Immediately after the accident, i.e., at about 20·05 hours, the driver of the train took his engine to Bettiah with 7 injured, who immediately were admitted into the hospital. The engine with an open truck returned to the site of the accident at 22·05 hours with the District Magistrate and the Superintendent of Police, Motihari. High-power lamps, food and drinking water were also brought in the truck. The railway medical relief train from Narkatiaganj with Railway doctors arrived at 23·05 hours. The civil authorities had already reached the site with medical and other assistance. The District Magistrate returned from the site of the accident to Bettiah at 1-30 hours on 3rd May, 1954, with the engine and the truck in which 22 more injured were taken to Bettiah. The injured were removed from there to the hospital in jeeps and other vehicles. Medical relief trains left Narkatiaganj and Samastipur at 22·00 hours and 22·05 hours respectively with doctors and District Officers of Samastipur. Breakdown trains left Narkatiaganj, Samastipur and Gorakhpur at 22·35, 23·05 and 23·50 respectively. The Railway Administrative Officers and District Officers Samastipur arrived at the site of the accident between 2 and 4 hours on 3rd May, 1954. The General Manager arrived later in the morning. The track was cleared at about 16·30 hours on 3rd May, 1954. Prompt measures were taken for removing the injured from the debris and giving first aid, and taking them to the hospital at Bettiah. The staff and students of Kumar Bagh Basic School also rendered assistance.

Of the injured, 24 left after receiving first aid at the site or at the Bettiah Civil Hospital. The remaining 40 cases, which include four railway servants and six cases of serious injuries, have been admitted into the Civil Hospital at Bettiah.

The approximate cost of damage to permanent way is Rs. 200. The cost of damage to rolling-stock is being assessed. The Government Inspector of Railways has notified that he is commencing his enquiry on 4th May, 1954 at Bettiah.

CONVICTION OF A MEMBER

Mr. Speaker: I have to inform the House that I have received the following communication from the Magistrate 1st Class, Purulia:

"Purulia, 28th April, 1954.

Sir,

In continuation of the Sadr Sub-Divisional Officer Manbhum's letter No. 84 dated 22nd January, 1954, I beg to state that Shri Bhajahari Mahata, M.P. has been convicted today under section 9(5) of the Bihar Maintenance of Public Order Act 1949 and sentenced to undergo simple imprisoment for six months and to pay a fine of Rs. 500/-, in default to undergo further simple imprisonment for three months. He has been remanded to jail custody and has been placed in Division I".

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

Mr. Speaker: The House will now proceed with the further consideration of the motion moved by Dr. Katju day before yesterday for reference of the Code of Criminal Procedure (Amendment) Bill to a Joint Select Committee of both Houses.

Shri S. V. Ramaswamy (Salem): I beg leave.....

Shri Bansal (Jhajjar-Rewari): Before you call upon.....

Mr. Speaker: I am sorry. Along with that, the House will also consider the following motion moved by Shri S. V. Ramaswamy on the 12th March 1954, namely:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be referred to a Select Committee consisting of Pandit Thakur Das Bhargava.....

I do not know whether he will come within the operation of this.

Pandit Thakur Das Bhargava (Gurgaon): I am not speaking on that Bill.

Mr. Speaker:

"...Shri H. V. Pataskar, Shri K. Raghuramaiah, Shri Tek Chand,

[Mr. Speaker]

Shri N. C. Kasliwal, Shri Mukund Lal Agrawal, Shri A. M. Thomas, Shri Nageshwar Prasad Sinha, Shri N. Somana, Shri R. Venkataraman, Shri Sankar Shantaram More, Shri Kamal Kumar Basu, Sardar Hukam Singh, Shri K. M. Vallatharas. Dr. Lanka Sundaram, Shri C. C. Biswas and the Mover, with instructions to report by the last day of the first week of the next session".

I do not know whether for the purpose of convention I should combine the names of members of both the Select Committees.

Mr. Venkataraman has tabled an amendment Let him move it. That will solve my difficulty.

Shri Venkataraman (Tanjore): I beg to move·

"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."

Mr Speaker: Amendment moved·

"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."

Shri Bansal: On a point of information, Sir, Yesterday, thre was a suggestion thrown out from almost every section of the House that the time of the debate may be extended, and if it is not possible to do it in the normal business hours. the session may be called in the afternoon. The hon. Deputy Speaker was good enough to say.....

Several Hon. Members: No, no.

Mr. Speaker: Let me hear the hon. Member.

Shri Bansal: The hon. Deputy Speaker was good enough to say that he would put it up to you and that you would be good enough to inform the House of your decision today. So I request you before calling upon the hon. Member to speak to give your decision as to what you propose to do in the matter.

Shri K. R. Sharma (Meerut Distt-West): I have given notice of an amendment to the motion standing in the name of Shri S. V. Ramaswamy substituting certain names of the Members of the Select Committee.

Mr. Speaker: I will take it later.

As regards the point raised by Mr. Bansal. I should have thought that we should see the progress of this Bill and the necessities and requirements. I understand a point was made yesterday in the House that the Business Advisory Committee proceeded to fix up the time without having the Bill before it. I need not enter into the merits of the whole argument. I might in this connection state to the House that as the Bill was a very important one, I had granted special permission to the hon. Home Minister to have it published in the *Gazette* before it was introduced in this House. The Bill was accordingly published in the *Gazette* and opinions were called for and I understand a number of opinions have already come to him. I also understand that they are not circulated up till now but the hon. Home Minister said that he would have them circulated to the Members of this House. I am just speaking as to how this Bill has progressed to meet the point that the Business Advisory Committee had not the Bill before it. In fact, the Bill was before the entire country, including the members of the Business Advisory Committee. And, as the Bill was going to be referred to a Joint Select Committee with all the opinions that have been received countrywide, it was felt, and to my

mind rightly, at that time by the Business Advisory Committee that, though the Bill is a very important one, the debate at this stage should be restricted only to the salient points and not to all the details or the entire ground that the Bill covers. That was one of the considerations which the Business Advisory Committee had in mind. Therefore, it will not be quite correct to say that they fixed up the time only as a matter of some *ad hoc* estimate on the question. But, it will be for the House to consider, and, if they want more time, I should not come in their way of granting more time. But, the House will have to take a decision because the decision of the Business Advisory Committee, which I communicated to the House, has been now included in the Order of the House. So, it will be necessary to make a motion—to my mind not a very formal one in that manner; but, let us try to follow the spirit of the tradition which we are forming for the purpose of enabling this House to put through as much business as possible I should not, at this moment, suggest a course which the House may follow.

But, looking at the large volume of legislative business coming before the House, as I have been seeing it, it would become more and more difficult for this House to sit for an examination of all the provisions of even the most important Bills. And, the House may well consider whether it would not be proper or necessary—even later on—that they should have a large Select Committee consisting of a large number of Members and discuss the salient points and leave the matter to be thrashed out in the Select Committee where it can be much better thrashed out than it can be in a bigger House, and then the House will deliberate on it after the measure comes from the Select Committee. I believe, some such kind of thing is being followed in the House of Commons. We must try that convention instead of trying to have a full-dress debate on motions in respect of Bills which are going to the Select Committees and, particularly, in respect of very important Bills. But, that is for the hon. Members to consider. That is only the way I was thinking about as to how to satisfy the desire of the Members of the House. That is a general and a wider question and one need not take any decision just at this stage.

For the present, therefore, as I was saying, we will go on and, if necessary and if the House so desires, we may certainly sit in the afternoons or at such time as the House may be agreeable.

Several Hon. Members: No, no.

Mr. Speaker: I am not just now taking the sense of the House on this question. I am saying that, so far as the Chair is concerned, the matter is absolutely open because the decision of the Business Advisory Committee, which was taken unanimously by representatives of sections of opinion in the House has been endorsed by the House and it is now part of the Order of the House. By a simple appeal to the Speaker. I do not think I should be doing the proper thing in simply setting aside the decision of the House. However, as I said, the matter is open. Let us proceed and see what happens. And then, if necessary, the matter will be considered. Informal consultations may be had by Members amongst themselves and let them bring the motion before the House. I shall put it and go by the decision of the House.

Now, I have to inform hon. Members that copies of the Code of Criminal Procedure (Amendment) Bill, 1953, as originally published in the *Gazette* together with copies of Summary (Part I) of the views of the State Govenrnments etc. thereon, which have been received from the Ministry of Home Affairs, are available at the Publications Counter for distribution to Members. Hon. Members may collect their copies from the Counter.

Shri T. N. Singh (Banaras Distt.—East): I wanted to know whether the decision in regard to any extension of time or more opportunities for further discussion will be given to us today in the afternoon or shall we know of it only tomorrow before the hon. Minister replies.

Shri Bansal: I am sure, when deciding as to whether time should be extended or not, you will please bear in mind that the hon. Minister, while moving the Bill, took about two hours and two other speakers took about one hour each and the hon. Pandit Thakur Das Bhargava, who is on his legs, will be taking about three hours—that is at least what he said. You will see from this that if the debate goes on like this only half a dozen Members will be able to speak I am particularly anxious to speak because I want to bring to bear upon this important Bill the layman's point of view about justice in this country. If you allow all the time to the lawyer Members only to speak on this, the layman's point of view will go by default. Therefore, I suggest that you will take into account that all sections of the House are represented in this debate.

Mr. Speaker: Shall we take up time in carrying on this discussion? I think what I have said includes the germs of the reply to all the points which the hon. Member has already raised. I cannot say definitely when I shall be able to tell this House, but, so far, I have no motion before me. I therefore advisedly said that the hon. Members may have consultations amongst themselves and, if there is any agreed solution that a motion should be brought before the House, I am sure the hon. Home Minister will himself bring a motion and that will be an easy matter for the House to carry through without any waste of time. Otherwise, we shall be discussing this mater for two hours and the time allotted to the Bill will be finished by then. So, the best course would be just to have consultations as I said and then come to this House with a motion. There is time enough tomorrow and, if the House wishes to sit in the afternoon, then as the House is sitting up to the 21st, there will be ample opportunities—a number of afternoons on which it can continue to sit. It is only a matter for the wish of the House.

As regards the length of speeches, reference was made to the long speech of the hon. Home Minister. I believe he is strong enough to defend himself. But, at the same time, I do think that when he brings a motion before this House of this importance, he has done well in placing before the House all the different aspects which the Bill deals with and, therefore, naturally, it takes a long time. But, that does not mean that the Members should discuss all and sundry points that he has mentioned, while placing the Bill before the House. Therefore, as I said, the idea is, when the Bill is to go to a big Select Committee and to come again before the House, Members may just touch the salient points because every Member is anxious to speak and desirous of placing his point of view. He is certainly entitled to do so, and one can appreciate his desire to do so, yet, I think, he has to take into consideration the overall picture of the business before the House and the time that the House can or should devote to every measure. But, it is for the hon. Members to decide for themselves. I am not coming in the way of any hon. Member who wishes to speak for any length of time; he may do so, with the result that other Members are blocked. But unless that point is also borne in mind by every Member who wishes to speak, I do not know how we can put through the business of the House. I believe the House is restive at the prospect of having to sit till the 21st May and I leave it at that.

There was one amendment which the hon. Member wanted to move. What was that amendment about?

Shri K. R. Sharma: My amendment has been necessitated by the fact that some of the names in the list given by Mr. Ramaswamy are already given in the list given by the hon. Minister.

Mr. Speaker: I shall dispose of this very shortly. The hon. Member hands it over at 8·30 A.M. at the Table. He has not given previous notice and I decline to accept it. That puts an end to this amendment. If he is keen on that, he may just have discussion with the hon. Member who moved the original proposition of referring

the Bill to the Select Committee, and if he brings in anything tomorrow, by agreement, certainly it will be placed before the House and I have no objection to waive notice of it at that time.

Shri Thanu Pillai (Tirunelveli): The practice here has been that Members of the Advisory Committees or Select Committees do not participate, but on many occasions we find that many Members of the Select Committee do participate in the debate in the House, and the earlier speakers are given one hour, half an hour and so on, but later on some time-limit of ten or five minutes is fixed for the other speakers that are yet to come. The inevitable speakers, who are a few here, do get their chance to speak, but back-benchers are always back-benchers and when we approach the Speaker or Chairman we are asked to submit a memorandum to the Select Committee. If we are to submit a memorandum to the Select Committee, we need not have come here to this Parliament, we can as well do it by sitting at home.

Mr. Speaker: Obviously, the hon. Member feels cross, and I do not know with what justification, but the House will realise the difficulties of the Chair. There are 500 Members, and about 350 of them are usually present. It is not possible, unless the House sits day in and day out from month to month throughout the year on any one particular Bill, to satisfy the desire of each Member to speak. There has to be, therefore, some kind of organisation amongst the Members themselves by way of division of subjects, and selection of speakers, for controlling the debate. It will not be possible for the Chair only to control the debate. In the first place, there may be some brilliant men who are sitting on the back benches, but unfortunately, the Chair has no opportunities of knowing them and the study which each has made in respect of the Bill. I should like to know such names, and so long as I am here, I shall try to give preference—I say intentionally —but I do not promise to give preference to anyone, but these are the difficulties. Let us now try to evolve some conventions about the organisation of the speakers and that is a matter which is not the concern of the Chair but that of the Party to which the Members belong. If the Parties organise themselves better, I am sure there will be no room for such complaint. Without any further discussion on any of these matters, I would like to call upon Pandit Thakur Das Bhargava.

Shri Vallatharas (Pudukkottai): Before that, may I raise a point....

Mr. Speaker: The hon. Member has tabled an amendment....

Shri Vallatharas: My point is totally different and I am not coming to that as it is a matter for the House to decide. Here in this printed Bill, I do not see the corresponding sections of the existing Act printed. It is very important, and I should like to suggest to you that it is just and proper that the hon. Home Minister prints those and publishes them for the benefit of the Members.

Mr. Speaker: I will tell the hon. Member the difficulties. Usually when a small number of sections of a particular Act are touched in an amending Bill, the procedure that we have been following is that those particular sections are printed and circulated to Members along with the copies of the Bill, but in view of the large number of sections with which this amending Bill deals, it was not possible to do so. Therefore, special arrangements were made and copies of the Code of Criminal Procedure were brought from the Legal Department and have been placed in the Library, and the fact that they are available in the Library was notified through the Parliamentary Bulletin about three or four days ago. Therefore, that is a complete answer, to my mind, to the point raised by the hon. Member, Shri Vallatharas. As regards the other point of his, about which I wished to

[Mr. Speaker]

speak, the position is this. He has tabled an amendment to the Bill. After the amendment was tabled and notice was given, he has accepted membership of the Select Committee. Though his amendment is now before the House, I do not think, in view of the conventions, that he will press his desire to speak on the Bill and he will have ample opportunities to speak in the Select Committee. The time is already short and it has to be rationed, and so I do not wish to make an exception in his case. I would request Pandit Thakur Das Bhargava.

Shri Vallatharas: With Thakur Das Bhargava also, the difficulty arises. He has moved an amendment just like mine for referring the Bill to the Select Committee and he is also a Member of the Select Committee.

Mr. Speaker: He is not a Member of the Select Committee; that is the point. Day before yesterday, I think, when I spoke about conventions, I made it clear, when this point was posed to me, namely, that Government may easily deprive a Member of his right to speak on the Bill if his name is on the Select Committee; I gave the reply on two points, stating that no Member is put there without his consent. If the Member chooses to consent, he has to make a selection as to whether he will prefer to speak or prefer to be on the Select Committee. In this particular case, the hon. Member has preferred to be on the Select Committee. Therefore, the point about his speaking does not arise.

Pandit Thakur Das Bhargava: Before I proceed further with my speech on this Bill, I feel the weight of your remarks and I can assure you that so far as I am concerned, I have taken to heart the very valuable advice that you were pleased to give that nobody should take the time of the House except when it is absolutely necessary.

I have not spoken for about a month or so on any question in the House and if I have risen here to speak on this Bill, I do not need any apologies.

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

The House must realise that this Bill is not an ordinary Bill. It consists of at least about 60 Bills jumbled together into one Bill. If separate Bills are brought in the House for the amendment of these particular sections, something like sixty Bills will have to be there and the time taken on this Bill should be judged from that standard. Some Members have complained that I have taken too much time of the House. I have moved two motions relating to circulation and reference to Select Committees and I now want to speak on the Bill. I feel very much embarrassed when I am told that other Members will not get their time. I am not responsible for this, but the House should have provided for more time. We should devote at least one month for the consideration of the Bill, but this will not detract me from making my submissions to the House on certain important aspects of the Bill. Many of them are too important to be ignored by me or by any other responsible Member. I will take care to see that I do not spend any amount of time over unimportant things, but some of the things are so fundamentally important that no Member will be well-advised to ignore them.

I was submitting for the consideration of the House yesterday that there is a provision like section 16(3) of the Criminal Procedure Code, which requires that if a sub-inspector so chooses, he may record the statements of witnesses on separate papers and I submitted for the consideration of the hon. Home Minister that he may be pleased to enact in this Bill that such loose or separate papers, on which statements are taken down, are not allowed to be tampered with in any circumstances. With your permission, Sir, I crave your indulgence to repeat this request of mine, as it is

too important and it can bear repetition.

Section 162 of the Criminal Procedure Code is sought to be abolished. Let us be clear in our minds as to the implications of this section. Section 162 is, I should say, the bulwark of the accused's right in the matter of defence. I was practising in these courts before 1923 also when it was not obligatory to furnish the copy of the statements of the witnesses to the accused. Usually this statement is now utilised to point out the contradictions in the evidence of the witnesses. Now, the statements of the witnesses before the police are a matter of very great importance in any trial. According to the provisions of section 162, it is not the statement under section 161(3) alone to which the accused is entitled. I would respectfully beg of the hon. Minister to pay some attention to my observations on this point. Under section 162, he will be pleased to find, that not only the statement under 161(3) which was introduced into the Act in 1941, but copies of other statements have also to be furnished. The statement may be on a loose paper; may be separately written or interpolated anywhere else in the *zimnis*. But a copy of that is to be given—that is the present law. It has to be done under section 162. The actual words are:

> "(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose, etc., etc."

