivilised and barbarous provision, something which is an absolute blot on the criminal jurisprudence, and anyone with a vestige of regard for the fundamentals of right jurisprudence would have taken this opportunity of effacing it. Can the hon. Home Minister point to any country which has any kind of a civilised jurisprudence, which has an appeal against acquittal? After all, we have competent courts, and men who run the whole gamut of trial by these competent courts are acquitted finally. But the hon. Home Minister says, no, we are not satisfied with this, we want an appeal from an acquittal. We are having here the whole hangmen's pattern, starting from the recording of the witness under section 161, the examination by the accused, the abolition of his right, and finally this appeal against acquittal. The right of appeal has been given now.

Sir, what is happening today? I say with a sense of sorrow, I say that Government is using this provision, which is an extraordinary provision, as a matter of course. Today appeals from acquittals are going to High Courts, and I say this with regret that almost as a matter of course, appeals against acquittals are being admitted. All right. What it leads to is this. You know that it should be an axiom of criminal jurisprudence that there must be at least one right of appeal. But what is happening today? What is going to happen to a larger extent? For the first time, the appeal is admitted after it is tried by a competent court, the acquittal is set aside, he is convicted and he has no right of appeal, not a single right of appeal. You will have to change the Constitution. I say that if you are going to do this, if you have a spark of conscience, if you have a spark of juridical conscience, you should see to this too, that if an acquittal is set aside by a High Court, that if a man is convicted, for the first time, then he must have at least one right of appeal. You must amend your Constitution for an automatic right of appeal to some higher authority, may be the Supreme Court.

Then, Sir, I come to my last point and that is this.

Mr. Deputy-Speaker: Is it not open to the person to invoke the aid of the District Magistrate to write to the High Court that they might take up the revision.

Shri Tek Chand (Ambala-Simla): To the Government?

Shri Raghavachari (Penukonda): The decision is that of the Government.

Mr. Deputy-Speaker: The Government can exercise that. Now, instead of his looking to the Government, the right is given to the complainant.

Shri Raghavachari: The other man goes up in appeal.

Shri Frank Anthony: My objection is to the principle of appeal from acquittal. But if we do have it, then let us also show some juridical conscience. A man is convicted for the first time in the court and he has no right of appeal. The whole thing offends what I regard as a fundamental concept of criminal jurisprudence that a man should at least have one right of appeal, which he is denied under your present set-up.

Then, Sir, there is this amendment in clause 112—amendment in respect of defamation of public servants. Now, may I say that I agree with the arguments which have been adduced so far as the Heads of State are concerned. the Rajpramukh and the President? But after that I am bitterly opposed to it. I say this is an argument which is extremely unfair, I say it is disingenuous. This is what he has said. The public servant will be on trial. Here is an opportunity to investigate the rectitude or character of the public servant. This, Sir, is an extremely tortuous argument. The public servant is being put on trial. We are making it a cognisable offence. What happens? What is the procedure in a cognisable offence? The sub-inspector, the investigating police officer will take it over. Once he knows that it is a cognisable offence, once he starts investigation—which is in respect of a V.I.P.—are we asked to believe that he will go out even-handedly between the complainant and the accused? What does an investigating officer do? We know this, that an investigating officer's confidence and promotion depends on the percentage of his convictions. He is out to get the conviction at all costs, and in most cases they get the conviction at a terrible cost—of perjured evidence, destroyed evidence and all that. When you leave a public servant to fight it out on equal terms with the Press, if necessary, that is a different matter. But when you are deliberately placing them on unequal terms, you will have all the repertoire, all the technique, the crude and false technique of the police at your disposal to break the Press for an allegedly libellous writing. And I say this, that even if there was such an evidence which could have been forthcoming, the investigating officer will do away with that evidence. He will plug every weak hole in the complainant's case. He will do it. They do it in all cognisable cases and we are asked to believe that they will act differently in this particular cognisable case. Here they will do it for the additional reason that the complainant will be a very important person. They will enable a very important person to cover up his weakness and to destroy evidence, if necessary. That is what is going to happen. I say this is wrong because whatever the Home Minister may say, it will act—I do not know whether it is his intention—it looks like a calculated instrument of terror. I do not know whether it will offend the Constitution. Perhaps not because it is a class of cases. But certainly what about the equality before the law?

What are we doing ? As Acharyaji has said, we are putting the servants of India in a class by themselves. The people who are the masters of the Ministers, the ordinary people, in their case it will be a non-cognisable offence triable by a first-class magistrate. But you are putting up the servants of the people as a class by themselves. First of all there is going to be a cognisable case in which all the instruments of the police machinery will be invoked in order to patch up a case to their advantage. Secondly, we are making a special class of cases. The ordinary person will be tried by a first-class magistrate. Under the Bill, so far as the V.I.P. is concerned, the case will go before a sessions court, and I say this, that it will operate as a calculated instrument of terror, it will shield the Ministers, it will stifle all legitimate criticism. Because a man will say: 'What can I do? I am an ordinary person. I am a small man. I just dare not do it. The machinery of the police will be placed against me. They will patch up the case and I will have

to go before a sessions judge'. Do not forget this. If the sessions judge is convinced, he does not stop with a sentence of fine. He always imposes a sentence of jail. I say it is a calculated instrument of terror, because we are placing them in a special class by themselves. We are making it triable by a higher court, encouraging a higher sentence and to that extent, I say it will operate as an instrument of terror. It will give them a *carte blanche* to go all their own way. That is what is going to happen and I feel very strongly about it.

May I end on this note? Sir, I feel that the whole way in which the approach has been conceived has been to weave a pattern which will act as a noose round the accused's neck. They have taken away step by step everything. They have taken away the vital rights of the accused, which make all the difference between a conviction and an acquittal.

I say this is not going to bring about quick or cheap justice. If the Home Minister really wants to carve out a *niche* of immortality for himself, then there is only one way. Let him introduce this long-overdue reform. To begin with, may I say that there are many amendments which have not been touched? This is not comprehensive; this is partial. Obsolete, utterly obsolete provisions have not been looked into. I will give one instance. Take your provision with regard to the presidency magistrates. It is an anachronism. A first-class magistrate with criminal jurisdiction sitting in Bombay has been invested with powers higher than those of a district magistrate. In Bombay he will try a case summarily. Five miles out, his counterpart, a first-class magistrate, will try it by the warrant procedure. Then, Sir, I do not know who has written the Statement of Objects and Reasons; I say that he does not even know law. It is said that in every criminal case, there is an appeal to the sessions judge. Where? If a presidency magistrate, who is not higher than a first-class magistrate, convicts and sentences a person to Rs. 200 fine or jail, then no appeal lies. Under section 411, he has to sentence a man to more than 6 months. An ordinary first-class magistrate, because he is in a presidency town, has much higher powers than a district magistrate. This is a provision which is an absolute anachronism. Everyone who has anything to do with the Bar finds that it is an anachronism. It has not been touched. There are so many other provisions I could cite. May I say, Sir, that section 350—*de novo* trial—is quite wrong? What is the principle? What does the accused do? He can only demand a *de novo* trial. But what people do not seem to understand is that before charges are framed, it is not a trial. So if the magistrate is changed during the examination-in-chief, during the cross-examination before the charges, you cannot transfer the case. You cannot have a *de novo* trial. A *de novo* trial means a trial after the charge is framed. So if the magistrate is transferred in the initial stages, we cannot demand a *de novo* trial. A trial is something quite different from an inquiry. It should be an elementary principle of criminal jurisprudence that if a man is going to be sent to jail, he should be sent to jail, in the first instance, by a person who has seen the witness and who has heard the witness. It is a vital principle and it should be a principle which we should not give up, that before a person is convicted, you must have had an opportunity of seeing the witnesses and of hearing the witnesses. Why is it that courts are loath to interfere with findings of fact, because they say that the lower courts have the opportunity of seeing the witnesses, of scrutinising their demeanour. That vital principle is now going to be set aside.

As I said, if the hon. Home Minister really wants to carve out a *niche* for himself let him separate the executive from the judiciary. I endorse the opinion of the Home Minister that today there is very little trust, there is less respect, on the part of the public, so far as our magistracy is concerned. What is the reason? The reason is

[Shri Frank Anthony]

this. You may have a perfect Criminal Procedure Code; you may collect all the codes from Heaven in order to evolve a comprehensive code. But you will not inspire one iota of added respect for your magistracy? What is the way to do it? To separate the executive from the judiciary. Today I say everyone, I say everyone in this country, regards the magistracy as creatures of the police. I know it. Magistrates in court have told me: "Mr. Anthony, we know: if we had been somewhere else we would have acquitted your clients; but we are executive officers, it is not our business to acquit: we are here to convict. You go and get your acquittal from somewhere else". As we know it is the District Magistrate who writes the confidentials of the magistrates and I know that a District Magistrate before writing the confidentials always consults the D.S.P., with a view to seeing how many convictions and how many acquittals have emerged from the pen of a particular magistrate. They are afraid of doing justice, because however much the evidence may justify it, because that will damn them in their confidentials. As long as you have this system, as long as your magistracy virtually is a limb of your police, you can never expect any respect for them, you can never inspire any respect in the public mind. Once you separate the executive from the judiciary and I say this you give the greatest amplitude of powers, not restrict the powers of the High Court, then and then alone you will achieve the maximum justice. In this country all of us are one on this—that by and large our High Court judges are people who do deserve and who do command our respect.

Shri Bansal (Jhajjar-Rewari): Mr. Deputy-Speaker, Sir, after a field day of lawyer-members of the House—in fact three field days, I am myself doubtful as to my ability to place before the august House the point of view of the public, the layman,—the human point of view. Sir, as I have been sitting here.

Mr. Deputy-Speaker: Is the hon. Member also a Bachelor or Master of Laws?

Shri Bansal: I am a Bachelor of Laws, but I never went near a law court, so that I never even took up my probationary period of six months.

Mr. Deputy-Speaker: So, he is not wholly a commoner.

Shri Bansal: I regard myself as a commoner in so far as the practice of law goes; and I am really grateful for being in this position, particularly after listening to the very forensic oratory of some of the lawyer members, very distinguished members, of this House. I have very great respect for Pandit Thakur Das Bhargava. In a way I was glad that he was not taken on the Select Committee, because if he was on the Select Committee, the House would have been deprived of the three hours of brilliant discourse that he gave us on the many provisions of this Bill. But as I was listening to him I was wondering whether he was speaking only as a lawyer, or as a representative of the people. Sir, do we not know that this Parliament this Government are on trial at the bar of public opinion, for giving them a law where no justice is possible?

Shri S. S. More: But not under this procedural code.

11 A.M.

Shri Bansal: Under the present procedural Code, I may tell you that persons after persons in my constituency—I can quote some examples—have come and told me that no justice is possible today. Whether this Code is responsible for that, whether the magistracy is responsible, or our whole administrative system is responsible for that, I am not competent to say. But the fact remains that today justice is so costly, so dilatory, that it is not within the reach of the common man. I quite understand that the point of view of the accused must be heard everywhere, at every point. But what about the aggrieved? Who is in the majority? After

all whom are we going to defend? Only the accused? Have we no conscience for the aggrieved party? I can quote specific instances from my constituency, where a man for a very minor offence, for a very technical offence, is being dragged to the court, driven from pillar to post, for a year and a half. For what offence? He ordered for one hundred tins of molasses. He is a small *bania* in a small village. It cost him Rs. 400. The excise officers came and challaned him. The case is under trial, but I think I have the privilege of the House to mention it.

Mr. Deputy-Speaker: Is it still pending?

Shri Bansal: Yes, Sir.

Mr. Deputy-Speaker: Then the hon. Member should not speak of it.

