

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

Mr. Speaker: The House will now take up further consideration of the motion for reference to a Joint Committee of the Code of Criminal Procedure (Amendment) Bill, moved by Dr. Katju, along with the motion moved by Shri S. V. Ramaswamy regarding his Bill, together with the amendments moved in the House.

The Minister of Home Affairs and States (Dr. Katju): Sir, we have had a very long debate on this Criminal Procedure Code (Amendment) Bill. Many hard things have been said. So far as it concerns me I do not mind, but I confess that the exaggerated extravagant and one-sided language which was used for condemning classes of people who are not here to defend themselves has pained me a great deal. This Bill may not be perfect. I have been saying right from the start that it was open to the hon. Members of this Parliament to improve it in any way they like, but I have been called in so many words a sort of 'hang-man' as if I was here to see that no justice was done and everyone who was brought before a court of law was condemned without trial. I shall deal with all that in a minute, but in the meanwhile I should like to dispose of some preliminary points.

It was suggested by hon. friend—who is not here this morning—from Calcutta or Bengal, Mr. Chatterjee, that he was greatly disappointed because I had not referred this matter to a Law Commission. He suggested that the Law Commission should have consisted of the Chief Justice of India, one or two Chief Justices of the different High Courts, leading lawyers, Advocates-General, Members of Parliament and leading public men; that they should have travelled up and down the country and then produced a report after examining everybody in India interested in this

matter. Now, I respectfully submit that nobody denies the urgency of this problem. One hon. Member after another has confessed that today the Indian public has almost ceased to have any confidence in the criminal courts. They think that justice is not administered there and I should have thought that we should have taken cognizance of this sentiment of urgency. If you want to have a matter postponed almost indefinitely, appoint a committee over it. Please remember one thing, that in the past many committees have sat on this matter and yet nothing has come out. It is not as if this Parliament today is called upon to deal with this matter without any proper information. In recent years, committees have been appointed in the different States. In the United Provinces a committee was appointed under the chairmanship of one judge of the Allahabad Court, known as the Wanchoo Committee. There was another committee in Bombay and a third committee in Calcutta under the chairmanship of the Chief Justice of the Calcutta High Court. Unfortunately I have not got my papers just now here where I have got a list of these committees. They all spent years and took evidence. All that material is available with me which can be considered by the Select Committee and both the Houses of Parliament. Then, as I said in my opening speech, from 1951 onwards the Home Ministry has been consulting the various State Governments. At the instance of the Punjab Government—a letter which has been circulated and hon. Members would have seen it—we wanted to make it as comprehensive as possible. Opinions were coming in; there were almost hundreds, and then I circulated a memorandum, a big memorandum, dealing with the whole topic and I expressed my gratitude for the assistance and the advice which has been extended to me by every single judge of the Supreme Court, by all the Chief Justices of the High Courts, Advocates-General, State Governments, Bar Associations etc. Then, on the top of

it, this Bill itself, with your permission Mr. Speaker, I published in the gazette and I was surprised to see the next morning, practically in the entire press of India, one full page containing six columns, dealing with the relevant provisions of the Bill. That Bill differs very minutely from the Bill which we are now discussing. In a Press Conference which I had, I held out an invitation to the entire people of India, Bar Associations, judiciary and everyone interested to send opinions and my appeal was successful. I got 207 opinions. My hon. friend, whom I respect very much, said: "There are 36 crores of people, and what has been the response; only 207 opinions?" Probably, he expected 36 crores of people at least to send 36 lakhs of opinions.

Babu Ramnarayan Singh (Hazari-bagh West): At least one lakh.

Dr. Katju: Yes, at least one lakh. These 207 opinions included 56 Bar Associations—my hon. friend ventured to describe these Bar Associations. There were about 40 to 50 district sessions judges, High Court judges, individual lawyers, State Governments; all these people sent their opinions. What more do we want? Here, the problem is an urgent one. A Bill has been introduced before you, which is taken into consideration and which is founded upon all those materials which have been accumulating for all these years, and my hon. friend now says that the material is not here. I see that there is a motion for reference for eliciting public opinion. What sort of public opinion will come now? I do not want to drag on this matter. The proposal is to refer it to a Select Committee. The motion for eliciting public opinion is that public opinion may come by the 31st of July. I do not know what the Chairman of the Select Committee will decide as to the dates of sitting. Supposing this motion is carried, what will be the decision about the sittings of the Joint Select Committee. We will be rising here on the 21st or 22nd of May. The House has been

working for more than three months. I imagine hon. Members would like to have a holiday of five weeks or six weeks. (Some hon. Members: Going back to their constituencies.) They will not be able to come and work here. So far as I can see, the Select Committee will not be able to meet before the 15th of July. Today is the 8th of May. I hold out again most prominently a general invitation to everybody in India, interested in this topic, instructed as he has been by this four days' most illuminating debate to send his opinion on this Bill either to the Parliament Secretariat or to the Home Ministry or addressed to you, Sir, and all that will be laid before the Select Committee. We must pay some attention to the urgency of this matter. We do not want to get it adjourned for three years, six years. Therefore, I say that any move for circulation of the Bill, will be, I use in the neutral sense of the word, a sort of dilatory tactics. We do not want it. We want to get on with the Bill. I am not wedded to any particular section of the Bill. I am most eager that this thing should get through, should be discussed.