Further on under the proviso we find that it is obligatory for the court to furnish the accused with a copy of the statement wherever it might exist. It may exist in a diary; it may not exist in a diary. But the copy of the statement has to be given; perforce it must be given.

In 1923, however, this law was changed. I will not take up the time of the House by reading the provisions in the Act or the various rulings of the courts. The hon. Minister will take it from me that it is now a settled law that every part of the statement, whether it exists in the diary or otherwise, a copy of it must be given. If he wants me to refer to any rulings, I will refer him to Criminal Procedure Code by Mitra (Pages 483 to 502).

Shri Raghavachari (Penukonda): It cannot be disputed.

Pandit Thakur Das Bhargava: I am very glad my friend supports me. But what is your provision today. The provision you are making today in clause 23 of your Bill is:

> "The report forwarded under sub-section (1) shall be accompanied by copies of the first information report recorded under section 154 and of all other documents on which the prosecution proposes to rely, including statements of witnesses recorded under sub-section (3) of section 161 and statements and confessions recorded under section 164."

May I humbly submit that by abolishing Section 162 and enacting it in clause 23 you are depriving the accused of one of the most valuable rights which he possesses today. If this is done a very great injury will be caused to the accused without the Home Minister meaning it. If this aspect of the case is specially brought to his notice, I do not think he will differ from me. While he has included statements under sub-section (3) of section 161, he will also include all the statements, wherever existing in the diary as in the words of section 162, so that the accused may be furnished with all the statements with which he is today furnished. Let his right not be taken away. It is a very valuable right, and only those

[Pandit Thakur Das Bhargava]

who are practising in the law courts can realise what the effect of this deprivation will be.

Then again clause 23 speaks of "and statements and confessions recorded under section 164." Now, I am very sorry to make this remark. It appears that this Bill has been drafted by a top-ranking lawyer; but at the same time I should point out that perhaps that lawyer had not had the benefit of practising in the original courts. I will have occasion to refer to this matter subsequently also.

According to Section 164 these statements are never with the police officer. It is irregular to send them to a police officer. A police officer ought not to be in possession of these statements. Under section 164 these statements must be sent by the magistrate recording the statements to the court which is to enquire into the case. As a matter of fact a police sub-inspector is not supposed to know the contents of these statements. These statements are confidential; they are not given to the police sub-inspector. They are sent to the court under section 164. It is, therefore, irregular to give these statements to a sub-inspector. Because when a person is taken to a court, while he is in the free atmosphere of the court, he may make any statement, and it is not right that the statement should be brought to the notice of the sub-inspector and the police officer puts pressure on him to say something other than what he proposes to say independently.

I have also to refer to another aspect of section 162. I am sorry I have to refer to these details. These are of such an important nature if I do not mention them the full significance of them will not be realised. Now according to the provisions of section 162 these can only be used for one purpose and one purpose alone—that is contradicting the statements of prosecution witnesses.

Now the police officers write all sorts of things in the *zimni*. Once in a *zimni* it was written that such and such Counsels were brought from various places and they claimed they would demolish the whole case. It so happens that statements of the accused are also written in the police diary. We do not know what a police officer writes. Usually it is written: "This man has confessed and said he was accompanied by so and so when he committed this crime." Then again so far as defence witnesses are concerned, sometimes a police inspector knows in advance what persons are coming in defence. He knows that the man might plead *alibi*. He knows that the houses of some persons are near and they will appear as witnesses. So, in advance, he writes the statement of these witnesses that they were not present at the spot, so that ultimately when the case comes to the court those statements could be utilised by the police for the purpose of contradicting defence witnesses.

Now, as I have submitted the use of this copy is restricted to one thing, that is contradicting prosecution witnesses. At present the law is absolutely certain and well established. These statements cannot be used for any other purpose. Now, Sir, you have been pleased in your wisdom to grant the accused a valuable right of appearing in his own defence. Now if this is going to be enacted that there is no law which will prohibit the use of those *zimnis* against the accused when he appears in the witness box such a law is bound to be abused to the detriment of the accused. I would therefore, submit in all humility: kindly do not take away section 162 or, in the alternative make a provision in some other place that the statements taken under section 161(3) or written in any part of the diary will not be used for any purpose except for the purpose of contradicting

the defence witnesses. This is a very salutary rule and this should not be departed from. I know the hon. Home Minister is very kind in his heart. He looks at things from a dispassionate view and from a detached in view as if looking from the sky. And that is why we differ from him in the amendments. I do think that with the best of motives he is doing this. But the unfortunate part of it is that he does not really know the conditions obtaining in the mofussil. It is most unfortunate. In England, and perhaps in America—I do not know—if a person confesses to the police then the word of the police officer is gospel truth, and no confessing accused can escape punishment. But what happens here? For years, or for scores of years, I should say, you have got in your books that all confessions before the police are irrelevant. Any statement written by the police officer—Inspector, Superintendent of Police, Inspector-General—any statement in the *zimni* cannot be used against the accused. Your police officer may be an angel, but in the eye of the law, whatever is in his records is not taken as good evidence against the accused, because experience has shown that the police, generally speaking, do not investigate the cases in the proper manner, according to the high standards which are obtaining in other countries. This is very unfortunate. You must assume things as they are, and you cannot say that 'we will be advised in changing our laws.' Therefore, in all humility I submit that the rule which has been regarded as good for section 162 should not be departed from at this stage. You have not succeeded in bringing about a state of things in which truth-loving people will have shed all their defects of character. We want to be with you in enacting not only this measure but much more, but today, if you do this, your purpose and aim that the accused be properly defended, and that there would be no miscarriage of justice will not be achieved. Take only the present conditions in view and then enact according to them.

I wish to submit that in so far as section 162 is concerned, I am positive in my mind that the Select Committee will do well either not to abolish the section or to enact certain provisions which will include the principles which are embodied in section 162.

About section 164, I do not want to repeat, but at the same time, I should like to refer the hon. Minister to page 518. I am really making an attempt at converting the convertend. He himself said that this section is being used for penning the witnesses to particular statements. This practice has been condemned outright, beyond measure, and, I should say, in most explicit terms, by all the High Court Judges and the Supreme Court Judges. What is the result? No court will accept this statement so much so that the courts have gone to the length of saying that this statement cannot be used for the purpose of corroboration. Though the rulings on this matter are not unanimous, all the same, concensus of opinion is that such statement under section 164 can only be used for contradicting not for corroborating the witnesses. I doubt it. It can be used for corroboration as long as this law is there. But my own fear is that court may in future be included to use these statements for corroboration. I want to say that such kind of statements should never be used for corroboration. Otherwise, there could be nothing but miscarriage of justice.

The Minister of Home Affairs and States (Dr. Katju): Which statement under section 164?

Pandit Thakur Das Bhargava: The statement of witnesses, which, according to the Home Minister, is today used by police officers against dishonest witnesses.

Dr. Katju: I would like to know from my friend—with his vast experience at the Bar—how many guilty persons have escaped justice under the sessions courts?

Pandit Thakur Das Bhargava: I have no desire not to answer this question, but when you take the time into consideration against me, you will excuse me, because.....

Dr. Katju: Then, I withdraw the question.

Pandit Thakur Das Bhargava: If the question is put, it cannot be withdrawn except with the leave of the House.

The hon. Home Minister told us two days back that 75 per cent. of the cases ended in failure, and out of the rest, in which there is conviction, one-third is acquitted in the High Courts and the Supreme Court. So, according to him, about 83 per cent. is acquittal. That is his estimate.

10 A.M.

Dr. Katju: That is a fact. At least more than half are guilty.

Pandit Thakur Das Bhargava: I agree with him cent. per cent. and even to the extent of 200 per cent. I am only anxious that persons who are guilty of murder etc., or, for the matter of that, of any other offences also, should be brought to book in a legal and honest manner. Where is the differences of opinion? My submission is that even the remaining 17 per cent. that are convicted now will have to be let off by this law which is now under consideration. I am going to submit how this result is going to be achieved. Today, what happens? In regard to the police statements, the courts have got very little faith in them. If you want to have good administration of justice and a climate of truth and justice prepared for the country, you have to find and make up what the police officer and the pleader lack today. These are two responsible persons besides the courts in the administration of justice the lawyers and the police. Unless you reform them no change is possible. The public who bring false cases out of revenge or spite require information but it shall take a long time to change their character. If you enact this section 164, you must remember this: in every word, in every second amendment, the hon. Minister has said that copies of section 164 will be given. The result will be this: the statement under section 164 has been condemned by every court. It means that you will be opening schools for tutoring witnesses and for preparing false statements. What would happen? Another amending Bill will come.

Mr. Deputy-Speaker: Are not copies of section 164 statements now available?

Pandit Thakur Das Bhargava: They are available. You may remember this, by your own experience: every statement that has been recorded under this section, when it comes to the trial, to the higher courts, the higher courts have treated it as tainted evidence. It is thought that the statement has been obtained improperly by pressure and is therefore not reliable. These are the views which you will find, have been collected at page 518 of the book that I have before me. If I want to quote the rulings, it will take a good deal of time of the House and Mr. Bansal may come in against me. So, without quoting, I might say that the practising Members of this House know and realise that if section 164 is allowed to have full play, then there would be regimentation and no person will be allowed to have indepedence of evidence. If, before a court of law, you make an independent statement, and you want to stick to it, the new Section 485A empowers the court to say. "Now you go to jail for another month."

It means this will be utilized for pinning down evidence under section 164. Even the 17 per cent. of convictions will go away. This will be the result and there will be difficulty and chaos.

Mr. Deputy-Speaker: Are there not cases where, at the earliest opportunity, before the magistrate, the witnesses are uncontaminated and make a statement, and subsequently, inducements are offered so that they may change? Therefore, some value ought to be attached to section 165.

Pandit Thakur Das Bhargava: It would carry conviction with me. Most of the judges will be happy. If the original statement were made before the Magistrate as soon as possible then it would be all right. But this statement is not the original one, before the magistrate to which every possible value should be attached. If it is uncontaminated and is made soon after the occurrence, it is all right. But after 10, 15 or 20 days, the police takes the man to the magistrate, asks him to be pinned down to a statement. Why should that man be taken to the magistrate and asked to be pinned down to that statement?

Shri Raghavachari: It is the police that takes him to the magistrate.

Pandit Thakur Das Bhargava: I am not of this view—that in all cases under section 164, the statements are such tainted statements that nobody should take care of them. My difficulty is that when the police interferes, it does not inspire confidence so far as the courts are concerned. That is the real difficulty. My humble submission is that if all these amendments are accepted, I am quite sure in my mind that the object will not be achieved though I admire the object. The object is laudable. It appeals to me. I will even think that the hon. Home Minister is a *rishi* of old of one's imagination. But what am I to do? His remedy is worse than the disease.

Dr. Katju: That is what you think.

Pandit Thakur Das Bhargava: I think so and I can give you the opinions of the hon. judges...

Dr. Katju: I know them.

Pandit Thakur Das Bhargava: You will see there that others also think so; the judges think so. My humble submission is so far as this clause is concerned, I am clear in my mind that the Select Committee will be well-advised in throwing out this clause and keeping this section, section 162, intact.

Dr. Katju: He is an advocate of communism

Shri Nambiar (Mayuram): He speaks truth.

Pandit Thakur Das Bhargava: These gentlemen on the other side applaud me whenever I seem to say something against this Bill though this does not please me or the hon. Home Minister.

Dr. Katju: Hon. Member may kindly proceed to section 165.

Pandit Thakur Das Bhargava: I am coming to that. I go to another section, section 207. In regard to this section, I said something yesterday and I do not want to repeat it. If it is allowed to remain in regard to private complaints, I would be very sorry. The hon. Home Minister seems to think that apart from the police, the private complainant also has got in the eye of law a very high place. He has now gone further and gone to the extent of providing for an appeal from acquittals so far as private cases are concerned. I will have something to say about that subsequently but now I am speaking about the commitment stage.

In my humble opinion, it is not right to go to court at that stage. As soon as a case is ready, it ought to be given to the sessions court for trial; that is my humble submission. I do not want any Magistrate to intervene and decide if all the formalities of law had been fulfilled. That

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is my humble submission. It is grounded not only on the question of an intervening Magistrate being there but on much more solid grounds. As between the sessions case, the warrant case and the summons case, there are very very important differences of procedure and we must keep them in mind. I beg to draw the attention of the whole House to this matter because this is a very important thing.

In regard to a sessions case, the accused person is called upon to enter upon his defence after the whole prosecution is over. This is the present law. In regard to warrant cases, we fully know that the whole evidence is over before he is examined. In regard to summons case, we know that as soon as the accused comes, the first question put to him is: 'What have you to say? You have to show cause why you should not be convicted'. That is the main difference between them.

The other difference is about the defence. In regard to the main difference, I beg to submit that the hon. Home Minister has provided a curious thing in that section, in clause 18. He says that at this stage when no witness has been examined, when the documents are ready, when the court is ready, the accused will be brought and then he shall be examined. That is the most serious matter. The words are: 'The Magistrate shall then authorise.....'

Shri R. Venkataraman: That is in respect of property.

Pandit Thakur Das Bhargava: I am sorry. This is section 207. He says: 'The Magistrate shall peruse all the documents relevant to the case, examine the accused if necessary and after giving the prosecution and the accused an opportunity of being heard, he shall decide whether the accused should be committed for trial.....' At this stage he has to disclose his defence. I take very strong exception to this. It is, I should say, a somersault of the entire procedure that we have got today. The accused is not to be examined at the stage when no witness has been examined by the prosecution. Only the statements are there. If you ask the accused to give his defence at this stage it is entirely wrong. The prosecution witnesses can subsequently concoct a story and enmesh him. In regard even to warrant cases we know that under section 252 all the evidence is taken, and afterwards the accused is examined. He knows what the case is. He need not anticipate the case and make statements for which occasion may or may not arise

This is not alone. I have seen in all the amendments there is a certain principle which runs through. For instance, I find there is an amendment to section 342 that not only for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him you can examine the accused but, you can cross him at your sweet will, you can ask him any questions, and he can be enmeshed at your pleasure.

Mr. Deputy-Speaker: It is not made obligatory on the accused to make a statement. It is open for him to make

Shri Frank Anthony (Nominated—Anglo- Indians): It is bound to be the practice.

Pandit Thakur Das Bhargava: If the accused is put a question and he keeps mum—he can keep mum—the court can draw its own conclusion from it. If he makes a statement the court can draw any conclusion from that statement.

My humble submission is that so far we have got the law that in sessions cases the accused is asked to make a statement after he has heard the prosecution evidence. (*Interruption*). I am speaking of sessions and warrant cases. In regard to his statement also, this has been

the law so far that the accused would be asked only questions which will enable him to explain the circumstances against him. In regard to other things no questions are allowed, and the courts have deprecated times without number the practice of cross-examining the accused at that stage. This is a subtle way of cross-examining the accused.

Shri Frank Anthony: It is not subtle way; it is a crude way.

Pandit Thakur Das Bhargava: I was submitting that the examination of the accused as provided for in section 207 under clause 29 is not right and I would ask the hon. the Home Minister to kindly take it away and see that the accused may not be examined at this stage.

In regard to sessions cases, warrant cases and summons cases the main difference is about defence procedure. Why has the law provided four kinds of procedure? Because warrant cases and sessions cases are more serious cases and the accused should be given more opportunity for defence. What has the hon. Minister provided here? The hon. Minister provides at this stage, when no witness has been examined, when it is only from the statements and the documents that the accused knows what the case against him is, under sub-section (5) of the proposed section 207A, "the accused shall be required at once to give orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial". It passes my understanding how the accused will be able to give a list orally all at once as soon as he receives copies of the documents. It is impossible in practice. What is the present provision? After the evidence of the commitment stage is given, after the whole evidence is recorded in the committal proceedings, then the accused is asked to give a list and he can also supplement that list if necessary. We know, even in the sessions court we have been filing such lists. Here, at the time when the accused comes face to face with the magistrate, he is not to cross-examine evidence or hear the witnesses etc. but, is asked atonce orally to give the list of defence witnesses.

Then there is another provision. It is very kind of the hon. the Home Minister to make a provision like this :

> "Provided that the Magistrate may in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and where the accused is committed for trial before the High Court, nothing in this sub-section, etc. etc."

Sir, my humble submission is that this is not fair. This is not fair to the accused. Before he enters upon his defence you must give an opportunity to give his list. Only then he knows what evidence he has to produce. For instance, he comes to know the names of the people from the cross-examination of the prosecution evidence when they allege to be present at the time of occurrence. How can he summon them beforehand. The result will be that the prosecution witness will never admit that these defence witnesses were there, if they knew this beforehand. It is a practical difficulty. My submission is that the accused will be hampered in his defence if he is asked to give a list in this manner. These provisions must be liberalised if the accused is to have a proper defence.

Then, Sir, I leave these provisions and I come to the question of warrant cases. Before I deal with this I want to say a word about jury.

Mr. Deputy-Speaker: If perchance the preliminary enquiries should be done away with, what are the other provisions made? We will assume that in a murder case the magistrate will not take the responsibility to discharge the accused and he sends

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all the papers to the sessions court. If this is considered to be an unnecessary procedure and waste of time, what is the other alternative?

