[Mr. Deputy-Speaker]

Vinayak Pataskar, Shri Chimanlal Chakubhai Shah, Shri Awadeshwar Prasad Sinha, Shri V. B. Gandhi, Shri Khandubhai Kasanji Desai, Shri Dev Kanta Borooah, Shri Shriman Narayan Agarwal, Shri R. Venkataraman, Shri Ghamandi Lal Bansal, Shri Radheshyam Ramkumar Morarka, Shri B. R. Bhagat, Shri Nityanand Kanungo, Shri Purnendu Sekhar Naskar, Shri T. S. Avinashilingam Chettiar, Shri K. T. Achuthan, Shri Kotha Raghuramaiah, Pandit Chatur Narain Malviya, Dr. Shaukatullah Shah Ansari, Shri Tekur Subrahmanyam, Col. B. H. Zaidi, Shri Mulchand Dube, Pandit Munishwar Dutt Upadhyay, Shri Radhelal Vyas, Shri Ajit Singh, Shri Kamal Kumar Basu, Shri C. R. Chowdary, Shri M. S. Gurupadaswamy, Shri Amjad Ali, Shri N. C. Chatterjee, Shri Tulsidas Kilachand, Shri G. D. Somani, Shri Tridib Kumar Chaudhuri and the Mover, and 16 members from the Council;

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

that the Committee shall make a report to this House by the last day of the first week of the next session;

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

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

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898, be referred to a Joint Committee of the Houses consisting of 49 members, 33 members from this House, namely, Shri Narhar Vishnu Gadgil, Shri Ganesh Sadashiv Altekar, Shri Joachim Alva, Shri Lokenath Mishra, Shri Radha Charan Sharma, Shri Shankargauda Veeranagauda Patil, Shri Tek Chand, Shri Nemi Chandra Kasliwal, Shri K. Periaswami Gounder, Shri C. R. Basappa, Shri Jhulan Sinha, Shri Ahmed Mohiuddin, Shri Kailash Pati Sinha, Shri C. P. Matthen, Shri Satyendra Narayan Sinha, Shri Resham Lal Jangde, Shri Basanta Kumar Das, Shri Rohini Kumar Chaudhuri, Shri Raghubir Sahai, Shri Raghunath Singh, Shri Ganpati Ram, Shri Syed Ahmed, Shri Radha Raman, Shri C. Madhao Reddi, Shri K. M. Vallatharas, Shri Sadhan Chandra Gupta, Shri Shankar Shantaram More, Sardar Hukam Singh, Shri Bhawani Singh, Dr. Lanka Sundaram, Shri Rayasam Seshagiri Rao, Shri N. R. M. Swamy and Dr. Kailash Nath Katju, and 16 members from the Council;

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

that the Committee shall make a report to this House by the last day of the first week of the next session;

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

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

I must confess that I regard this day as a somewhat notable day in my life. I have spent most of my living years in the law courts and have felt in my day to day work the difficulties and complexities that arise in the administration of the law, particularly in procedural matters. One thing which has struck every one of us, each lawyer, to our greatest sorrow, is that a law court, instead of being an incentive to the people of this country, to go and assist the administration of justice by giving true evidence before the judges and magistrates, does not seem to exercise that function, nor generate that incentive. The common feature, as every lawyer and everyone who has to deal with law courts feels is that perjury flourishes. This is a matter for the moralists and public conscience, and I know that legislation can do but little in this matter. I appeal to this House, to this sovereign Parliament, to take the utmost possible measures that it could for the purpose of purifying the atmosphere of the law courts.

The second thing is this. From decade to decade, for a variety of reasons—it is not that the procedure is complex—the procedure is somehow becoming complex. It is becoming dilatory; it is becoming expensive. It may be that the persons who are accused, who have to go to the law courts, want themselves to protract the proceedings, to ward off the evil day. But, the result is nevertheless the same. It is awfully expensive; it is awfully dilatory. During all these years I have met people in the villages and in the urban areas, and mostly in the last two years, who seem to be losing faith in our law courts, particularly on the civil side. They say, what is the good of bringing a claim; it takes three years to get a decree, and another five years to put it into execution. We would rather settle it out of court than go to the law courts. So far as criminal justice is concerned, for a variety of reasons, there is a very complicated procedure. The case takes months and months before the magistrates; if it is a sessions court, it takes one or two years. Then, the number of acquittals is enormous. I do not know that there is any difference in principle which should guide these matters namely, every one is anxious that no innocent man should suffer and no guilty man should escape. The police say that they do as best as they can.

Judges and magistrates say that they are independent and they deal out justice between the State and the citizen. The result is that before sessions courts, generally speaking, out of 100 people prosecuted, 75 are acquitted and of the persons convicted, at least one-third are acquitted by the High Court. That is the state of affairs which we have got to tackle.