Shri Bansal: Any way, there are cases after cases which I can quote where for minor technical offences a person is dragged from court to court. People feel aggrieved because they do not get justice. I know of cases where persons have been robbed, where persons have been murdered, but the family of the murdered, the family of the robbed do not get any justice. And then, what is happening? The aggrieved parties get all the harassment because our law today is so dilatory.

Shri S. S. More: It is due to corruption, not procedure.

Shri Bansal: It may be due to corruption. I do not ask you to leave corruption aside.

But inasmuch as this Bill is a step forward in amending this very dilatory Criminal Procedure Code, I congratulate the hon. the Home Minister. Every reformer is born before his day. Speeches made by very eminent lawyer Members of this House make me believe that this amendment has not come a day too soon. It may be that some of the provisions are not very well thought out. I am not a lawyer; I am not going into that aspect of the matter. But I think it is high time that the combined wisdom of this House gave the hon. Home Minister, advice, well-considered advice, as to how we are going to make justice cheaper, make justice quicker. The well known maxim of law is: Justice delayed is justice denied. Pandit Thakur Das Bhargava said that by amending the law in this manner we are not only going to delay justice, but we are going to deny justice altogether. I do not agree with him. I am sure there are a number of clauses in this amending Bill which will make justice cheaper as also quicker, and inasmuch as that object will be achieved, I am glad that this Bill has been brought. In fact, my regret is that such a measure did not come earlier before the House.

Shri Nambiar (Mayuram): What are those clauses please?

Shri Bansal: The hon. Home Minister has analysed those clauses on the floor of the House very carefully and the time at my disposal does not permit my covering the same ground again. I also admit that I am not competent to do that. But I know this that the public today is tired of this machinery which administers justice in our country, of the law under which justice is administered and the sooner we realise it the better.

After listening to the speeches made—one of them ran for three hours, another ran for two hours and a third one lasted an hour and a half—one is inclined to ask whether any of these Members with all their knowledge of jurisprudence and all their practice of criminal law, did make one concrete suggestion as to how to improve this Bill, or how to improve the Act. Did they make a single suggestion? Not one suggestion came forward. That is my regret.

Shri S. S. More: Even the Home Minister does not agree with you. He is walking in protest!

Shri Bansal: I am making these remarks for the hon. House, and not for the hon. Minister individually.

A number of points were picked out from this Bill which seek to check perjury. I think this clause 92 amending section 485 (insertion of section 485A) is a very salutary provision. Fears have been expressed and it has been said that the same magistrate trying the case should not be in charge of trying the witness for perjury. It was admitted by Pandit Thakur Das Bhargava himself that perjury is widespread. Perjury today is rampant. How are we going to stop it? Is it not our duty to find out some ways and means to stop perjury? Is it not our duty to inculcate some sense of responsibility in our witnesses? Is it not our responsibility to inculcate some sense of responsibility in our police sub-inspectors and inspectors?

Shri S. S. More: It is the rich men who encourage perjury.

Shri Bansal: I also do not have very good experience of our police officers. But is it not our duty to see as to where they come from? Are they not our own kith and kin? Do they not belong to our country? Are they not our own brethren? (*Shri S. S. More*: No). Where do they come from? After all, where do we recruit our police officers from? We put them in charge of investigating crimes. What scientific machinery have we placed at their disposal so that their investigations are conducted on proper lines and not on third degree methods. Suppose a theft is committed or a robbery takes place. It is the duty of the police officer to apprehend the suspected thief or the suspected robber. Even if they suspect somebody, what scientific machinery have you placed at their disposal to take recourse to. None. We do not give any training in scientific methods to our police, to our inspectors, or sub-inspectors and we blame them for what they do.

[SARDAR HUKAM SINGH *in the Chair*].

I agree that our police officials should be recruited from a section of the people where the sense of respect for law is better. We must recruit our ordinary constable after he has passed at least the Matriculation examination, if not Intermediate or B.A. Today, as you know, if there is a vacancy in the ordinary constable's cadre you get applicants who are graduates. I think it is high time we began recruiting our policemen, our sub-inspectors from a better class of people. For that you will have to pay them better salaries. What does a constable get today? About forty or fifty rupees. Is it possible for a constable to live a decent life with forty rupees?

Shri Nambiar: Very good. Pay more.

Shri Bansal: And then you blame him for taking bribe and resorting to third degree methods.

Shri M. P. Mishra (Monghyr North-West): The I.G. takes bribe. Probably he gets three thousand.

Shri Bansal: It may be your experience. As I said, I am not a very experienced person in this matter.

Pandit K. C. Sharma: Layman talking!

Shri Bansal: I am bringing to bear on this Bill my limited experience from my constituency. I am not an expert in law, and I hope the House will give me this indulgence of talking on behalf of the common man, and not behalf only of the legal profession. (*Interruption*).

Mr. Chairman: I hope hon. Members will allow the representative of the common man to proceed.

Shri Bansal: As I said in the very beginning, this question of the reform of the Criminal Procedure Code, this question of the reform of our police, magistracy and judiciary is a very important one. And when hon. Members of the stature of Shri Frank

Anthony, Pandit Thakur Das Bhargava and Shri Chatterjee speak on a Bill which takes this reform a step further, I beg to suggest that it is their duty to help Government in trying to make justice cheaper and within the reach of the common man. It has been admitted by everybody that this is not so at present. I know of a case where an accused person had to be under trial for two years nearly. He was behind the bars for one year and six months. He was given a clean acquittal. The fertilizer case has been going on for years. We again and again read about this *ghee* scandal case in the papers. I think I am reading about it for the last two or three years. We, again, read in the papers about the trial which is going on against the grain syndicate in Delhi. I do not know whether it has been referred for trial so far or not. In as much as this Bill will make such procedure less dilatory and make justice quicker to the people, I welcome the provisions of this Bill.

Quite a lot has been said in the House about assessors. The system of assessors has been described by my hon. friends as an unmixed evil. I do not have that view of assessors. I come from a small town where I used to see as a child my father and uncle acting as assessors. I can tell you this that whenever they came back from the trials in the session judge's courts and told me as to what was going on there, I was filled with a type of awe that here is our country where ordinary men, common men, are being associated with such important cases. Now, if it is the experience of hon. Members that the system of assessors has been an unmixed evil, although I am not one who believes in that, let us give it up.

But I am all for the trial by jury. After all, why this lack of faith in the common people? Are we not sent here by the common people? If we can represent the common people here by their vote, why can the jury not act honourably and honestly on behalf of the same common man? I think it is time that we stopped paying only lip service to democracy and put it into practice in every phase of our life. I must congratulate the hon. the Home Minister for bringing this change in the Bill. In fact I will go a step further and say that it should not be left optional to the State Governments but that the jury system must be given a trial. It may be that in the beginning some juries will fail. I can quite conceive that. But we must give them a trial. I am sure the combined wisdom of the common man will come up and the jury will function properly. (*Interruption*).

Mr. Chairman: I must remind hon. Members that an occasional interruption might be tolerated. It might sometimes be savoury and welcome too. But such frequent interruptions should not be made.

Shri Tek Chand: But, Sir, are juries going to be on their trial?

Shri Bansal: Then, Sir, there is another provision, which, I think, must be welcomed by every Section of this House about which reference is made in paragraph 3 of the Statement of Objects and Reasons, whereby it is provided that a person under trial can be kept in a lock-up only for a limited number of months. I think it is a very salutory provision. By this provision, if the police cannot bring all the evidence against a particular accused person within the specified period, the person concerned must have the right to be left on bail. As I have said already, I know cases where persons have been in the lock-up for months and months—even years—and have got acquittals.

Then, about this Schedule II of Act V of 1898 which makes defamatory statements cognizable offences, I must say, I am not in agreement with this amendment. This is one of the amendments, in my opinion, which will take away whatever safeguards the public have at present against corrupt officials. I have a case at hand of which I have knowledge—it is not *sub-judice*. A person in my

[Shri Bansal]

constituency was returning to his village after taking his salary, a pittance of Rs. 53. On his way he was robbed. He lodged a report with the police officer at the Thana and the report was registered. Now, as you know, in Rohtak District, there were lots of dacoities and murders during the last few months as a result of which the police were made to be rather strict with such cases. There was some police action taken on a large scale but that situation has passed off now. When this particular report was lodged, the sub-inspector of police in charge of that Thana got flared up that this case should have taken place while the reports had gone saying that everything was all right in the district. So he called this person and asked him to withdraw his report. Naturally, the person concerned said: "Now can I? Why should I withdraw the report when I have been robbed of my money?" He was then given beating by the police.

An Hon. Member: Only beating? And, you want the police to be trusted!

Shri Bansal: That does not prevent him from being our kith and kin. Then I telephoned the Deputy Commissioner and told him that this case has been brought to my notice and that whatever the position may be, the person concerned should not be beaten. Now, supposing in one of the local papers—we have quite a number of them; small journals coming out from Rohtak—I give this story, what would be my position?

An Hon. Member: You will be hauled up.

Shri Sadhan Gupta: You will have speedy justice.

Shri Bansal: There is no proof that, that man has really been beaten whereas I am convinced in my mind that he has been beaten. Then, all the machinery of the police will go against me or the editor of that paper. Therefore, Sir, I think that this particular amendment should be taken away. If not, it should be confined to the President, Governor, Rajpramukh or even Ministers.

Some Hon. Members: No Minister.

Shri Bansal: But it should certainly not apply to the officials.

Shri Velayudhan: Not even to the Rajpramukh.

Mr. Chairman: The hon. Member may be allowed to go on with his speech even if we have differences of opinion.

Shri Bansal: That is my view, Sir. "Or any other public servant in the discharge of his public function", these words must certainly be deleted; otherwise there would be no safeguards left and no civil liberty left as far as small mofussil towns are concerned.

Sir, I am one of those who believe that nothing should be done without due process of law; that rule of law should prevail. I am glad that my hon. friend Pandit Thakur Das Bhargava brought that point so prominently before the House. What is due process of law? Is that due process of law confined to the Criminal Procedure Code which was passed 60 or 70 years back? Will any law which this august House passes today not be according to due process of law? In as much as this supreme Parliament of the country adopts a legislation, that is due process of law. I agree that this Parliament should not pass any legislation in a hurry and must keep the fundamental right of every human being in the forefront, but I do not see any infringement of legal right or due process of law in this particular amending Bill.

Acharya Kripalani (Bhagalpur *cum* Purnea): Rules of jurisprudence may be violated I suppose.

Shri Bansal: As I said in the very beginning, I am not a jurist and I do not really understand what are the basic principles of jurisprudence.

Mr. Chairman: Then the hon. Member can continue without answering it.

Shri Bansal: But, I know this that legislation, code or any law that this supreme House passes becomes due process of law. That is my reading of the Constitution. If any law goes beyond the Constitution, it is always challengeable before the Supreme Court and in as much as the Supreme Court declares that *ultra vires* that law will become null and void. In as much as any law passed by this supreme Parliament is according to due process of law, I do not feel that we are violating any of the fundamental principles either of jurisprudence or of law by enacting this particular amending Bill.

Sir, I will not take any more of your time, but I will say this that the hon. Home Minister deserves congratulation of a vast majority of people in this country for his attempt to amend the Criminal Procedure Code. I know he is going to be unpopular with his legal profession. I know this because no reform is popular when it is introduced. We know the history of Sarda Act; what opposition we had in this country when that Act was passed. That is the history of all reforms. We know what happened when *sati* was abolished in the country; there was a hue and cry. We know that no one is going to tolerate an infringement.

Pandit K. C. Sharma: There is a limitation to analogy; a tree cannot be compared to a bullock.

Shri Bansal: I do think that this is one of the first step towards a very vital change which is necessary in our present system of criminal jurisprudence and to that extent the Home Minister deserves congratulations. I am speaking on behalf of at least my constituency. I have contacted the people there. No lawyer has supported this Bill, but every man who has had an occasion to approach or go near a court of law will support a large number of the provisions made in this Bill and to that extent, I again say, that the Home Minister deserves congratulations from the people of this country.