Pandit Thakur Das Bhargava: The thing is very clear, Sir. There are various ways. In some countries we have got an institution like the Director of Public Prosecutions. Supposing a man of the status of an Advocate-General in a State or a senior Public Prosecutor is appointed to go through these cases, after the matter has passed through him, if they were to be sent to the sessions judge, that is all right. As I submitted yesterday, in the Punjab in 1948-49, there were no commital proceedings and the cases were to be sent straightaway to the sessions judge. There was no difficulty there; absolutely none. I for one want that the commitment stage should be done away with. It is unnecessary and I am at one with the hon. Home Minister in this respect. But, I do not like that a magistrate should intervene at this stage, examine the witnesses and perform all these things which he should not perform. In the first instance, when you go before a court of law or a court of justice, it is anomalous that he should not be given any powers to discharge a person in a case in which he feels that there is absolutely no case. The experience of the hon. Home Minister might be different, but I have known many cases in which in the commitment stage itself the magistrates have discharged the accused. I can quote some instances in which this has been done even though the hon. Home Minister says that his experience is different. At the same time, my humble submission is that the magistrates should not intervene in these cases. I do not know the law of England but I know there are Director of Public Prosecutions and therefore the whole thing can pass through him direct to the sessions judge and there is no difficulty.

Then, I want to say something about these warrant cases. As I said I will first say a few words about the Jury. There are no juries in Punjab. I have no experience and therefore I cannot speak with any experience or authority over the matter. But, I know my people very well. I know that in Punjab, the hon. Home Minister has so far taken no steps whatever so far as prohibition is concerned. As long as you allow drink, you cannot think of a jury.

Some Hon. Members: Why?

Shri Frank Anthony: Intoxicated verdict?

Pandit Thakur Das Bhargava: May I submit for your consideration, I know that in many parts of the Punjab, murders are committed without any motive, under the influence of drink. This drink is responsible mostly for murders in my province. I know it for certain.

Shri N. C. Chatterjee (Hooghly): Does the hon. Member apprehend that the jury will return an intoxicated verdict?

Pandit Thakur Das Bhargava: The jurors will not give an intoxicated verdict. Intoxication requires fresh drinking. They have not got the heart; they have not got the head to judge coolly. I am not speaking of Bengal where this right has been exercised for a long time. I do not say that in Bengal and Assam this system should not go on. I would rather say that this should be intensified. I only say that where you want to introduce it as a new experiment, please stay your hands for ten years. I do not know the conditions of other provinces. They may have it. The hon. Home Minister is right there when he has enacted like this.

Dr. Katju: May I intervene and say that in the Bill, so far as jury is concerned, the law is left severely alone. It is left to the State Governments to have it or not.

Pandit Thakur Das Bhargava: I do not blame the hon. Home Minister for leaving it alone, and not making it obligatory on the States to have this provision. I like the idea which the hon. Home Minister has propounded in this House that the burden should be laid on the public at large and they should see that justice is done. I like it very much. I am not opposed to the system of juries. It may be introduced where the States like it. It may be continued in the States where they exist. So far as the Punjab is concerned, I would respectfully ask him not to get it introduced for 10 years.

Dr. Katju: I am not doing it.

Pandit Thakur Das Bhargava: My hon. friends laughed at the prohibition affair. I know that there are persons who differ from me. This is my humble view.

Shri U. M. Trivedi (Chittor): They believe in drink.

Pandit Thakur Das Bhargava: If the hon. Minister wants *Ram Rajya* at once, if he wants us to become truth loving people, he should put an end to this drink evil. In spite of what Shri Frank Anthony may think, I remember his speech the other day. If you ask me one cause which is responsible for so many crimes in this country, I maintain, it is drink. I may be wrong.

Shri Frank Anthony: You are wrong.

Pandit Thakur Das Bhargava: I am definitely wrong if Shri Frank Anthony is right. Otherwise, I may be right and he may be wrong.

So far as the jury is concerned, I have an open mind. So far as the assessors are concerned, I am one with the hon. Home Minister, that it must be abolished all at once. Sometimes I doubt wherefrom these jurors will come and whether they will not be the same as assessors. We have had a very sad experience of the assessors. If instead of two, we have five, what difference is it going to make? We know how they have become corrupt and how they have never exercised any sort of independence. I have not got the time; otherwise, I could have given some stories about assessors and jurors and the House would be amused to hear them.

Now, I come to warrant cases. The relevent amendment is contained in clause 36. The amendment is that in section 252, for sub-section (2) the following sub-section shall be substituted, namely:—

> "(2) In any proceeding instituted on police report, the Magistrate shall, before commencing the trial under sub-section (1) satisfy himself that all the documents referred to in section 173 have been furnished to 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."

It so happens that sub-section (2) of 252 of the present Code has been substituted. Now, what has been substituted is exceptionally important. The substituted part in section 252 runs thus:

> "The Magistrate shall ascertain, from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary."

This salutary procedure of law has been taken away. The right of the magistrate to ask him "Who are your witnesses?" and to summon them has been substituted by another section where the reference is only to documents etc. This thing does not remain here. If the magistrate

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has not got the right to ask for the witnesses and summon them, how is the case to proceed? I think this is a case of an omission which I want to bring to the notice of the Select Committee. They may be pleased to put this thing again into the statute so that it may remain. Otherwise, the whole Bill will be infructuous.

Similarly, when you kindly see the next clause, clause 37, this is again very curious. It reads:

> "For sub-section (1) of section 256 of the principal Act, the following sub-section shall be substituted, namely....."

May I request you to give your attention to me for half a minute? The words are:

> "If the accused refuses to plead, or does not plead, or claims to be tried, the Magistrate may, if he is of opinion that further cross-examination of any of the prosecution witnesses is necessary in the interests of justice, allow further cross-examination of such witnesses and the witnesses shall be recalled and after such further cross-examination and re-examination, if any, they shall be discharged and the accused shall then be called upon to enter upon his defence and produce his evidence."

Supposing a charge is framed against an accused person on the basis of the evidence of the complainant alone, it is now usual that as soon as the complainant is examined, the court at once frames the charge so that the accused may be deprived of the provision under section 256 for further cross-examination. There and then he is asked to further cross-examine the complainant and then the rest of the evidence is taken. This is how this provision under section 256 has come to work in the mofussil courts. But, now, taking this amendment as having been passed, what would be the result? The result would be further cross-examination in the discretion of the court, and if the court allows this, then, after cross-examination of the witnesses, "and after such further cross-examination and re-examination, if any, they shall be discharged and the accused shall then be called upon to enter upon his defence and produce his evidence", which means that the whole of the prosecution evidence which has not been produced will not be allowed to be produced. If this is enacted, it means that the prosecution will fail almost in every case. According to the present law, under section 256 after the cross-examination and further cross-examination of the witnesses, the rest of the prosecution evidence is taken. If the whole of the prosecution evidence is not taken, well, there is a very great grouse for the complainant and the police. But now you have framed it in such a manner that except for these witnesses who are produced before the charge, no other prosecution witness will be allowed to be produced.

I do not know who has framed this. When I submitted that some top-ranking lawyer has produced it and not a practising lawyer, I had this particularly in my mind. I would respectfully ask the Select Committee to go into these provisions rather minutely. Otherwise, the whole system is going to come to a standstill and the whole structure is going to crash down. The relevant portion of section 256 is this:

> "The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence."

Those words are missing. May I know if they are intentionally missing or by mistake? If they are

missing by mistake, I do not want to say anything more, because the mistake can be corrected. I would beg of the Home Minister and the Select Committee to kindly put these words, so that the whole evidence may be there.

Now, I have to submit a word about the right of cross-examination. As I submitted yesterday, the right of cross-examination is a fundamental right and is a very valuable right which every accused should possess. If there is no right to cross-examine...

Mr. Deputy-Speaker: Why is the hon. Member making this suggestion when he says it is in the interests of the accused? Nowadays, the practice is, after examining the complainant, so as to avoid further cross-examination, straightaway the magistrate proceeds to give a charge and then he examines the other witnesses. Is it not in the interests of the accused to confine himself only to the complainant and then finally to further evidence?

Shri Frank Anthony: Why plead the Government's case?

Pandit Thakur Das Bhargava: I am giving you this example that it happens that the complainant is examined and the charge is framed, because according to the law under section 254 as soon as the court comes to the conclusion that there is a *prima facie* case, the court is in a position to charge the accused. It is not every court that behaves in this manner. All courts are not of this kind. Only courts which want to shut out cross-examination behave in this manner. There are many other courts which want to be convinced and take other evidence, before they proceed to frame a charge.

Mr. Deputy-Speaker: Would they not be more careful, because now, there is no more chance of examining any more witnesses, until all the evidence is taken by the prosecution?

Pandit Thakur Das Bhargava: Today, the accused cannot wait. As soon as the witness comes, he is asked to cross-examine, and if he does not cross-examine, what is the result? The accused loses his right. He cannot say, I shall cross-examine him, after all the witnesses have been examined. It is very kind of the hon. Minister to have made a provision here to that effect, whereas previously there was no such provision, and the accused either lost his right or cross-examined the witness at the moment he was there: he had no other right, but now what the hon. Minister has provided for is this. While he has given some favour for the accused, he has robbed him of a much greater and valuable right, and he says here that the court may say, all right, your cross-examination is deferred. But then what happens?

The provision in clause 37 reads;

> "If the accused refuses to plead, or does not plead, or claims to be tried, the Magistrate may, if he is of opinion that further cross-examination of any of the prosecution witnesses is necessary in the interests of justice, allow further cross-examination of such witnesses...."

Now, I do not want that any magistrate becomes the guardian and adviser of the accused. I want that the accused shall have absolute right to cross-examine. If this right is taken away, there is an end to all justice. The hon. Home Minister was submitting to the House yesterday that there were three occasions when these rights for cross-examination were exercised by the accused,—first, under section 252, when the evidence is taken; secondly, under section 256, when after the charge, the witnesses are called; and thirdly, under section 257. I would appeal to the experience of every practising lawyer in this House to say that so far as section 257 is concerned, this right is rarely invoked. It is only in those cases that section 257 is used, where

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the magistrate does not allow the right under section 256 for want of time or other case, and asks the counsel, to make a petition under section 257, or in cases where the magistrate thinks himself that the statement of the witness will be of some use. It is only in those cases that section 257 is used, but usually it is not used. This must be the experience of every person. If you look at section 257, you will find that there is no obligation on the part of the magistrate to call any witness. The words are:

> ". . .the attendance of such witness shall not be compelled under this section,. . ."

Therefore, my submission is that this reference to section 257 should not have been made by the hon. Minister, because it is a right rarely exercised, and it is within the discretion of the court. What we are really concerned with here is the right to cross-examine, under section 256. The hon. Minister wants to make this discretionary. I would, with the utmost humility, beg to submit for his consideration that he should not take away this right. This is the most valuable right of the accused. If you want that any respectability should remain in this country, and that people should be independent, you must see that people are not convicted in courts. The first attempt you are making here is that you take away the warrant cases, and enlarge the sphere of the summons cases. The hon. Minister has not supplied us the figures as to the number of cases where this change would be effected. But I have made a list, and you would be surprised to learn that if this amendment is accepted, a very large number of cases would become summons cases.

There will be less chances of justice. In summons cases the first question of the magistrate is: 'Show cause why you should not be convicted', whereas in the warrant cases the person has got a proper trial. He can say anything. Therefore, my humble submission is that this is a retrograde step, that you want the scope of the summons case to be enlarged. By one stroke of the pen, you take from out of the purview of the warrant cases about 60, if not more, sections—some of them very important. Under section 153A, many persons are accused now. My submission is that this is a retrograde step. We want, Sir, that in this land where people shun conviction, where people do anything before they are convicted, this sentiment of the people should be duly respected. It is a law-abiding country. If we want that our country should remain law-abiding, we should see that the sentiment of people against convictions should be fostered and they should be encouraged to think that there should be no conviction against them, and it is a mark of disgrace that there should be a conviction. If you make convictions easy, you will be doing a wrong thing. The effect of this amendment will be that convictions will become easy.

Shri Frank Anthony: That is the purpose of the whole Bill.

Pandit Thakur Das Bhargava: Excuse me, I do not agree that that is the purpose of the whole Bill. The purpose of the Bill is an ennobling one. It is designed with the best of motives and I simply congratulate the Government for having brought this Bill. The purpose is quite clear.

Pandit K. C. Sharma (Meerut Distt-South): Then why spend so much time in arguing?

Pandit Thakur Das Bhargava : My friend is quite right in putting this question. But he should not complain if I answer him.

Shri Velayudhan : Give us a chance to speak like this.

Pandit Thakur Das Bhargava : This evil has spread further to my friend, Mr. Velayudhan also. He wants to know from me as to why I am submitting for the consideration of the hon. Home Minister, whom I admire so much, who I believe is doing the right thing, as to why I am criticising him. Now, it is quite clear. I need not offer any explanation. I and the hon. Home Minister and many of my friends on this side of the House have got the same aim. We are all actuated by the same purpose, that there should be purity in courts, that there should be justice in courts.

Shri Frank Anthony : This is not the way of doing it.

Pandit Thakur Das Bhargava: The way in which he is doing this, as it appears to me, is that of a detached lawyer sitting in Delhi. He does not know what is happening in courts. Therefore, I ask him to come to brasstacks and to the realities of the question, I ask him to improve his police and improve his lawyers. He put a question yesterday to my friend from Bombay and asked 'What is the right way in which you want it to be done?' You are a very respectable Member of the Bar and my friend, Mr. Chatterjee, is a respectful member of it. Ask him his opinion. Just have a look into your own heart. Do you not believe that all these Bar Associations are dens of perjury, where perjury is tutored and taught and everything.....(*Interruptions*). I know as a practising lawyer. (*Interruptions*).

Mr. Deputy-Speaker : Order, order. I have very great respect for the age and experience of the hon. Member.

Shri N. C. Chatterjee (Hooghly): He has specialised in that.

Mr. Deputy-Speaker : But to make such a sweeping remark on the floor of the House that Bar Associations are dens of perjury, is, I am afraid, not proper. It ought not to have been said by the hon. Member. The hon. Member will kindly reconsider his statement. Such a sweeping remark that lawyers' and Bar Associations are dens of perjury is wrong.

Pandit Thakur Das Bhargava: I certainly bow to you.

Shri Tek Chand (Ambala-Simla) : I crave for the expunction of this remark. It is a blot on the profession.

Pandit Thakur Das Bhargava : I bow to your ruling. You might order the expunction of these remarks. I do not mind.

Mr. Deputy-Speaker : There is absolutely no occasion for expunction. But the hon. Member may say that he did not mean it.

Shri N. C. Chatterjee : He has stated that the remarks may be expunged.

Pandit K. C. Sharma : These remarks may kindly be expunged.

Pandit Thakur Das Bhargava : I never wanted it to be taken in that spirit. I never reviled any person. I was only respectfully, in all humility, submitting to the hon. Home Minister. I was not in any way condemning them or condemning myself. At the same time, is it not true that statements are made.....

Mr. Deputy-Speaker : I am afraid, I have not made myself understood. Unfortunately, many members of the Bar—individuals—do not strictly maintain the high position of the Bar and tutor witnesses. But to say that Bar Associations as a whole are huge dens of perjury and that witnesses are tutored there, is very wrong. With all respect, I must say that such a statement regarding Bar Associations is not warranted by the situation. The hon. Member may certainly say that there are individuals who do this, but it is really surprising that he said that Bar Associations are places where witnesses are tutored and that all of them are engaged in the same business. With all respect I have to say that such a sweeping remark on a very noble profession of India should not be cast in that manner.

Shri S. V. Ramaswamy : In view of his reassertion, the remarks may be ordered to be expunged. (*Interruptions*).

Pandit Thakur Das Bhargava : I do not understand this. Hon. Members know that I am not referring to them individually. They should think, when I make the remark, that it is only with a view to see that we take proper steps to bring in a proper climate for truth-loving people. I am not saying that we are all actuated by the worst of motives. The system is so bad from the very start. Do we not know all the things that are going on; do we not know that no case would be successful unless it is supported by almost perjured oral evidence?

Several Hon. Members : No, no.

Dr. Katju : My hon. friend is going from bad to worse.

Pandit K. C. Sharma : On a ponit of information, Sir. Has or has not the hon. Member withdrawn the expressions he has used against the Bar Associations? Have they been expunged from the proceedings?

Mr. Deputy-Speaker : I have not ordered the expunction of anything.

Pandit Thakur Das Bhargava: I have no apology to offer in this respect. So far as what I have said is not regarded as good by my hon. friends, that may be expunged. I have got absolutely no objection. I never intended to imply that all persons in this profession are bad. I never intended that. We know that there are good persons. I never said that so and so has been doing it; I never said that Mr. Chatterjee is doing that nor did I say about any other Member. They are all respectable people. These remarks may be directed to myself; I am ready to take the responsibility. I have done it and I am responsible for it and I do not want to say that these things are not being done. They may not be done by all and sundry; they may not be done in the Bar Associations. I did not say that it is done in the Bar Associations. A lawyer practising in the mofussil will be guilty of perhaps speaking a falsehood in this House if he means to imply that as a matter of fact all these witnesses do not come to him and do not ask him what they have to say in court. This is the bare truth and if I am expressing it, my friends take exception to it, and say that it is in bad grace. I would say that they are more discreet. I would withdraw all the words that I have said if they offend my friend. But, at the same time, if you ask me the real truth, I am not going to be untrue to myself and not say things which I have seen in my life and which I have been also doing to some extent.

Pandit K. C. Sharma : The world is greater than your experience.

Pandit Thakur Das Bhargava : I know at least the Bar rooms of Meerut and U. P. very well. I have practised there.

Pandit K. C. Sharma : Never in my life have I tutored any witness and never have I seen the members of the Bar in my Bar tutor the witnesses. I protest against that (*Interruptions*).

Mr. Deputy-Speaker : Order, order please.

An Hon. Member : He is not a lawyer.

Pandit K. C. Sharma : I am a very eminent lawyer. I make this claim by man and God and I stand by it.

Mr. Deputy-Speaker : Order, order. May I appeal to all sections of the House, and, particularly to the lawyer section, not to feel that individual lawyers or Members of this House are being attacked. They need not apply these remarks personally. Always present company is excepted. I would say this is all digression and it has added a certain fillip or created a sense of irritation. Therefore, hon. Member will proceed to the other matters in the Bill.