My hon. friend from Gorakhpur, Shri Sinhasan Singh, said that he wants to discuss the whole Bill. Welcome. Because we are dealing with the summary process, we are dealing with the warrant process, we are dealing with the sessions process, we have suggested something and it will be quite in order so far as I understand, and I am perfectly prepared to support that in the Select Committee efforts may be made to recast the whole of the summary process, recast the whole of the warrant process, recast the whole of the sessions process as the Committee likes. The whole thing is connected together. This is a non-party matter. I am not going to take advantage of any technical rules and say that this is an amending Bill and so we must go to that extent and not farther. If you like, you can open the whole Code. I shall be there to assist you. My

[Dr. Katju]

My hon. friend from Bulandshahr said that he hates the Bill and he wants to tear the whole Criminal Procedure Code. My hon. friend Pandit Thakur Das Bhargava said that he looks upon every Bar Association in India as a den of perjury. It is a very vivid eloquent description. It catches the imagination. I have heard of gambling dens being closed by executive order. I do not know which is worse: a gambling den or a den of perjury. Let us close both. We get rid of the lawyers; we get rid of the Criminal Procedure Code. We get rid of the police because it is inefficient, corrupt. My hon. friend Shri Frank Anthony said that the judicial officers were the minions of the executive. You were not here, Sir; there was not one phrase that he did not use. He said that they were under the thumb, under the clutches. God knows under what, under the heels of the police. We get rid of the Members of the Bar, we get rid of the Criminal Procedure Code, we get rid of the judiciary and this land becomes a paradise. That is what my hon. friend Pandit Thakur Das Bhargava is driving at. It really makes me angry. I am prepared to discuss the whole Code. My hon. friend said that he looks upon the Criminal Procedure Code as a reminder of the days of our slavery. Well. In the Select Committee let us have a Code of Criminal Procedure, 1954, 5th year of our deliverance. I have no objection.

Dr. Lanka Sundaram (Visakhapatnam): May I interrupt the hon. Minister? Would you accept Shri Sinhasan Singh's amendment to the motion?

Shri S. S. More (Sholapur): He has already said so.

Mr. Speaker: Order, order. Let there be no cross talks. The hon. Member may address the Chair. The question posed is, would he accept the amendment moved by Shri Sinhasan Singh. That is the question.

Dr. Katju: I have no objection to it. Let us examine the whole thing because it is all inter-connected. I shall come to that in a moment.

Attention has been drawn in the debate with full vehemence, absolutely astonishing, to four or five sections of the Bill. Member after Member, I do not know the places from which they come, rose and concentrated on sections 161, 164, 207, the perjury section and the defamation section. That is the analysis. This Bill makes a number of provisions for hundreds of things. There are 100 amendments here. No one has said a word about them; these are the only five things which were referred to.

Dr. Lanka Sundaram: That is the matrix. (*Interruption*)

Mr. Speaker: Order, order.

Dr. Katju: Mr. Speaker, I have no objection to the Select Committee going through the whole Code because it is all inter-connected matter. If you examine the warrant process, you will have to go through the whole thing, so also sessions process.

Then, my hon. friend said, I want a Select Committee of the House. I do not know what it is. The Select Committee that we have proposed has 33 Members of the House of the People.

Pandit Thakur Das Bhargava (Gurgaon): I never said that I was not on the Select Committee; I never complained. This is entirely wrong. I never said that because I am not in the Select Committee...

Mr. Speaker: No, no.

Dr. Katju: My hon. friend said that there should be no Joint Select Committee, and that there should be a Select Committee of the House. Consider this. Am I not entitled to call it a dilatory tactics? We have developed this procedure of a Joint Select

Committee so that the two Houses combined may have an opportunity of discussing this matter, exchanging notes, exchanging ideas, trying to influence each other in the Select Committee and producing something which may represent the considered opinion of both Houses. My hon. friend says that this is a very very important matter, more important than the Constitution of India. Very well. A Select Committee of 33 Members will be able to bring a homely atmosphere. The moment you add 16 Members to it, it becomes too unwieldy. Very well. What happens? The 33 Members sit and take the usual time. Then, the Bill comes before this House. Being a most important matter, the House of the People will take 10 or 12 days and then it will go to the Council of States. There, again, if I may anticipate, they are bound to refer the Bill to a Select Committee of their own, if for nothing, simply to say that we are equal to the House of the People. Then, it goes for 3 months. They can bring a motion, just for the sake of spiting us, for eliciting public opinion. Has my hon. friend considered these things? It is a matter of the greatest urgency.

Dr. Lanka Sundaram: You have waited for 56 years.

Dr. Katju: Remember one thing. You say that the people have no confidence in the law courts. I see it every day. People are beginning to take the law into their own hands.

An Hon. Member: Where?

Dr. Katju: If a murder takes place and the man is acquitted, the whole village knows who has committed the murder. As I said to the House one day, sometimes, in the court compound he is shot. Sometimes, when the accused goes back to his village and alights from the tonga, he is shot. The people would not have him. You must inspire confidence in the people. I am also myself a lawyer. In these criminal matters, you know yourself

much better than we do. The whole Bar is on the side of the accused minus the poor, miserable public prosecutor. In Uttar Pradesh, I think there are 10,000 pleaders, if not more—pleaders and advocates. Out of them, I imagine government pleaders, as we call them, are hundred. Fifty-two districts and hundred pleaders, probably two for a district. So, the proportion is this: 9,900 advocates of varying intelligence, capacity and forensic ability on the side to get off with the offender, poor hundred government pleaders trying to do their best. And that is reflected here. You were not here. Mr. Speaker, when Mr. Anthony was speaking. I tell you, he was opposing everything. He was opposing the abolition of the commitment proceedings. Everyone has supported it. He said "No". Today, the position is this. If in the city of Ahmedabad or Kanpur or Allahabad—anywhere it does not matter—a sessions judge or a magistrate acquits every single accused, I tell you the Bar will give a grand tea party to celebrate the occasion. That is their ideal. Do they think, as Mr. Datar put it, of the public interest and see that offenders are punished? Do they think of the people who lose their wives, mothers, sisters and fathers, the bread-winner of the family who is killed, the people whose houses are looted? All the witnesses have to come again and again, again and again. They are thinking of three rights of cross-examination, four rights of cross-examination. It is becoming a mockery.