Mr. Chairman: Shri Raghavachari.

Shri Mulchand Dube (Farrukhabad Distt.—North): Sir, I have tabled an amendment.

Mr. Chairman: Yes, I have that in my view.

Shri Raghavachari (Penukonda): Sir, I wish to make certain observations on this Bill. Before I do so, along with my other friends I also feel a bit disappointed with the fundamental principles on which the Home Minister seems to be acting. Of course, he has very bluntly and stoutly expressed it in this House that he is very much worried over two things: that the percentage of acquittals when compared with the prosecutions started is very high in the country, and therefore something must be done so that the percentage of convictions will increase. That is one point. Secondly, that the courts, the lawyers and other institutions with their branches have only contributed towards bringing about, not an establishment of justice in this country, but have always been leading to failure of justice. We are all men of experience. We have knowledge of how things are going on in this country. Nobody would like that this kind of thing must go on. But, we feel that the remedy suggested in this amending Bill, *viz.* doing away with all the safeguards of the accused, as some of us contend, or removing the obstacles in the way, as the Minister feels, will not achieve the purpose. What he wants is that there must be quick justice, not in the way as my hon. friend interjected, you will have quick justice, but real justice at less cost. What is it that he has done? People do not feel,—that is one of the complaints made by the Home Minister—that this institution the court, is their own. They always try to do things in such a way that they are not

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bothered about doing justice by speaking the truth; they are only bothered about how to achieve success in the courts. These institutions have been foreign grafts here and they have been centralised far away from the place where the offences take place. We have a procedure for investigation and something is brought before the court. People are only interested in success. They never care whether it is justice that is being done in courts. What is the way of securing this objective? Is it by omitting the committal proceedings? Is it by asking that the percentage of convictions should be raised? Why is it that people have been doing like that? India is a country where truth is worshipped. Truth is God. Everybody knows the Home Minister as well as most of the Members of this House know, that when a person goes to court and says something falsely on oath, it means perjury. But, we know things like that take place. What is the way of correcting them? It is not by prosecution for perjury. That would not correct things. This is a country in which the original institutions of justice were not like the present one. What we had was the *panchayat*. What we wanted was arbitration, and not these technicalities of the Evidence Act, hearsay evidence, direct evidence, indirect evidence, what is stated in the F.I.R., etc. These are not the things that really bring about a change. Reformation must come more with the institutions becoming part of the life and suited to the genius of our country.

The Home Minister asked, look at the percentage of acquittals. I suppose he too knows, and I know from intimate knowledge, how prosecutions are started in this country. I was a Public Prosecutor for six years and I have conducted 700 or 800 sessions cases. I know that in most of them,—anybody can know that—the truth is 10 or 15 per cent. and it is mixed with the other percentage of untruth. That is responsible for all the evils. Take the first information report which starts a sessions case. We attach, and as you know, the judge attaches the greatest importance to the time when the first information reached the police. The greater the length of time between the occurrence and the time of reaching of this information, there are greater opportunities for fabrication. It is true that an offence has taken place. A man has murdered another. But, who is prosecuted? All the factionists collect together and book not necessarily the real offender, but sometimes the person whom the factionists want to be sent away under this pretext. The F.I.R. goes to the police. The policeman naturally takes his own time. Some more people gather and then statements are taken under section 161 or 162. What is it? Everybody knows. Many hon. Members have already expressed their views. It is not what the witness says. It is what the investigating officer thinks should be spoken. He writes it down. This is important. There is then section 164. They are taken to a magistrate. I have read statements after statements under section 164. They are of a certain pattern. You know the cases require certain things. The same things are repeated whatever the witness says. It is the magistrate who records. The witnesses come and repeat their stories and the poor magistrate records them. Sometimes, he writes down what the investigating officer wants. You have got more or less a fixed sample. You go to the committing court. Some cross-examination takes place. There are so many things fixed up. Then, it goes to the sessions court. There are available so many things: section 164 statement, F.I.R., section 162 statement, cross-examination in the lower court records, fading memory as the Home Minister put it. Not only that. There are the influences of other people, corruption, temptation, relationships. Everything acts this way and that way. In the end, do you want the sessions judge to hang a man because another person has been

murdered? That cannot be done. Therefore, the real thing that would bring about a higher percentage of conviction would be the investigation being truthful and correct. That is hardly attempted to be done. Therefore, there is no good that is likely to come out of this process of avoiding the committal stage.

Shri Bansal complained and asked what are the practical suggestions that you have to make. I will say this. The sessions courts, were presided over by people who were foreigners, who never understood our language. They were people who could not understand even the manners of the people of our country. Therefore, there was a committal procedure. Every clerk was a magistrate and the Government itself had no faith or confidence in the magistrate. Therefore, they did not want them to exercise that kind of discretion. The result was simple. The magistrates copied all the depositions and transferred the whole thing to the sessions court. If you really want things to be done properly, the magistracy and the judicial officers should be of the proper calibre, people who have experience of life and people who can understand and discriminate between a good case, and a bad case. They should have discretion to discharge a number of these people. Then, it is not every case that will go to the sessions courts as is happening now.

The purpose of the Home Minister cannot be achieved by a single process of doing away with the further cross-examination, simplifying the warrant case procedure, or omitting the committal procedure or threatening prosecution for perjury. These things would not do. I have read through the whole Bill and examined the whole thing. My fear is that with the procedure that is sought to be substituted, there will be a greater percentage of acquittals in the sessions cases than there are today. What happens under the new procedure when a case goes to the sessions court? The policeman may write or may not write anything under section 161. He will send everybody whom he considers as a necessary witness to the magistrate for recording a statement under section 164. The magistrate takes down the statement and so the witnesses are fixed up. On the day of the sessions trial, there are these two things. The witness comes and goes on giving evidence. What is it that we do? There is the statement under section 164. As practitioners we know that when there is a statement-in-chief without cross-examination, every statement can be nullified by getting further details. This is what mostly defence lawyers do. The result is that the disjointed sentences of the witness under section 164 will be nullified by filling up of details. Ultimately, between one witness and another the details are changed and the whole case goes to dogs. In fact, it may not be within the experience of the Home Minister. The defence counsel puts many questions and draws out many details. The constable takes a corpse from one place to another. He is asked who came, who was present, at the investigation etc. In this way, the whole conduct of the investigation and of the investigating officer is exposed to criticism. The corpse constable is either sympathetic to the accused or is made to be sympathetic, and there is an end of the whole thing. Therefore, this kind of thing will not do. If public officers can exercise discretion and the court commit proper cases, that is one thing. The Home Minister has never said a word, either in his statement before the House, or in the Objects and Reasons, that there is anything wrong with the police or their investigation. He has taken them to be absolutely honest people who do their duty much better than the sessions Judges and the High Court judges. The aim cannot be achieved by reforming, altering or tinkering with the Criminal Procedure Code, but by something more; and I have always felt that the method by which the magistracy, and even the *munsifs* and other people are now chosen and asked to dispense justice, is not the

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system that will ever bring credit to this country. A democratic Government must be prepared to ask and secure the senior members of the Bar who are 45 or 50 years old to serve as magistrates and judges and *munsifs*—may be for five years or ten years. Then only you can improve the quality of justice. You want a young man. He must be trained. He looks to his promotion and is without experience. That is not the way of reforming it.

Regarding omission of committal proceedings, I think the procedure now submitted is very dangerous, because, as I said, it will lead to more acquittals than convictions. It may save a little time, but that is no consolation.

Then, about the warrant procedure, the amendments suggest the deprivation of the right to further cross-examination and the right to a *de novo* trial. These are the two checks that we really have in favour of the accused. The accused is a person who is not always the offender and many times not the man who has committed the offence in the shape in which it is put before the court. Exaggeration is the worst thing and the inclusion of other innocent people is also there.

In regard to the deprivation of the right to further cross-examine, no doubt the discretion is now given to the magistrate. It may be that this deprivation of the right of further cross-examination may not really injure the interests of the accused provided the magistrate is a man of experience and does his duty properly. But often times we cannot expect this thing from them. They may think this provision is meant for quick disposal of cases, and the accused may not have the advantage at all.

Then there is the question of *de novo* trial. There are some *Vakils* and accused persons who call everybody and waste the time of the Magistrate. One should call only such of them as are necessary. Now also the magistrate is given such power, but it is the spirit in which these powers are exercised that counts, and therefore I feel there is some risk involved in the procedure that is now stated and the accused may really suffer than be helped.

I am also anxious that the committal proceedings should not be so formal and useless as they are now. There must be something more useful in that.

There are many other improvements in the Bill which are quite welcome.

In regard the defamation, I commend the wise and useful suggestion made by my friend Mr. S. V. L. Narasimham yesterday. The power to arrest without warrant is sure to be abused, and it is an attempt to suppress all kinds of criticism against public servants. The more you suppress and the more you are conscious you are attacked and you want to guard yourself against it, the prestige of the institution of the public servants will further go down, and that is not a thing that is necessary or welcome.

The Home Minister has said the transfer application must only go to the High Court after it has gone to the sessions court. Of course that is being done in practice even now. That may not do very much harm, but when the sessions courts are closed, and the sessions judge is enjoying a holiday in Kashmir, there will be difficulties. That is a small matter, but more important than that is the revision powers which are only confined to questions of law or legality only and not propriety and other things. The Objects and Reasons say the High Court's time is wasted by all this kind of thing. But the sections refer not only to the High

Court, but to District Magistrate, sessions judge, sub-divisional magistrate. So, in the name of the High Court, everybody is being asked every time not to entertain all these applications. That is a matter which requires to be looked into.

Then about this appeal against acquittal. I know that what is provided now is that every complainant must be given an opportunity of filing an appeal against an acquittal of course with the permission of the High Court. We know that almost everybody whose election is set aside goes up to the Supreme Court for some kind of writ with special permission, and years are taken over it. Every complainant is given the right to file an appeal against the acquittal either by the original court or by the appellate court, except the High Court. Therefore, in almost every case there will be further persecution. No doubt, some compensation is provided for; but I cannot allow myself to be beaten today so that I may get Rs. 10 tomorrow by way of compensation.

The amendment to section 145 is welcome. I am in favour of the jury system. What is it that makes the jury system useless? It is because you have property qualifications. Every fool is a juror and he does not know how to sit in a court, or does not listen to the thing, cannot exercise his mind about what the witness said. The judge hardly gives any respect for these jurors. So, we must have a jury system where education, experience and other qualifications are there. They have made one provision, that ladies also will be jurors. It will add some colourful atmosphere to the court. To that extent it is a progressive step. I welcome it.

In the amendment to section 345, a number of sections are added on to the list of compoundable offences. It is very good. On principle there is nothing wrong. I wish a few more things had been added on. If you make them compoundable, they are legally done. Otherwise, they will compound outside the court and destroy all the evidence. Therefore make the list of compoundable offences more comprehensive.

Shri Mulchand Dube: There is a common saying that justice delayed is justice denied. It is equally admitted on the floor of the House by every section that perjury is prevalent in the law courts. It is equally true that it is more prevalent in criminal courts than in civil courts. If you go to a civil court with oral evidence, the chances are that your case is thrown out in ninety-nine out of hundred cases.

Mr. Chairman: Does the hon. Member want to move his amendment?

Shri Mulchand Dube: Yes.

Mr. Chairman: Then he may move it and then speak.

Shri Mulchand Dube: I shall move it in the end.

I was saying that in civil courts, you have to depend on documentary evidence, and if a man wants to prosecute his case merely on oral evidence, the chances are that in ninety-nine out of hundred cases, the case will be lost. But a criminal case depends entirely on oral evidence. Therefore, there is greater perjury in criminal courts than in the civil courts.