Pandit Thakur Das Bhargava : I will proceed to the other matters. My friend was to blame. He is a lawyer as he trots out to the world, that he is a lawyer of great eminence. All the same, I never said anything about any particular Member that he has done it. There may be exceptions. But, I tell my friend that I know the Meerut

Bar; I have myself practised there I will leave it at that.

My friend is asking how are you going to get the climate of truth. I say that the police and the lawyers are at the root of the matter. If these two systems are not really reformed, there will be no climate, of truth and justice in the Courts and abroad.

Mr. Deputy-Speaker: The system of the Evidence Act is responsible.

Pandit Thakur Das Bhargava: Not only the Evidence Act, but the Penal Code is responsible. In setion 302. only two punishments are provided for. When I started practice in a sessions case, I found that a boy of sixteen was sentenced to transportation for life because he happened to kill a man who had adultery with his sister openly. He was a very beautiful boy and everybody thought that it was a wrong thing to give such a sentence. What can the sessions judge do when the law says so? In very many cases, persons have got a good ground for killing others, and in those cases the law provides only two punishments. This is not the only section, but there are hundereds of sections in which the law is such and the system is such in regard to the Criminal Procedure Code.....

Shri Sinhasan Singh (Gorakhpur Distt.—South): On a point of information, may I know how much time the hon. Member will take. He is only at section 250 or so, and there are three hundred more sections to be covered.

Pandit Thakur Das Bhargava: If I am allowed to have my own way and if questions are not put..... .

Mr. Deputy-Speaker: Under the law, in respect of the Finance Bill, a time-limit can be imposed by the Speaker, but there is no time-limit for Bills. Any hon. Member, who has known pre-republican days, will see that some hon. Members took seven days and eight days over their speeches This is a kind of practice which can be done for the good of Parliament and for even obstructive tactics, but it can be said that so far as this matter is concerned, the hon. Member is trying to present very important facts. section.

Shri S. S. More (Sholapur): We are appreciative.

Mr. Deputy-Speaker: I cannot impose any time-limit. I leave it to hon. Members themselves to decide. Hon. Members no doubt curtail their speech, if possible, but wherever they find that in the interests of justice, in the interests of proper administration and in the interests of a particular Bill they have to speak out their mind, they take their own time. I am here to hear whoever speaks.

Shri Sinhasan Singh: I never meant that an imposition..... (*Interruption*).

Pandit Thakur Das Bhargava: I have imposed on myself some sort of a limited control. I do not want to take the time of the House more than is absolutely necessary. I have adopted it in this case and I propose to adopt this principle in future also. On the highest authority I have been advised that no Member in this House should take more time than is absolutely necessary as I have already said. If my friends allow me to proceed in my own way, much time will not be taken. After all, the relevant sections in the amending Bill must be commented upon. I propose to touch only a few; I do not want to touch them all.

I was submitting about clause 37, that so far as the right of cross-examination is concerned, the magistrate must at least arrange that the accused has got full rights of cross-examination, and this right, under section 256. should not, in any manner, be tampered with.

In regard to section 257, that is, clause 38, I have made my submission already.

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In regard to the other sections, I will be very brief. One section that I want to comment upon is clause 2. In regard to clause 2, I very humbly submit that the House will not be well-advised in just enlarging the scope of summons cases, because, as I have submitted, if a list is made out of all warrant cases, some important sections will be included there and, therefore, it means that there will be no proper trial in regard to sections now sought to be included in the list of summons cases.

So far as the question of honorary magistrates is concerned, I have to submit a word. In theory, it may be right to have honorary magistrates if they are respectable and if they are men of integrity, but at the same time, from past experience, we are sick of them and we do not want them. If they are superannuated people, we do not want them. If they are not superannuated people, then also our experience is that stipendiary magistrates are much better than honorary magistrates. I do not like such kind of patronage to be left with the State Government so that they may be able to have some political influence. I am, therefore, opposed to the system of honorary magistrates.

Now, in regard to section 30, I have to submit that so far as the Punjab is concerned this section has been very useful and I want that this may be extended to other parts of India as well. But so far as the particular clause is concerned, I am sorry that the headnote is wrong and misleading. It should be changed; it should be brought into line with the actual section.

In regard to increased punishment, so far as fine is concerned, in clause 8 it is said that a second class magistrate should be able to impose as big a fine as Rs. 500. Now, Sir, I do not like this provision. Even if the punishment is there, it should not be more than Rs. 400, because everything is going to be doubled. But a fine of more than Rs. 400 is too much. It is quite true that the value of the rupee has decreased; but it is equally true that the purchasing power of the people has also diminished. I therefore, submit that the amount of fine should not be enhanced to that extent.

Then, in regard to certain amendments proposed in clause 11, the use of the word "and" is not justified. In clause 13 "the person residing" must remain as it is. The real purpose of the previous amendment is lost if the substitution suggested is made.

In regard to section 107, I have to submit a word. Prior to 1882 and 1898 the law was different from what it is at present. At present two conditions have to be satisfied before a magistrate can ask for security. The man must be there against whom the proceedings are taken and the alleged place of occurrence must also be within the jurisdiction of the magistrate. If both of them are not there, a first class magistrate is not able to take action. Now a change is being sought to be made to the effect that every magistrate should have the power to ask for security, even if both the conditions are not fulfilled. I submit section 107 is in derogation of the rights of liberty of the individual, and we are not justified in enlarging the scope of the section and restricting the right of the individual. I should think that the present section is very wholesome and there is no case for enlarging the scope of the law and restricting the liberty of private citizens.

In regard to clause 16, I would submit that I am very much opposed to substituting the summons procedure for the warrant procedue, in regard to section 117, it is tantamount to putting a person in jail for no reason without a proper trial.

In regard to section 145, I beg to bring to your kind notice that as a matter

of fact the present section is much more helpful to the rightful person than the proposed change. The principle seems to be, as appears from the notes on clauses, that the hon. Minister does not want that the Criminal Procedure Code should confer the right of defamation of civil rights in Criminal Courts. But in section 147 the civil rights of the individual are being determined by Criminal Courts under the Criminal Proedure Code. There seems to be no difference between sections 147 and 145 so far as civil rights are concerned. If the Criminal Procedure Code can decide civil rights under section 147, I do not see why it should not under 145. It is entirely wrong that a court instead of deciding who is the rightful possessor of a property, attaches the property in dispute. What would it result in? You will not be helping the rightful owner. The present provision is very good and it should remain as it is, because it helps those who are in the right.

I have already commented on clause 23. I now proceed to section 198. In regard to this, I am at one with the hon. Home Minister, that if he wants to make an exception in the case of the Rajpramukhs and the Governors and the President, they should not be asked to come to the court. I am at one with him and I support this amendment. But so far as the other public servants are concerned, I am sorry I do not see eye to eye with him. In regard to defamation and other wrongs, I fully appreciate the point of view of the hon. Minister, because he thinks that in case such kind of aspersions are cast against public sevants, they are not to go to court and even if they are asked by the Government to go to court, they out of fear or due to guilty conscience do not resort to courts. So far, it is right, from that standpoint. It may be advisable. But he fails to appreciate the other points of view; that it gives a very great handle to those public servants to wreak vengeance on those who calumniate them. In France, we have got a law called "Adroit Administratif," whereby certain persons are treated differently from all the rest. But in India, we do not have a similar thing. I should like to say that in this matter there should be no discrimination. I am of the view that so far as the Ministers and other public servants are concerned, they may be given some money by the Government so that they may be able to clear themselves. I am of the view that if unnecessary aspersions or wrong aspersions are cast, they may not be able to defend themselves. But all the same, if you make it cognizable offence it may give a handle to the police. Instead of it being a good thing, it will be an engine of oppression in the hands of a few people who will really do harm to the other people. In such cases, it may happen that even an ordinary public servant, who may be an honest man, may also be put to some trouble, but, in the interests of society and himself he should go to court to clear himself, and he should be subsidised by Government to clear himself. Otherwise, it would mean that any person who writes anything against a public servant will be brought to trouble and all fair criticism and all true criticism will be stopped.

I have already spoken on clause 29 and I do not want to take more time of the House for this purpose. I have commented upon clause 31 already and I need not touch upon it again. But so far as the accused is concerned, only for the purpose of enabling him to explain the circumstances of appearing in the evidence against him, he should be examined. It is only for that purpose, and it is for no other purpose.

Now, while I come to clause 34, I may just mention here another clause—clause 108 which deals with section 540A. These two, to a certain extent, are alike. Here, the personal attendance of the complaint is dispensed with and a change is sought to be

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made that even in the absence of the person the court may go on with the proceedings. In a summons case, a complainant who was the person concerned, was not present. It was taken that the person who was absent had made up the case, and the accused is discharged. Now, it so happens that this provision—section 540A—has been existing on the statute book for a long time. Now, it is sought to be amended. I for one have got this difficulty, and I have been having this difficulty for a long time. I myself brought an amending Bill in regard to this matter many years ago, but I was not successful in getting the law changed. I feel that if on account of certain circumstnaces if some of the accused are not present, the case should not be adjourned for the mere reason that some accused are not present. This is a wholesome provision. My difficulty is that the words used in section 540 are capable of two interpretations. The words are these:

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In section 540A, the words are 'incapable of remaining before the Court' which implies that originally, he was present before the Court. The words are: "At any stage of an enquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of the accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader....." The words are capable of two meanings—the words "incapable of remaining before the Court". It means that he could not be present; if that is so it is a good enough provision but if that means otherwise, that he becomes incapable of remaining after being originally present on account of certain reasons, I do not know how it could be possible to meet emergencies which it seeks to improvise against. Therefore, I would submit that this may be changed so that it will not remain capable of having two meanings.

I had already commented upon clauses 37 and 38. I come to section 342 on which I have already commented in some respects. Clause 63 is far too wide and involves a principle which I should think every lawyer should condemn. So far as the accused is allowed to be a witness. I value this and would rather like that this facility is extended to the accused. But at the same time I cannot shake myself away from a feeling that if a person does not go into the witness box there will be every sort of presumption against him. There is this clause which authorises the Court to put any question at any time at the suggestion of the prosecution or defence, or at its own will. We are, as a matter of fact, making an inroad on Article 20 (3) of the Constitution, which says that the accused will not be forced almost to confess and no statement will be taken out of him in such a manner that may be taken as confessing his guilt. I should, therefore, think that the Select Committee should examine this very thoroughly; otherwise my own feeling is that we will be interfering with the ordinary course of justice.

In regard to clause 66 in which also certain sections have been mentioned, I find section 429 is mentioned here. With the leave of the court, the offence can be compounded. I am opposed to section 429 being included in this section. There are other sections also regarding the public wrongs that are committed and these sections should not have been included originally or even now so far as compounding is concerned. For instance, section 494 is also compoundable I think that this requires more the consideration of the Select Committee.

Then I come to clause 67 which is again a very important one and contains a very important right of the accused which now is sought to be taken

away. You will find in Criminal Procedure Code that section 350 gives the right to the accused that whenever a new magistrate comes, he can demand trial *de novo* and this right is sought to be taken away; and not only this right but even the priviso in (b) which authorises the High Court or the district magistrate in cases of appeal to exercise some sort of a jursidiction is also sought to be taken away. My fundamental objection is this. When I come before a new magistrate, I should be enabled to see that the magistrate takes a proper view of the things. In case of a previous magistrate, I may have thought that this magistrate is favourably disposed towards the defence. So when the personnel of the magistrate changes. I think this valuable right which is given by section 350 (a) ought to be retained. Otherwise, if the previous record is meagre—and meagre intentionally, because the accused thought that the magistrate was favourably inclined towards him—he will be put at a loss when he has to appear before a magistrate who may take an adverse view against him. So far as section 350 is concerned we ought to keep the present provision and not allow this provision to be changed.

I come to another provision. In regard to clause 87, as the House is fully aware, when we were dealing with the Preventive Detention (Amendment) Bill I submitted that the appeal provision is known only to the Indian Act and to no other civilized Act in the world.

Shri Frank Anthony: Uncivilized.

Pandit Thakur Das Bhargava: And I quoted from the Criminal Procedure Code and said that in no civilized country such a provision is existing. Now it is sought to be extended. It is not only sought to be extended, but a peculiar provision is going to be made. In clause 87 we find that when the proceedings have been instituted upon complaint, special leave of the High Court ought to be taken before an appeal is filed. So far as the right of appeal to the Supreme Court is concerned, the Home Minister himself has been condemning the practice. He said in two minutes it is disposed of and that in ninty-nine out of a hundred cases it is a confirmation of the earlier judgements.

Shri N. C. Chatterjee: That is not correct.

Pandit Thakur Das Bhargava: It may be quite wrong. But this is what the hon. Minister stated. I do not think the Supreme Court is behaving in that manner. I know in certain cases people have been acquitted and justice has been done.

Shri N. C. Chatterjee: In two cases recently, Chief Justice Mahajan and Justice Das reversed the findings of fact of lower courts and ordered the acquittal of the accused—in the case of Mr. Nargundkar, Excise Commissioner of Madhya Pradesh, and also in the recent case of Shri Bajoria.

Pandit Thakur Das Bhargava: I am very glad to say that special leave of the Supreme Court is not a routine matter. When we are dealing with criminal cases, and with the lives of people, we ought to be more circumspect. And when the law has given the right, the right should be rightly exercised. In regard to private complaints there is no occasion for making a provision for this kind of appeal. When the Government can appeal, the private person can also go to the Government and ask Government to make an appeal. If the Government thinks it fit, it will allow the appeal to be made. I am rather surprised at the proviso. The proviso says if special leave is given and the appeal is made, if the appeal is frivolous or vexatious the court can award some compensation. When the leave is given, when the High Court itself exercises its jurisdiction and comes to the conclusion that it is a fit case which it should see and gives the leave, the provision is made here that if it is "frivolous" and "vexatious", compensation should be given! I am very much opposed to this provision and I do not like that our statute book should be disfigured by a provision of this nature.

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In clause 88 I find the same thing. I am surprised that such a thing should occur in this law. You will be pleased to find that when section 426 was amended it was a very salutary provision of law made that as soon as an accused is convicted in regard to certain types of cases the court had been given authority to release him on bail. To enable him to make an appeal he was released on bail.

The actual words are:

> "When any person other than a person accused of a non-bailable offence is sentenced to imprisonment by a Court, and an appeal lies from that sentence..."

Now the change sought to be made is:

> "for the words 'other than a person accused of a non-bailable offence is', the words 'is convicted of a non-bailable offence and' shall be substituted".

So far, so good. If a person convicted of a non-bailable offence can be released on bail, I have no objection. But, what is to happen to a person who is convicted of a bailable offence? What will happen in his case? Will he be denied these privileges that a person who is convicted of a non-bailable offence is getting? Perhaps the hon. Minister thinks that in cases of bailable offence every person has got the right of being bailed out. He is entirely wrong. So far as his Code is concerned it is perfectly true that every person has got the right of being bailed out in bailable cases in original courts, but when a conviction takes place, only if the court grants him bail, then only he can be let off; otherwise not. Therefore, I am surprised that such a mistake should have crept in. If it is a mistake that this alteration is being made and restricted to non-bailable cases it ought to be convicted and the facility should be extended on all kinds of cases. I would respectfully submit to the Select Committee, to please correct this. I cannot think that the hon. Home Minister has in his mind that in the case of a conviction for a bailable offence, the man should not be released on bail.

Shri Nambiar: It is only a clerical error.

Pandit Thakur Das Bhargava: Not at all. If that is so, persons who are convicted of a bailable offence will not enjoy this facility.

Now, Sir, in regard to section 435, another right of the people is sought to be taken away.

Mr. Deputy-Speaker: I believe, with regard to section 426, the intention was that for the word 'accused' the word 'convicted' should be introduced. That is all that was intended. The sentence should actualy read "other than a person convicted of a non-bailable offence".

Pandit Thakur Das Bhargava: I am in favour of this amendment. I am only pointing out this omission.

Mr. Deputy-Speaker: I think the intention was to release on bail only those persons who are convicted on other than a non-bailable offence. Unless a person is convicted he is not bailable.

Pandit Thakur Das Bhargava: My submission is if he is convicted of a bailable offence, should he not be released on bail?

Mr. Deputy-Speaker: The words 'other than' omitted.

Pandit Thakur Das Bhargava: What would happen to a person who is convicted of a bailable offence? He will not enjoy this facility unless it is specifically mentioned.

Mr. Deputy-Speaker: If the words 'other than' are retained then those persons who are not convicted of a non-bailable offence can invoke the jurisdiction of this section.

Pandit Thakur Das Bhargava: You kindly read, Sir: "for the words 'other than. . . . ."

Mr. Deputy-Speaker: 'Other than' is a wrong inclusion.

Pandit Thakur Das Bhargava: Then, Sir, I was coming to section 435. Now, this revision affair is a very serious affair. In regard to all cases in which no appeal is provided, in regard to petty offences and in regard to serious offences also, this right has been enjoyed for a very long time by the people of India. This is a sort of equity jurisdiction in which, if the court is satisfied that there has been miscarriage of justice, the court can set it right. Now the hon. Home Minister wants that the word 'legality' should be substituted for the words 'correctness legality or propriety', so that there will be no revision on question of fact. I must very humbly submit that this is a very retrograde step and I should think that if we want to do justice in this country and secure justice to even the meanest man or poorest man who may happen to commit petty offences, this step should not be taken. In regard to many other matters, people have said in the House and outside that there should be no difference between rich and poor and man and man. The hon. Minister was pleased to say that there should be no difference between the rich and poor. What happens if a man secures a decree for Rs. 500? He cannot go anywhere; he cannot appeal. If the decree is for Rs. 1,00,000, the man concerned can run up to the Supreme Court. Yet, the saying is that there is no difference between the rich and poor. What about this Bill? If the case is a small one, and an assistant sessions judge passes the order, there is no appeal. If it is by a first class magistrate, there is no appeal. The person concerned cannot go for revision. Why deprive that revision also by this Bill? He may be a small man; the offence created may be small and he might be smarting under the conviction. Therefore, my submission is that so far as this chance is concerned, I am very much opposed to the change proposed in the Bill.