So, I respectfully suggest to you with these preliminary points that the House would be pleased to approve of this motion for reference to a Joint Select Committee. I oppose this amendment for reference to a select committee of this very House. It will be setting a very bad example, a very bad precedent. This device of a Joint Select Committee which has been reached is a device of great virtue, great expediency, and I submit it is a very wholesome device.

[Dr. Katju]

There is no reason whatsoever why it should be departed from in this case.

So far as the appointment of a Law Commission or anything like that is concerned, I respectfully suggest to you that you have got the most ample material for examining this Bill or any Bill on merits. The Select Committee will do it, and as I gave an undertaking before the Members of the Select Committee, I will get the whole thing printed. I think it will make a big volume, and the volume will be circulated to every single Member of Parliament, of both Houses of Parliament, so that they may read and digest it. They will find different opinions expressed. It is open to them to choose any.

So far as my hon. friend Mr. Sinhasan Singh is concerned, I say the members of the Select Committee, Members in the open House may move any amendment they like, may see me and we will be most helpful to them if they make any suggestion. As I said, the Bill that I got published with the permission of the Speaker was a Bill which dealt with amendments. When the opinions arrived, those 207 opinions, they suggested some more points may be included in the Bill. Many suggestions were made. We accepted some. We did not accept others. If hon. Members make any other suggestions for amendment of any other portion of the Code, they are most welcome. I shall also entertain the proposal, if it is made in the Select Committee, that the title of the Bill should be changed. We will call it the Criminal Procedure Code or anything you like.

Then, there is another amendment, Mr. Speaker, of my hon. friend Mr. Ramaswamy. He did not move it. It relates to his Bill, moved by Mr. Venkataraman. Mr. Ramaswamy has introduced a Bill in which he pleads for the abolition of the system of assessors and the abolition of trial by jury. So far as the assessor system

is concerned, the present Bill gives effect to his proposal. So there is an end of the matter. So far as trial by jury is concerned, our Bill says,—let the system remain where it is, which means that it is left entirely to the discretion of every State Government either to extend the trial by jury or not to extend it or even to cancel it.

Mr. Venkataraman has proposed that Mr. Ramaswamy's Bill may also be taken into consideration by the Select Committee which will consider this main Bill and I cordially support it, so that the whole matter may be before the Select Committee.

Shri S. S. More: May I bring one fact to the notice of the hon. Home Minister? There are some other Bills, one by Mr. Kazmi and another by Mr. Sodhia and the discussion on these Bills also was postponed because of the present Bill.

Dr. Katju: Mr. Sodhia's Bill was limited to the abolition of the system of assessors, nothing else. He did not touch the jury system. So, his object has been served. Mr. Ramaswamy has gone the whole length, jury and assessors. So far as assessors are concerned, we are with him. So far as jury is concerned, that could be examined on the facts.

Dr. Lanka Sundaram: What about Mr. Kazmi's Bill?

Dr. Katju: So much about these preliminary points.

Then there are what I may call the main points urged. In a way it is really not necessary for me to take any time of the House because if the House approves of this Bill going to the Joint Select Committee, then I imagine that every single section will be most carefully examined and gone into, but inasmuch as enormous capital has been made of those four or five or six sections, I think I owe it to the House to put forward our point of view about it.

My hon. friend said this is not the proper way of doing it. He said: "You are not going sufficiently far. The proper way of effecting the improvement is: (1) drastic improvement of the police; (2) improvement of the judiciary; (3) improvement of the members of the Bar. Unless you get this, you can make no progress". I do not know what exactly that means, whether it means you may have no procedure at all, or you may have any procedure. These are the three fountain-heads and unless these fountain-heads are purified, and the water which flows from them...

Shri A. M. Thomas (Ernakulam): One other important point, separation of the executive from the judiciary.

Dr. Katju: Separation of the executive from the judiciary. These were the four points. One of my hon friends here said these amendments must be revolutionary, radical and drastic. One of my complaints is that of negative precepts and of negative condemnation I have had enough. But, speaking with all respect, if you were to analyse all these speeches, positive or concrete suggestions will not go beyond two or three. We want drastic, revolutionary and radical changes, and goodness knows what. But what are they? Nobody has said anything. My hon. friend from Bulandshahr said "Tear up the Criminal Procedure Code". But what is the substitute? He did not answer that. My hon. friend spoke for half an hour. I waited and waited for one single suggestion of a revolutionary type. Excepting the tearing, nothing has come out.

Now, so far as the police is concerned,—Mr. Chatterjee is not here—in order to give an example of the inefficiency of the police and inefficiency of investigation, he gave an illustration of what?—of the overcrowding in Delhi on the air demonstration day, the Tilpat jam. Just consider this. What in the name of God has that got to do with this

Criminal Procedure Code Amendment Bill—and he has been a judge of the High Court—I really do not know. Then, my hon. friend, a member from the Bar, said "these dens of perjury". That is his language. The hon. Member is himself a member of the Bar Association and very likely the President of the Bar Association in his district. How am I to improve them? That is a matter for the High Court and the Bar. That is a question of professional etiquette and professional conduct. Am I to appoint Brahmins to sing *bhajans* and *kirtans* for their moral uplift?

