change in the rules regarding absence of Members. In my opinion, if a Member remains absent for more than 60 days during the period of one year, then for every day's absence Rs. 20/- should be cut from his salary.

Mr. Speaker: I think that is a matter which the Committee might take into consideration at some later date and come with a fresh report on that point. The matter cannot be settled here.

Pandit Thakur Das Bhargava (Gurgaon): The Constitution would come in the way.

Shri Altekar: That is a proposal for the Committee to consider and place a report before the House. The House will then consider it.

Mr. Speaker: The question is:

> "That this House agrees with the Sixth Report of the Committee on Absence of Members from the Sittings of the House presented to the House on the 3rd December, 1954".

The motion was adopted.

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

Mr. Speaker: The House will today take up consideration of three groups of clauses of the Code of Criminal Procedure (Amendment) Bill, 1954, for which two hours each have been alloted.

The first group consisting of clauses 66 to 81 will be disposed of by about 2-25 P.M. when the House will take up consideration of the next group which consists of clauses 82 to 88 The discussion on this group will continue up to about 4-25 P.M. which consists of clauses 82 to 88. vote of the House.

Thereafter, the House will take up the third group consisting of clauses 89 to 102, excluding clause 97 which has already been adopted. Only half an hour will be left for the consideration of this group today in which case the discussion on this group will continue tomorrow.

Hon. Members will now hand in at the Table within 15 minutes slips indicating the numbers of amendments to clauses 66 to 81 in their name which they wish to move.

Shri Kasliwal (Kotah-Jhalawar): May I suggest that clause 81 may be put into the second group. Clause 81 is entirely different; it is connected with questions relating to appeal. Clauses 81 to 88 may be discussed together.

Mr. Speaker: He proposes that I should first put before the House clauses 66 to 80?

Shri Kasliwal: Yes.

Mr. Speaker: I accept that.

Shri Venkataraman (Tanjore): We have not voted on section 162.

Mr. Speaker: I think we may put that to vote. But I had said that a short discussion on Mr. Pataskar's amendment might be permitted if Members were......

Shri Raghavachari (Penukonda): So far as the consideration of that amendment and other amendments is concerned, it may be postponed to a later time.

Mr. Speaker: That is what I am saying......

Shri Raghavachari: So my submission is that it would be better if you fixed some time when that matter would be discussed. It is better that we know when they will be taken up, rather than at once.

Mr. Speaker: He wants postponement of the discussion

Shri Raghavachari: I want a particular time to be fixed.

Mr. Speaker: I think we might do that. If the hon. Minister is agreeable, as he wants time to be fixed specifically for the consideration of Shri Pataskar's amendment and amendments to that amendment, let us fix that time for tomorrow.

The Minister of Home Affairs and States (Dr. Katju): Yes.

Mr. Speaker: We have it tomorrow in the beginning.

Dr. Katju: Immediately after 12 noon.

Mr. Speaker: I cannot say if we can have it immediately after the Question Hour. But that is the first point tomorrow.

Dr. Katju: Only a very limited time is needed; we discussed the matter very greatly.

Mr. Speaker: That was what I said before—a short discussion and not a long discussion. I had suggested at that time 15 to 20 minutes.

Dr. Katju: Very good.

Clauses 66 to 80

Shri Sadhan Gupta (Calcutta—South-East): I beg to move:

In page 21, *for* lines 16 to 18 *substitute*:

"69. *Amendment of section* 371, *Act V of* 1898.—In section 371 of the principal Act,—

(a) in sub-section (1)—

(i) after the words 'translation in his own language' the following words shall be inserted, namely:—

'if his language has been adopted by the State in which the trial is held for any official purpose under article 345 or has been recognised in the place where such Court ordinarily sits under article 347 of the Constitution of India and if his language is any other language, then in such language'; and

(ii) the words 'in any case other than a summons case', shall be omitted;

(b) in sub-section (2), after the words 'charge to the jury' the following words shall be inserted, namely:—

'or, where a transcript of the charge forms part of the record under section 297, a copy of such transcript'; and

(c) after sub-section (3), the following sub-section shall be inserted, namely:—"

In this group of clauses, the amendments are mostly consequential but I shall have some remarks to make on clause 69.