Then, I come to section 485A. As I have already submitted, it is again taking away the right of a witness to make a statement which he wants to make, which may be perhaps true. Facts may be more true than what they appear by way of fiction on the surface. There is another provision of law, section 191 Cr.P.C., which requires that as soon as a magistrate takes cognizance of an offence upon his personal knowledge upon what happened before him, he must ask the accused whether he wants the case to be tried by himself or any other Magistrate. What happens to that provision? That provision is not referred to. There will be two provisions, one requiring that he should ask the person whether he wants the case to be tried by him or another Magistrate and the other requiring him to send the person to jail. The very salutary principle that a person should not become the judge in his own cause is a very good one and no power should be given to the civil or criminal courts to exercise this sort of jurisdiction. The words are "When any Civil or Criminal Court". A third class Magistrate or a judicial *panchayat* magistrate or any other person may be able to send any person to jail for one month. I think it is too great a power to be exercised, and that too without any procedure, without any trial. This would be a prejudged trial. At the same time, it may encourage perjury in the land. Nobody will be able to speak what he believers to be the truth; justice would suffer. It would be a great draw back if this is allowed to be enacted like this. Again, there are other provisions in the Indian Penal Code and the Criminal Procedure Code which provide for offences consisting in disobedience of appearance before the courts. There is no reason why the law

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should become so extensive and try to enmesh people. And, then, there is summary trial:

So far as the present amendment to section 497 goes, I think it is very good. It will result in cases being decided without any great delay. Six weeks is the period. Unless the case is finished by the prosecution, it is good that the magistrate will be able to threaten the prosecution, if you don't finish the trial. I will release the man on bail. That is all right. In proper cases, the power is reserved to the magistrate not to release also. I like this provision very much. When we are considering section 497, may I humbly submit for the consideration of the Select Committee that I placed a Bill in this House some two years ago which has not seen the light of day? It has not come before the House. It has been introduced. It was a Bill in respect of anticipatory bail. In one case, it so happened that a very rich man in Hissar district was chalanned for murder. He was absolutely innocent. The Deputy Commissioner, the District Superintendent, everybody knew that he was innocent. At the same time, the District Magistrate had not the courage to release him on bail because he was a very rich man. He could have given bail to the extent of Rs. 1,00,000 or more. He would not be let on bail unless he surrendered himself. He belonged to a very high family. He did not want to surrender himself. He says, I am innocent, why should I surrender? So, it came to this that he got himself admitted in a hospital at Lahore. I think I am not disclosing any secret. The doctor said that he will not be out from the hospital for some time and that he will get good time to go to the High Court. He was suffering from hernia for the last 15 years, and he was operated upon not all these 15 years, but for the purpose of keeping him in that dispensary. Ultimately, after 2 days, he died after the operation was performed.

Mr. Deputy-Speaker: He has sufficiently suffered.

Pandit Thakur Das Bhargava: There were a good many co-accused with him and I conducted the case on behalf of the co-accused. The learned Sessions Judge held that it is an absolutely false case so far as this rich man was concerned. All the co-accused were acquitted.

Mr. Deputy-Speaker: Was the judgment pronounced after his death?

Pandit Thakur Das Bhargava: Later he was let off on bail. Of course he died. He would not surrender because of the police. Everybody knows and the House fully knows of what type these police people are. People do not want to go to the police because they know that if they go to the police, the other party may see that they are beleaboured and beaten and third degree methods are used on them. Therefore, people do not want to go to the police and surrender. So, it is all right if we enlarge the provision that in proper cases anticipatory bail may be taken. If a man surrenders there and then, bail may be taken. This Bill I brought a few years ago and I wish the Select Committee may be pleased to consider that Bill and make a provision here if it so minded. Similarly, other persons had something to say about section 497 and I submitted yesterday all these analogous provisions should be gone into by the Select Committee so far as this is concerned.

Now, I proceed further to clauses 102 and 103—amendments to sections 526 and 528.

In regard to section 528, I hinted yesterday, and with your permission, I take this opportunity of saying a few words on this.

According to the new scheme of the separation of the judiciary from

the executive, sessions judges are sought to be empowered so far as the hearing of appeals from the convictions of third class and second class magistrates are concerned. We have got a provision like this and I congratulated the hon. Home Minister in regard to his making this change. But what does this section 528 mean? Today, the District Magistrate can withdraw any case from any magistrate, first, second or third class, can call into his own file and can practically transfer the case. Now, you are giving this power to the sessions judge. So far, so good. I am in favour of giving this power to the sessions judge, but I do not know how these two sets of authorities will exercise their powers. There will be nothing but confusion and conflict. The sessions judge will transfer the case, and the District Magistrate will recall that case. The District Magistrate will recall the case, and the sessions judge will transfer the case. If you are really serious, if you want to make a separation of the judiciary from the executive, take away the powers from the District Magistrate and invest them solely in the sessions judge. Therefore, my submission is that this section so far as it goes may be good, but the other part of section 528 must be gone into by the Select Committee and proper changes made.

I do not want to touch any more provisions of this Bill and in the end, I would only submit for the consideration of the Select Committee that this Select Committee has got a very important function to discharge, and they will be well advised in considering the entire Criminal Procedure Code, and at least such connected provisions of the law as call for a change, and unless and until they make proper changes in the corresponding sections and in the sections connected with the other provisions of the Act, they will not have done the right thing.

I do not want to enter into the broad field into which the hon. Home Minister entered because, as I said before, I am not inclined to go into that question. It is only by way of side-tracking the issue that I was forced to go into that question. The broad question has to be gone into by the Government at some time. Now, it is seven years since we attained independence and we must see that the atmosphere in the courts and the atmosphere in the country is changed for the better. Under the old dispensation, under the old law, the Government of that day, the British Government, was not so much interested in our betterment on these lines. Since we have attained independence, we must bring about that better atmosphere. We should change our judicial system and we should change the entire climate of the country. It is not the judicial system alone that has to be changed. There will have to be many other changes. I have been crying hoarse in this House for the formation of Social Reform and National Reconstruction Ministries, but my voice has not reached proper ears and no attention has been given. If the hon. Home Minister wants people may become truth-loving, he shall have to make a great searching of his heart and he shall have to change many other things connected with the judicial system, and not only tinker with the reform of the Criminal Procedure Code which is only one aspect of the entire matter. As you yourself were pleased to remark, the whole of the Indian Evidence Act, the Indian Penal Code, the Civil Procedure Code, and many other enactments are to be changed, if a proper atmosphere is to be created. I would, therefore, think that this is the first thing, as far as this attempt is concerned. If this is the first endeavour only, and more such endeavours are likely to follow, I have nothing but congratulations for the hon. Home Minister. But if this is the first thing as also the last thing, and the hon. Minister wants only to tinker with the problem, I must say this is not likely to succeed, and if this Bill is transformed into law in the form in which

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it appears today, I am afraid, all that is left now, so far as the confidence of the country in the administration of justice is concerned, will be eliminated, and we will have nothing but chaos.

Shri N. C. Chatterjee: After the very exhaustive review by the leading criminal lawyer of the Punjab Bar, my hon. and learned friend, Pandit Thakur Das Bhargava, our task is light. I would only say that when Dr. Katju made the announcement in the last session of this Parliament, when Shri S. V. Ramaswamy's Bill was under consideration, great hopes and great expectations were raised, because he said that he was going to tackle seriously the problem of the reform of criminal justice in this country. On behalf of the Opposition, I immediately promised him our wholehearted co-operation, and I told him, "We shall co-operate with you, provided you make an honest attempt to put your house in order."

You know that for fifty-six years, this Criminal Procedure Code has been in operation, and there has been really no serious attempt to amend it or to revise it, in the light of the new social objectives of the State. Therefore, we welcomed it. But I must say that these expectations have not yet been realised, and there is a sense of disappointment over the Bill that has come now before this House.

The very first day the news came of my election as a Member of Parliament. Dr. Katju congratulated me. I told him, " Dr. Katju, my request to you is this, for Heaven's sake, appoint a strong Commission consisting of the Chief Justice of India, the Chief Justice of one of the High Courts, some leading lawyers who know actually the operation of the administration of criminal justice, in the original courts as well as in the High Courts, some members of the public, and some leading Members of Parliament, let that commission go round the whole country, consult the leading lawyers, judges, Bar Associates and the leading members of the public, and then submit a report." That is how it was done when Sir Tej Bahadur Sapru was the Law Member of India. He wanted to rationalise, cheapen and expedite the dispensation of justice. So, he appointed Sir George Rankin, Chief Justice of my High Court, as the chairman of the commission appointed to go into the matter. Sir George Rankin did a thorough good work, and to a large extent, his labours were fruitful. I wish a similar thing had been done now. But Dr. Katju told me, "I am very anxious not merely to eliminate delay in the courts, but also to eliminate even delay in consulting public opinion. Therefore, he told me, immediately after the sitting of Parliament was over, that he was drafting a memorandum on the reform of judicial administration in India. I do not know whether you have seen this blue-book, which is Dr. Katju's great production, and is entitled. *The Reform of Judicial Administration in India.* He says there is perjury, and he wants to curb perjury, but it seems that there is perjury in his own house. I shall tell you how there is perjury in the Minister's own house. The Attorney-General one day told me. "Mr. Chatterjee, have you seen Dr. Katju's wonderful memorandum on the reform of judicial aministration?" I told him, what is this, he promised to give it to me, immediately it was ready. He said, "I have got it, have you not got a copy of it?" Then, I rang up the Home Minister, and he said, "come along, have a cup of tea with me, and I shall give it to you." When I went to his house, he sent for his secretary, and asked for a copy, the memorandum on judicial administration. His secretary told me, "No, Sir, there is no copy available." I knew that he was not telling the truth—not the whole truth at

least—and I told Dr. Katju, "will you please tell him who I am, so and so, Member of Parliament, you promised to give me a copy of it." Then, Dr. Katju said, "he is my friend Shri N. C. Chatterjee, Member of Parliament." The Secretary immediately went and brought this copy—in half a minute. He said: "There is one copy left. Kindly take it". I have gone through it very carefully and I have studied it with the close attention it deserves.

Pandit Thakur Das Bhargava: Is it a confidential document?

Shri N. C. Chatterjee: It is said here 'Strictly confidential'.

Shri N. S. Jain (Bijnor Distt.—South): May I know, Sir, whether this memorandum has been circulated to Members of Parliament?

Shri N. C. Chatterjee: Dr. Katju said he sent it to some Members—I do not know to whom.

Mr. Deputy-Speaker: Has the hon. Member received a copy?

Shri N. S. Jain: No.

Mr. Deputy-Speaker: Then evidently it has not been circulated.

Shri N. S. Jain: How can he get a document which is confidential?

Mr. Deputy-Speaker: The hon. Member evidently has not been attentive. The hon. Member, Mr. Chatterjee, just now said under what circumstances he got a copy.

Shri N. S. Jain: Mr. Deputy-Speaker, on a point of order, Sir, as also on a point of privilege of this House. The memorandum has been drafted by the hon. Home Minister. He did not supply that memorandum to the Members of Parliament, but he gave it to his own guests at the tables.

Shri N. C. Chatterjee: Forced guests.

Shri S. V. Ramaswamy: This was circulated to the Law Committee of the Members of the Congress Party and we had discussed it.

Shri S. S. More: What about others?

Shri V. G. Deshpande (Guna): Which Law Committee? Congress Party?

Shri S. S. More: What about non-Congress Members?

Mr. Deputy-Speaker: A point of order was raised. I will deal with it. Evidently, if hon. Members had wanted, the hon. Minister would have supplied copies. Even now, if possible, the hon. Home Minister will . . .

The Deputy Minister of Home Affairs (Shri Datar): I shall see.

Mr. Deputy-Speaker: ...give copies, if he has no objection. I am not able to decide whether it is strictly confidential or not. It is for them to say. At this stage, I can only say that he may circulate copies, if he has no objection.

Shri S. S. More: On a point of information. Does the document retain its character of being a confidential document? It has become a public document.

Shri Gadgil (Poona Central): If it referred to in the course of a speech by an hon. Member, then is it or is it not the right of the House to demand that the whole thing should be laid on the Table of the House?

Shri S. S. More: It is.

Shri N. C. Chatterjee: I will lay it on the Table, but there are some remarks not very creditable which I have in pencil on this.

Shri S. S. More: Can't be helped.

Mr. Deputy-Speaker: So far as confidence and secrecy is concerned, it can be kept confidential by the hon. Member who got it. But once any document is read on the floor of the House, to the extent of that portion and any other relevant portion to make it understood, it must be

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placed on the Table of the House. The entire document need not be placed.

Shri S. S. More: Why not the entire book?

Mr. Deputy-Speaker: Why not? It is so.

Shri N. C. Chatterjee: Sir, that is the difficulty . . .

Shri Bansal: On a point of order, Sir. May I know if it is not the ruling given by the Chair that no confidential document should be referred to on the floor of the House. I remember, Sir, on a previous occasion, when I was not a Member of this House, but was sitting in the Gallery, some Member from that side was referring to a confidential document and the Finance Minister of that time raised a point of order, and, if I remember aright, the ruling of the Speaker was that no confidential document should be referred to in the House.

Mr. Deputy-Speaker: No privilege was claimed on this side when the hon. Member, Mr. Chatterjee, referred to the document. Now, when the hon. Minister has no objection to give it to one of the hon. Members, I do not know why other hon. Members should be denied the right to look into it, when it is germane to the issue.

Shri N. C. Chatterjee: It has been given to me and to some friends of Dr. Katju of the Congress Party. (*Interruptions.*)

Shri Bansal: We have not been given.

Shri N. C. Chatterjee: Mr. Tek Chand has got it.

Shri Tek Chand: At one time, at its inception, the document was intended to be confidential. It is no longer confidential. It is meant to be known to such people as are interested in the judicial reforms in contemplation.

Shri N. C. Chatterjee: I was going to refer to one or two portions. Very pertinent observations had been made by the hon. Minister in that it embodies very weighty comments from a great lawyer who had spent half a century as a votary of themis and in one of the biggest courts in India. It starts by saying in the introduction that in criminal courts the State itself being a party, the proceedings are easily capable of control. Therefore, according to the hon. Home Minister, the evil is more widespread and deep-seated in the civil courts because the State cannot control it. Then, he tried to point out that he was going to do something very important with regard to the administration of civil justice as well as the administration of criminal justice.

The hon. Home Minister says in that memorandum that complaints of dilatoriness in criminal proceedings in his opinion spring mainly from increase of criminal work without any corresponding increase in the number of magistrates, and sessions judges. He also states that it is now a welfare State and no longer a police State. To some extent the fact that no commission was appointed, nobody went round the country and consulted the different High Court Bar Associations or the Bar Councils, nor were the public taken into confidence, gives rise to a certain amount of misgiving. People say that here is the Home Minister, the author of the Preventive Detention Act and the Press Act who is going to do something to restrict the liberty of the subject. As a matter of fact, somebody was asking me the other day. Is it something like a hangman's Bill?" When I had been to the Delhi courts the other day, some members of the profession asked me, 'Is it correct that the fundamental principle of our jurisprudence is that a man shall be presumed to be innocent until he is proved to be guilty and is Dr. Katju's Bill just the reverse? Whenever Dr. Katju's police

arrests somebody, he shall be presumed to be guilty until his innocence is established.' I assured them that it was not so bad. I am sorry to say that the real malady has not been tackled by the hon. Minister. What is the real malady? The real malady is not in the court. The real malady is not in some of the sections of this Code which was drafted by an eminent man and revised by one of the greatest lawyers England had sent out to India Sir James Fitz James Stephen. It has stood the test of time. The real malady is that the system of administration of criminal justice has become hopelessly defective because, even in independent India, today after seven years of freedom, there is no real separation of the judiciary from the executive. Have any amount of codification, re-codification, amendment, alteration and revision, either according to Pandit Bhargava or according to Dr. Katju . But there shall be no improvement unless you improve the dishonest, inefficient and corrupt police. You must first of all find out where is the trouble.