Pandit Thakur Das Bhargava: Have Government become quite bankrupt in practical statesmanship now? Have Government suggested anything? Have you made any constructive suggestion? You are accusing us for nothing.

Dr. Katju: You are accustomed to talk in this language in the air.

Mr. Speaker: Order, order.

Dr. Katju: What has that got to do with the Criminal Procedure Code? The Criminal Procedure Code is concerned with how the case is to be initiated, how the accused is to be summoned, how the witnesses are to be examined, what is the process, is the accused to be bailed out or not, etc. If the whole of the legal profession in India—I am talking seriously—is so corrupt as my hon. friend painted it to be, then it ought to be abolished. Those who cannot be trusted should be eliminated. That is the basic rule. Either you set your own house in order, or you do not. They are the flowers of the nation. They sit here, defend the accused, talk about the right of defence and so on and so forth, but they cannot account for themselves. Do you want me to tell any member of the Bar, be good, be honest, honesty is the best policy, be fair, be truthful, do not fabricate evidence, do not cause your people to get false evidence, etc. Do they require lectures on it? That is

[Dr. Katju]

the basic principle of an honourable legal profession. If you do not do it, get away with it. If dishonesty is proved, the Bar Council should take action, and debar the man.

The Minister of Defence Organisations (Shri Tyagi): Such as giving bribes to jurymen.

Dr. Katju: If there is a member of the Bar, who manages or arranges bribes to be given to the jurymen or the police officers, I think he ought to be debarred. What has that got to do with the Criminal Procedure Code.

Then I come to the other two favourite thoughts of a hardy annual. The first is about the judiciary. It was said that the judiciary is bad in the sense that it is entirely under the control, not of the district magistrate, but of the police, and that they are the minions, cats' paws, and goodness knows what. The second point was the separation of the judiciary from the executive.

Now, I am not going to generalise. My mind works in concrete cases. I tell you honestly and in all sincerity, that I am becoming more and more increasingly proud of our subordinate judiciary. My hon. friends go back to the days of old. They do not go to the training college here, which we have for the cadets or the young people whom we select for the Indian Administrative Service, who are being brought up in a new and free atmosphere; they are the flowers of our universities, and they are our future hopes. If you go to any State in India and make an independent enquiry, you will be told—I am not talking of the police here—that the subordinate magistracy behaves well. Even today, as I was reading the newspaper, I read of the reversal of a judgment of the Allahabad High Court, by the Supreme Court. A magistrate had acquitted some person—I believe it was a bribery case or something like that. There was the

government appeal against acquittal. The Allahabad High Court allowed the appeal and convicted the man. The Supreme Court said that the magistrate's judgment was quite all right. Hon. Members here, I sometimes fear, do not realise the greatest harm that they do to their own people and to their own services by means of this general condemnation, or sweeping condemnation. If there is any particular case, the State Governments, I, and everybody else are taking the utmost steps to purify them. But if you condemn everybody in our new Indian Administrative Service or the old members of the Indian Civil Service in this fashion, what does it do? It discourages them, it demoralises them, and it makes them shameless. The more you condemn the police in the way it is being done here, the more you make them reckless, for they will say, well, there is no differentiation here, everybody is condemned, therefore, let me go ahead.

My hon. friend there is talking of the separation of the judiciary from the executive. So far as the district and sessions judges are concerned, nobody has ever suggested that a sessions judge, an additional sessions judge or an assistant sessions judge is in any way under the thumb of the executive; it is only the magistrate who is under the thumb of the police. The magistrate deals with comparatively less important cases. All important cases go to the sessions judge. I should like to know—let my hon. friends here make a survey—how many magistrates' judgments have been reversed on appeal, by the sessions judge. Has any comment been made that the judgment was perfunctory, or that it showed a bias towards the executive? We cannot have this kind of a mere condemnation by words; there must be some material to support it. I am not concerned with what used to happen twenty or thirty years back. I am talking of today, and I say that we

have got—I am not saying absolutely matchless magistracy—a magistracy which is definitely more or less alive to the functions which it discharges in this free India.

In many States, today we have got two classes of magistrates. I am not familiar with the position in Bombay, but in the Uttar Pradesh—we have invented a term for that purpose—we have what we call a judicial magistrate and an executive magistrate. So far as the judicial magistrate is concerned, he does nothing but judicial work. He has nothing to do with the police. He goes and sits in his office for six hours a day, and does only judicial business. The executive magistrate does welfare work, community project work, inspection work, and possibly also attends to some of these security clauses.

Shri Sinhasan Singh (Gorakhpur Dist.—South): The only point is they put them under district judges instead of under District Magistrates.

Dr. Katju: They are under District Magistrates, maybe for the purpose of appointment and other things. But the question is what class of work they are doing.

Shri S. S. More: That is the crux.

Shri Algu Rai Shastri (Azamgarh Dist.—East cum Ballia Dist.—West): That makes a world of difference.

Dr. Katju: So far as the appeal is concerned, the appeal is now going to be before the sessions judge. I am not saying that I am not prepared to do anything. There is the objective in the Constitution. Let it be carried out. So far as the police is concerned, we are doing our best. I wish hon. Members, when they find a little time—not in the hot weather, but if they like, they can go in the hot weather also—go on a visit to Abu, where there is a police training school. It will do your hearts good to see these fine young men, again brilliant students of our universities, being taught everything.