Before I go into the leading features, there is an amendment which seeks to persuade the House to circulate this Bill for eliciting public opinion. It may be that there is some apprehension that people have not been properly consulted about it. I want in the very beginning to tell you what the facts are and what actually has been done. Now, as a matter of history, it may rather interest the House that the first Criminal Procedure Code on an all-India basis as applicable to British India was enacted in the year 1861. Before, that, there were numerous regulations in force in Bengal, Madras, Bombay and elsewhere and the procedure was in a very cumbersome state of affairs, one procedure for what were called Presidency towns which followed the English procedure, another procedure for the *Nizamat Adalat*, the East India Company's courts and so on and so forth.

[Dr. Katju]

Everything was codified and put on a formal basis in the Criminal Procedure Code of 1861. And about that very time, we had our two big codes, the Civil Procedure Code as well as the Penal Code reforms were passed. Now, this Criminal Procedure Code has stood practically without any big change right through. It is correct that the Procedure Code which is now in force is called the Procedure Code of 1898, but not many changes have been made thereafter. There were some amending Acts in 1872, in 1882 and last of all in 1923. I think that this is the first big and comprehensive examination of the entire Criminal Procedure Code this Parliament is undertaking after about 92 years, and it is also of some importance.

So far as the events preceding the Bill are concerned, what happened was this. In the year 1951, the Punjab Government sent a communication in which they made some suggestions, the most important being that the commitment proceedings should be abolished. There should be a direct sessions trial and they also pleaded for simplification of the warrant and summons procedures. This letter was circulated by the Home Ministry to all the State Governments and I may tell the House here that we received a lot of information. Out of 27 State Governments, 24 have sent replies. Out of 16 High Courts, 11 favoured us with replies. Now that was the position when the Home Ministry on their own in January 1953—that is, last year—sent a very comprehensive letter suggesting numerous points and asking for opinion. (*Interruptions*).

Shri Vallatharas (Pudukkottai): Were any Bar Associations consulted in this matter?

Shri N. C. Chatterjee (Hooghly): Were any Bar Associations or Bar Councils consulted?

Dr. Katju: I am coming to that.

Shri Syed Ahmed (Hoshangabad): That would be answered if you allow him to proceed.

Dr. Katju: Some State Governments sent what are called consolidated letters, namely, they embodied the opinion of the judges, the Bar Associations and the lawyers also. Now, this letter which went out from the Home Ministry in January 1953 was a very comprehensive one and that asked for opinion from all the State Governments. The State Governments were requested to consult the High Courts, the Bar Associations, district judges—everybody—and the replies that we received were numerous. We received from each State Government consolidated replies. From Bombay we received the opinion of 15 district judges and 18 Bar Associations—separate—, from Madras the numbers were, 7 district magistrates and some Bar Associations. Each State Government sent what they called a consolidated reply. Now this was proceeding when the House would recollect that in August last in the course of the discussion of a Private Member's Bill in which the question was raised of the abolition of trial by assessors and by juries, I made a statement that we were considering this matter and I said that I would like to place a Bill before Parliament as early as I could, say in the month of December. I ventured to prepare a memorandum—which turned out to be a very big one, —about 52 foolscap pages—which dealt with both the Civil Procedure Code and the Criminal Procedure Code. I sent that out to all the judges of the Supreme Court, all the Chief Justices, all the Chief Ministers representing their Governments and the Governors, all the Advocates-General asking for opinion at large; I sent that memorandum also to my hon. friend, Mr. Chatterjee, and many other friends. I should like, Mr. Deputy Speaker, with your permission to express my deep gratitude for the very generous response that I received. Now, that was before the Bill was

framed. I had sent out that memorandum to 75 big people and big authorities and out of them, 52 have favoured me with replies. Every single judge of the Supreme Court sent detailed comments, then 14 Chief Justices out of 16 sent replies, mostly after consultation with their colleagues, then 12 Chief Ministers, 10 Advocates-General and 5 Governors—some of them, you know, are lawyers of great eminence—the Attorney-General and also the Solicitor-General—all sent replies. Out of all this material which had been collected, namely, the material received in answer to our previous letter of January 1953, the material received in answer to the Punjab Government's proposals and in answer to this memorandum, we ventured to prepare a Bill and with Mr. Speaker's permission I got it published in *the Gazette of India*. That was in December last. We from the Ministry also sent another letter drawing attention to that publication and asking each State Government to reproduce the Bill in their own State Gazettes. We also asked them to let us have the opinion of every single person interested in this matter. Now, between December and April, there were four months and in these four months we have received 207 replies: 56 Bar Associations have written to us, 21 Advocates-General in their personal capacity have written to us, then 66 sessions judges and district judges and 30 district magistrates sent replies, 19 State Governments sent what you may call consolidated letters, notes stating their opinion and 15 High Courts sent us their comments—altogether 207. We analysed every one of these and took the previous matter and we saw that most of these comments were on the proposals embodied in the Bill and many others were on points which had not been touched in the Bill—i.e. points in the Bill and points outside the Bill. Then we went over them and we thought that some of the suggestions received were sound and we adopted them. Where comments made on the amendments appeared to us to be sound, we have changed our proposals and the result is that the Bill which is today before the House is substantially the Bill which was published in December last, but which does depart in some particulars from that Bill. It either modifies here and there some suggestions made to the proposed amendment or adds some further features which have been the result of the comments received.