The object of this Bill is to remove or reduce delays in the administration of justice, as far as possible, and also to purify the administration of justice. Both these are laudable objects, and nothing has been said against these objects, by any section of the House. Therefore, this Bill has to be considered in a dispassionate manner. It is something new that is being introduced. It is something to which we have not been used for hundreds of years. Therefore, we have to consider it in a dispassionate manner, and while going so, we should

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steer clear of all prejudices and prepossessions that we might have acquired during these long number of years.

As I was saying earlier, in a criminal trial, it has been found to a very great extent that the witnesses are not truthful witnesses, both on the side of the prosecution as well as on the side of the accused. It has been said sometimes that it is better that hundred criminals who are guilty escape rather than one innocent man suffer. This is in the nature of a dilemma. We have to examine this question as to whether this is the correct approach to a criminal trial that hundred guilty person should escape rather than one innocent man should suffer. Every criminal that escapes is a potential danger to society, and his acquittal, is responsible for crimes that he commits afterwards. The dictum that it is better that hundred guilty persons escape rather than one innocent man suffer has to be examined in the light of the present circumstances. We have to examine whether this principle can be applied in all its implications in the administration of criminal justice. My submission is that it cannot be. In his book *Theory of Legislation*, Jeremy Bentham says, on page 421—it is true that he is not a recognised authority in England, but I think what he has said is something that needs to be considered well:—

> "When it is said, for example, that it is better that a hundred of the guilty should escape than that one innocent person should perish, a dilemma is supposed which does not exist; the security of innocence may be complete without favouring the impunity of crime; indeed it can only be complete on that condition; for every culprit who escapes, threatens the public security; and so far from being a protection to innocence, such an escape exposes innocence to become the victim of a new offence. To acquit a criminal is to commit by his hands all the offences of which he is afterwards guilty."

It is from this point of view that the whole matter should be considered. As it is, the accused is free to keep quiet till at the end of the trial. The result is that he only makes a statement after all the prosecution witnesses have been examined, and he has had the opportunity of indulging in a rambling cross-examination, trying to pick loopholes here and there; after all these loopholes, have been found, he makes a statement. After that statement is made, he is called upon to enter on his defence. Then, he produces his witnesses. It is not true, and I do not agree with the general proposition made out, that our people are more fond of perjury and are more liable to tell untruths, than other people. Even when the accused is called upon to enter on his defence and produce his witnesses, it is only very rarely that he can get an independent witness. It is only his near relations or friends or men over whom he has some influence, that can be called to his aid and support him in his defence. In the case of the prosecution also, when a police officer goes to investigate, it is the complainant or the person who has been injured, who is asked to produce a majority of the witnesses, some of them connected with him, and some of them not connected with him, but they are somehow under his influence. The perjury is not as great as it is made out to be. The question now is this. Is any harm done to the accused by this procedure of the court putting questions to the accused in the course of the trial? I submit, no harm is caused. If a man has a good defence, he can straightaway say whether he has committed the offence or not, and he can also speak about the various things that appear against him during the course of the trial. I do not think there is any reason for the accused being put in such an

advantageous position as to escape justice for the crime that he has committed.

Therefore, my submission is that we should look at it from that point of view in a dispassionate manner and not be carried away by our prejudices and prepossessions in a matter like this.

Now, I would like to point out that the Bill is not free from defects and shortcomings. There are some defects which arise out of bad drafting; there are others which arise out of not giving full consideration to every aspect of the matter. It has to be considered in the proper perspective. Every defect that is found there must be considered fully by the House and the House should try to reform it as far as possible. Now, a great deal has been said that no attempts are being made to reform the police. My submission is that the recent pamphlet that has been circulated to us clearly shows that efforts are being made to reform the police also. Men are being recruited for their integrity, for their honesty, for their ability and all that. We cannot reform the police in a day, or for the matter of that, we cannot reform the judiciary in a day. The position, therefore, is that this little attempt that is being made in the reform of criminal procedure should be considered in its proper perspective and every provision that is made should be viewed properly so that it will not be possible for any guilty man to escape, nor should it be possible for an innocent man to be punished. That is the attitude that should be taken in the examination of this Bill. It is from that point that we should judge procedure. Each party should be allowed to put his case before the court in the manner he pleases, and he should have full opportunity for that purpose. To the extent that that opportunity is taken away, the procedure is defective. To the extent that that full opportunity is given, the procedure is perfect. People should also, before they go to the court, be in a position to know how the case will be conducted, how the trial will proceed so that they will not be placed at the mercy of the court, and will be protected from the whims, idiosyncrasies and the vagaries of the court. If that object is fulfilled, I do not see any reason why the Bill should be criticised in that fashion, in a passionate manner, in an eloquent manner and in all other ways.

Now, there are certain defects which I have discovered. I will refer to clause 6 of the Bill where it is proposed to give greater powers to magistrates of first-class. My submission is that so long as the judiciary is not separated from the executive, the magistrates should not be vested with those powers which are proposed to be given to them.

The next point is about section 145. In order to reduce the delay that takes place generally in the proceedings, in section 145 it is proposed that when a magistrate is satisfied that there is apprehension of a breach of the peace concerning any property, he may attach the property, require the parties to proceed to a regular court of Law. This is liable to be abused in this manner. A man may have not even a semblance of title to a property. He may not be in possession of it, and in spite of that fact, he may just pick up a quarrel with the person who is in possession and who has a title to the property. The result will be that the property will be attached, and it will be attached for a period of time Then the court will again enter into an inquiry as to whether or not there is an apprehension of breach of the peace. If it comes to the conclusion that there is still an apprehension of breach of the peace, then what will happen is that the property will be attached for a further period. Now the person who has not even a semblance of title to the property will naturally not go to court and will put himself in an advantageous position, and by putting himself in that position, will compel the other party to go to court.

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The result will be that the entire onus will be laid on that person. The person who is in possession will lose that right which he had by the mere fact of his being in possession. Therefore, my submission is that the amendment that is proposed to section 145 should not be pursued. The section should remain as it is now. My submission is that that section gives protection to the person who was in possession, because if after enquiry the magistrate comes to the conclusion that one party is in possession, that party is put in possession of the property and the other party, who may have no possession has to go to the civil court to establish his right. Therefore, the amendment as proposed does not meet the object for which it has been introduced, and my submission is that it is not perhaps a proper amendment, and the law on this subject should be left as it is.

Then, Sir, a good deal has been said about omission of section 162.

Mr. Chairman: The hon. Member has not yet moved his amendment.

Shri Mulchand Dube: I beg to move:

"That in the motion, *after* "and 16 members from the Council", *add*:—

With instructions to consider the inclusion of the following provisions in the Bill and if necessary and convenient, to consider and report on the same:—

(i) Clause 6 be omitted.

(ii) Clauses 17, 18 and 19 (Amendments of sections 145, 146, 147 and 148 of the Criminal Procedure Code) be omitted.

(iii) *Clause* 22. The power to record confessions may be retained as at present to Magistrates of the First Class or those specially empowered.

(iv) *Clause* 29—In page 6, lines 43 to 46.

for 'satisfy himself that all documents referred to in section 173 have been furnished to the accused, and if he finds that any such document has not been so furnished, he shall cause the same to be furnished to the accused' the following be *substituted*:

'furnish or cause to be furnished to the accused all the documents referred to in section 173'.

(v) *Clause* 29. In page 6 line 48, *after* 'the case' *insert* 'after giving the parties a reasonable time'.

(vi) *Clause* 36—In pages 8 and 9, *for* lines 46 to 48 and lines 1 to 3 respectively the following be *substituted*:—

'(2) In any proceeding instituted on a police report, the Magistrate shall, before commencing the trial under sub-section (1), deliver or cause to be delivered to the accused all the documents referred to in section 173'.

(vii) *Clause* 37—In page 9, line 8,—

after 'the Magistrate may', the following be *inserted*—'after examining the remaining prosecution witnesses, if any'.

(viii) In appeals from convictions in cases instituted on a complaint, notice shall be given to the complainant also.

(ix) Section 438 of the principal Act be amended and Sessions Judges be given powers to pass final orders instead of reporting the matter to the High Court.

(x) *Clause* 92—Section 485A seems to be unnecessary and not likely to serve the purpose which it is intended to.

(xi) *Clause* 98—In page 21, lines 27 and 28—

the worls 'or the Director of Finger Print Bureau' be *omitted*.

(xii) Necessary amendments be made in the Bill wherever they are called for in view of the fact that section 562 of the Criminal

Procedure Code has been repealed in U.P. and substituted by the Probation of First Offenders Act.

(xiii) *Clause* 112—In page 24, lines 12 to 15—

In column 3, *for* the words 'May arrest without warrant' the following be *substituted*:—

'shall not arrest without warrant'."

12 NOON.

A great deal has been said about the omission of section 162. I am of the opinion that the matter is not so important or serious as it has been made out to be. Even if the prosecution is enabled to corroborate the statement of the witness, the corroboration does not become substantive evidence, just as contradiction does not become substantive evidence. It does add to a certain extent to the credit of the witness surely if he is corroborated. Therefore, I am of the opinion that the omission of section 162 which will have the effect of allowing the police or prosecution to use this statement recorded in the diary as corroborative evidence of the witness is not proper. My reasons for this are as follows. In the normal course, any police statement can be used for the purpose of corroboration or contradiction but in this case when the investigation is by a police officer, the statement is not recorded in the words of the witness. The police officer records merely the substance, so to say, of it, and because it has been recorded by the prosecution agency, therefore, a certain amount of stigma attaches to it. For that reason it should not be used for corroboration purposes, although it could be used for the purpose of contradicting. Therefore, I think at the place where it is provided under section 207A that copies of the statements of prosecution witnesses recorded by the investigating officer should be delivered to the accused, there should be a proviso added that those statements of the witnesses recorded by the police during investigation shall not be used for the purpose of corroboration of the witnesses. That, I think, will serve the purpose.

Shri Mulchand Dube: Two minutes more.

Mr. Chairman: I have already given 5 minutes to the hon. Member.

Shri Mulchand Dube: If there is no further time, I conclude.

Mr. Chairman: Amendment moved:

That in the motion, *after* "and 16 members from the Council" *add*—

"with instructions to consider the inclusion of the following provisions in the Bill and if necessary and convenient, to consider and report on the same:—

(i) Clause 6 be omitted.

(ii) Clauses 17, 18 and 19 (Amendments of sections 145, 146, 147 and 148 of the Criminal Procedure Code) be omitted.

(iii) *Clause* 22—The power to record confessions may be retained as at present to Magistrates of the First Class or those specially empowered.

(iv) *Clause* 29—page 6, lines 43 to 46,

for 'satisfy himself that all documents referred to in section 173 have been furnished to the accused, and if he finds that any such document has not been so furnished, he shall cause the same to be furnished to the accused' the following be *substituted*—

'furnished or cause to be furnished to the accused all the documents referred to in section 173.

(v) *Clause* 29—In page 6, line 48—*after* 'the case' *insert* 'after giving the parties a reasonable time'

(vi) *Clause* 36—In page 8 and 9, for lines 46 to 48 and lines 1 to 3 respectively the following be *substituted*—

[Mr. Chairman]

'(2) In any proceeding instituted on a police report the Magistrate shall, before commencing the trial under sub-section (1), deliver or cause to be delivered to the accused all the documents referred to in section 173'.

(vii) *Clause* 37—In page 9, line 8,—

after 'the Magistrate may' the following be *inserted*—

'after examining the remaining prosection witnesses if any'.

(viii) In appeals from convictions in cases instituted on a complaint notice shall be given to the complainant also.

(ix) Section 438 of the principal Act be amended and the Sessions Judges be given powers to pass final orders instead of reporting the matter to the High Court.

(x) *Clause* 92—Section 485A seems to be unnecessary and not likely to serve the purpose which it is intended to.