This memorandum as well as the Statement of Objects and Reasons as well as Dr. Katju's speech clearly indicate that investigations are done in a slip-shod manner. He has also pointed out that investigations are not really done in a fair way. He has pointed out that delay occurs in the course of the trial before magistrates, prosecution witnesses do not attend on the dates fixed, the police officers have complained that the prosecution witnesses are no longer amenable to the police persuasion and he has also said that investigations are done in a perfunctory manner. What is the step that the Government is going to take to improve the police machinery? Unless and until you improve that machinery, nothing would happen. Go to any of the magistrates' courts here. It is a perfectly disgraceful state of affairs. I was myself an accused along with Dr. Syama Prasad Mookerjee and another Member of this Parliament. Dr. S. P. Mookerjee was arrested on the 6th of March, 1953 and he died on the 23rd June, 1953. The case was still going on although he was anxious that the case should be finished. The Government were kind enough or good enough to withdraw the prosecution against me after a terrific bereavement which I had and which God in his mercy had pleased to vouchsafe to me. But the case went on against the other two Members of Parliament with a number of others who were arrested and retained. I was a member of Parliament and I had some responsible work in the Supreme Court of India. I sent my Advocate, a member of the Supreme Court Bar, to the Magistrate "Kindly let me know when the court will be taking up my case". The Magistrate said he would take it up at 11 a.m. I was punctually at the jail gate along with Dr. Syama Prarad Mookerjee, some Members of Parliament, lawyers and other people. I waited there till two o'clock and there was no sign of the Magistrate. The men in the court do not even condescend to let us know when the magistrate will come. If this can happen to an ex-Member of the Government of India, an ex-Judge of the High Court and also to Members of Parliament, what happens to ordinary poor people in the country. It is absolutely disgraceful. Go and ask any lawyer, he will tell you this. What is the good of having a perfect Criminal Procedure Code, the best penal code, if no magistrate sits there at ten o'clock or even at eleven a.m. punctually? No magistrate here comes to court punctually. They do sit there sometimes for ane hour, sometimes for two hours and sometimes for three hours. They entertain visitors, friends and relations in there court rooms or in their chambers and go on holding conversations when the men interested in the cases are dancing attendance in Court. Do not make the promotion of magistracy dependent upon police recommendation or police report. You can never get pure administration of justice unless you change the system. The executive magistracy wastes its

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time dancing attendance on Ministers, organising *vana mahotsavas*, wrestling matches and foot-ball matches, and attending on V. I. Ps., hon. Ministers, Deputy Ministers, Parliamentary Secretaries, etc. and doing all sorts of other things. Make them work subject to the direct supervision of the High Court and the Sessions Judge. Take them out of the control, interference and tampering of the police. Otherwise, you will never have a pure magistracy or pure administration of justice. I am urging you to improve the machinery. It may be that Dr. Katju has great faith in the police nowadays, but it is still the police of Hallett and Vincent; it is still the police of the old British bureaucratic days and they have not changed. You must give them better salaries; you must give them a higher standard of education; you must teach them the scientific system of investigation and not merely the old system of *danda* or shoe-beating My hon. friend, Mr. Anthony, who has great experience, told me that they put a wet blanket and then go on beating the man. Unfortunately, I was appearing for some of the police constables before the Supreme Court, and one of the Judges, with great experience, remarked "Mr. Chatterjee, what are you talking? Do you really not know that they are employing third degree methods?" I replied "My Lord, how can you say this sitting on the Bench?" He said "I do not believe in platitudes; that is what is happening in the State." In the Republic of India, third degree methods are being employed and this is happening day after day. The police are deliberately fooling with the Courts. In Dr. Mookerjee's Case the State Lawyer asked for adjournment saying that his witness cannot come owing to this or that reason. After three or four adjournments, the magistrate asked the lawyer to produce his witness in the court, but he said that the witness had got a terrific attack of diarrhoea or something of the kind. Actually that man was going about in Chandni Chowk and the magistrate went down and saw that the man was realy enjoying and not in the least suffering from anything of the kind reported. This is the police officer. He was the investigating officer and he behaved in this manner. The police have supreme contempt for the magistrates because they know that the magistrates have not got the guts to pull up the police. Magistrates must not be associated at any stage of investigation. I thoroughly agree with Pandit Thakur Das Bhargava that it is a dangerous innovation that Dr. Katju is making. Do not make them part of the investigation system; do not make them part of the police machinery. Sir, I do not know whether you had the opportunity of reading the judgment of the Supreme Sourt in a recent case which has been published in the May Number of A.I.R. of 1954. Page 322 at 335. I am reading to you the unanimous judgment of the Supreme Court on this subject in the case of Shri Shiv Bahadur Singh. Rao Shiv Bahadur Singh was a Minister of Vindhya Pradesh and he was convicted. The Bench consisted of Justice Bhagwati, Justice Jagannadha Das, who was the Chief Justice of the Orissa High Court and Justice Venkatrama Ayyar. They have quoted the judgement of the Privy Council in one case and they say that what the Privy Council has said is correct.

> "In their Lordships' view it would be particularly unfortunate if Magistrates were asked at all generally to act rather as police officers under Section 162 of the code; and to be at the same time freed, notwithstanding their position as Magistrates, from any obligation to make records under Section 164. In the result they would indeed be relegated to the position of ordinary citizens as witnesses and then would be required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure of conduct whatever ..... "

Then they quoted the judgment of Mr. Justice P. B. Mukharji of the Calcutta High Court:

> "Before I conclude I wish to express this Court's great disapprobation of the practice that seems to have become very frequent of sending Magistrates as witnesses of police traps. The Magistrate is made to go under disguise to witness the trap laid by the police. In this case it was Presidency Magistrate and in other cases which have come to our notice there have been other Magistrates who became such witnesses."

[SARDAR HUKAM SINGH *in the Chair.*]

I do not mean to say there is a provision to that effect in the Bill. There is no provision authorising the magistracy to act as trap witnesses what Dr. Katju's Bill seeks to do is this. In every case a serious offence is charged, immediately the police has got to take the material witnessses to the magistrate for their deposition to be recorded. This, sir, is a very serious matter and I strongly protest against this provision which is thoroughly undesirable.

I am not saying that the whole Bill is bad. I do not agree with Pandit Thakur Das Bhargava on some points. Firstly, I welcome the abolition of assessors and I welcome the provision regarding jury system. There should be an extension of that system as far as possible. I connot understand why there should be any animus againt the jury system. From the days of *Magna Carta* right up to date the greatest bulwark of British liberty has been the jury system; the greatest bulwark of civil liberties in America has been the jury system. That is a panacea against many evils. The British fought Tudor despotism with the jury system; they fought the stuart tyranny with the jury system. every encroachment by the executive they fought with the jury system. Every extension or attempted extension of the frontier of executive tyranny was resisted by the jury. Why should we not have the same system? I think it would be a good thing to extend it, it is better the assessor system goes.

Again, I endorse Dr. Katju's suggestion that there should be a greater category of summons cases. I think he has given a list and that list is quite good. Under clause 2 "all cases punishable with imprisonment for a term not exceeding one year" will be treated as summons cases. Take, for instance, an offence under section 166—public servants disobeying the law. That will be a summons case. Section 168—public servants engaging in a trade—that will be a summons case. Section 171E bribery at elections, section 171-F, undue influences at elections—all this will be summons cases. Also sections 264 to 267—offences relating to weights and measures, will be summons cases. Sections 296 to 298—disturbing religious assembly and so on, section 309, attempt to commit suicide, section 323, simple hurt section 342—wrongful confinement, and so on. Also house trespass and certain other kinds of mischief come under this. I think that is a right move and if Pandit Thakur Das Bhargava can give us some additional list, I think the Select Committee will be well-advised in accepting his suggestion.

I agree with Pandit Bhargava that sooner the honorary magistrates go, the better. I do not like the provision which has been made in clause 4, namely, with regard to honorary magistrates, the State Governments shall prescribe such qualifications as they may, in their discretion. think fit. One State Government may think that a particular property qualification should be the test. Another may think that, say, contribution to the party fund, is very important. It is desirable that there should be some regulation, some standard prescribed, but it is the Parliament that should do it and it should not—leave it to the unfettered discretion of the State Governments.

Then I come to another move of Shri Katju, that section 30 should be

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made uniform. You know, Sir,—and you are from Punjab—that certain States have invested their magistrates with the power to try serious offences except those punishable with death, or transportation, Dr. Katju wants to extend it throughout India. One great objection was that young magistrates. *Chhokra* magistrates or magistrates of two or three years' standing may be given this power and that will be most objectionable. Now Dr. Katju has rightly put in this Bill that the power should be given only to a magistrate when the person has been a first-class magistrate of ten years' standing. I think that is a good safeguard and that should be accepted.

With regard to the increased fine, section 32 is being altered. There is not much to be said about it. I do not know why Pandit Bhargava is so angry with Dr. Katju. What was Rs. 1,000 in 1898 is certainly Rs. 2,000 now. There is not much to be said there. But the most serious objection, according to my mind, is the deletion of section 162. So far as I can make out, under section 162, no statement made by any person to a police officer in the course of an investigation can be referred to or used for any purpose of any enquiry or a trial except for the purpose of contradicting a witness appearing for the prosecution. It does not matter whether that statement is in writing or not, whether it is *in extense* or is an abridged one. This was a very salutary provision, because it gives the accused a chance of testing the veracity of the prosecution witness in court by confronting him with a statement made by him at an early stage during the investigation. It also gives the accused a chance of testing the honesty of the investigation conducted by the police. What the hon. Dr. Katju proposes to do is to delete the section altogether. The first part of section 162 is introduced as sub-section (4) of section 161. But that is a trivial thing,—that the statements shall not be signed. But the result is this: the most serious consequence will come upon the accused, because the prosecution is now entitled to use the statement recorded by police officers during investigation, as corroborative evidence of the witnesses' testimony. Now, this is a revolutionary change. I would have welcomed this if it had been in the proper direction, but it is a retrograde step. It will have an improper effect. It will work hardship and injustice. It has been judicially recognized in this country, in the High Courts of India—that police officers, in their over-zealousness frequently record whatever they desire, or choose to record and not to record what witnesses actually state. I was reading a great judgement of the High Court of Allahabad where Dr. Katju successfully practised for many years I shall now read from 16 Allahabad, page 207. It was a Judgment of a great judge who became the Chief Justice of the Allahabad High Court, Chief Justice Knox. He says that "Statements are recorded by police officers in the most haphazard manner. Officers conducting an investigation not unnaturally record what seems, in their opinion, material to the case at that stage, and they omit many matters equally material which may be of supreme importance as the case develops. Besides that in most cases they are not experts of what is evidence and what is not. The statements are often recorded hurriedly, in the midst of a crowd and confusion subject to frequent interruptions and suggestions from bystanders. Over and above all, they cannot in any sense be termed as depositions for they are not prepared in the way of depositions; they are not read over to nor are they signed by the deponents. There is no guarantee that they do not contain much more or much less than what the witness has said" This judgement of Justice Knox is reported in 16. Allahabad and has been followed practically by all High Court judgments. In a latter case in 1940 Allahabad, page 291, it is stated. "The purpose of section 162 is to protect ac-

cused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from prejudice at the hands of persons, who, in the knowledge that an investigation has already started, are prepared to tell untruths." I think it is Lord Atkins's judgements. Lord Atkin pointed out in 1939 P. C. 47 that "If one had to guess at the intention of the legislature in framing the section in the words used one would suppose that what they had in mind was to encourage the free disclosure of information or to protect the person making the statement for a supposed unreliability of police testimony as to alleged statements or both."

In the British regime, our High Courts realised that in this country, police did resort to unfair practices during investigation. Therefore, they held statements of witnesses recorded by police could not be used and admitted as evidence in a Court of law because of their limited purpose. Would it be right to do away with it completely? Would it be right now to take away the protection which is given to the accused, both against over-zealous police officers as well as against untruthful witnesses? It is a very serious thing and I will ask the Select Committee Members, particularly to consider whether it is right to give a go-by to one of the cardinal principles of our judicial system. Now that you are free from the British bondage, it would not be what that you simply reject something because the Britishers in their wisdom had imported it into this country—a system which has stood the test of time. The proposed subsection (5) to section 161 as sought to be introduced by Dr. Katju is objectionable and is the worst feature of this Bill. It amounts to practically pinning down the witness by having their statements recorded by magistrates. Police investigation methods have been frequently condemned, as my learned friend Pandit Bhargava pointed out, by almost every High Court. It is surprising that the hon. Home Minister is giving legislative sanction to that practice. In every case which is going to the Sessions Court, it is going to be made obligatory.

I think this is a very retrograde feature of this Bill. The magistrates will be acting as draftsmen or a solicitor to record what is said by a crown witness or a State witness. Naturally at this stage, witnesses will be tutored and coached up before they are taken to the magistrate. Any statement recorded by the magistrate from such a witness will have, to some extent at least, value attached to it later on. The curious thing is that while the statement is recorded, the witness is still subject to police pressure and what is most objectionable is that it shall be done in the absence of the accused and behind the back of the accused.

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This is something which is very serious. Although I know that Dr. Katju is anxious to vindicate the rule of law and to have expeditious justice, still this is something which will put the citizen in great peril and it is not right that this should be allowed.

I am also opposed to the provision made by Dr. Katju in his Bill whereby he says that defamation against the President, the Governor or Rajpramukh of any State or a Minister or any other public servant in the discharge of his public duties must be made a cognizable offence. I think this is not the right course. This Parliament should reject it. Of course in regard to the President and the Governor or Rajpramukh of a State I do not think there will be any objection. But no Minister should be allowed to have this immunity and utilise the police machinery. My friend Mr. More was taking the case of a hypothetical Home Minister. But suppose he has got the power. He can set his hounds against the

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particular person, and the State will take up the battle. I know what happens in some cases when the police takes up a case like that and makes a thorough search. Suppose the man who has made certain strong criticism of a Minister or a public servant has got some documents to substantiate that charge which makes it *prima facie* possible or probable that the charge is true. Those documents can be got at by the police, and sometimes they do not see the light of day. Therefore, valuable evidence may be destroyed. Really, this will be a fetter on the fundamental, guaranteed right of freedom of speech, freedom of expression and freedom of the Press. It is a very serious matter, and I doubt whether it will at all be constitutional and whether it will not be repugnant to the basic guaranteed freedom. The Supreme Court has held in the case of Ramesh Thappar that these Fundamental Rights deliberately embodied in Part III of the Constitution mean not merely rights conferred on the citizen but are *pro tanto* an encroachment of the sovereignty of Parliament. They are meant to enshrine and embody the basic principle of a declaration of rights. What is that basic principle? The basic principle of the American Constitution and of other Constitutions which have deliberately embodied a Bill of Rights is this, that there are certain basic human rights which must be removed from the vicissitudes of party politics, which must be completely made immune from the play of ordinary majority and minority in any parliamentary or democratic set-up, which can never be at all whittled down or affected by ordinary means of legislation. I think that is a very serious matter. It is a right that has been deliberately conferred upon us. And you know, because of that right, in Master Tara Singh's case, the Punjab High Court declared that section 124A was illegal, and also other sections which clashed with that right. Chief Justice Weston relied on Chief Justice Patanjali Sastri's judgment and said that these sections are repugnant to the Constitution and therefore *ultra vires*. I think there is some force in what I am saying.

Apart from the constitutional or the legalistic aspect, it will not be right on principle to confer this very wide power.

With regard to the jury I have said already that it is very desirable that there should be an extension. Have faith in our fellow citizens. Take them into trust. I am sorry that certain strong remarks have been made by Pandit Thakur Das Bhargava when he was condemning perjury. I was a student in the London University and also of the Middle Temple when I was reading in the Bar just after the First World War was over. I remember, I was sitting as a humble law student in the court of the great judge, Mr. Justice McCardie, and I still distinctly remember the sentence of Mr. Justice McCardie, who said:

> "I am convinced that perjury has increased and is increasing in this country".

That remark was taken up by the newspapers, by the legal profession, by the Bar Councils and also by the Parliament and nobody condemned the great judge for saying what he only felt to be true. Sir, I ought to say with regret that after I retired from the Bench, when I went to England and had a discussion with some of the greatest jurists there, I found that the position had gone from bad to worse and there was progressive deterioration in the standard of veracity in the courts of law there. I am sorry to say from my experience both at the Bar and elsewhere that perjury has increased and is increasing in this country. We should do everything possible to check it. I am appealing to Dr. Katju not to have this kind of thing which he advocates. I strongly resent any imputation made on the

great profession to which I belong, that they are consciously party to the lowering of standard or in any way abetting perjury on a large scale; but, it has got to be admitted that having regard to the system, the tradition we have built up, there is a certain amount of coaching or tutoring. Take, for instance, a case where we have got to prove a will or an attested document. Unless the man goes to the witness-box and says that it has been signed and attested in the presence of the testator and other attestry witnesses, there is a lacuna and the suit is dismissed. The legal technicalities are such that it is not a question of real perjury but a question of refreshing memory, trying to remind the witnesses that these things must have happened years ago and all that. Sir, those of us who have had the privilege of practising on the original side of the High Courts of Bombay or Calcutta, know that these disagreeable tasks are performed by a special agency of solicitors, but in other courts there is no bifurcation like that. The junior members of the Bar have generally got to do it. But, still we have to eliminate it as far as possible and it should be the bounden duty of the entire profession in India to co-operate with the Home Minister, the Bench and the Bar, to do their best to see that as far as possible perjury is eliminated from our land.

Sir, I can tell you from my own experience that the provision which Dr. Katju is introducing in this Bill will be dangerous. Many a time, sitting on the Bench, I have thought that a particular witness is telling something absolutely untrue. There is no difficulty in thinking that a particular man is telling a lie. But, as the facts develop, as the testimony progresses, other documents come in, other witnesses are examined, and also, possibly, from some public source some data are placed before the court, the judicial mind changes and the first impression may be entirely wrong. As an experienced judge, you must have noticed that on such occasions the first impression turns out to be wrong. Would it be right for this Parliament to put its seal of approval on the suggestion of Dr. Katju, that at any stage of the proceedings if the magistrate thinks that the man has told a lie, he should immediately be sentenced. Is not that a dangerous power? Is not that an extraordinary power?

Shri A. M. Thomas (Ernakulam): Nobody would be prepared to go into the witness-box.

Shri N. C. Chatterjee: That is another danger, as Shri A. M. Thomas says.

One thing that I wish to tell this House is this. In the great *Amrita Bazaar Patrika* case, one of the greatest jurists that India has ever had, the great Jackson, you know he was called Tiger Jackson, appeared for the Editor of *Amrit Bazaar Patrika* before a special Bench which issued a rule for contempt of court. The contempt was because the *Amrita Bazaar Patrika* wrote that the judges were hobnobbing with the executive. The Chief Justice flared up and he thought that that constituted contempt and issued a rule. Ultimately, you know the Editor, Shri Tushar Kanti Ghosh, was sentenced to a term of imprisonment. I remember the classic saying of Tiger Jackson. There were five Judges and the late Sir Ashutosh Mookerjee was one of them. His first sentence was. "My Lords, I think the end of this war will see the end of this sham." The Chief Justice flared up and said, like "Mr. Jackson, you should not talk like that." Mr. Jackson said, "I repeat it; I demand, I hope and I wish that the end of this war will see the end of this sham." The Chief Justice asked, "what do you mean, you must not talk like that." Mr. Jackson said, "I deliberately use the word sham; the sham is that the same person is the prosecutor, the witness and the judge; actually you have made up your mind that I have maligned you, I have blackguarded you and you have issued the rule; you are trying me." This is what

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is going to happen. A man hears, he immediately makes up his mind and he sentences the man. And, at any stage, even before the final adjudication is over, even before he has heard the whole evidence, he does it. That, I think, will not be a safe procedure. I want perjury to be punished and dealt with severely. But, I think the cardinal principles of justice should also be afforded to a man who is suspected of perjury. Many a time, the evidence is so equally balanced and the judge has got to do his best and say that he believes one and disbelieves the other. It is very difficult to say exactly who has actually perjured although you have got to make up your mind and give the decision.