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

That is a clause which empowers and enjoins upon Courts to furnish copies of findings and judgments to accused persons. Now, when the British framed the Criminal Procedure Code, they laid it down that certain things, certain orders and judgments were to be given, as far as practicable, in the language of the accused. The words used were 'as far as practicable'. Of course, a loophole was left for the Court to escape from the obligation of furnishing a copy of the judgment in the language of the accused.

Sir, it is time that we should make a change in that provision and we should provide that the accused persons should have the judgments against them given in their native language. There are certain languages in the case of which we need not make any exception at all. For example, if in Bengal an accused wants a copy in Bengali or in Bihar or U.P. an accused wants a copy in Hindi, there is no meaning in this provision, 'as far as practicable'. It should be given to him. It is only where the language of the accused happens to be one into which it may not be feasible in that part of the country to translate, for example, if, in a trial in an outlying district of Bengal, the accused wants a copy in Telugu, it would be very difficult there. Then, of course, we may have the provision 'as far as practicable'. Therefore, in clause 69, I have suggested, by my amendment No. 623, that a clause should be substituted which will provide not only for giving copies of sentences or findings but which will also amend the other provisions of section 371 so as to make it obligatory on the court to furnish to the accused copies of judgments either in the language of the State or in a regional language, if it has been adopted by that State or recognised by that State.

It is provided under the Constitution that any State may adopt any language for its official purposes. If a State but I shall have some remarks to why the courts of that State should

not furnish the accused with copies in that language, if it happens to be the language of the accused himself.

Secondly, it is provided by article 347 of the Constitution that any other language may be recognised by a State in accordance with the directions of the President. It may be recognised throughout the whole State or it may be recognised in a particular area. Therefore, I have suggested the other provision, that if there happens to be such a language which is recognised in the locality where the court sits, then the accused should have the right, the undeniable right to obtain a copy in that particular language. It is only in other cases, if the language of the accused happens to be one which cannot be translated readily in that part of the country, that, I think, the provision, 'as far as practicable' should remain.

Therefore, my amendment, in short, is to sub-section (1) of section 371 that if the accused's language happens to be the one adopted under article 345 of the Constitution or one of the languages recognised under article 347 of the Constitution in the place where the court sits, then he should be compulsorily given a copy in his own language if he desires. In any other case, it should be in his own language as far as practicable.

The second amendment I suggest to section 371 is to delete the exception in the case of summons cases in the matter of furnishing copies of judgments. Our British masters were not too much preoccupied with protecting our rights or doing us justice. Therefore, it was provided that in all cases other than summons cases the accused should have the right to obtain copies of judgments. I want to delete this particular exception 'other than in summons cases'. The reason is simple. First of all, when an accused person is convicted, or when an accused person is prosecuted and the case ends against him, particularly in conviction, he should have a copy of the judgment which has been passed against him. Even when it is a case of acquittal he should be given a copy of the judgment because that shows that his honour has been unsullied. But, particularly, in a case of conviction, there is no case for denying him the judgment in a summons case. Because, to get a judgment in summons cases you do not necessarily have to spend less and you cannot be denied the right to proceed against the judgment in a summons case. That is one reason why I have sought to provide that he should get it in summons cases.

The second reason is even more important. Today, summons cases are not confined only to petty offences punishable with six months imprisonment. In summons cases you may be convicted and sentenced to one year's imprisonment. Formerly, if the sentence was of one year's imprisonment, you did have the copy, the right to get a copy of the judgment free of cost. Why should the accused be denied this right by extending the scope of summons cases. Therefore, I have sought to do away with this exception in the case of summons cases.