(xi) *Clause* 98—In page 21, lines 27 and 28,—

the words 'or the Director of Finger Print Bureau' be *omitted*.

(xii) Necessary amendments be made in the Bill wherever they are called for in view of the fact that section 562 of the Criminal Procedure Code has been repealed in U.P. and substituted by the Probation of First Offenders Act.

(xiii) *Clause* 112—In page 24, lines 12 to 15,—

In column 3, *for* the words 'May arrest without warrant' the following be *substituted*:—

'shall not arrest without warrant'.

Shri V. P. Nayar (Chirayinkil): I am inclined to think that as the elder gentlemen of this House who chose to run a marathon race yesterday, we younger men should satisfy ourselves with a short race today. Dr. Katju, while introducing this Bill said that he considered the day when he introduced this Bill as a 'notable' day of his life. If he had been a bit more serious and realistic, he would have confessed that the day on which he introduced such a retrograde, reactionary Bill, which is an outrage, a hideous outrage, on criminal jurisprudence in this land, was not a notable day, but a notorious day in his life.

I wish, Sir, that we do not have such days in future when Dr. Katju comes here with such Bills. Every session we have had, almost without exception, a Bill from Dr. Katju of the most reactionary type. We had the Preventive Detention Bill, we had the Press (Objectionable Matter) Bill. While introducing his Bill you will always find Dr. Katju banking upon his forty years of experience in the law courts. He introduces a Bill and justifies it by saying: "Here is my experience of forty years at the bar." On such occasions I am reminded of a school-boy rhyme which I learnt—I do not know whether you have heard it—it is about a dunce.

Dr. Katju: In which year did you hear it?

Shri V. P. Nayar: That was probably in the early thirties. The rhyme was:

Duncy Duncy double 'D'

In forty years A,B,C;

In forty years that boy could study only a, b, c. If, Sir, the experience of Dr. Katju in the law courts for a period of forty years, has resulted in producing only these bills, treacherous bills, I think the dunce of the Rhyme was better.

Dr. Katju: It is a very lamentable experience.

Shri V. P. Nayar: Sir, I do not wish to quarrel with him on that score. He

has certainly applied his mind; he has his arguments and he has tried to goad the majority which is always at his command, by repeating very often that this Bill has been the result of his mature thinking with forty years' experience at the bar. I have not had forty years' experience; nor am I a practising lawyer now. Shri Bansal was heard to say that he was only a bachelor of law. If I may say so, I have divorced practice. I have not been doing any practice for some time now. So, I will only take the general line. I do not propose to go into details, because much of what I could have said has already been said; and much of what I could not have said has also been said by eminent lawyers like Pandit Thakur Das Bhargava and Mr. N. C. Chatterjee.

Dr. Katju: Law is reputed to be a very jealous mistress, you know that.

Shri V. P. Nayar: Jealous mistress only at our age, not yours! Sir I am not worried about such fillibustering, of the Hon. Minister. Sir, the penal law of this country has certainly to be revised. It is not only a question of revising the procedural law, but is a question of revising the substantive penal law also. And here is an attempt by Dr. Katju to get certain amendments passed, after he has promised several times that he is bringing forward a very comprehensive measure.

Sir, I was trying my best to understand what Dr. Katju was saying. I sat through the entire speech of Dr. Katju: I had also the patience to read through all the pages of his speech. In the course of his speech he said:

> "In fact I wish again to say that the Government of India is not committed to this Bill on any party lines."

Why then do you press for this Bill, if you are not committed on party lines. You have already heard the views of your own party people, who have levelled criticisms against this Bill. In my little experience of this House, I have not seen any other measure being criticised so vehemently from all sections of the House without exception. I have not heard a single Member, except, perhaps, the apologist Shri Bansal, praising this Bill.

An Hon. Member: That shows that it is not conceived on party lines.

Shri V. P. Nayar: That shows precisely that Dr. Katju should withdraw it, because it is not conceived on party lines. If his party prestige is not at stake, he can certainly withdraw it. The evil character of this Bill can only be understood if you look at it for a proper perspective. Dr. Katju says that they have separated the judiciary. Well, in some States (in Madras, for instance) they have made an attempt. But, generally speaking, the magistrate, as it has been repeated in this House, is in the clutches of the Police. What you call the separation of the judiciary, the separation of powers, still remains a figment, a mere ideological fiction. And when all the advantages, even the very limited advantages, which the accused had, are taken away from him one by one by these amendments, it is not possible for one to think of the very hard times which the accused will have in the magistrate's court. I can relate any number of instances of how the Magistrates are under the thumb of the Police. Dr. Katju himself knows it.

He says we have to stop this delay. Well, he must first set his own house in order. I remember six months back I wrote to him about a case which happened right under his nose, the case of a girl of thirteen years having been very mercilessly beaten in one of the Delhi stations. He was kind enough to acknowledge my letter. That was a cognizable offence. That girl was the daughter of an Advocate and the niece of a Congress Minister of one of the States. But what has happened? I understand that magistrates have given evidence against the police officers who are responsible for it: but in spite of it nothing has been,

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done so far. If in his own Ministry, the Home Ministry, there is so much delay, how can you expect redress from law courts. I would put it this way: before Dr. Katju thinks of getting justice quicker, he should first set his own Ministry in order.

Sir, it is not so much the provisions as such that I object to, because more than the provisions there are certain very objectionable matters in the existing Criminal Procedure Code which, Dr. Katju if he has any sense of justice at all, should have taken out of the Code. It does not mean that I agree with all these provisions. I disagree with most of them. I oppose them: I oppose many of them hammer and tongs. But this is the position. Before you take up any such reform, before you think of any amendment to the Criminal Procedure Code, you ought to have looked into their application.

Mr. Chairman: The hon. Member will address the Chair.

Shri V. P. Nayar: I always address you, Sir.

The Home Minister ought to have seen to it that certain sections of the Criminal Procedure Code which are subjected to maximum misuse, which are abused more than any other sections in the whole Code, have to be repealed. I refer to section 144 and 107. Why is it that the hon. Home Minister has not tried to bring any amendment for their repeal. I was going through the proceedings of the Legislative Assembly of 1923 when the Bill for amending the Criminal Procedure Code was, discussed. The Congress then had no Member in the House I presume. I found from one of the speeches then that although the Criminal Procedure Code was promulgated in 1898 till 1921 there has not been a single instance in the whole of India where this very obnoxious, treacherous provision of 144 was applied to prevent a public meeting. And during the time of the struggle in 1921, the application of this treacherous section gained great momentum; it spread like an epidemic from one end of the country to another.

Now, Sir, what does the Congress Government do? We know for certain —I challenge Dr. Katju on this matter— if you analyse the figures of instances where Section 144 has been applied in India in the present Congress regime, it will far outnumber the instances on which it was applied at any given period of seven years during the British regime. If you take instances of application of this very treacherous section 144 which prevents the exercise of fundamental right by a citizen for any one year, except perhaps the year 1942, you will find that Section 144 has been resorted to in more number of occasions in the Congress regime than under the British rule. There are orders under Section 144 issued for everything; before the elections it is issued; after the elections it is issued. I remember, Sir, just prior to the last General Elections by which all of us came to this House, all members, all leaders of all political parties, except those of the Communist Party, were allowed to campaign in my State.

Shri V. P. Nayar: I am right.

Mr. Chairman: Let the hon. Member go on.

Shri V. P. Nayar: Shri U. M. Trivedi's party did not put up a candidate in my State. In my State the Communist Party there put up several candidates. Shri A. K. Gopalan, our Leader in this House came there. But in every district the first man to meet him as soon as he crossed the border of one district and entered another was a police officer carrying a cover containing an order under section 144. Even when he was sleeping, the police were around him. They were to his front, back, left and right, everywhere. He was not allowed to speak. Many Congress leaders were allowed to go from one place to another, probably in State cars. Ministers' cars. The Praja-Socialist Party leaders came, they also campaigned. But when two

of the Communist Leaders visited the area—most of our candidates were underground, some were in jail—yet, in spite of that fact they used all their repressive machinery against our party. When Communist leaders from outside came to canvass in our State for the party which had set up candidates, and whose candidature had been recognised by the Government, every District Magistrate took it to be the view of the Government that he had necessarily to issue an order under section 144 and prevent him canvassing for the election. This is how they have been using this section. A very queer situation arose after the recent elections. We have never heard of section 144 being promulgated even after the conclusion of an election. But the Congress Government which was in power in my State had to beat an ignominious retreat, and they wanted to do it silently. Therefore, when the elections were over, in every district they had section 144, and the condition was that no meetings should be held for two weeks till after the date on which the last election result was out. This is the way in which section 144 is used. I would respectfully ask Dr. Katju through you, Sir, whether a similar position exists in any other country, in its Code of Procedure. If he can quote one instance—he may have some in his pockets.

Shri S. S. More: Sir, is the Congress in power in any other country?

Shri V. P. Nayar: In answer to that I would only say, God forbid. Here, when in respect of all our enactments our Ministers draw parallels from the United Kingdom, the United States of America, New Zealand, Australia, Canada, and every other country, I ask Dr. Katju whether in any country which is called a civilized country you have provisions identical to those which you have in section 144?

Why do you have it then? It has been proved that the British Government which promulgated the law first in 1898 had a definite purpose. But till there was mass agitation in the country they did not dare to use it, and they used it only in a much more restricted manner. But here when the Congress came to power they started using it in all places. I have studied very carefully the writings of the Leader of the Congress Party, Pandit Jawaharlal Nehru and I remember a cryptic sentence which he wrote, "Englishmen who are worried by a gnat at home can swallow a camel in India without turning a hair." That was the attitude of the Congress in those days. But this lawless provision is still there, and Dr. Katju comes before us and says that reform is overdue.

Mr. Chairman: Two minutes more.

Shri V. P. Nayar: I may be given five minutes.

Mr. Chairman: The Speaker made it clear that nobody will have more than forty minutes.

Shri V. P. Nayar: Mr. Frank Anthony spoke for more than forty minutes, after the ruling. Some others also spoke. I am not claiming it as a matter of right, but I want your indulgence.

Similar is the case of section 107 and the following few sections. Till now there is some restriction on the magistrate's exercising the power. But Dr. Katju brings in an ingenious amendment by which, if you view it in the proper angle, you will be able to see that while at present a district magistrate or a first-class magistrate has his powers strictly limited by his jurisdiction under the working of the present law, Dr. Katju wants to change it and say that any district magistrate or first-class magistrate can proceed even if he was not within his jurisdiction. I shall put it this way as an instance. Suppose there is a report from the Travancore-Cochin police that after the session if my friends Shri Punnoose and Shri Sreekantan Nair go there, there will be some trouble, that public tranquility will be in danger. They

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have only to report to the Delhi Magistrate and he can proceed against them under section 107. That is how I read it. It is for Dr. Katju to contradict it. But this is the way in which I have been able to understand it.

An Hon. Member: That is correct.

Mr. Chairman: The hon. Member is being interrupted by his own men.

Shri S. S. More: They are supporting him.

Shri V. P. Nayar: It is support not interruption.