They have inherited a mad legacy from the past. Now, this was what was said.

Now I come to the sections. The first thing, the devil on the stage, was section 161. That is a statement, you know, made by a witness during investigation. It is unsigned. It is the inspector who notes it—on a question being put, this is what the witness stated. Now, it was stated over and over again that under the Code as it exists, this statement is only admissible for the purpose of contradicting that witness. I accept it. Now, I say in what way has this amending Bill changed that? A witness makes a statement on the second day of the investigation. It is recorded. He is produced in court. A copy of that statement is given to the accused. When the witness comes before the government pleader or public prosecutor, no question is put to him about this diary statement. He just gives his story and he may be asked—‘Were you examined by the police?’ He says: ‘Yes’. He says ‘Second day after the murder or the second day after the dacoity’. Now, I put it to you as a very experienced advocate, supposing in cross-examination, you are the defence counsel and you do not draw the attention of that witness to any contradiction between his present statement in court and the statement which he has made before the police during investigation, what would be the inference? The inference that every magistrate and judge would draw is that the witness has stuck to his story. Whatever he said before the police, he is repeating in court. Why? Because if he had changed, then the cross-examining counsel would at once have drawn his attention and said: ‘You were examined by the police. I put it to you that this part of the statement you never made before the police’. And if he denies it, then you send for the sub-inspector and put it to him ‘Is this right?’ He says: ‘It is right’. I tell you I have not the

[Dr. Katju]

slightest intention to get that statement used for corroborating purposes. It does not meet corroboration. It is a point which has no substance. It does not arise, it never struck me, it never struck the Law Minister or anybody that it was capable of being used in this way.

Pandit Thakur Das Bhargava: Most unfortunate.

Shri S. V. Ramaswamy (Salem): May I ask.....

Mr. Speaker: Let him proceed.

Dr. Katju: Secondly, it is section 164. You were not here, but I tell you out of the 13 or 14 hours spent in debate, probably 5 hours were taken over this section. Declamations and eloquent speeches rose to new heights. Why? Section 164. The statement is made and the police gets it made in order to tie the witness down to a particular statement. I think I am carefully and accurately analysing and summarising the arguments. At that time, the witness is entirely under the thumb of the police. The accused is not present before the magistrate. Someone said, there is the magistrate, there is the witness, there is standing behind him the sub-inspector and the thing is being recorded. And why? Because this truthful man should be bound down. Now, the other side of the picture was never put by anybody. I may ask you in all seriousness that when these 9,900 pleaders who are free and at large to appear for the defence, is it not the case that the first attempt is to square up the prosecution witnesses—I deliberately use the word 'square'? Please remember that after the occurrence it takes months and months for the commitment proceedings. May be six months; the sessions case may begin after one year and may last six months again. All these witnesses are subjected not to police pressure, but they are subjected to pressure of all kinds—caste, community, political...(Interruption) relationship, neighbours....

An Hon. Member: Money?

Dr. Katju:everything.

Shri S. S. More: May I know how that gesture will go on record?

Mr. Speaker: It need not go on record.

9 A.M.

Dr. Katju: All these learned lawyers and my hon. friends do not say one word of all this. And they know it. (Interruption) What they say is: Here is this poor, innocent, true witness, in the investigation compelled to make a false statement by the police and the police wanted to get it recorded and signed by him so that he might be tied, in an attempt to get away, and this truthful witness, poor fellow, goes before the sessions court; he dare not speak the truth because he has already made a false statement. I say this is a picture which has no relation to truth, you may take it from me; you are experienced and I have also had some experience in this line. It may have had some relevance thirty years back, but today in this free country, the witnesses have also become free. The first attempt made in what you call this 'den of perjury', the first attempt, whether it is made in the Advocates' Association or elsewhere, is made to get hold of the prosecution witnesses.

Now, when we inserted this provision in this amending Bill, I tell you honestly we thought we were furthering justice in the interest of the accused. But I am not wedded to it, as I said so many times. If you dislike it, change it. You and I are all interested in the proper administration of justice. What I said was this, that the witness should go before a magistrate and make a statement there when the police is not present. You may say: With your Bill, as it stands, you may allow a third class magistrate to record this statement: it may not be very fair'. Make it first class magistrate. You may say that the police should not be there. Make every possible thing, but the idea was

that opportunity for the accused or for the people who are in charge of the defence on behalf of the accused may not be given to tamper evidence. Please remember that in civil cases difficult questions of law and fact arise and the canvas is a very wide one; it covers ten years, twenty years, thirty years. But in a criminal case, it is all very limited—five minutes, twenty minutes. A man comes, shoots, goes away—in twenty minutes. It is a simple, straightforward case. The accused knows. Somebody said—settle his line of defence. I tell you when I was at the Bar and if anyone ever came to me—probably very few came to me—saying that 'we did this and we ask what should be our line of defence', when the man said that. I got the feeling that he was guilty; I used to say 'get out; you have done this and you want a line of defence. You go and confess what you have done and pay the price for it'. Now what is to be done? What is the line of defence in criminal cases when my hon. friends are going to establish? Now, in perjury cases, the stock argument is *alibi*; it is so low. In a criminal case, nobody looks at the *alibi*; it is hopelessly false—either an entry on the hospital register or a school register or attendance in court. I wish to emphasise this point, that I am not wedded to this insertion in this amending Bill about section 164. If you do not want it, it may go out; it does not matter to me. But it was actuated for the purpose of advancement of justice although there may be no tampering with evidence.