The other amendment which I have sought to introduce, I submit, is really a consequential amendment and without that amendment, sub-section (2) of section 371 becomes meaningless. So, sub-section (2) of section 371 makes it obligatory on the Court of Sessions to give the accused a copy of the heads of charge. Now, by our present amendment of the Code, we are seeking to provide that the Sessions Judge will record the heads of charge only when a transcript of the charge is not kept under section 297 of the Act as amended. Section 297 has been amended to provide that the charge should be taken down as far as practicable in shorthand and where it is so taken down, the transcript of the charge has to be kept on the records. Section 367 as amended, provides that where a transcript is kept—that is the proviso sought to be introduced—where the transcript of the charge is kept, then the Sessions Judge need not record the heads of charge. Therefore, I would ask the

[Shri Sadhan Gupta]

Home Minister, supposing a Sessions Judge does not record the heads of charge, how can he give to the accused the heads of charge as required under sub-section (2). I have, therefore, sought to provide by clause (b) of the amendment to section 371, which I have proposed, namely 623, that in sub-section (2) after the words 'Charge to the jury', that is to say, heads of charge, the following words shall be inserted, namely,

"or, where a transcript of the charge forms part of the record under section 297, a copy of such transcript;".

That is to say, where the Sessions Judge records the heads of charge, it should be supplied to the accused, but where the copy of the transcript of the charge is kept, the copy of transcript should be supplied to the accused. I think, the Home Minister will have no difficulty in accepting the amendment.

For rest of my amendment, it contains a printing mistake and whole sub-section which I proposed has been omitted. Clause (c) of the amendment says:

"(c) after sub-section (3) the following sub-section shall be inserted, namely:"

And after that, in the printed list the sub-section itself does not appear. So I submit that the Home Minister can easily accept my amendment No. 623 to clause 69.

As regards the other clauses, I have not much to say, because those are really consequential. But I would request the Home Minister to give his support to the amendment I propose and to consider it carefully, particularly in respect of sub-section (2) as to how heads of charge can be furnished when they are not recorded by the Sessions Judge.

Mr. Deputy-Speaker: Amendment moved:

In page 21, *for* lines 16 to 18, *substitute*:

"69. *Amendment of section* 371, *Act, V of* 1898.—In section 371 of the principal Act,—

(a) in sub-section (1)—

(i) after the words 'translation in his own language' the following words shall be inserted, namely:—

'if his language has been adopted by the State in which the trial is held for any official purpose under article 345 or has been recognised in the place where such Court ordinarily sits under article 347 of the Constitution of India and if his language is any other language, then in such language; and

(ii) the words 'in any case other than a summons case', shall be omitted;

(b) in sub-section (2), after the words 'charge to the jury' the following words shall be inserted, namely:—

'or, where a transcript of the charge forms part of the record under section 297, a copy of such transcript'; and

(c) after sub-section (3), the following sub-section shall be inserted, namely:'"

Pandit Munishwar Datt Upadhyay (Pratapgarh Distt—East): I think that this clause 79 now has become necessary. When any application is made either by the person sentenced or by any other person on his behalf, unless he is in jail, such application cannot be made. My submission is that sometimes there are chances that a person makes this application, so that he may have the advantage of not going into custody. In such a case it also happens that such application is allowed and a person avoids going to jail or avoids entering into custody. I think that was because of a special provision. Ordinarily such applications are not made. They are made only in very rare cases. This is not a provision for an ordinary application that we should be very particular that the accused, that the convicted person, must surrender himself and go to jail before any application can

be made on behalf of that convict. So, if it were an ordinary application and if it were meant ordinarily for convicts—all clauses of convicts—surely, I would agree. But in special cases where special provisions had been made, they should allow them to remain. If there is a modification on other lines, I would have really welcomed. But that subject is not being considered.

But then, as it stands to-day, the provision now sought to be made is that any person who is above the age of eighteen years, if he wants any advantage of the remission of sentence, all that he has got to do is that he must surrender himself and go to jail. It is only when he is in jail that this question can be considered. It may or may not be granted. But even for consideration, it is necessary that he must surrender, he must go to jail; because this provision says:

> "Provided that in the case of any sentence passed on a male person above the age of 18 years, no such petition by the person sentenced or by any other person on his behalf, shall be entertained, unless the person sentenced is in jail, and—
>
> (a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or
>
> (b) where that petition is made by any other person, it contains a declaration that the person sentenced is in jail."