One other provision which is seriously objectionable in Dr. Katju's Bill is that there shall be no cross-examination after charge. I think Pandit Thakur Das Bhargava has stressed this point. But, his copious and comprehensive survey has clouded some of the important issues, because he has covered the whole ground. I would appeal to Dr. Katju; would you take away this right? Could you really cross-examine, however brilliant and capable the counsel may be, however experienced a cross-examiner he may be, unless you know the whole prosecution case? Are not sometimes witnesses interlinked? One witness says something. The investigating officer says, I was doing this and I was suddenly stopped because I was told by my superior officer to stop and I was diverted to another case. Unless that man comes into the box and says, I never ordered so, can you really cross-examine the first man at this stage? Can any cross-examination be effective however brilliant and experienced the counsel may be? I submit that it would not be possible to do justice. Don't for Heaven's sake take away this basic right of the accused to defend himself properly. In our anxiety to eliminate delay, we should not take away the main props of justice and really make defence impossible. It is not only the function of Parliament to see that justice is speeded up. It is also our function to see that there is no miscarriage of justice, that there is even-handed justice and that there is impartial justice. There should be fairplay to both. It is not our business to see that the guilty man escapes. At the same time, we should not provide an engine of oppression at the disposal of the State which could be improperly used. Normally, the accused person enters on his defence after the prosecution case has been fully disclosed and then the cross-examination starts. Here it is going to be the other way. It will not be fair also to the prosecution. I am not here pleading for the prosecution. Pandit Thakur Das Bharagva has also pointed it out. Under clause 38, no witness shall be allowed to be cross-examined after the charge is framed. Prosecution witnesses can never be recalled after the accused enters on his defence, either as prosecution witness for cross-examination or even as defence witness in support of the defence case. I do not think that is fair.

I think that these are the points which require very careful consideration, and I am quite sure the Select Committee will do its best to give their weighty consideration to the various recommendations made by Pandit Thakur Das Bhargava and by some of us, and will certainly weed out these unsatisfactory and retrograde provisions of the Bill.

I hope that one day our Police system will be just like the English Police. You know, Sir, that Sir Robert Peel brought about a complete reformation of the Metropolitan Police in London and they are the model still for the whole world. They are therefore called Bobbies. The standard of the London Bobbie is so high that whenever he goes into the box and says: "This man confessed to me. He said this and this", it is accepted as gospel truth in a court of law, and that is an end of it. That high standard of honesty is not here, in spite of the great affection which Dr. Katju shows towards his Police. You and I, Sir, were returning the other day from

Tilpat. Have you ever seen a more scandalous and more stupid inefficiency displayed by any Police force in the whole world? On the Republic Day it took me an hour and a half to go from here, Parliament House corner, to the India Gate. It took me an hour and a half or a little more. Are you going to entrust that police, Dr. Katju's police, but still a police which is the relic of the old British imperialism with these extraordinary powers. They will make a mess of it.

Dr. Katju: I am told it took the London Police seven hours to let the people who saw the coronation from the Westminster Abbey to go home.

Shri N. C. Chatterjee: If Dr. Katju's police had been there, it would have taken them seven years. If he had only requisitioned half a dozen of the constables from his old place of Calcutta which I hope he still loves, the whole thing would have been cleared. Anyhow, this is the Police which is to be invested with these extraordinary powers, and they will make a mess of it. Therefore, I respectfully submit that we should be circumspect before we abrogate the safeguards and clothe them with such wide unfettered powers.

Shri S. V. L. Narasimham (Guntur): I am really under a handicap in that I am called upon to address the House after two giants have spoken, but fortunately I have the advantage of having heard them in that it assists me in adopting their arguments and confining myself only to supplementing where I feel necessary.

I feel it my duty to congratulate the hon. Home Minister for his consistency in piloting and trying to justify indefensible measures of legislation. The first blessing we had from the hon. Home Minister was the extension of the abnoxious Preventive Detention Act. Then, he wanted to give us a gift which was in his hands. The Press (Objectionable Matter) Act, and today he comes forward to confer a boon on this House and the people by this present Bill which, in my opinion is a thunderbolt.

Dr. Katju: What is it?

Shri S. V. L. Narasimham: Thunderbolt.

Shri S. S. More: They are compliments for you.

Shri S. V. L. Narasimham: I am at one with the Home Minister when he stated that the aim of any Criminal Procedure Code should be firstly to afford facilities to an accused person for properly conducting his defence, and secondly, to ensure against what are known as law's delays. As such, it is imperative on our part to examine the provisions of the present Bill and come to a conclusion as to how far these provisions will enable us to attain that objective. The hon. Home Minister himself has very rightly and truly observed that people have lost faith in the courts. It is indeed a significant statement. Naturaly, a number of questions arise for our consideration. Why is it that people have lost faith in the courts? What are the causes? Is it on account of the delay in the disposal of criminal proceedings, which necessarily result in large expense being caused to the accused? Is it due to the inadequate strength of the police, the magistracy and the judges? Or are there any other causes? These causes have to be canvassed first. Then, we have to consider how all these causes can be eliminated, and how we shall be in a position to frame our administrative machinery to dispense justice in a fashion that people will certainly restore their faith in the courts.

I am of the view that our concept of crime has mostly developed or grown round our concept of property. This has resulted in wealth and riches attaining, and being allowed to retain, an exalted and pre-eminent position which enables it not only to influence but to control all aspects of human life in the country. This has

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naturally resulted in social and economic inequality, mass poverty, mass starvation, mass unemployment and illiteracy. The laws of the land have been so framed, and the executive also has been so conducting itself that the interests of the few rich are sought to be safeguarded as against the welfare of the large masses. This necessarily results in a sort of discontent among the peasants, the workers and the middle-class people, who are practically subjected to very immense hardships and misery. When they think of collectively agitating and entering on a struggle to assert their proper place in the life of the country, and when they try to have their legitimate share of the profits of their hard labour, what we find is that these movements of the people are sought to be suppressed by Government by various repressive and preventive measures. I may tell you that sections 144, 107, 108, 109 and 110, which would never have been conceived of in a civilised country, are in fact being utilised relentlessly by the executive in our country, to suppress the many progressive movements that have tried to raise their heads.

You find that at present, the magistracy is subordinate to the executive. And what is the kind of executive that we have got? Inefficiency and corruption are the general reputation that they have established. I do not want to weary the House, by quoting instance after instance to prove this statement of mine. It would be enough for me, if I draw the attention of the House to the report of the S. V. Ramamurthy Committee appointed by the Andhra State to report on the working of prohibition in that State. You know that prohibition has been an article of faith with the Congress, and in fact, it has been enshrined as a directive principle in our Constitution. But what is the tribute that has been paid by the Ramamurthy Committee to the conduct of the policy by way of contribution to the successful operation of prohibition in the Andhra State? I may state that Shri S. V. Ramamurthy's observations were to the effect that prohibition has utterly failed, and one of the important causes given by him is that the executive have got it as a perennial source of their income.

That itself is sufficient to prove how the executive, a corrupt police, an inefficient police, not only began to work as a pest to the people but also work to undermine the principles of the Constitution. What is the position? No respectable person would like to deal with the police. The people are really afraid to appear before them. And these are the persons who are charged with the power of investigation and also prosecution; Then what happens? People do not appear before them. They ask people to appear before them and then make a statement. Then they have got their own way of recording whatever they please. Then what happens ? If a man is hauled up and proceeded against and a case is filed before the court, still we find that adjournment after adjournment takes place. What are the causes of these adjournments? If only Dr. Katju thinks of calling for the records of these magistrates and having the patience to peruse those records, I am certain—and I assert confidently—that he will find that the invariable cause for adjournments leading to expensive justice, is the absence of the police themselves. Why is it that they absent themselves ? I can straightway tell you that it is because of the peculiar position that has been assigned to them. The power given to them to arrest and detain a person, the subordination of the judiciary to the executive, all these causes have created an impression in their minds that they need not care for the court at all. It is the indifference and the disregard with which the police treat courts that is responsible for these delays in the dispensation of justice. Surely, Dr. Katju himself has been very sym-

pathetic to the accused. In fact, he was saying—and he has also mentioned it in the Statement of Objects and Reasons—that the accused are all poor people and he wants to protect them against themselves, namely, he wants to confer a boon on them by saying 'Well, here I am sympathising with you. My heart bleeds for you. Therefore, it is in your own interest, in order to protect you against your own money or labour that I want to curb the power of revision of the High Court'. Instead of doing this, the Home Minister must realise that he has got some other duty. He alsc stated in the Statement of Objects and Reasons that it so happens that guilty persons will take to various ruses for protracting the proceedings so as to postpone the evil day. After all, he must realise that most of the accused persons are poor. They are poor to the extent of not being able even to engage counsel. Moreover, according to the present rules, they are called upon to purchase copies of the records also which are necessary for the proper conduct of the defence. This is the state of affairs in which we exist. Unless we take such measures as to rectify this scandalous state of affairs that exists, it is impossible for us to expect the people to restore their lost faith in courts. It is necessary for us that we should so model the laws of the lands as to eliminate these social inequalities and economic inequalities so that steps will be taken which will result in the formation of a welfare State. Vigorous measures have to be taken to uproot corruption and inefficiency. Persons who have got a sound knowledge of law, who are known for their integrity and who have got experience of life—they alone shall be recruited to the judiciary. Not only that. The magistrates should be subordinate to the High Courts. Separation of the judiciary from the executive must not only be effected, but it must be real and complete, and that can be achieved only by subordinating the magistrate direct to the High Court and not to the Government. Not only that. As I submitted, competent counsel is as much necessary for the proper conduct of defence as a judge of honesty and integrity. When Dr. Katju realises the poverty of the offenders, then is it not his duty to see that they get legal assistance at the cost of the State? If only these measures are taken, then alone will we be able to solve the problem.

Now, in the light of the aims which have enunciated by Dr. Katju himself, I have tried my best to convince myself of the utility of the Bill. I am convinced that it not only fails to achive those objects, but I find it has attempted to substitute executive justice for justice by the present judiciary. I may not elaborate this position. The House has heard the very valuable and instructive arguments of the hon. Members, Pandit Thakur Dass Bhargava and Mr. N. C. Chatterjee. As such, I will content myself by trying to supplement some words of mine to the arguments put forward by them. I may start with the remark that I support the arguments that have been advanced in regard to the objectionable and retrograde features of the present Bill by Pandit Thakur Das Bhargava and Mr. Chatterjee. Now I straightway come to section 162 of the existing Criminal Procedure Code. I have got my own feeling that Dr. Katju in fact never intended to delete this prohibition against the use of statements recorded under section 162 by the police in the course of investigations as evidence in a court of law. I would invite the attention of the House to the Notes of Clauses that have been appended to the Bill and that have been supplied to us. Clause 20, the Notes on Clauses reads:

> "As it is proposed to omit section 162 of the Code, a provision has been inserted that no statement made by any person to a police officer shall be signed by the person making it."

Then under clause 21:

> "As it is proposed to supply statements recorded by a police

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officer under sub-section (3) of section 161 to the accused, section 162 is superfluous and has been omitted."

Neither the Statement of Objects and Reasons nor the Notes on Clauses give us an indication of the mind of the Home Minister as to why he has deleted this prohibition clause which previously existed under section 162 of the Criminal Procedure Code. If really he applied his mind, he would have advanced some argument or other either in the Notes on Clauses or in the Statement of Objects and Reasons or at least in the course of his address to the House in moving the Bill. So, in view of what has been already very rightly and strongly pleaded, I would appeal to the Minister to consider this position and see that every paragraph of section 162 shall be incorporated in one section or other so that the very valuable right which has been enjoyed by the accused is not taken away.

Then, proceed to section 164 of the Criminal Procedure Code. I will not just repeat the arguments that have already been advanced. What is the position of 164? I take into consideration specially the cases which are triable by the sessions. What the Minister now seeks to do is this. The police officer records the statement of a witness during the course of investigation under section 161 of the Code. Then he does not stop there. There is an obligation imposed upon him to get the statement of every one of these witnesses whose evidence, in his opinion, is to be considered material for the purpose of enquiry or trial, it is an obligation imposed on him, to take these people before a magistrate and get the statements recorded under section 164. Under what circumstances is the statement under section 164 recorded? Hon. Members are fully aware of how statements under section 161 are recorded by the Police. Now, the moment this prohibition clause under section 162 is deleted, I will say that this statement can be utilised as evidence either by the prosecution or by the accused. If we say that if a witness's statement was not in fact recorder by a police officer as not having been a statement of the witness, the witness is already pinned to that position while under the thumb of the policy. The very same police officer who has chosen to record whatever he was pleased to, is going to produce him before the magistrate. What will be the position? The witness will be confronted by the police officer who will say, 'Here I have got a record of your statement; if you are going to depart from it, under the amended Code, this shall be used against you'. Therefore he is under duress and as such whatever has been recorded under 161—whether he has committed himself to the statement or not—shall automatically be incorporated in the statement under 164. When he comes before the court, there is a statement recorded under 162 as recorded by the police officer another recorded under 164 by the magistrate, which will be as I already submitted to the House nothing but a copy or transcription of the previous statement under 16. Under these circumstances, if each witness as he comes before the court, if he wants to speak the truth he cannot do so unless he is prepared to face the risk of being prosecuted for perjury—after all, for speaking the truth. This is the injustice he is going to suffer. That is the ground on which I base my objection.

Another point I wish to urge on the Home Minister is this. He is already told—and even without being told. I am sure our Minister is vigilant enough to be aware of it—of judgements of the High Court. The High Courts have been deprecating the practice of getting statements recorded under section 164, for the simple reason that the object or at least the idea of getting the statement of witness recorded under section 164, will occur to a police officer when he is convinced that he is pliable or pliant. If yon insist that each and every witness's statement should be recorded

wholesale under section 162. What will be the impression that the layman can draw. Here are a number of persons about whom the prosecutor himself, who is going to examine the witnesses, is not sure as to their integrity. This will be another impression that will be created in the minds of the police. In view of this, I would appeal to the hon. Home Minister to consider and see that section 164 is altogether removed from the statute itself. Of course, I am fully aware of the fact that even confession statements are to be recorded under section 164.

Then, coming to the committal proceedings, I have followed the arguments of the hon. friend, Pandit Bhargava. When I see the Statement of Objects and Reasons, as given by the Home Minister, two objections have been raised against the retention of the Committal proceedings. The first is that it involves delay and the second is that after all, statistics show that 3 per cent. of the case only are discharged and the rest are automatically committed to the sessions court—this statement as corrected by Shri Raghavachari is two per cent. Now are these really serious objections to the committal proceedings? So far as delay is concerned, I have already submitted that the delays are not on account of the accused, but on account of the police. We are aware that the sessions judge begins a trial and it goes on from day to day. Under section 173 of the Criminal Procedure Code, as it is sought to be amended by the hon. Home Minister, the police officer is bound to send a final report, the statements recorded of witnesses under sections 161 and 164, and all other documents. After all, the witness is already known to the police authority and we may put the obligation of taking the witness also along with him to the magistrate on the police authority. The police is there the accused is there and the magistrate will see the copies being supplied to the accused, and if the witness also is there, the trial may begin. In consultation with the defence counsel and the prosecutor, dates may be fixed and the enquiry may be commenced and proceedings may take place day to day. It is possible for us to avoid the delay in committal proceedings.

The second objection is that after all, committal proceedings are not serving any purpose. I am of the view that the Criminal Procedure Code, in any way, gives ample powers to a magistrate to discharge or commit, but unfortunately what you find is that the magistrates are subordinate to the executive and they are not bold to take the responsibility of discharging. Therefore, it is that you find that possibility for discharge is far less. These are the two objections that have been urged by the hon. Home Minister, and my reply is this. After all, what is the advantage which a person gets on account of the committal proceedings? I may straightaway submit to the House that with regard to a witness who is tutored, it is always in the interest of the accused that he is subjected to cross-examination as much as possible. It may not be possible for a *vakil* or advocate to tackle a truthful witness, but a tutored witness or a witness, who has decided to speak the untruth, tries to be astute creates a problem. The more you begin to cross-examine, the greater is the possibility of the man getting confused.

Now, if you are going to dispense with committal proceedings, the one advantage which the accused was enjoying is taken away and I submit to the House that the advantage which the accused has outweighs the inconvenience caused to him. Therefore it is necessary that committal proceedings ought to be retained and I am opposed to the abolition of the committal proceedings.

Then we come to the restriction of the powers of revision of the High Court. Here again statistics are relied upon by the hon. the Home Minister. But let us not forget that the right of appeal has been provided under given

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circumstances. In fact the Code itself says that no appeal shall be preferred, except in the manner given. There are a number of cases with respect to which there is no provision at all. When a District Judge awards a sentence of one month, or less than a month, or a fine which does not exceed Rs. 200 there is no appeal. Similarly there are provisions whereby justice is sought to be meted out by summary proceedings. There is no provision of appeal in such cases. Then, what happens to all these cases? Should they have the opportunity of going by way of revision or not? Naturally, if it is the object of the Bill that it is only in relation to matters for which appeal has been provided that we should make it proper to restrict the powers of the High Court, I can certainly appreciate, when the hon. Home Minister comes and says: "This applies only to cases where appeals have been provided and does not apply to matters for which no appeal is provided." After all when people become poor, even if they want to pursue the proceedings to the logical end, their poverty itself stands in the way. And in the absence of any opinion expressed by the people at large who are to be affected, I do not find any justification for the Home Minister to come forward with this offer: "I will give all assistance to you; I want to protect you against yourself; therefore it is entirely in your interest that I am restricting the powers of the High Court.