I respectfully submit, Sir, that no one can say that this Bill has been drafted in a hurry or that comments of competent people, judges of the High Courts and the Supreme Court, practising advocates, Bar Associations etc., have not been consulted. I submit with some confidence that so far as we could do, we have tried to profit by all the advice that we have received and this Bill comes before you after very mature consideration lasting for over two years. I may say at once that I had intended, if I could have been able to introduce the Bill about the middle of December, to ask the House myself to circulate it for eliciting public opinion. But as you will recollect, we were all very much concerned at that time with the congestion of legislative business. So, I said to myself that if I could persuade Mr. Speaker to allow me to publish it, there were four months and the public would be in possession of the proposals and we could utilise these four or five months and thus avoid a formal reference for eliciting public opinion.

Shri Bansal (Jhajjar-Rewari): On a point of information, Sir. If the Bill is circulated for eliciting public opinion, then those public opinions are made available to the Members of the House. Inasmuch as the hon. Minister's contention is that this Bill was published about four months back and he has received a lot of public opinion, will he be kind as to favour the House and the Select Committee with a consolidated summary of whatever views have been receiv-

[Shri Bansal]

ed? In fact the House would have been very glad to receive from the hon. Minister all the previous viewpoints that were received by the Minister, but that may be perhaps too voluminous. The House will very much appreciate—I think I am speaking on behalf of a good number of hon. Members—the circulation to it at least those views which have been received subsequent to the publication of the Bill in the gazette.

Dr. Katju: I am indebted to the hon. Member for this suggestion. As a matter of fact, this has already occurred to me and I have already instructed the preparation in the form of a book, the printing of the comments that have been received on this Bill right from the year 1951. I may say at the outset, as I said in August, that I am not putting forward this Bill in any party spirit. In the administration of criminal justice, we are all deeply interested. It is a matter which concerns 36 crores of people and we are here engaged in an endeavour to make it as perfect as we can, with the combined wisdom of every single Member of Parliament. So, nothing can be concealed, nothing can be kept back and I do hope that by the time the Select Committee begins to function that booklet—or may be a biggish thing—may be ready. I shall keep copies placed in the library so that every single Member of Parliament can have it for his own consideration and for his own perusal.

Shri N. C. Chatterjee: May we press for the circulation of that thing; it is very important and all of us must get a chance of appreciating it.

Mr. Deputy-Speaker: He wants that copies should be circulated to the Members.

Dr. Katju: It shall be made available for the Members.

Shri S. S. More (Sholapur): In the library or personally?

Dr. Katju: I shall circulate it to every single Member of the 750 Members of Parliament. Is it enough? I have already given orders for its printing; it is in the Press. I am indebted to my hon. friend for this suggestion. It is a very important matter. I think every Member ought to have the comments made by the superior judges, the inferior sessions judges and members of the Bar, Advocates-General and others. It is not a question of placing something on the Table of the House. Every single Member will be supplied with a copy.

This is the history. I have gone into it at some length, Mr. Deputy-Speaker, because I do not want to create an impression that this thing has been done in a hurry or the Bill is the product of some particular individual's ingenuity and all that. I am extremely grateful for all the assistance that we have received and are receiving. We have all treated it as a sort of endeavour in which every single citizen is interested.

Leaving this history aside, I venture to put before you the basic reasons underlying the Bill. What is the background? During all these 12 months or 16 months and practically throughout my practice, I have always been constantly thinking of how to stop perjury. Human nature being what it is, it may be a completely hopeless task. But we can lessen it. I can understand a man's relations, a man's partisans coming and telling lies, but why should an ordinary citizen come and do it? We must recapture the reputation that India had in the olden days that the people of India were truth-loving people.