So, it is absolutely necessary that before any application is made, the convicted person must have surrendered. Just as I have submitted in the beginning, these applications are made in very special cases. They are not made for ordinary cases. In the case of ordinary convicts, of course, this sort of provision was absolutely necessary; but when the provision is for special cases under special circumstances, I would submit that it should be treated as special. Therefore, this provision that he must surrender before his application is at all considered, I think, is not desirable in certain special cases. Where the application is made, or the application is granted or is considered fit to be granted and the person is asked to go to jail, in that case the execution of sentence is suspended for some time. So, if the provision is meant for special cases, it should remain special and as it is not meant for ordinary cases, the amendment that has been suggested here, I think, is not very desirable.

Among those clauses that are now before the House, one clause is about the question of language and what Mr. Sadhan Gupta said is right.

Shri Venkataraman: Sir, the amendment which Shri Sadhan Gupta has moved, the second part namely, that where a transcript of the charge forms part of the record under section 297, a copy of the transcript should be given, seems to be necessary so that in the new amended procedure, the party may get a copy of his transcript of the charges. I want to support that proposition. The hon. Minister also is inclined to accept it.

There is another aspect about which my friend Mr. Upadhyay has said that in cases where the sentence is passed, a person may apply under section 401 for remission without going into jail. That, I think, is totally opposed to any sense of morality. You may probably be aware of a very famous case in Madras where a person was sentenced by the Sessions Court at Coimbatore. He was released on bail and thereafter he filed an appeal in the Madras High Court and the Madras High Court confirmed the conviction. But the gentleman never went to jail and he came over to Delhi.

Mr. Deputy Speaker: He is hiding somewhere here.

Shri Venkataraman: That is why I thought I might bring it to your knowledge.

Mr. Deputy-Speaker: There was a scandal regarding that at that time.

Shri Venkataraman: That is what I wanted to draw your kind attention to.

Pandit Munishwar Datt Upadhyay: That is an individual case.

Shri Venkataraman: I am just developing an argument and my hon. friend should be a little more patient. Ultimately the sentence was remitted and there was considerable scandal about it. It is to prevent such things that this section is intended and I think it is a very wholesome provision. Where the Court finds a person guilty and sentences him to a particular term of imprisonment, it is not right for that person to evade the process of law and yet claim benefit under section 401. Therefore, I support the clause as it is.

Dr. Katju: Sir, I think my hon. friend Shri Sadhan Gupta is perfectly right in saying that when there is no such document of the charges, there will only be a transcript of the charge originally referred to, and then a copy of such transcript should be given to him. I have, therefore, no objection in accepting his amendment, part (b) in so far as it relates to the giving of a copy of the transcript.

So far as the other matter is concerned, my hon. friend Shri Venkataraman has referred to what he calls a "well-known case". When I was a Minister in U.P. fourteen years back, in about 1937 and afterwards, I had two or three cases of this description, namely, people just running away evading law causing a lot of corruption, making false applications and trying to dodge the law. I think Shri Venkataraman put it very well, that: "If you want to apply for remission; well, obey the Court first and then do it." Please remember that we have taken care in this amendment to protect really needful persons—females and all males below the age of 18. If a young lad of 16 or 17 is sentenced to an imprisonment of six months and there are grounds for remitting that sentence, this section does not apply to him. Nor does it apply to any female. I had a case where a girl was sentenced to imprisonment and when an application was made for remission we entertained it. But this should not be allowed to people who are sentenced to six months or eight months and then rushing about making applications. They do it on false pretensions. I think, therefore, that this is a very useful and salutary provision which should stand.

Mr. Deputy-Speaker: Now, I will put the amendment to the vote of the House.

Shri Venkataraman: Only part (b) of the amendment may be put.

Dr. Katju: I am only referring to part (b) of amendment 623. That says:

> "In sub-section (2), after the words "charge to the jury" the following words shall be inserted."