Mr. Chairman: I find that there are certain concentrations from where so much noise is coming; I would request hon. Members to co-operate with the chair.

Shri Nambiar: There is a Congress election going on outside.

Mr. Chairman: I am not talking anything of what happens outside; I am talking of what is happening inside the House.

Shri Nambiar: This is a reflection of that.

Shri S. V. L. Narasimham: Then I come to the question of defamation of the President, the Rajpramukh, the Ministers and public servants. I am not very much bothered about the President, the Rajpramukh or the Governors. Let me confine my attention to the Ministers and public servants.

The law has amply safeguarded these officers as against the atrocities or the offences they commit either in the discharge of their duties or while purporting to act as such. But the citizens have not been provided for in the remotest, as against these people. In fact, I may ask certain questions of the hon. Home Minister. When a Minister of a State addresses a public meeting and begins to rouse feelings of the people of that locality as against the people of a different district, what steps are to be taken either by the Home Minister at the Centre or for the matter of that by any authority in the whole country. In fact, I may assert before this House that a campaign, a systematic campaign, was indulged in by a section of the Ministers in certain districts in Andhra as against the people who reside in other parts of the district and not a word has been said about any protection being given to the people. In fact, the expression used in the section is "public functions." I believe that the word 'function' has been used. It must be understood that 'function' is a word which has got a different connotation from the word 'duty'. I am of the view that the word 'function' is more comprehensive than 'duty'. Suppose, a Minister addresses a meeting organized under the auspices of a particular political party or some social organization, and he utilizes his own authority in some way or other and suppose another person comes and begins to attribute motives feeling that what the Minister had said was not justifiable, then it also becomes a 'duty.' Who is there to decide whether the criticism of that word was justifiable or not? Why should there be any special privilege conferred on these people? They are allowed an opportu-

nity of expressing whatever they choose to do. Can one person, in this case, represent the views of the people? Every citizen has got a right to give a reply, and if a citizen feels that the statement made by a Minister is false, that citizen has got every right by way of criticism to tell the people, "Here is a man who is a lier. He cannot go on like that. He should be thrown out." I shall put it this way. I happen to be elected as an independent candidate. Suppose, I choose to cross the floor of the House, and then, suppose criticism is made against me. Or at least if I begin to create the impression in the minds of others that I am about to cross the floor. At that stage, they begin to go to the people and express their own opinion about me. Will it amount to defamation? Suppose, protection is given, then, what happens? The police officer comes, and because the offence is cognizable, automatically the man is arrested. The difficulty is there. The difficulty would arise this way: if the offence is made to be cognizable and has been canvassed on the floor of the House. I hope I followed the hon. Home Minister correctly. The reply he gave was that it was not a question of bail or no bail. It is a different matter. The only question is, who should initiate the proceedings? If that is his object, he may achieve the object by a different way. Now, by virtue of section 155—the section reads as follows:

> "(1) When information is given to an officer in-charge of a police station of the commission within the limits of such station of a non-cognizable offences, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate."

Sub-section (3) of this section says:

> "(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in-charge of a police station may exercise in a cognizable case."

What this section says is that the police-officer shall not investigate into a non-cognizable case excepting by an order of the magistrate. Suppose an exception is granted here. Suppose a clause is inserted in this section saying that this does not apply to the case of defamation. Then there is no question of a man being arrested even before investigation has commenced. Still, the police have got the power to initiate the proceedings. Dr. Katju can easily follow this. But why make this offence a cognizable offence, which gives the power to the police officer in whom people have no confidence, for whom they have no regard, and in whose trustworthiness they have no faith? So, if that were the object of the hon. Home Minister—I believe I have correctly understood the object of the hon. Home Minister—I hope he will accept this amendment, and I also hope that it will be urged before the Select Committee.

Then, with all these objections, I must be fair to the hon. Home Minister, as I believe that the function of a Member of the opposition is not merely to oppose whatever has been brought forth by the Government but to agree with the Government also if he is satisfied with the provisions that they have been brought forward are really the correct ones. I would submit to the House that I welcome the provisions with regard to qualifications prescribed for appointment of persons as honorary magistrates but I wish that these qualifications shall not be prescribed by State Governments or the Central Government but the Parliament itself may decide the qualifications. I might also suggest that whatever qualifications we may insist upon, namely, a sound knowledge of law, integrity, experience of law, etc. in addition to them the qualifications that are imposed to the recruitment of magistrates may also be imposed for the purpose of appointing honorary magistrates. These, I submit and I repeat —must be directly subordinate to the

[Shri S. V. L. Narasimham]

High Court and should not be subordinate to the district magistrate or the Government.

One word more and I have done. At the present juncture, we are all accustomed to a particular maxim of criminal jurisprudence. The evidence in criminal cases will be assessed before any judge with the presumption that the accused will be deemed to be innocent until the otherwise is proved. But when I went through the speech of the hon. Home Minister, I have observed one sentence to this effect that there is no presumption this way or that way.

Shri Sadhan Gupta (Calcutta—South-East): It is not jurisprudence; it is ministers-prudence.

Dr. Katju: There is no harm in that he started with a clean mind.

An Hon. Member: Clean mind means innocence.

Dr. Katju: On the speech of Pandit Thakur Das Bhargava, I think that they should start with absolutely blank minds.

Mr. Chairman: The hon. Minister shall have ample opportunity to reply to Pandit Bhargava and he need not take this opportunity.

Dr. Katju: I am unable to follow what he is dealing with.

Shri S. V. L. Narasimham: I am in full sympathy with the hon. Home Minister and therefore, I raise my voice. This is from the uncorrected report of the speech of the hon. Home Minister on page 14453: this is what he says. 'I submit that we are hereby conferring a valuable privilege upon the accused. If he is an honest individual or an innocent person, he will very much cherish it.' In the course of his arguing for the provision to enable the accused himself to offer as a witness and allow himself to be cross-examined, he says: 'I repeat what I have said over and over again that the function of a law court is to punish if the man is guilty and to acquit if the man is innocent. There is no presumption either way, and you have got to try the matter on the facts.' This I would submit is inconsistent with the honoured maxims of criminal jurisprudence to which we are accustomed. If the hon. Home Minister is really convinced of the correctness of the position, I would think that he ought not to have hesitated to incorporate that policy as a provision in the Criminal Procedure Code. I take it as his personal view. If that is the view or the way of his approach, no wonder that he does not believe in taking away the rights of the accused and other things.

Another matter on which I wanted to draw the attention of the hon. House is this. I am sure he will agree with it. Pandit Thakur Das Bhargava has already drawn attention to this.

I refer to section 426. The previous words 'other than a person accused of a non-bailable offience' are sought to be removed and the words 'convicted of a non-bailable offience' are sought to be inserted. If it is the view of the hon. Home Minister that a person convicted of non-bailable offience can also be released by the convicting court, he is justified and he ought to have inserted and included the words 'convicted of an offence'. If, as I understand, the purpose of the amendment to section 426 has been to enable the convicting courts to release persons who have been convicted of bailable offence, then I would submit that these words 'other than....' have to be retained.

I have got full confidence that all these matters will be scrutinised thoroughly by the Select Committee and I am thankful to you for the opportunity given to me.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): Sir, with your permission I would

like to make a small announcement regarding the allotment of time for this Bill. The House is aware that the Business Advisory Committee allotted twelve hours for this Bill. The time expires tomorrow at 11-45. But a large number of Members have expressed the desire that the time for this Bill should be extended. The alternative was that we should sit in the afternoon. But then I have sensed the opinion of a large number of Members of this House, and they do not like to come in the afternoon. Then we examined our own time-table and we found that some adjustment could be made there. I have consulted the Speaker also, and the Government have come to this decision that four hours more should be allotted for this Bill. Instead of twelve hours the House will now have sixteen hours, that is, an additional 1½ hours tomorrow, 1½ hours on Friday (because that is all the time for official business on that day), and the remaining one hour on Saturday. The hon. Minister in charge of the Bill will reply on Saturday.

Mr. Chairman: Do I understand that this proposal has the approval of the House?

Several Hon. Members: Yes, yes.

Mr. Chairman: So that will be the programme.

Shri D. C. Sharma (Hoshiarpur): May I submit that there should be some rationing of time for the speakers so that the right adjustments can be made?

Mr. Chairman: The Deputy-Speaker made it clear this morning that no time-limit can be imposed on this Bill. At the same time he appealed to the Members, and I also do so, that they should realise that a very large number of Members are anxious to speak. So they should accommodate the others as well. This is the appeal I can make.

Shri N. S. Jain: While rising to speak on this Bill I am very much hesitant; hesitant because the sponsor of this Bill is Dr. Katju whom I hold in very high respect not only as my leader but as a great legal luminary of my own State. As far as this Bill is concerned I was expecting a Bill from Dr. Katju's hands and I was awaiting it since he had informed the House that he was going to bring in a Bill to reform the administration of criminal justice in this country. I was in fact thinking all the time that Dr. Katju had in his mind the reform of the judiciary, the police and the lawyers who are the mainstay of any judicial system in any country. Especially in India they are. And I had the idea that the Bill which he was intending to bring would have something to do with these three departments concerning criminal justice.

1 P.M.

But, unfortunately, what do I find here? I find that not a word has been said about these three. What has been done is that, the accused, about whom Dr. Katju has got an idea that he escapes scot-free inspite of his having committed offences, that person has been loaded with all sorts of inconveniences, loss of his rights, loss of his privileges and so on, which he had under the present Criminal Procedure Code. Well, in this Bill there are certain redeeming features, but as far as I could judge, the features which have hardened it are more than those which have lightened it. It will be rather presumptuous on my part to tell something of law to Dr. Katju, but as one who has practised in criminal courts for the last 30 years, I think I can have some say and I can at least enlighten him,—perhaps not more than what my hon. friend Pandit Thakur Das Bhargava has done—at least tell him something about the criminal practice in the State from which he comes and from which I do come.

Shri A. M. Thomas: Rajasthan or Madhya Bharat?

Shri N. S. Jain: No, he comes from Uttar Pradesh. Though he was not elected from that State, still he belongs to that place.

Dr. Katju: I belong to many places.

Shri N. S. Jain: A man who belongs to many places belongs to no place. I wish the hon. Minister had said that he does belong to Uttar Pradesh.

Mr. Chairman: Then you withdraw your claim that he belongs to Uttar Pradesh.

Shri N. S. Jain: With this Bill in hand I wish he would better say that he is not from Uttar Pradesh. I would not mind it.

Shri D. C. Sharma: The hon. Minister belongs to Punjab, Hoshiarpur District.

Shri N. S. Jain: One thing which I want to dispel from the mind of Dr. Katju is this, that by reforming the Criminal Procedure Code in the way in which he is trying to do in this Bill, he would not get at his objectives. His objective is that delays must be done away with so that justice is done expeditiously and also that no man who is a real criminal should escape punishment. Now, as far as the last thing is concerned, that no man who is a real criminal should escape, I think I have something to say about it. In fact, this is where I wish that Dr. Katju had taken the Members of Parliament into confidence and should have told them what he thinks about this proposition of a guilty person escaping, because in the traditions in which we have been brought up as just now my friend over there said, when Dr. Katju said in his speech that there is no question of giving preference to the innocence of an accused person or rather presuming that a person is innocent till he is found guilty, well, that problem is such which should be decided once for all because on that the whole thing would hinge. If Dr. Katju means to say, that the moment the police puts a man in the dock accused of a certain offence, then the judge sitting there shall not have the presumption in his mind that, that man is innocent till he is proved guilty, then certainly the whole outlook will change. But, unfortunately, what I find from the speech just now quoted by my hon. friend over there is that Dr. Katju has got this idea, or perhaps this conviction, that this presumption must go. If that presumption must go, let us understand it once for all. I quite realise that the way justice is being given to us, the perjury committed in courts and the corruption prevailing throughout has made everybody sick of the present form of justice. But, what is the way out? That is the question. That way out can be found out only if we sit together and apply our mind to it. Something can be done. For instance,—I am only giving an instance, because it will take a much larger time if we were to go into all the details of how we want to reform the judicial system because that would be the fundamental thing—I say, there are so many sections in the Indian Evidence Act which are called privilege sections. So many statements are privileged; communications to the husband or the wife, communication to counsel and to so many other persons are privileged. Similarly, when I as counsel for an accused stand before the Court, I know in my heart of hearts that this man is guilty.

Dr. Katju: Yes.

Shri N. S. Jain: I know it.

Shri S. S. More: He is pointing his finger at you.

Shri N. S. Jain: I go there and plead for him because as far as I have learnt, I think it is my duty to save the murderer knowing him to be a murderer provided he comes to me, offers me a brief and my fees.

Let us change this conception if we want to. But, it is no use tinkering with things. If you agree to this principle that if a *vakil*.....

Shri A. M. Thomas: Are you expected to ask the alleged culprit or the accused person whether he has committed the crime? Is the advocate bound to ask that? How can you say that the Advocate engaged knows that he is guilty?

Pandit Thakur Das Bhargava: That is not the question. The point is, does he know or not.

Mr. Chairman: Let us hear the hon. Member.

Shri N. S. Jain: I am telling things which are bitter truths. I think we must face the things which are true, however, bitter they may be. I myself think that it is wrong from the spiritual point of view. But, what is happening in this country? I know what is happening in this country. I do not know what is happening in other countries. Suppose I say to Mr. Katju....

Sardar A. S. Saigal (Bilaspur): On a point of order, I have been marking the hon. Member, every now and then, taking the name of Mr. Katju. Previously the hon. Deputy-Speaker, from the Chair, has given a ruling that when we refer, we should not call the names of the Ministers.....

Some Hon. Members: No, no.

Several Hon. Members: Yes, yes.

Mr. Chairman: Let not the hon. Members decide among themselves as to what is going to be the result. Let the hon. Member have his say.

I do realise that it will be better for parliamentary practice if we do not repeat the names often. But, we are not strictly following the traditions here. Sometimes, we do depart. But, it is better if we avoid it.

Shri N. S. Jain: I will keep that in view.

Shri Sadhan Gupta: What is disgraceful in the name?

Shri N. S. Jain: Unfortunately, I referred to the name because I thought by referring to the name, I could draw the attention better to things. Anyway, I shall avoid it.

Mr. Chairman: If greater emphasis is put on certain names and sometimes a name is mentioned with some flourish, certain things could be drawn from that.

Sardar A. S. Saigal: Let us say, the hon. Home Minister.

Shri N. S. Jain: I will not name either the Home Minister or Dr. Katju. I will go the other way. I was going to tell the House what I think should have been the point of view, if we want to reform the judicial system. Let us begin, if not from the judiciary, if not from the police, from the *vakils*, from the legal profession. Let us see if we can make a law or a convention or something of that type whereby any communications made to the counsel are not privileged,—I will go a step further—whereby a counsel engaged for the accused person can be forced to go into the witness box if the other party desires it, to disclose at what times the accused came to him and what he told him, because the *vakils* might be tutoring the witnesses, might be telling the accused to enter into defence in such and such a way. But if you ask the *vakil* to go to the witness-box and ask him to state on oath what he told the accused and what the accused told him, he would never tell a lie. So, if you really want that the truth must come out, if you really want that you shall not presume a man to be guilty till he is proved to be guilty, if you have...

An hon. Member: But who will engage a lawyer then?

Shri N. S. Jain: That is what I say. None would be engaged. Therefore, we shall dispense with this class of lawyers. That is one of my suggestions, and I think if on these lines something can be done, perhaps we may get at things, but tinkering with the problem that you will allow the cross-examination this way or that way, will only be defeating the ends which you want and put the accused person in a worse position, cursing everybody all the time.

Dr. Katju: Let me ask one question. Am I to take it that the hon. Member is suggesting that while the case is proceeding, it should be open to the sessions judge or the magistrate at once to ask the *vakil* for the defence to go into the witness-box and tell the court as to what the accused confined to the *vakil* about his guilt? Is that the suggestion?

Shri N. S. Jain: I think so, if not immediately, at the end of the trial. When I say we want radical changes, by radical changes I mean that we must think in different channels altogether. Our present approach to the problem is wrong. I will now go further. I know that these propositions will hold no water with the approach that we have now in mind. So, I have given that only as an example that even in these laws we can do something if we want a radical change, because in times of yore this thing was done and there was no *vakil*. Anybody who knew anything about a case would have to come.

Shri S. S. More: It is a suggestion for Dr. Katju to accept.

Shri N. S. Jain: Now, I am coming to the Bill as it is, and now I will put my suggestions from the approach as it exists at present and not the one I have referred to uptill now.

I look at this Bill from the point of view that a person who is accused is innocent till he is proved to be guilty, and he shall be given all the opportunity and shall be treated with all the respect which an innocent man deserves. Now, I will show you how the framers of the Bill have taken it into their head to presuppose that a man who has been brought to the dock by the police is *prima facie* guilty, and if I am able to prove that, then I think the framers of the Bill should either say that they have changed their approach or withdraw the Bill itself or at least all those clauses which contain these provisions.

Before I go any further, I will divide these criminal cases into three sections as at present. There are the summons cases, the warrant cases and the sessions cases. There are three sets of trials provided in the Criminal Procedure Code for these three kinds of cases.

Mr. Chairman: The hon. Member might continue tomorrow.

The House then adjourned till a Quarter Past Eight of the Clock on Thursday, the 6th May, 1954.