This Bill does not deal with judicial *panchayats*. Judicial *panchayats* have now become a common feature in the legislation of every State. It occurred to me that we might deal with it here; but then I thought it would be better to leave it aside because in each State there is legislation

for the establishment of judicial *panchayats*. There are some variations. I believe the State Governments bear in mind their local conditions and they want to make progress accordingly. I know that on the value of judicial *panchayats* opinions differ. I have heard opinions on both sides. Small litigation—civil litigation for only Rs. 200 and small crimes, petty assaults—one beat and nothing happens—all these can be settled in the village. If you have to bring a suit for Rs. 200, before you do anything, you have to spend about Rs. 20 in court fees. In the villages a man can get justice done by the *panchayat* for nothing. Probably, it is just a small application and something like that. I do not want to tire the House with details and I am firmly convinced that justice administered in these *panchayats* is of the highest quality speaking generally. It may be that a *panchayat* here or there may be unsatisfactory; it may be guilty of corruption, may be guilty of irregularities. If in a particular village there is faction, then justice may be administered in a partisanship spirit. You may find such *panchayats* functioning here and there. But, in the vast majority of cases it is to me a matter of personal gratification that these *panchayats* have proved a real boon.

Only four months back, I went on a sort of tour for ten days through Madhya Bharat and Bhopal and everywhere I found the *panches* meeting me. I went into the villages; I asked the people, 'how is your *panchayat*'? They said 'we are all happy; we have not got to go to the courts'. If a man goes to the court for a small petty criminal case, say to the sub-divisional headquarters or to the district headquarters, imagine what happens to him. There are lawyers, there is the magistracy, there is the *peishkar*, there are the witnesses themselves and there is *puri kachauri*. All this means hundreds of rupees.

An Hon. Member: Touts.

Dr. Katju: We have left out these judicial *panchayats* here. That brings me to another feature of the Bill and that is the trial by assessors and jury. It is rather curious that there is a complete unanimity of opinion today that the system of criminal trial with the aid of assessors has outlived its usefulness. Out of 207 replies which have been received, not a single dissentient voice is there. They say "You can proceed in the matter and abolish the jury system". So far as the jury system is concerned, in this House we have heard hon. Members expressing different views. I remember Mr. Chatterjee saying that in Bengal they have found the jury system very useful. It is rather curious that in other provinces it is not so. They have not seen the sight of a juryman in the Punjab, for instance. In Gorakhpur there has never been a jury trial for centuries. My hon. friend Mr. Sinhasan Singh may stand up and say that the jury is corrupt.

Shri Sinhasan Singh (Gorakhpur Distt.—South): Who said so?

Dr. Katju: People who are not accustomed to jury trial and who have nothing to do with juries, stand up and say "The jury is corrupt, partisan and so on and so forth". I sometimes thought that out of 100 cases, if 75 result in acquittal, then the sessions judge is praised by all the lawyers concerned for his great independence, experience, and ability in assessing evidence and finding out the true from the false, and so on and so forth. If the 75 are acquitted by the jury, the jury is condemned as being corrupt and all that. The sessions judge gets the praise and the juryman gets the condemnation. My own personal feeling is this. I may be in a minority. I am talking as a lawyer. One of the worst features of our life is—it may be a historical reason; it may be the result of 200 years of British rule—that the people do not consider the law courts as their courts. They think that the courts are something out of their life. If you want to make ad-

[Dr. Katju]

ministration of law pure and speedy, and if you want to check the horrible state of perjury which is now prevalent, you must create a sentiment in the people that the court is their court and that they are associated with the administration of justice. In this Parliament, this is one of our greatest functions and we make the law, but people feel that it is their law and that it is not being made by some outside authority. It is being made by people whom they have elected and, therefore, it is something, of which they are proud. Similarly, in the administration of justice, if you associate the right type of people, it should be welcomed by the people. I do not know whether the lawyers or judges here are in the habit of writing and publishing their own biographies, but if you read the biographies of the most eminent and leading barristers and judges in England, you will find that one after another, for the last 500 years, leading advocates, judges and Lord Chancellors have paid their homage to the British jury for the wonderful work they have done in preserving the liberty, by which they have protected the citizens and promoted the respect for law and order. I may say here that if one guilty man escaped, that is as much disastrous to the common welfare as the conviction of an innocent man. My own opinion is that we may modify the legal system and make the necessary changes so that we may regulate how to select our jurymen. We may insist upon their being educated, that they should be treated in a respectable manner, that they should not be shabbily treated, that they should have proper treatment given to them just as the British jury are treated. Then, you will find that the administration of justice will improve. Today, the condition under the present law, is that if the assessors go, then the trial will be either by a judge sitting alone, or sitting with a jury. It will be a trial by a judge or trial by jury, and it is left to the State Governments to decide, subject to the concurrence of their legislature, as to whether they will introduce a jury system or whether they will not do. I have left it aside. In Punjab, there is no jury system and it is open to the Punjab Government to have it or not. In Bengal, the people are satisfied with the jury system and so it may go on there. We have left the law as it is and let everybody decide for himself. I am indebted to the Bombay High Court Judges. They have made some suggestions which we have incorporated in the Bill and about which I have been thinking for a long time myself, namely, if a trial is a very complicated one—as, for example, a trial in a dacoity case, in which there are about 25 accused, 150 witnesses, 300 exhibits and the trial goes on for five months—it may be a very great burden on an ordinary jury to carry all these in their heads. The Bombay High Court has suggested that if there is a sessions trial pending in Bombay, where the jury system prevails, then it will be open to the High Court on an application made or on its own, if it is satisfied about the complexity of the trial and the nature of evidence, and so on and so forth, to have that case tried by a judge sitting alone, and it will be open to the High Court to dispense with the jury. We have embodied this in the Bill. So far as the jury is concerned, the Bill leaves the situation as it is. So far as the assessors are concerned, they have got to go. Personally I would consider it a very very happy day in my life if the jury system were extended and people adopted it. As a matter of fact, it is very curious that until the day of the advent of Independence, throughout India the Congress and all our national leaders were advocating, striving and passing resolutions for the establishment of jury in India. In the U.P., with which I am very familiar, soon after the Montagu-Chelmsford reforms, the new legislative councils came into existence, and resolutions were passed that the jury