Then I shall refer to the provision relating to defamation. It is not necessary for anybody to make a public speech to come within the wide mischief. To bring anybody within the mischief of the present section it is enough if he writes a letter to Dr. Katju officially. Suppose I write from Trivandrum, "Here is an officer attached to the Central Government who is found to be in a very drunken state". That is a matter which can be considered to be defamation, because the letter will be seen by Dr. Katju's Private Secretary, clerk, typist, stenographer, and everybody. And it can be claimed that the person has been defamed. On the other hand I should have thought that a Government which is sincere about eradicating corruption which is rampant in the service ought to welcome people who come forward taking courage in their hands and accuse their officers. We have not known of any parallels for the corruption which we have in our country today. I do not say that all of them are corrupt. But there are officers, especially at the top level, who under the new provision that Dr. Katju is introducing will definitely take advantage of it. In fact the Government of India ought to have induced people to come forward, even giving them a reward, placing the services of the propaganda machinery of the Government including the Radio at the disposal of persons who are prepared to come forward and expose corrupt officials. Instead of that you make it a cognizable offence. And Dr. Katju knows how much a man will be tormented if it is a cognizable offence. He says it is done only in the interests of purifying the service. I can point out from his own Ministry, right under his nose, there are people whom nobody can tolerate in government service even for a day. Suppose I wrote to Dr. Katju—if I speak here probably I may have protection—suppose I write. The person is at once defamed and V. P. Nayar can be proceeded against. The Delhi police will be at 4, Asoka Road the next morning. This is the way Dr. Katju wants to shield his officers.

He says there is perjury. Well, it is there. His forty years of experience should have suggested to him,—I do not know why he did not have a word to say about the real source of perjury. Perjury is rampant in this country because the police tutor the witnesses, and nothing else. You can find in each case the police bring forward, that the police tutor the witnesses, and not only tutor them by ordinary means but, if it is necessary, even by using third degree methods. They beat them. They fist them. They kick them. I have seen it with my own eyes, and Dr. Katju knows that witnesses are tutored, on pain of torture.

Shri U. M. Trivedi (Chittor): He has admitted it by shaking his head.

Shri V. P. Nayar: There is no doubt a clear admission by his shaking his head. But any amount of shaking of the head cannot shake off the responsibility which Dr. Katju himself has in this.

What is the real source of perjury? He is bringing forward novel provisions. How do you stop perjury? When the police tutor a witness in a particular way, that person cannot later on resile

from his statement for the sake of honesty. He cannot have any reliance on the higher courts for protecting him. He stands the risk of being summarily proceeded against. Is it the way in which you want to reform the Criminal Procedure Code? I ask Dr. Katju, let alone the amendments, has he taken any steps to see that the police do not teach people to perjure? They do it from Kashmir to Cape Comorin. When once a policeman starts a case, his sole object is to see that the accused he has brought in is convicted. That is the primary object of Dr. Katju also. He wants speedy justice. He does not want that justice be delayed. Is this the way of drafting an amendment? There is no provision, no security for the accused. We had certain rights for the accused, which one by one Dr. Katju is taking away. I fear that Dr. Katju is very adamant in making the foundations very firm for a 'Police Raj' in the State. He is allowing the police to have all their ways satisfied with the help of magistracy which is dependent on the police. All the magistrates may not be like that; most of them are. I have a personal experience of a district magistrate. After I argued a Bail petition before him, he called me to his chambers and said that I must excuse him for keeping the accused in custody for one day more. He said openly that it is not possible to release the accused although he was convinced that there was no case against him. That is a district magistrate and if Dr. Katju insists I can give his name privately. This is the way the magistrates act. If ever you have an occasion to go to a magistrate's court as a complainant in a private case, you will feel the difference. You may be a Member of Parliament, and you may occasionally take the chair also, but if you ever go with a private complaint before a third class magistrate, it is hell for you. I say it is 'hell' because what we have in hell, we have in the magistrate's court. On the other hand, if there is a police case, whatever your integrity or honesty, the magistrate will not care about that. I can relate many instances. One of the Members of the Parliament here has been proceeded against for being a vagrant or a vagabond. After he was elected to the House the case was dropped. Even then, this is the way in which the police move in conspiracy with the magistrates or the magistrates move in conspiracy with the police. When from top to bottom the police are responsible for all the defects in the administration of criminal justice, when the magistracy are made to depend for their promotion on the executive authority, such amendments will only make the justice which is available for the people a sort of streamlined executive justice; nothing more than that. It will never be a "judicial" justice. Dr. Katju is again shaking his head.

Dr. Katju: I am not shaking my head at the hon. Member; he need not take notice of it.

Shri S. S. More: He has got freedom to shake any part of the body.

Shri V. P. Nayar: I am glad that Dr. Katju, after all has brought certain offences to be compoundable. I do not agree to that in principle, but I only agree to that with certain limitations. For example, theft under section 380 is a compoundable offence. That is again a matter in which the police will have much to do. The police may charge the people with some cases, accept bribe from them and then press them for compounding. For the Government also it is bound to give room for doing some undesirable thing, because you know that there is any amount of stealing Government property. Very top officials are involved in theft of Government articles. Well, Government can come forward and say that it is only a compoundable offence and there is no chance of recovery. The officer concerned continues in service. When once the offence is compounded, what is the result? If there is no conviction there is no moral turpitude the Government servant can

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go on in service. In such cases, even if it is a theft of a lakh of rupees worth of property, the Government servant who has the capacity to manage with the police and move them for compounding, will find that he has nothing to fear about and he will not lose his job. Therefore only to give such room to the government servants that Dr. Katju has introduced these measures.

After having said this, I would only warn Dr. Katju that if he is not prepared to think now of withdrawing this Bill as a whole the country will rise against the obnoxious and hideous outrage on criminal justice. People will not tolerate this. You have not consulted the people. The Home Minister has only consulted the specialised organisations which only read the law from books or perhaps administer law to others. The vast bulk of people will certainly have to rise in protest against Dr. Katju and his obnoxious measure, because he is not even prepared to have this Bill circulated. Therefore, Sir, I sit down with this warning again to Dr. Katju that unless he sees to it that a very large measure of public opinion is elicited on this Bill, days are not far off when the people of India will rise as one man and prevent the working of this obnoxious Act.

I also appeal to the Select Committee that when they consider this Bill they should also bestow proper attention and consider whether it is not high time to repeal the most severe lawless provisions which are now in the Code and about which Dr. Katju has all along remained very significantly silent. Unless they do that, the Select Committee, I am afraid, will not be discharging its duty to the country and the people.

The Deputy Minister of Home Affairs (Shri Datar): Sir, we are having a debate on the amendments in the law of criminal procedure for the last four days. This debate has given expression to two cross-currents of opinion. One opinion was expressed by a few but representing an influential section of the public. It was to the effect that we had not gone far enough and that the law ought to be stronger and more revolutionary. Mr. C. C. Shah the learned advocate of the Bombay High Court, who spoke day before yesterday, thought that we had not gone far enough and that in order to achieve our aims in view we ought to have a more progressive and almost revolutionary change so far as the system of law is concerned. On the other hand, we have opinions expressed very strongly by those hon. Members of this House who have also been practising lawyers, and while hearing their remarks or, rather, their vehement and bitter attacks, I was wondering whether in this House they were considering the larger interests of the country, or whether they were only thinking of the rights and privileges of the accused. So far as the Criminal Procedure Code (Amendment) Bill is concerned, it was also entirely wrong on the part of certain hon. Members of this House to have likened it either to the Preventive Detention Act or to the Press (Objectionable Matter) Act. So far as those two Acts are concerned they subserve a certain purpose and are meant against certain contingencies. Now, when we deal with the law of criminal procedure, then I would point out to this House that we have undertaken this amendment in the criminal procedure law as one of the many steps which the Government and the people will have to take for the purpose of improving the criminal law administration in country. We are aware that administration of criminal laws cannot be made perfect necessarily or solely by the passing of the present Amendment Bill. There are other factors as well. We desire the co-operation of the public to the fullest extent possible. We are also aware that the police machinery has to be improved to the extent that improvement is necessary. We

desire that, as the Home Minister clearly pointed out, every man in the land must consider that it is not only an obligation on his part, but a privilege to take part in helping criminal justice to the fullest extent possible. It is for these reasons that this amending Bill has been placed before the House, as one of the numerous measures which Government desire to take and which the Government also desire the public to take, because we must have, what we call, a many-pronged measure for improving society. Ultimately, administration of criminal justice is one of the many factors which have to be improved to the extent that an improvement is necessary.

Now, what is exactly the purpose of criminal justice? There are anti-social elements within the country, who are not prepared to respect the rights of others. It is the duty of the Government to prevent wrong action and if wrong actions are done, to punish those wrong doers. Under these circumstances, the House will be aware that we have got certain factors or personalities to be considered. One is the public at large. The whole House will, I think, agree that the public at large is greatly or vitally interested in having justice done to themselves in the long run. For example, if a murder is committed or a theft has taken place, that must be considered as an offence against society itself. If in a given case, you have an offender, who, according to ordinary principles has actually committed the offence, and if, on account of certain technical defects or other reasons which are extraneous to the administration of justice, such an offender escapes from the clutches of the law, you have to consider that the interests of society as such have been surrendered or given away. Therefore, whenever we consider the question of an amendment of the criminal law or establishment of a system of criminal law, we have to take into account, in the first instance the larger interests of the community. You have to have two factors in view. One is that no person should be harassed and no innocent person should be brought to book, or punished. This principle has been accepted. Simultaneously with this, we desire that an equal emphasis should be laid on the fact that those who are guilty ought to be punished. We have had this from the days of Manu. You will kindly note that the King's duties were twofold and not one, according to Manu's system; 2,500 years ago, Manu said:

अदंड्यान् दंड्यन्राजा दंड्याश्चेवाप्य दंड्यन्
अयशो महदाप्नोति नरकं चाधिगच्छति।

We are not concerned with the other aspects. So far as Indian jurisprudence is concerned, we are entitled to take into account the fact that a guilty person has to be punished or brought to book in the same way as an innocent person has to be safeguarded.

Then you will find that so far as the present criminal law is concerned, we have followed the principle that has been laid down in the English law, which is that it does not matter if 100 guilty persons escape, but one innocent person should not be punished. To some extent this principle is good. We have also to understand that in the interests of the security of society, for the establishment of a society which is free from all such anti-social elements, we have to give consideration to or lay emphasis also on the other aspect, namely, that the guilty person has to be brought to book or punished. Therefore, I would request this House and through this House the Select Committee to consider this question. Even in England, they are not now overdoing the application of this principle.

Then, so far as India is concerned, for certain reasons which were perhaps very good in those days, the then Government of India considered, in view of the peculiar conditions in India, and the helpless condition of the masses,

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that even the accused ought to be given the largest protection or privilege. We have developed a law, mostly a law developed by the judgments of the various courts. You will find that whenever there is a trial, there are certain circumstances in which an accused cannot be convicted at all. There are certain technical defects and you have got also what is called the benefit of doubt. In an ordinary civil case you will find that if there is a preponderant certainty either in favour of the plaintiff or the defendant, naturally a decree proceeds in favour of the plaintiff or the defendant. In a criminal case, if, for example, the magistrate comes to the conclusion that there are some elements which throw some doubt, the case law that we have developed tells us that the benefit of doubt has to go to the accused.

Shri Debeswar Sarmah: Not some doubt; reasonable doubt.

Shri Datar: If there is some reasonable doubt, that has to go to the accused. Either on account of technical defects in the law or on account of the application of the principle of benefit of doubt, or on account of other defects in investigation, etc., oftentimes you have got acquittals which are perfectly legal according to the case law that we have developed, but which cannot be sustained so far as the larger interests of the country are concerned. On a number of occasions it has happened that people who have committed murders have got away. I would point out to the House in all earnestness that this leads to a sense of disbelief in the justice and also to a sense of demoralisation. Suppose a murder takes place in a village and the persons in the locality know who the culprit is. If, on account of a number of other circumstances, the culprit goes scot-free and escapes from the clutches of the law, we as defence lawyers are satisfied that our client has escaped. We are satisfied that we have succeeded. But, I would implore Members of this House who are practising lawyers to look at this case from the larger interests of society, in the sense of security of the people at large. You know, sometimes there is a reluctant acquittal also. The judge finds that he cannot but acquit on account of certain circumstances. In those cases, the people in the villages do not know why he has been acquitted or whether the acquittal is right or wrong. In all these cases, you will find that the whole atmosphere is entirely demoralised. The faith of the people is gone.