Shri Lakshmayya (Anantapur): They must be recorded in the absence of the police.

Dr. Katju: The hon. Members must take the entire subject-matter into consideration. On the one hand, there are excesses and improper conduct of the police. On the other hand, the improper conduct of the defence, and the defence comes to the conclusion

'we will let it stand'. Well, do it. I have no objection.

The Minister of Food and Agriculture (Shri Kidwai): Lawyers also.

Dr. Katju: Yes, lawyers also. Consult everybody. The third thing was the supply of papers. Shri Ramaswamy said—I could not follow him there—that papers have not been supplied. We will supply all of them. Let him give me a list and I shall see that everything is supplied. Then he said, the accused goes before a magistrate. My complaint is that hon. Members have read only part of the section. He said, 'goes before a magistrate'. The section says that the magistrate may examine the accused. He asks, why, and says, 'don't examine him, but just look at him'. Till then, the accused is not supposed to have gone before any magistrate. He appears, under the section, for one specific purpose. The magistrate reads the papers, the charge-sheet, the statement of all the witnesses, and when he examines the accused, he says, 'Now you are being charged with this murder or dacoity. What is your case? Are you guilty or not guilty? Have you done it?' The accused says, 'No'. It is then finished. But supposing he says he has done it, the magistrate may say let him go to the sessions judge. It will go before the sessions judge. It will soon be over. The other thing is: the magistrate asks him, in order to decide whether the case should go before the sessions judge, 'Is it sufficiently serious, or should it go before a magistrate?' It is only for that limited purpose that this thing is done. What is wrong with it? I submit to you in great confidence that there is nothing wrong in it. The idea was that the accused, before he enters the court room, should know what is the charge against him, what witnesses are going to be produced against him and what those witnesses are supposed to say against him, and what is the prosecution version of the story that he gets from the charge-sheet, from the statements recorded in the

[Dr. Katju]

police diary. He gets them in a more accurate and clear manner from the statements recorded in section 164. That was the picture we had in mind. If this picture requires some modification in the judgment of the House, you may redraw it. Put more red into it, put more green into it, but the picture is quite sound.

Then my hon. friend said that they went really into excesses, warrant cases and double cross-examination. In the warrant case, the procedure is the same. Please remember that the accused has been supplied from the court all the statements recorded in the diary. Just as it is in the sessions case, before the trial begins, the accused knows what evidence is going to be produced against him and of what nature. I ask, where is the objection, if the accused is then asked, as he will be asked in the sessions court, to commence his cross-examination then and there. My submission is this: to suggest that any single section in this amending Bill has been inserted with a view to throttle the accused—speaking with all sincerity, and the House may take my word for it—is completely baseless and unfounded. There is no single Member in this House who is more anxious than I that an accused should get a proper trial, a fair trial, before a proper court.

A good deal has been said about the presumption of innocence and benefit of doubt. Of course I know it all. But so far as we in India are concerned, the language is this. The prosecution must prove their case. When they say that somebody has committed a theft, they must prove the fact, and the legislature lays down these words:

“A fact is said to be proved when, after considering the matters before it, the court either believes it to exist or consider the existence so probable that a prudent man ought under the circumstances of the particular

case to act upon the supposition that it exists.”

This applies to criminal cases, civil cases, revenue cases, income-tax cases, and indeed to every type of case. That is the test laid down for the proof of a case. If the prudent man should not draw that inference, the fact is disproved. If the court is unable to make up its mind, again, it is neither proof nor disproof. You let the case go.

Mr. Anthony said—he is not here, as usual—that the magistrates are under the clutches of the police, that they are wild people, undependable. Therefore, they always convict. In the Bill it is said that if on a private complaint there is a trial, and a private complaint is rejected, then the private complainant may be given the right to move the high Court for leave to appeal. Mr. Anthony said: ‘Have you ever heard of an appeal against an acquittal? It is something which is against all canons of justice. If he convicts, he is a wild creature. He is entirely under the thumb of the police. His judgment is not worthy of the paper on which it is written. But if he acquits, he becomes a Daniel. The judgment should not be examined by anybody.’ My hon. friend—I think it was Pandit Bhargava—raised the point that abolition of commitment proceedings is a wide step. But what about the cases started by private complaints? I thought that inasmuch as in all private complaint cases there is no investigation by the police, an independent authority, by the C.I.D., therefore, a judicial enquiry may be proper. Pandit Bhargava said, no, no, even in private complaints, you get away with the commitment proceedings. Well, I have no objection if you are satisfied that it will be in the interests of the accused; I only wanted to protect the accused so that he may be able to know what type of cases he has to meet, but if you think he will do it, I have no objection.

There are only two points left, and I shall finish my speech with them. One is the proposal about the summary punishment for perjury. Everyone is

agreed here that perjury is rampant and rife in law courts. How to stop it? Of course, the pressure of moral opinion, social opinion, public opinion, religious opinion, *bhajans*, *kirtans*, *sadhus*—everything is employed. Are you going to have some direction, namely, that a man who tells lies should go? Well, everybody has been condemning this. Mr. Chatterjee is not here. He referred to his own judicial experience. He said that 'when I was hearing a case, one witness was telling a lie. But when I went on with the case, I thought he was telling the truth, and therefore, this process of summary punishment, while the trial is going on, is very injurious.' But he had not read the section. The section provides that in so far as the examination relates to a fact material to the case, there will be no prosecution. It is only on what you might call subsidiary matters that the question arises. I also gave an illustration. A man says this, that and the other. The defence counsel immediately proves on an unimpeachable evidence that the fellow is lying and that he was then in Calcutta or Lucknow, that he has nothing to do with the case. This aspect obviously troubled Mr. Chatterjee and he had to make up his mind—goodness knows what.