system should be established. A committee was appointed, another committee was appointed and the Indian opinion was so emphatic about it that they made a beginning with it. Today, in the U.P., the jury system prevails in six districts, and in some trials, cases can only be tried by jury, but as soon as Independence came, even that truncated Independence after 1947, I do not know how this metamorphosis came about. In the Indian legal opinion, lawyers' opinion, and the judges' opinion the juries became wild people and therefore the jury system should be abolished. I should personally be happy if Parliament were to decide that every sessions case should be tried with the aid of the jury, but there it is.

I shall now take only the big changes that are effected here.

Mr. Deputy-Speaker: Is the jury system advocated for murder cases in the Bill? Hitherto, in murder cases, there were no jurors; there were only assessors.

Dr. Katju: So far as the Bill is concerned, it makes no change about jury at all.

Wherever the jury system prevails in the trial of murder cases it will continue. The Bill does not say that a murder case should be tried with jury.

I think in Bengal, Mr. Chatterjee will correct me if I am wrong.....

Shri N. C. Chatterjee: In Bengal and Assam, both, in all murder cases there is jury trial.

Dr. Katju:..... every murder case goes before a jury. In the United Provinces it is only the lighter cases that go before the jury; others do not. Often it happens that there are two charges: the first relating to murder and the second against the same accused for causing the disappearance of the dead body, or possessing an unlicensed arm. So, one aspect of the case is tried by the assessors; the other by the jury. The same five people who function as jurors also function as assessors. So, whatever the position is, it is left completely untouched. We are not going to make any alteration here. It is open to the State Governments concerned to do what they like. It is, however, open to hon. Members, whether in the Select Committee, or in the open session, to make any changes they like, opinion being divided on this subject.

Now, I was coming to one big change that we have made here, namely the abolition of commitment proceedings. I think it is the experience of every lawyer that commitment proceedings take a lot of time. First comes the police investigations: it may take, two weeks, six weeks or five months. It all depends upon the intricacy of the case and the number of witnesses. When the accused is charge-sheeted he goes before the committing magistrate, and I have seen proceedings before magistrate lasting, five months, six months, eight months.

An Hon. Member: Two years!

Dr. Katju: My hon. friend says two years. And please remember that the length of the proceedings has a very mischievous consequence. The mischievous consequence is that the horror caused in the public mind by the guilt, by the crime fades away. Secondly, it gives an opportunity to the dishonest offender, supposing he is the culprit, to win over witnesses, and the result is that very often—maybe honest witnesses,—memories become hazy, there is the clever cross-examination, there are some discrepancies, evidence becomes rather shaky and the whole case ends in an acquittal.

The purpose of the commitment proceeding was to provide the accused with full knowledge of what he had to meet: full knowledge means all the evidence, of the witnesses as well as documentary. Now we have decided that all this should be made available to him. Now what is the first document. I am perhaps talking platitudes, because every-

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body knows it. The case starts with the first information report. Then there may be a *post mortem* report, if it is case of murder; there may be the chemical examiner's report; then comes the notes made in the police diary by the investigating officers. The House will remember that today it is open to a police officer—if he so chooses, and this is rather important, to get the statement of every witness recorded by a magistrate. It is entirely in his discretion. What he generally does is that if there is a witness about whom he has some suspicion, either because of relationship or because of some other reason, that he may try to get out, then he goes and has his statement recorded; otherwise not. So far as the statement in the diary is concerned that is in the handwriting of the police; it is not signed by the witness. It is not part of the evidence.