Shri N. S. Jain: Is there any provision in this Bill whereby the benefit of doubt is sought to be reversed?

Shri Datar: There is no provision in this Bill at all, but I am merely pointing out to you the other side of the shield. There is no such provision, but I want to point out to you that ultimately in the highest interests of the country we must have a Code of Criminal Procedure which would advance the interests of the country both by punishing the wrong-doers and also by saving those who are not guilty from the clutches of the law. That is the view that we have placed before ourselves.

Shri N. Sreekantan Nair (Quilon *cum* Mavelikkara): Do you agree to a people's court where a mass trial can be conducted by the people themselves?

Shri Datar: The other points that have been touched I would mention very briefly.

Shri V. P. Nayar: What about this?

Mr. Chairman: It is not necessary that every question should be answered.

Shri V. P. Nayar: The inference is he could not.

Shri Datar: It has been asked why we did not appoint a Criminal Law Commission to go into the whole question. So far as that question is concerned, I expected this House to congratulate the hon. Home Minister for

having brought this amending Bill within ten months of his announcement on the floor of the House. Now, you will kindly understand why I am making a reference to this. Any commission, especially a Commission of the nature which was asked for or demanded by this House, would take at least three years to report and for the Central Government and the various State Governments to consider that report. In that case any Bill that the Government could sponsor would at least have taken three years. Immediately after the present Government came into power they found that already in their records there was a considerable expression of public opinion not only by the States but by others also, and therefore they addressed a long letter to the State Governments. That letter with a note was circulated to all the Bar Associations and the judges early in 1953 and we got considerable opinion. I would also point out to this hon. House that during the last one year there have been numerous occasions when our proposal was published and the press has always found this Bill to be a welcome measure. In most of the newspapers, either in English or in the Indian languages, you will kindly note there has been a general welcome extended to the fundamental principles on which this new Bill has been based.

Pandit Munishwar Datt Upadhyay (Partapgarh Distt.—East): Are the provisions in the Bill based on the opinions received?

Mr. Chairman: The hon. Minister is not inclined to give way.

Shri Datar: I am not inclined to give way at all.

Shri Debeswar Sarmah: Advocates in weak cases shout the loudest.

Shri Datar: That is the privilege of the hon. Member.

Mr. Chairman: The hon. Minister may also address the Chair. Then there would be no trouble.

Shri Datar: Then the different States sent their proposals and we had a mass of opinion—public opinion, press opinion and the opinion of the States also. When all this opinion was considered by us, we found that we had a very valuable bit of public opinion on which it would be sufficient for the Government, if they desired speedy action, to immediately to come to certain conclusions and to bring a draft Bill before this House. In spite of all this opinion which we had before us, the Home Minister had made it quite clear that this is a matter which is in the highest interests of the country and therefore Government are prepared to treat it as a non-party measure, because, after all, we shall not be satisfied only with the passage of this Bill, but we do desire to bring about a change in the society itself. This is one of the numerous measures for effecting a welcome change in the whole structure of society. For that purpose this particular Bill has been brought forward.

Another point was made, that this Bill is not liked by the people at all. I would point out in all sincerity that the underlying principles of this Bill are such as to make it a popular measure so far as the public are concerned, because the public at large are not necessarily interested only in the accused. They are interested in the administration of justice. They are interested also in the complainant who is an aggrieved party and who is entitled to better consideration at the hands of all of us than even the accused, and therefore we have brought forward this Bill.

There are three or four important features of this Bill which I should like to place before you. Objection was raised that the present system of criminal justice was dilatory, expensive and complicated or technical. It was dilatory to a certain extent, but there were certain provisions of the statute or law which made it necessary for the courts or the magistrate to adjourn the cases from time to time. There were also certain provisions which

[Shri Datar]

could be abused with impunity without the Magistrate being able to stop such abuse of those provisions. For example, you will find that in the case of transfer applications, in the case of *de novo* trials, there are certain provisions to which I shall make a very brief reference, where it is open to the accused to take advantage of these provisions and to protract the trial, if not to defeat the ends of justice.

Shri Lakshmayya (Anantapur): May I know what are the safeguards for the innocent accused?

Mr. Chairman: The hon. Member already knows that the Minister is not giving way. Therefore, he should not interrupt.

Shri Datar: I am interested in safeguards not necessarily for the accused, but also for the aggrieved persons and also for the society at large, and therefore I am not looking at it so far as the defence is concerned. I am looking at it so far as the public are concerned, and I want to point out to you that so far as the accused are concerned, even the provisions as they would be amended would leave sufficient protection or safeguards for the interests of the accused. The safeguarding of the interests of the accused does not require that he should be allowed to cross-examine the witnesses at any time when he pleases and have as many number of times as he likes. That is a provision which has to be put a stop to. If, for example, there is a case against an accused, naturally the accused or his lawyer must know what his defence is and must be ready to cross-examine the witnesses as and when they come. He cannot depend upon the provisions of the law, he cannot depend upon his sweet will and insist that he is entitled to cross-examine at different stages. That is a point which has to be understood very clearly and therefore you cannot stretch the rights or the privileges of the accused at the cost of postponing the litigation. I am one of those persons who believe that especially in criminal trials the matter must be brought to an end as early as possible. If there is a murder trial and if the murderer is found to have committed murder after two or three years and he is hanged, then the moral effect of bringing such a person to book would all be lost because people will forget and in this process there are also other difficulties, and therefore we are interested in seeing that there is a speedy trial, and attempts have been made in the present Bill to see that no real injustice is done to the accused, though we have also seen that no undeserved advantages are extended to the accused at all.

Then, as the Home Minister has pointed out, it is our desire that the people at large should feel that criminal justice is a matter in which they must co-operate and take as large a part as possible. That is the reason why we have introduced certain provisions with a view to make the people feel that it is their duty to extend all help not only so far as the evidence is concerned, but also so far as help in investigation is concerned.

We have heard on a number of occasions, and even now, condemnation of the police to the fullest extent possible. The police is also an arm of the Government and it is our duty to improve them to the extent possible, but you cannot say all the police are bad. It was extremely regrettable that some hon. Members especially from the opposite side went to the extent of saying that all the police are bad and the Magistracy are the hand-maids of the police. On behalf of the Government of India, I would repudiate the allegation with all the strength at my command. It is entirely wrong to say that our magistracy are not carrying on their duty as efficiently and as impartially as they are expected to do. It would be extremely wrong to go on condemning the whole class of magistrates.

Shri S. S. More: Does that mean that there is no reason for the separation of the judiciary from the executive?

Shri Datar: No. If the hon. Member had waited for one more minute, I would have mentioned this point.

Shri Altekar: The hon. Member has failed to note that the judiciary has been separated from the executive, in his own State.

Shri Datar: I would point out that in most of the States, the judiciary has been separated from the executive. (*Interruptions*). You can take for instance, the State from which my hon. friend Shri S. S. More comes.

In addition to this, you will also understand that the enforcement of the conditions of service of the magistrates is not left to the executive at all, but it is in the hands of the High Court. That must be understood very clearly. It is the High Court under whom the whole magistracy or judiciary are now carrying on their work. That is one of the fundamental principles on which the separation of the judiciary from the executive has been mentioned.

Shri Debeswar Sarmah: Is that so in Delhi?

Shri Datar: Delhi is a Part C State, and we have the Government of Part C States Act. (*Interruptions*).

Mr. Chairman: The hon. Minister may continue his speech and address the Chair.

Shri Datar: So far as Delhi and other States are concerned we are anxious that the popular Ministries take this question also into account; they might have their difficulties.

I rely upon this circumstances of the control that the High Courts have on the magistracy and the judiciary in the country, for that is a point of extremely great importance. Though the orders are issued by Government, yet actually it is the High Courts which have got the last word, and we respect their word also. Even for appointments, transfers, etc., the High Courts have been given the fullest powers. In the face of all this, it was extremely unfortunate that some Members needlessly made some adverse comments.

Something was said about lawyers also. My hon. friend there said something, and he withdrew it later, but some portion of the venom still remains. So far as the lawyers are concerned, be it said to their credit that a very large number of lawyers or advocates is above these temptations. It would be entirely wrong to say that the lawyers encourage or instigate perjury. That would be a statement which would go against all truth. We have, for example, great lawyers like.....

Shri Punnoose (Alleppey): We can understand your defending the police. But why defend lawyers?

Mr. Chairman: That is his opinion.

Shri Datar: Lawyers constitute a limb in the administration of justice, and I am pointing out to this House that lawyers are doing their work in an extremely good manner, though there might be black-sheep here and there. In this connection, I would like to invite the attention of the lawyers in particular and the other Members of the House also to the autobiography that our Speaker has been writing and publishing week after week.

Shri S. S. More: Present us a copy.

Shri Datar: You would find that we have got such great lawyers, who always take into account the moral side. I would invite the House also to read the recollections of the Home Minister, so far as the way in which the thing has to be conducted is concerned.

1 P.M.

Shri S. S. More: On a point of order, Sir. Since he has referred to two autobiographical recollections, will they form part of the proceedings of this House? (*Interruptions*).

Mr. Chairman: There is no point of order. They need not form part of the proceedings.

Shri Datar: I am merely pointing out that we have got great lawyers who lay emphasis on the moral side of the case and, therefore, the interests of the public are safe in the hands of such people whose number is many in India.

Now, there are also a few controversial matters to which reference has been made. I would pass on very briefly through them. So far as defamation is concerned, it is stated that defamation of Ministers and public servants should not be a cognisable offence at all. Here in this case, it has been made a cognisable offence for the purpose that so far as their own work is concerned, it should not be disturbed. Now, the only legitimate fear that one can have in this connection is that they are likely to be harassed when the case is filed. Now, the process of harassment might be there in a very small number of cases. In all such cases, even now the practice that we have been following is that whenever in the course of any judgement, there are remarks made by the judge that certain pieces of conduct on the part of the investigating officers were far from correct, then immediately the Government takes notice of these and acts in the interest of real justice. Wherever there are instances of any harassment, Government would surely take that into account. Even now, it is open to a Minister or to a public servant to file a complaint. That right to file a complaint is always there, and that is done. Then the police officers are asked to make an inquiry and ultimately the matter goes to the magistrate or the judge—the sessions judge mind you, not necessarily only a magistrate— and the whole matter will be settled. If any wrong or over-zealous action on the part of the police officer is found, then surely Government have powers which are large enough to punish such offenders.

Shri N. P. Nathwani (Sorath): May I seek a clarification from the hon. Deputy Home Minister.

An Hon. Member: Why?

Shri S. S. More: He is a Congressman.

Shri N. P. Nathwani: May I know why imputations against public servants respecting their private character are made a cognisable offence? May I know the explanation from the Deputy Minister?

Shri Datar: They have not been made cognisable.

Shri N. P. Nathwani: Why? Where is it mentioned that imputations concerning or respecting their conduct only in the discharge of public functions are cognisable? Where do you find it?

Shri Datar: So far as this question is concerned, the hon. Member has raised a very important point and the Select Committee will introduce certain provisions, if at all they are necessary. But Government's intention is only to deal with cases of defamation so far as their public functions and public character are concerned.

Pandit Thakur Das Bhargava (Gurgaon): It is already down there.

Shri Raghavachari: It is already provided.

Shri Datar: Something was said about honorary magistrates. Honorary magistrates as a class have worked well at least in certain parts of India. Formerly, what happened was that there was a defective method so far as their appointment was concerned. Now, we have laid it down that they must have some judicial experience. In the conditions of the State Governments, it has been made clear that some educational qualifications also should be laid down. That is the reason why the system of honorary magistracy will be introduced only to the extent that it is necessary.