Nobody read it and they say there should be no punishment for perjury. But, for God's sake, point out to me some method for stopping this perjury which is killing and is simply choking the administration of justice. There is no use merely saying that Advocates' Associations are dens for perjury. Something must be done to stop these dens and the activities of these dens by way of punishment.

Lastly is this very much discussed provision about making defamation a cognizable offence. The House has heard me and the House has heard the hon. Members opposite and I imagine the Select Committee will deal with it. I ask every hon. Member of this House to remember that making the offence a cognizable one does not mean that there is going to be a conviction or there is going to be any interference

with the trial. The only question is who should be able to initiate the proceedings. These libellous statements in newspapers, this defamation by the general printed word is assuming alarming proportions. Nobody is safe and there are no prosecutions. Whether you enact this provision as it stands or in a modified way, we must stop it. It causes great trouble. My hon. friend said, why not about Members of Parliament? if they want it I shall add it. If there is a defamatory statement and if there is a charge against a Member of Parliament that he has abused his position and he has taken something to exercise influence or something like that let the police investigate it and we will see to it. But, the mischief is there. How to check it? Today the so-called yellow journals and other sheets think they are completely safe and that nobody would come and prosecute them. In that way it goes on. The administration suffers; the public interests suffer. Please remember that I am doing this not for the purpose of protecting the government servant. I am doing it so that we may have some agency for finding what the truth is. If the truth inclines towards the journalist or any man who publishes it, then I want to make an example of that public servant by starting departmental proceedings or a prosecution against the man. Of course if he has been maligned without any cause, then the newspaper must suffer. That is the duty of an efficient police.

Mr. Speaker, I want to take no more time of the House. I ask hon. Members to take this Bill as an earnest endeavour on the part of this Government, the whole of the Government of India, on the part of each one of us, to take advantage of the accumulated materials which exist on the files and to see that utmost improvement is made and justice is speedy, is efficient and is less costly.

Some hon. friends referred to other procedural codes. We will take all of them by and by. There is not the least desire to hamper the accused in any way or to interfere with the course of administration of justice

Mr. Speaker: I shall first try to dispose of the amendments and then I would take up the original motion.

There are two amendments, one of Mr. Vallatharas and the other of Mr. Sreekantan Nair, for the circulation of the Bill for eliciting public opinion; one gives the date as 31st July, 1954 and the other is 30th September, 1954.

Shri Vallatharas (Pudukkottai): In view of your decision, I do not propose to press it. I am withdrawing it.

The amendment was by leave withdrawn.

Mr. Speaker: Does Shri Sreekantan Nair want to withdraw his amendment?

Shri N. Sreekantan Nair: I want to have it put to the vote of the House.

Mr. Speaker: The question is:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th September, 1954.”

The motion was negatived.

Mr. Speaker: Then, there is the amendment of Pandit Thakur Das Bhargava which is for reference to a Select Committee of 33 Members of this House only. Does he want it to be put to the vote?

Pandit Thakur Das Bhargava: Yes, Sir.

Mr. Speaker: The question is:

“That the Bill be referred to a Select Committee consisting of Shri Narhar Vishnu Gadgil, Shri Ganesh Sadashiv Altekar, Shri Joachim Alva, Shri Lokenath Mishra, Shri Radha Charan Sharma, Shri Shankargauda Veerangauda Patil, Shri Tek Chand, Shri Nemi Chandra Kasliwal, Shri K. Periaswami Gounder, Shri C. R. Basappa, Shri Jhulan Sinha, Shri Ahmed Mohiuddin, Shri Kailash Pati Sinha, Shri C. P. Matthen, Shri Satyendra Narayan

Sinha, Shri Resham Lal Jangde, Shri Basantha Kumar Das, Shri Rohini Kumar Chaudhuri, Shri Raghubir Sahai, Shri Raghunath Singh, Shri Ganpati Ram, Shri Syed Ahmed, Shri Radha Raman, Shri C. Madhao Reddi, Shri K. M. Vallatharas, Shri Sadhan Chandra Gupta, Shri Shankar Shantaram More, Sardar Hukam Singh, Shri Bhawani Singh, Dr. Lanka Sundaram, Shri Rayasam Seshagiri Rao, Shri N. R. M. Swamy and Dr. Kailas Nath Katju, with instructions to report by the last day of the first week of the next session.”

The motion was negatived.

Mr. Speaker: Then, there is the amendment of Shri R. D. Misra. He wants certain instructions to be given to the Select Committee. Does he wish to press his amendment?

Shri R. D. Misra (Bulandshahr Distt.): In view of what the Minister said, I wish to withdraw it.

The amendment was, by leave, withdrawn.

Mr. Speaker: Then, there is Mr. Sinhasan Singh's amendment.

Shri Sinhasan Singh: It is accepted by the hon. Minister. He has said that there is no objection to this amendment.

Dr. Katju: I accept it, Sir.

Mr. Speaker: I shall put the amendment to the House. The question is:

That in the motion, after ‘and 16 members from the Council’ add—

“with instructions to suggest and recommend amendments to any other sections of the said Code not covered by the Bill, if in the opinion of the said Committee such amendments are necessary.”

The motion was adopted.