Now, we have provided here, not for the purpose of tying up witnesses, but for the purpose of making evidence available, that every police officer, during investigation, whenever he thinks that the witnesses are material witnesses, will have to produce them in court. He gets the note in his police diary first and then as early as practicable within two days, three days, four days, he should get the statement of that witness recorded before a magistrate in the freer atmosphere of the magistrate's court and get it signed by him. The result will be that you get all the documentary evidence, oral evidence and any other material evidence and we propose that copies of these documents should be at once handed over to the accused so that he may know full well what he has got to meet.

Shri R. K. Chaudhuri (Gauhati): On a point of information. As soon as a charge sheet is submitted, even if the Magistrate thinks that it does not disclose any case, is it open to him to send it to the sessions judge?

Dr. Katju: What I was saying was this. When a charge-sheet is framed, it discloses on what evidence the man is charged. May be that I have not got sufficient experience in the original courts, but I imagine that when a magistrate discharges an accused in the commitment proceeding he discharges him not because there is no evidence at all—excepting what I may call embroidery accused here and there, but because, in his opinion, the evidence is not trustworthy. The evidence against that particular accused is slender and that slender evidence is not trustworthy. What we have done today is this. The charge-sheet along with all the evidence, which has been collected by the Police shall be put before a magistrate. He will read it and if he finds that it need be tried only by a magistrate he will send it to a magistrate. If he thinks that it should be tried by a sessions judge, in order to give the accused a full opportunity of knowing the precise charges against him he will draw out a draft charge and then send the papers. As I said just now we have received 207 opinions on this Bill and I find that opinions against the abolition of commitment proceedings were twelve,—12 out of 207. If my recollection is right all the judges of the Punjab said it does not do any good. So far as the discharges are concerned, the Select Committee will go into it at great length. I do not think the number of discharges is more than 1 per cent or 2 per cent, and these may be, what I call embroidery accused persons.

Pandit Thakur Das Bhargava (Gurgaon): May I put a question? The hon. Minister said that a copy of the entire evidence and statements will be supplied to the accused. May I know whether all the statements taken before the police as well as the notes of the police will be supplied?

Dr. Katju: I think hon. Members are aware that today under the existing procedure the moment a witness is produced by the prosecution, if the accused so desires, a copy of that man's statement and the witnesses' statements in the police diaries are

furnished to him. The relevant section itself, however, says that it may be open to the court to, what I may call, rub out or not to give copy of a statement which has nothing to do with that accused, which are not material or which in the interest of security should be kept back.

Pandit Thakur Das Bhargava: Notes of inspections, as well as statement recorded so far as witnesses are concerned, will they be supplied or not? Let us know precisely what is actually proposed to be supplied.

Dr. Katju: If you want to have a look at the whole police report and other things, that cannot be allowed.

Shri S. S. More: Who is to decide?

Dr. Katju: That will be the judge. It is open to the judge to look at the entire thing. (*Interruptions*).

Mr. Deputy-Speaker: Let the hon. Minister go on.

Dr. Katju: My point was that so far as this is concerned, we are most anxious that the accused should have as complete information as possible made available to him before the sessions trial starts. Today while the commitment proceedings are in vogue, what does he get? Every witness is examined before the magistrate. He gets a copy of that. In addition to that, he is entitled to a copy of the statement of that witness in the police diary. So that is before him. But he is not entitled to have a sort of clean run over the police diary itself. The *vakil* might suggest to the judge: will you kindly have a look at the diary? Every sessions judge has got it before him and he reads through the entire report but the accused is not entitled, as a matter of right, to the whole thing. We have not given that right to him here. He is entitled to know what his witness is going to say; nothing more.

An Hon. Member: May I know whether this procedure has to be followed in respect of sessions cases only or in respect of all cases.

Dr. Katju: I am coming to the warrant cases. I was dealing with commitment proceedings; I shall deal with warrant cases in a minute. The object of the commitment proceedings being to let the accused know what the prosecution case against him is and what evidence is there, he has got to know and we want him to know that by the supply of copies.

I hope the State Governments will take adequate steps to try and see that police investigations are completed as early as possible. I was looking to a maximum of two months but this will put strain on the police staff. Wherever I have gone, people had said to me: 'you are complaining of delays, the Procedure Code may be responsible for it but delays occur mainly because of the inadequacy of the staff—inadequacy of the police staff and inadequacy of the magisterial staff. I have heard a lot about the poor magistrates. He is holding enquiries and there are too many cases. Then they say that this is becoming a welfare State and the magistrate has got to go to the community welfare project, he has to go to the co-operative societies. Then the ministers may be going there—the Central Ministers, the State Ministers, the Deputy Ministers and the Parliamentary Secretaries, the V.I.Ps. from this sovereign Parliament. They all go and he has to look after them. The result is that the cases are postponed. I do hope that when this Bill is enacted the State Governments will see to it that for the trial and disposal of cases there should be a magistrate—or you may call him whatever you like—and he should have nothing to do except disposal of criminal cases.