I have dealt with the main question and I desire that we should look at it from the larger point of view. I am quite confident that all hon. Members would go through the numerous features of this Bill which have not been

referred to but which are more important. I would not take the time by enumerating all of them. Most of those features, the house will find, are of a progressive character.

Mr. Chairman: Shri Nand Lal Sharma.

सरदार ए० एस० सहगल : क्या मंत्री जी यह बतलायेंगे कि जो आनरेरी मजिस्ट्रेटस आप मुकर्रर करेंगे उनको किसी किस्म की ट्रेनिंग देने की आप व्यवस्था करेंगे ?

सभापति महोदय : यह तो डिटेल की बात है, यह बाद में तय हो जायेगा । इस वक्त इसको पूछने की जरूरत नहीं है ।

श्री नन्द लाल शर्मा अपनी स्पीच शुरू करें ।

श्री नन्द लाल शर्मा (सीकर) : धर्मेण शासिते राष्ट्रे न च बाधा प्रवर्तते, नाग्नयो व्याधयश्चैव रामे राज्यं प्रशासति ।

Shri Debeswar Sarmah: May I know whether other Members have any chance to catch the Chair's eye; or there is a list by which Members catch your eye?

Mr. Chairman: How can I say in advance?

श्री नन्द लाल शर्मा : सभापति महोदय, भारतीय दंड प्रगति पद्धति संशोधन के सम्बन्ध जो हमारे गृहमंत्री महोदय ने परिश्रम किया है उसके लिये मैं उन्हें धन्यवाद और बधाई देता हूं । इसमें सन्देह नहीं कि कमीशन अथवा और कितने ही प्रकार के उपायों से जो वर्षों में जाकर काम होना था, आपने उसको थोड़े से मास के अन्दर करने का प्रयत्न किया है, ऐसी परिस्थिति में किसी के प्रयत्न को निष्फल और दुर्भावना प्रेरित कह देना उचित नहीं है । यह भी हमारे ध्यान में बात आती है कि गत ५५ वर्षों के इतिहास में जो दंड पद्धति हमारे देश में अंग्रेजों द्वारा संचालित रही है, जो हमारे भारत की परस्थिति को पूर्णतः न जान कर जिस प्रकार का दंड प्रयोग किया गया उससे भारत निवासी सर्वथा असन्तुष्ट हैं । भारत निवासी केवल दंड प्रयोग पद्धति से असन्तुष्ट ही नहीं बल्कि न्यायालय पद्धति से भी सर्वथा असन्तुष्ट हैं और आप लोगों को इसका मान होगा कि आज सामान्य जनता में यह आम भावना है कि न्यायालयों और अदालतों में कहीं भी सत्य का वास नहीं है । जनरली हम यह जनता को शब्द कहते सुनते हैं कि यहां तो सत्य बोल दो, यहां तो कोई अदालत नहीं है, तात्पर्य यह हुआ कि अदालत में झूठ ही बोलने का काम होता है । ऐसी परिस्थिति में हमारे सामने जो भी संशोधन उपस्थित हों, उनको रखते समय यह एक दृष्टिकोण हमें अपने सामने रखना होगा कि सत्य पर न्यायालय कैसे पहुंच सकें ? उसके लिये मैं बड़ी नम्रतापूर्वक निवेदन करूंगा कि उसको प्राप्त करने के लिये केवल दंड प्रयोग पद्धति में संशोधन ही पर्याप्त नहीं होगा, आपको साक्षी पद्धति, एवीडेन्स ऐक्ट का संशोधन करना आवश्यक होगा । उसी के साथ आपका सिविल प्रोसीज्योर जो है जिसके बारे में कहा जाता है कि दीवानी मनुष्य को दीवाना कर देती है, उस सिविल प्रोसीज्योर में भी आपको संशोधन करना होगा और साथ साथ में दंड विधान, पैनेल कोड में भी संशोधन करना होगा, क्योंकि सिद्धांतः यह बात स्वीकार की जा चुकी है कि :

"दंड : सुप्तेषु जागर्ति"

जिस शासक का दंड बलवान होता है, उस शासक की प्रजा में शांति और सुरक्षा की भावना रहती है । परन्तु हमें दुर्भाग्यवश इस बात का अनुभव इस दिल्ली नगरी

[श्री नन्द लाल शर्मा]

के अन्दर हो जो भारत की राजधानी है और जहां पर पार्लियामेंट बैठती है करना पड़ता है और हम देखते हैं कि दिन दहाड़े यहां पर कत्ल होते हैं और डाके पड़ते हैं और जनता सर्वथा असहाय सी यह सब होते देखती रहती है और यह भी हमारा दुःखपूर्ण अनुभव है कि बड़े बड़े पुलिस आफिसर्स के पास पले हुये गुंडे रहते हैं और वह उन गुंडों को इस लिये पालते हैं कि वह मौके पर उनके काम आयें । मुझे इस बात का भी अनुभव है कि एक आध स्थान पर यदि सौभाग्यवश कोई ईमानदार और सत्य का आश्रय लेकर काम करने वाला पुलिस कर्मचारी पहुंच भी जाता है और वह मुस्तैदी से गुंडों को पकड़ना शुरू कर देता है और करप्शन और भ्रष्टाचार को मिटाने के लिये काम करता है तो दो दिन के अन्दर विभाग वाले अन्य लोग सब उसके शत्रु बन जाते हैं और उस बेचारे को काम करना असम्भव हो जाता है और वह बेचारा हम लोगों के पास आकर एकान्त में रोता है, विभाग में होने के कारण और सर्विस कंडीशन की वजह से वह और ज्यादा तो कह नही सकता, मैं चाहता हूं कि हमारे गृह मंत्री महोदय उस ओर भी ध्यान रक्खें । मैं यह मानने के लिये तैयार नहीं कि पुलिस आफिसर्स सारे के सारे डिस्आनेस्ट हैं, परन्तु चीज यह है कि जिस तरह से खद्दी का अगर एक तार बिगड़ जाय तो काम रुक जाता है और अगर उस एक तार को न सुधारा जाय तो सारे का सारा ताना ही बिगड़ जायगा और इस लिये उसको ओवर हाल करना पड़ता है, उसी तरह से हमें भी इस व्यवस्था में ओवर हालिंग करने की जरूरत है तभी हमारा काम ठीक तरीके से चल सकता है । आज हो यह रहा है कि अच्छा आदमी काम नहीं कर पाता, जो व्यक्ति सचमुच पाप को मिटाना चाहता है वह काम करने में समर्थ नहीं होता । इसी लिये हमारे शास्त्रकारों ने और हमारे धर्म शास्त्र ने इस ओर ध्यान दिया है । चालीस वर्ष का अनुभव हमारे माननीय गृह मंत्री को है । हमारा सौभाग्य है कि वह हमारे गृह मंत्री हैं, कम से कम विदेश मंत्री नहीं हैं । हमारे घर से उनका सम्बन्ध है । मैं उनसे एक निवेदन करूंगा कि आप यदि आज ५५ वर्ष की उस अपनी दंड नीति की गुलामी के बाद आप भारत वर्ष का दंड विधान संशोधित करना चाहते हैं, तो आपको अपने उस पुराने दृष्टिकोण की गुलामी को छोड़ना होगा । आपको यह ध्यान नहीं आता, यद्यपि थोड़ा बहुत दंड विधान मैंने भी उसी अंग्रेजी ढंग से पढ़ा है जैसे आप लोगों ने अध्ययन किया, मैं मानता हूं कि उस दिशा में आप का बहुत अनुभव है और आपने काफी काम भी किया है, परन्तु मैं कहता हूं कि आपका जब तक वह दृष्टिकोण नहीं बदलेगा, भारतीय सिद्धांत जुरिसप्रूडेंस का जब तक आपके मस्तिष्क में नहीं बैठ जाता है तब तक आप मेरे दृष्टिकोण से अथवा भारतीय दृष्टिकोण से पाप और कदाचार को मिटाने में कभी समर्थ न होंगे । आपका मार्ग वही है जो मार्ग पहले आपके गुरुओं ने सिखाया, दूसरे मार्ग पर इस समय चलने के लिये तैयार नहीं हैं :

गुरुरात्मवतां शास्ता राजा शास्ता दुरात्मनाम्
अथ प्रच्छन्न पापानां शास्ता वैवस्तो यम : ।

शासक केवल उन्ही बातों के लिये दंड दे सकता है जिनको वह अपनी आंख से देखता है और जिसकी कि आप साक्षी दे सकते हैं लेकिन जिनकी साक्षी नहीं दे सकते हैं उनके सम्बन्ध में कभी भी शासक दंड देने में समर्थ नहीं है । इसी लिये भारतवर्ष के अन्दर एक न्यायाधीश अपने सामने

आने वाले साक्षी को कहता था और स्पष्ट रूप से कहता था :

लेकिन आज दुर्भाग्य की बात है कि हम देखते हैं कि कोर्टस में एक व्यक्ति को खड़ा कर दिया जाता है और उससे कहा जाता है कि बोलो राम राम और वह राम राम कह देता है, न तो मजिस्ट्रेट को इस बात का ध्यान है कि उस ने राम, राम कहा है और न ही कहने वाले को इसका कोई ध्यान है कि उसने गवाही देने से पहले राम शब्द का उच्चारण किया है और हमारी यह अवस्था आज इस कारण है कि लोगों का धर्म में विश्वास नहीं रह गया है, आपकी सेकुलर गवर्नमेंट ने लोगों के अन्दर से उस धर्म के तत्व को नष्ट कर दिया है और उसका फल यह है कि आप हजार बार अमरीका, इंगलैंड आदि देशों की तरह संसार के कल्याण के लिये चिल्लाते हैं लेकिन कार्य वही होता है जो संसार का सर्वनाश करता है । मैं इस लिये आपसे निवेदन करूंगा कि आप इन सब बातों पर ध्यान देंगे और तदनुसार संशोधन करेंगे । आपने इस बिल के स्टेटमेंट आफ आबजेक्ट्स एन्ड रीजन्स में यह दिया है कि :

"People should feel the Courts to be their Courts."

मैं कहता हूं कि यह कैसे सम्भव है जब कि आज हालत यह हो रही है कि जब कोई व्यक्ति कोर्ट में जाता है तो पहले पेशकार की आवाज आती है कि मेरा हक़ दो, उसके बाद सामने जो अर्दली खड़ा रहता है वह अपना हक़ मांगता है, ये लोग ठीक मजिस्ट्रेट की आंख के नीचे पैसा लेते रहते हैं, मजिस्ट्रेट आंख से सब कुछ देखता है लेकिन मुंह से कुछ नहीं बोल सकता, क्यों कि मजिस्ट्रेट को टाइपिस्ट नहीं मिलता, मजिस्ट्रेट को दूसरा नौकर नहीं मिलता वह वहां से हक़ की कमाई कमाता है, वह पेशकार मजिस्ट्रेट के लिये नौकर भी रखता है, उनके लिये टाइपिस्ट भी रखता है, मजिस्ट्रेट चूं तक नहीं कर सकता, ऐसी परिस्थिति में आप यह कैसे उम्मीद कर सकते हैं कि जनता यह अनुभव करे कि ये हमारी अदालतें हैं ? मैं फिर साफ कर दूं कि इससे यह न समझ लिया जाय कि संसार में कोई अच्छे सज्जन हैं ही नहीं, कहावत प्रसिद्ध है कि पांच उंगली सदा एक सी नहीं होतीं, लेकिन अधिकतर जनता के अन्दर यह भावना विद्यमान है कि सत्य का कोर्टस से कोई सम्बन्ध नहीं है, बल्कि हम लोगों को तो पढ़ाया ही यह जाता था . . . .

Mr. Chairman: The hon. Member might continue tomorrow. The House will now stand adjourned till 8-15 a.m. tomorrow.

The House then adjourned till a Quarter Past Eight of the Clock on Friday, the 7th May, 1954.