That is accepted.

Shri Sadhan Gupta: As regards (c), I do not know what happens, I think (b) and (c) should be together. I do not know in what way it can be taken away.

Mr. Deputy-Speaker: What Mr. Sadhan Gupta says is that (c) is only a consequential one and if (b) is accepted, it should automatically come.

Shri Sadhan Gupta: That is a provision in the Bill.

Shri Venkataraman: In the original Bill it is there and therefore no amendment is necessary.

Mr. Deputy-Speaker: Now I will put the amendment to the vote of the House, as accepted by the hon. Minister.

The question is:

In page 21, *for* lines 16 to 18 *substitute*:

"69. *Amendment of section* 371, *Act V of* 1898.—In section 371 of the principal Act,—

(a) in sub-section (2), after the words 'charge to the jury' the following be inserted, namely:—

'or, where a transcript of the charge forms part of the record under section 297, a copy of such transcript'; and

(b) after sub-section (3), the following sub-section shall be inserted, namely:"

The motion was adopted

Mr. Deputy-Speaker: The question is:

"That clause 69, as amended, stand part of the Bill."

The motion was adopted

Clause 69, as amended, was added to the Bill.

Clauses 66 to 68 and 70 to 80 were added to the Bill.

Clauses 81 to 88.

Mr. Deputy-Speaker: The House will now take up the next group of clauses numbers 81 to 88. As usual hon. Members may send in slips indicating the numbers of amendments which they would like to move.

Shri Sadhan Gupta: Sir, this group of clauses deals with a very important matter—the right of appeal. Of course, the Government, in order, perhaps, to take away the edge of the other provisions which they have sought to introduce in the Bill, have introduced in particular sections, some salutary changes. We welcome the change by which District Magistrates have been divested of appellate powers and everything has been transferred to Sessions Judge, Additional Sessions Judge and even to Assistant Sessions Judges.

The only objection of a very fundamental kind that we entertain is to clause 85. Clause 85 seeks to substitute a new section 417. This section 417 is a section which is an embodiment of British tyranny and the suspicion which the British had even of the Courts set up by them. We all know, Sir, that in England, there is no right of appeal against an acquittal, but here, our masters did not feel themselves very much safe to leave the whole discretion to the Courts of law. They wanted to try their luck in a higher Court. Again the normal rule in Anglo-Saxon jurisprudence is, that, when there is an acquittal there should be no appeal on it and once the decision of acquittal is arrived at by a competent Court of law, there is a finality about it. That is the law, also in England, but they did not consider it a good enough law for us. Therefore, they provided that the Government can prefer an appeal against acquittal when the Government thinks it necessary. That was a bad enough clause. It was put in in the Criminal Procedure Code, I think, in order to ensure that, if some people whom the Government did not want to escape, did escape by some means, they would try and secure conviction from a higher Court. But, Sir, we should not have been a party to the continuation of such a clause. What the Government have done, is to go even further. It is now provided that not only the Government, but even a complainant can in some cases prefer an appeal. It is a most extra-ordinary thing that criminal prosecution which is primarily the concern of the State should be allowed to be prosecuted to a vindictive end by a private person. Therefore, I think this particular clause should not have been there and the proper course for a Government which can lay any claim to be progressive should have been to delete section 417 altogether. I have, therefore, proposed deletion of section 417, but if that course is

[Shri Sadhan Gupta]

not acceptable to Government, I would at least suggest that the old position be restored.