Shri R. K. Chaudhuri: What about those cases which are not exclusively tried before the court of session? A case is brought before a magistrate and he thinks that he should commit it to enhanced sentence and what will happen?

Dr. Katju: It may go before the sessions judge. I would request the hon. Members not to be guided too much by very rare cases when we are enacting a Code. I am coming to that part of the matter again. The main thing was about the commitment proceedings. The length of the proceedings would be shortened considerably. Please consider that the commitment proceedings are..... (*Interruptions*).

Shri S. V. Ramaswamy (Salem): What will happen.....

Shri Syed Ahmed: He is making a speech in support of his Bill. I think you would be good enough to give time to every Member to speak on the Bill and about the other difficulties if there are any. What is the use of interrupting him just now?

1 P.M.

Mr. Deputy-Speaker: The hon. Members who are giving this advice are themselves guilty.

Shri Syed Ahmed: I beg your pardon, Sir.

Mr. Deputy-Speaker: Anyhow I would request hon. Members not to keep on interrupting. After all, this is a debate. Why should you be very touchy over the matter? After all, all hon. Members are practising lawyers and they want to make the Code as good as possible. Let the hon. Minister make his points and at the end of that any suggestions or enquiries can be made.

Dr. Katju: I say that when we consider this matter please remember that these proceedings which sometimes last for months with 20, 30 or 40 hearings, mean not only waste of time, but something in terms of money also and the accused people are very often poor people. I know of a case where the devoted wife of an accused had to sell her ornaments so that the husband may put up a proper defence. By the abolition of this totally unnecessary commitment proceedings you save time and you save that poor family from ruin. If he is guilty, he ought to be punished quickly, and if innocent, let it be quickly decided. But, whether guilty or innocent, if he is going to be hanged, let him be hanged quickly, so that some money may be left for the family to live upon. Why should money be unnecessarily spent on the defence of a murderer? From that point of view, I respectfully suggest that this is a sound proposal. The truth of this is that the Punjab Government proposed it in the year 1951 and all the State Governments supported it, and I have told you how the figures stand.

We have taken care to give complete discretion to the judge to see that the accused does not suffer. For instance, there is a section which provides for regulating cross-examination of witnesses. It is open to a counsel for defence to say: "Sir, on this point there are three witnesses. Will you kindly allow me to examine witness A who has just now given evidence till the other witnesses have given theirs"? This is a matter left to the discretion of the judge. He may postpone or regulate the cross-examination in particular cases so that the case of the accused may not suffer.

Now, I am looking forward to the day when the sessions trial should be finished within two months. If it is a sentence of death, then it has got to be confirmed by the High Court and I am looking forward again for the day when the High Court will take only two months. In some cases it has taken many many months, but things are settling down. Please remember again that life is so precious that the condemned man takes every single step which is open to him merely to prolong his existence. The Supreme Court has declared from the house-tops that it would not interfere in criminal cases on pure points of evidence; but if you go to the Supreme Court you will find that

out of the condemned men in India, probably 99 per cent. of them, have filed what is called petitions for leave to appeal and every petition for leave to appeal is dismissed in two minutes. I am not exaggerating. There is nothing in it. It is done for the condemned man by his wife, father or mother or someone else, just to have a chance to prolong his life. When that disappears, then comes the mercy petition; first before the Government and then before the President. That may take a month or two months. The result is not very good even for the man who has committed murder. He lives a life of hell with the sword of Damocles always hanging over him. I think it is desirable—it may sound cruel—in the public interest that punishment in a condemned case should be swift so that people may remember: here is a man who murdered A in January and three months later he is being hanged. If you hang a man who committed murder in January 1954 in December 1956 or December 1955, everything is forgotten. People's hearts go out to the condemned prisoner and they think that his life has been taken. Nobody thinks of the murdered man, his wife and children. The trial and all procedure should be as rapid as possible.

My friends ask me about the application of this procedure to warrant cases. Today, it is an extraordinary case, you know it all, that in every warrant case, a man is liable to cross-examination thrice. It sounds ridiculous; but that is the fact. You give evidence. The counsel for the accused may get up and cross-examine you. Then, the charge is framed. Then, the counsel may say, I want this man to be cross-examined again. That is the second cross-examination. When the accused is called upon to enter on his defence, he may cross-examine you a third time. What is the result? The result is that people do not come to give evidence. Ask them what do you know about something. They say that they do not know anything. Why? Because the moment you go into the witness box, you will have to go over and over again. We go. The case is adjourned. We go again; again the case is adjourned. The procedure that we have envisaged is this. There should be one appearance of a witness and he should be cross-examined. Then, we leave it to the magistrate. If he thinks that there is some good reason for the petition for the defence to re-examine the witness and put further questions to him, he may order examination. Otherwise, it ceases to be a matter of right. I think that is a very fair provision, and I would ask the House to accept it.