Mr. Speaker: There is an amendment of Mr. Venkataraman for giving

instructions to consider and report on the provisions contained in the Code of Criminal Procedure (Amendment) Bill, 1952, by Shri S. V. Ramaswamy, M.P.

Dr. Katju: I accept that amendment, Sir.

Mr. Speaker: The question is:

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

"with instructions to consider and report on the provisions contained in the Code of Criminal Procedure (Amendment) Bill, 1952, by Shri S. V. Ramaswamy, M.P."

The motion was adopted.

Shri Ramachandra Reddi (Nellore): I think Mr. Venkataraman's amendment means a reference to a different Select Committee altogether. I want to know whether both committees will consider it or whether it will be considered by one.

Mr. Speaker: The amendment is an amendment to the principal motion by which a Joint Committee is constituted. It will take into consideration that Bill also. There is no separate committee.

There is Mr. Dube's amendment. Does he propose to have it put to the vote of the House?

Shri Mulchand Dube (Farrukhabad Distt.—North): I wish to withdraw it.

The amendment was, by leave, withdrawn.

Mr. Speaker: In view of the acceptance of Mr. Venkataraman's amendment, Mr. Ramaswamy's motion regarding his Bill falls through. Does he want to withdraw it or shall I put it to the vote?

Shri S. V. Ramaswamy: If it falls through I would like to withdraw it.

The motion was, by leave, withdrawn.

Mr. Speaker: I now put to the House the motion as amended by the

two amendments both of them giving instructions. The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be referred to a Joint Committee of the Houses consisting of 49 members, 33 members from this House, namely: Shri Narhar Vishnu Gadgil, Shri Ganesh Sadasshiv Altekar, Shri Joachim Alva, Shri Lokenath Mishra, Shri Radha Charan Sharma, Shri Shankargauda Veerangauda Patil, Shri Tek Chand, Shri Nemi Chandra Kasliwal, Shri K. Periaswami Gounder, Shri C. R. Basappa, Shri Jhulan Sinha, Shri Ahmed Mohiuddin, Shri Kailash Pati Sinha, Shri C. P. Matthen, Shri Satyendra Narayan Sinha, Shri Resham Lal Jangde, Shri Basanta Kumar Das, Shri Rohini Kumar Chaudhuri, Shri Raghubir Sahai, Shri Raghunath Singh, Shri Ganpati Ram, Shri Syed Ahmed, Shri Radha Raman, Shri C. Madhao Reddi, Shri K. M. Vallatharas, Shri Sadhan Chandra Gupta, Shri Shankar Shantaram More, Sardar Hukam Singh, Shri Bhawani Singh, Dr. Lanka Sundaram, Shri Rayasam Seshagiri Rao, Shri N. R. M. Swamy and Dr. Kailas Nath Katju, and 16 members from the Council, with instructions to suggest and recommend amendments to any other section of the said Code not covered by the Bill, if in the opinion of the said Committee such amendments are necessary, and with instructions to consider and report on the provisions contained in the Code of Criminal Procedure (Amendment) Bill, 1952, by Shri S. V. Ramaswamy, M.P."

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last

[Mr. Speaker]

day of the first week of the next session;

that in other respect the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to the Council that the Council do join in the said Joint Committee and communicate to this House the names of members to be appointed by the Council to the Joint Committee."

The motion was adopted.

HIMACHAL PRADESH AND
BILASPUR (NEW STATE)
BILL

Mr. Speaker: The House will now take up the Himachal Pradesh and Bilaspur (New State) Bill, as passed by the Council of States.

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

The Minister of Home Affairs and States (Dr. Katju): I beg to move:

"That the Bill to provide for the formation of the new State of Himachal Pradesh by uniting the existing States of Himachal Pradesh and Bilaspur, and for matters connected therewith, as passed by the Council of States, be taken into consideration."

This is a simple Bill. Hon. Members will find from the Statement of Objects and Reasons that Bilaspur is the tiniest State in India. It was one of the Punjab hill States and should normally have been integrated in Himachal Pradesh, but while its area is small, it has the Sutlej waters in it...

Mr. Deputy-Speaker: There is too much of subdued noise in the House. The hon. Home Minister may resume his seat for a minute and let all hon. Members conclude their speeches.

Dr. Katju: It has also the Sutlej waters in it, and the headworks of Bhakra-Nangal, a great project, are located there. We could have brought this Bill much earlier, but I was anxious that proper arrangements might be made for the administration of that project, and, incidentally, for the rehabilitation of people, whose lands, houses and other properties are merged in the reservoir which will come into existence when the project is completed. We have now made provision for all proper arrangements being made by the President under clause 31. That having been done, it was found that the separate existence of Bilaspur was leading to various difficulties and very undesirable results. There was a Chief Commissioner and he had all the paraphernalia of the provincial administration—a Chief Secretary, other Secretaries, heads of departments and all that. For a State with about a lakh of people, it was complete waste of time and waste of money, and incidentally also, the people of Bilaspur State were deprived of any machinery by which they might express their opinion and take any part in the administration of their own affairs. Under the Constitution, while they have one seat in the House of the People, here there was no provision for any local Legislative Assembly, and the result was that the Chief Commissioner had carried on the administration. Under this Bill, the House will observe that the people of Bilaspur will be entitled to send Members to the Himachal Pradesh Assembly and there will be seats reserved for the people of the Scheduled Castes also. While this Bill has been under consideration for so many years, no protest has been raised and it was almost an agreed measure, and the House may take it that that state of affairs continues. I say even though a petition is supposed to have been presented to the House containing a large number of signatures, but I do not know how they were obtained, whether by some mechanical process