1 P.M.

Next amendment I have proposed is to clause 86. There the appellate power of the appellate courts is sought to be increased by giving them the right of enhancing the sentence. It is only provided that an opportunity to be heard should be given before a sentence is enhanced. I would seek to introduce the phrase 'a reasonable opportunity' instead of the word 'opportunity', because it often happens that when you are prosecuting an appeal, you are not really much to argue on the facts and particularly, as you know, in jury cases the appeal is on question of law, and in such cases what we seek to concentrate on is the legal aspect of the matter and we do not prepare ourselves with the facts. In a case of enhancement of sentence, the most important part is the facts of the case—whether certain witnesses should be disbelieved, whether certain witnesses are creditable or not—and these questions do not arise at all in a consideration of points of law. Therefore, if you are simply given an opportunity of arguing against the enhancement of a sentence, that is to say, the accused is present in the Court, his lawyer is present in the Court and the Court says "What have you to say against the enhancement of the sentence?", that is hardly an opportunity in reality. It may be an opportunity in accordance with the letter of the law, but in accordance with the spirit of the law, it is hardly an opportunity, because he is not prepared for it. Therefore, it is to be provided that he is given a reasonable opportunity before he is asked to argue against enhancement. Let us not forget that appeals would lie not only to High Courts, but when convictions are by Assistant Sessions Judges, appeal would lie even to District and Sessions Judges, who may not be so much aware of the rights of the accused and may not be so much conversant with law as to give them the proper opportunity which the accused would require. I do not find any objection for including the words "a reasonable opportunity". After all, you should give the accused a reasonable opportunity for showing cause against enhancement. There can be no reasonable objection to it at all. Therefore, I would ask the Home Minister to accept this amendment if he has the interest of justice at heart. That is my amendment No. 627 to clause 86. I would also ask the Home Minister to remember that the present procedure is that when an appeal goes, the Court, when it wants to enhance the sentence, exercises its revisional powers and issues a rule to show cause against enhancement. The rule takes its own course, is returned, and meanwhile the accused has an opportunity to prepare himself with the facts. The facts may be very voluminous and evidence may go to hundreds of pages and the preparation can never be made in the course of just a few minutes or few hours; the accused would have to be given a reasonable opportunity.

The next submission I want to make is with regard to clause 87. Clause 87 seeks to amend section 426, and instead of saying "other than a person accused of a non-bailable offence, I want to have the words "other than a person sentenced to death or imprisonment exceeding two years", that is, convicted of a non-bailable offence. My objection is this. There is nothing particularly serious in this word 'non-bailable offence' as such. We know certain offences are bailable and certain offences are non-bailable, but the real crux of the offence lies in its seriousness. It may happen that a person may be convicted of a minor type of non-bailable offence and if section 426 remains as it is, then the court which convicted him would not be able to release him on bail as it can do in a bailable offence after conviction.

What I seek to do is to specify the gravity of the offence rather than the description of the offence. The gravity of the offence I am seeking to emphasise by providing a maximum period of sentence which would enable the Court convicting, to release him on bail. What I have sought to provide in my amendment No. 628 is that instead of the words "other than a person accused of a non-bailable offence", the words "other than a person sentenced to death or imprisonment for life or imprisonment exceeding two years" shall be substituted. If an accused person is convicted by a Court to imprisonment up to a period of two years it will be open to the discretion of the convicting Court to release him on bail if it is satisfied that no harm will be done. It does not mean that the Court, after sentencing an accused for two years, would automatically release him on bail. It does not mean that. It only means that in a proper case if the Court is satisfied that it is in the interest of justice to release him on bail, it will do so. Suppose he might be wanting to prefer an appeal, the appellate Court may be pleased to hear it but it may take time to go to the appellate Court after taking copies of judgment and therefore it may take time to prefer the appeal; meanwhile it may be desirable not to send him to jail and the convicting Court may release him on bail. What I want to say is that power should not be restricted to bailable offences, but it should be allowed for every offence of a minor nature in which the sentence is not for a very long time. That is what I propose to introduce by my amendment No. 628.

Therefore, I would request the Home Minister to consider these two amendments, number 627 introducing "a reasonable opportunity" and amendment No 628 specifying a limit on the releasing on bail by the convicting Courts with reference to the sentence, because I know that I will never persuade the Home Minister to give up the Government's right of appeal or even to modify the complaint's right of appeal. With these few words, I take my seat.

Mr. Deputy-Speaker: The numbers of amendments which the Members have indicated to move are as follows:

Clause 85.—624, 407, 625 and 626;

Clause 86.—627; and

Clause 87.—628 and 629.