Some Hon. Members: No, no.

Dr. Katju: The reasons for delay are numerous. These adjournments are the worst causes for delay. If you go to a witness, he says that he is ill. He gets fever, malaria. The case is adjourned. Here, we have provided in the Bill that if an application for adjournment is made and if the magistrate is disposed to adjourn the case, he will not grant the adjournment unless and until all the witnesses present that day have been examined. My friends have been asking me as to whether we have tried to cut short the duration of all cases. We have done that.

Another matter is this, and this would apply to all criminal cases. Today, in a criminal case, the number of what we call formal witnesses is simply enormous. When I was appearing in the courts, I used to handle these cases and I would get printed books, literally hundreds of pages of evidence. I found that the number of pages which were material may be 10; the other 90 pages were absolutely useless. Five witnesses are called for the purpose of proving that from the site of occurrence, the dead body was taken to a mortuary: they say, I took it; I am constable 252, etc. If on the date fixed for his examination, he is down with malaria, the case is adjourned, nobody reads his evidence. It is purely formal. This will be applicable to

[Dr. Katju]

all criminal trials. The provision now made is that for all these formal things, it will be open to the prosecution to file affidavits. The affidavit evidence is there and it will be open to the magistrate or to the judge or to the prosecution or defence, if they want to get any one of these witnesses in the box and put them some questions, to put those questions and be done with it. That would also cut short the number of examinations and I may tell you that an adjournment may be caused by their non-appearance. So far as summons cases are concerned, we have simplified the procedure. Also the number of cases in which summary trials may be held is being increased.

Hon. Members probably might have read in the newspapers that magistrates in London and elsewhere finish a case in two minutes. The policeman comes; the accused is brought; the magistrate tries the case and orders are passed—a fine of £5. 'You were driving a car at over-speed, 35 miles an hour. The policeman caught you. Yes—£. 5 fine—£. 10 fine'. But here cases take three hours.

Mr. Deputy-Speaker: Nuisance cases.

An Hon. Member: Three months.

Shri Syed Ahmed: One year.

Shri S. S. More: Not cases of such type. (*Interruptions.*)

Mr. Deputy-Speaker: Order, order. Let there not be another court here. What are hon. Members doing there? They are talking to one another.

Shri Bansal: Cross-examination is going on.

Mr. Deputy-Speaker: Just now the hon. Member wanted me not to allow Mr. Ramaswamy to put any number of questions. Now he is going on talking to those Members who are sitting in the rear. Hon. Members must keep quiet when the hon. Minister is speaking.

Dr. Katju: Therefore, dealing with this question broadly, every effort has been made—that could possibly be made—by shortening evidence, by giving affidavit evidence so that trials may be speeded up. There is another thing—I am dealing with this in two or three minutes. The length of the trial is very detrimental to the accused. During my term, either as Minister or as Governor, I have often been to the jails and sometimes I found that the number of undertrials actually exceeded—sometimes doubled—the number of convicted prisoners. I used to see the sheets—two months, three months, four months. There was some boy aged 16. How long has he been an undertrial? Five months—charged for smuggling. That was particularly in Bengal—smuggling to Pakistan or from Orissa into West Bengal—and the trial does not take place. So we have inserted in this Bill a provision that either the case should be finished within six weeks or the accused would be entitled to be let on bail, unless the magistrate for reasons to be recorded in writing by him, refuse bail. I think that would be a very suitable and, I respectfully suggest, a very proper and appropriate provision. That would act as incentive to the magistrates to finish the case. Otherwise, it will be said: 'If you let him out on bail, he will tamper with the witnesses and so on'. It is not proper that a man should be there for four months or five months or three months. That is one provision which I have made.

Then there are smaller things, namely, the moment judgment is given, then he should not go to jail; he should then and there be given by the magistrate a short note saying 'This man has been punished, has been convicted' so that a bail application may be moved before the sessions judge within a brief period two or three minutes. We have to protect the accused as far as we can within the limits of human ingenuity and to see that he gets every opportunity for defending himself, that he

is not allowed to remain as an undertrial for no fault of his own, that his liberty is not disturbed, so that he may file an appeal either to the High Court or to the sessions judge.

May I stop there because that finishes one part of the chapter?

Mr. Deputy-Speaker: The hon. Minister wants to continue tomorrow?

Dr. Katju: Yes.

Mr. Deputy-Speaker: Very well. He may continue tomorrow. The House will now stand adjourned to meet again at 8-15 A.M. tomorrow.

The House then adjourned till a Quarter Past Eight of the Clock on Tuesday, the 4th May, 1954.