Clause 85.

Shri Sadhan Gupta: I beg to move:

In pages 23 and 24, *for* clause 85, *substitute*:

"85. *Ommission of section* 417 *in Act V of* 1898.—Section 417 of the principal Act shall be omitted."

Shri Rane (Bhusaval): I beg to move:

In pages 23 and 24, *for* clause 85, *substitute*:

"85. *Substitution of new section for section* 417 *in Act V of* 1898.—For seciton 417 of the principal Act, the following section shall be substituted, namely:—

'417. *Appeal in case of acquittal.*—The State Government or the complainant may present an appeal agianst the order of acquittal:—

(1) to the Sessions Judge, if by a Magistrate; and

(2) to the High Court, if by any Court or Judge other than a Magistrate;

and the appellate Court after hearing, may either confirm or set aside the acquittal and convict and sentence the accused'."

Pandit Thakur Das Bhargava: I beg to move:

(1) in page 23, line 45, *omit* "or appellate".

(2) In page 24, *omit* lines 7 to 19.

Clause 86.

Shri Sadhan Gupta: I beg to move:

In page 24, line 27, *for* "an opportunity" *substitute:*

"a reasonable opportunity".

Clause 87.

Shri Sadhan Gupta: I beg to move:

In page 24, *for* lines 31 to 33, *substitute*:

"(a) in sub-section (2A), for the words 'other than a person accused of a non-bailable offence' the words 'other than a person sentenced to death or imprisonment for life or imprisonment exceeding two years' shall be substituted;"

Pandit Thakur Das Bhargava: I beg to move:

In page 24, lines 31 and 32, *after* "non-bailable" *insert* "or bailable".

Shri S. S. More (Sholapur): I have got a few observations to make regarding the amendments in this particular group of sections.

I do appreciate that by these clauses 82 and 83, a much needed change has been made. Up till now, appeals against orders of conviction passed by the Magistrates of the Second class and Third class were being heard on appeal by the District Magistrate or the Sub Divisional Magistrate and these District Magistrates and Sub-Divisional Magistrates were bureaucratic to their bones, with the result that whenever any appeal went to them against the orders ot their subordinates, who belonged to the same fraternity, justice was invariably denied. There was not only justice denied, but the District Magistrates and the Sub-Divisional Magistrates used to refuse to apply their minds to the facts of the case. Some clerk in their office, who is in charge of this particular criminal work, used to write practically the whole of the judgment and these Magistrates used simply to sign on the dotted line. I had the misfortune to argue a good many appeals before such Magistrates. After having joined this profession, in my young enthusiasm, I went to a Magistrate with a number of law books. He looked with contempt at me and the books that were with me.

Shri Venkataraman: Rightly.

Shri S. S. More: He said, Mr. More, what do you mean, are you going to quote all these books for me; what is going to happen to my other executive work; I won't give you so much time; you better give me in a nutshell the point that you want to agitate and then I shall see what I can do. What he did was to confirm the conviction and nothing else.

Mr. Deputy-Speaker: Did the hon. Member expect a different result even after quoting the books?

Shri S. S. More: He was a man who wanted to economise his time. Possibly, the result would have been the same. Or, possibly, being exasperated by my quoting all these books, he would have gone to do something more serious to my client. Fortunately, time was saved and my client too was saved because he did not get anything other than what the lower Magistrate had inflicted upon him. This is a welcome change and I do appreciate it. It is very rare for us to compliment the Government, because the good things they do are as scarce as oases in a vast desert. But, these few oases give us some good occasion for complimenting the Government.

The Deputy Minister of Home Affairs (Shri Datar): Many oases.

Shri S. S. More: Many asses, but not oases. I was saying that I compliment the Government for this useful change.

Then, I go to clause 85. As the previous speaker has stated, this clause is an undesirable clause, and it indicated a sort of distruct of the executive Government even in the decision of the Magistrate who acquitted the accused. The Britishers believed that an accused person in this

country is something like a poison, something like a poisonous viper and so he must be trampled under feet in a ruthless manner. Even if the lower Court aquitted such a man the Government did not like to allow that acquittal to stand in effect, and they used to go in appeal to the High Court, and the High Court used to apply its mind. We have been condemning this attempt on the part of the executive Government to pursue the acquitted accused even in the High Court. But, now, a further change is being introduced. Even in a private complaint, particularly when the complainant is a rich man, he will succeed in securing a conviction, even at the lower Court. Although he does not succeed there in securing a conviction, he can use his long purse to go to the High Court for permission to appeal, engage an eminent lawyer and persuade the High Court to entertain that appeal. Then, he may pursue the accused on legal grounds. My submission is that in this country, most of the crimes are committed by a certain order of society who are harassed and persecuted by the present inequitious economic conditions. Take for instance, the landlords and tenants. The tenants have their own grievances. There is no hope of getting those grievances peacefully and legitimately redressed. In this exasperation like a hunted beast, he turns round and does some criminal act. The police are quick to rope in such a man. Some evidence is there; some reliable evidence is not there. The Magistrate, in spite of his desire in the opposite direction, proceeds to acquit after appreciating the evidence. This poor man who has somehow secrued an acquittal will be persecuted by the prosecuting complainant and it will be a sort of war of attrition. The accused will be completely exhausted and he will be dragged from one forum to another. Even if he is not punished by any criminal court, the fact that he is required to undergo the expenses and undergo the necessity of standing such a trial, will be enough punishment for the man. He will be economically ruined. If he cannot fight in the High Court, possibly his case will be re-heard and again he will have to run the whole gamut. That should not happen. If on certain occasions, the Magistrates act in a wrong manner, and acquit persons, I feel that we should allow such acquittals to stand rather than give a weapon in the hands of the complainant to pursue the acquitted persons in the High Court. I am not prepared to welcome this change. I feel that it is pregnant with so many mischievous implications that the Home Minister will have to come possibly after some time with proposals for abolishing all these things.

Another clause that I want to comment upon is clause 86, where an appeal from conviction lies to the High Court and it may enhance the sentence notwithstanding, anything inconsistent therewith contained in clause (b) of sub-section (1). In the old Criminal Procedure Code, there is a power of revision, there is a power of appeal. When a man goes in appeal to a High Court, unless it has also issued a notice to the accused in exercise of the powers of revision, the High Court has no power to enhance the punishment. The utmost that they can do is to dismiss the appeal. It is necessary to put these two powers in two different compartments. The power to revise is a restricted power. The power of appeal is also restricted to some extent. But, according to the present amendment the power of revision and power of appeal will be lumped together and the High Court will be using their power of revision at the time when they are hearing appeals. What will happen? This will first discourage appeals on the part of the accused, and particularly persons who are illiterate and ignorant will be very much averse to go in appeal, because there were instances when a mad man went in appeal and came back not with an acquittal or reduction of the sentence, but with an enhancement of the sentence and that will act like a wet blanket against a good many persons. Then, Dr.

[Shri S. S. More]

Katju has written a book in which he has given some of his experiences at the bar. He has quoted a case where he was defending the accused. When the matter was taken up before one Bench, they said—I am putting it as Dr. Katju has said—they were not convinced by the argument. They said, "Well, Dr. Katju, this is a matter in which notice ought to be given for enhancing the sentence". A notice was issued. Subsequently, the matter went before another Bench, and they said, well, this is a fit case for being acquitted. The result was that the notice was set aside and the man was acquitted. If these provisions were in operation, the Judges who were hearng the appeal would have, at the same time, formed their own opinion about enhancing the sentence. They would have taken much serious view of the gravity of the offence and they would have straightaway gone to punish the accused with a higher sentence. Then, it might be argued on behalf of the Government that they have given a proviso, which says that an opportunity shall be given to the accused for showing cause. Now, what is the nature, what is the character of this opportunity which will be given to the accused? Let us try to visualise the scene when the matter is being argued. The lawyers for the convicted accused are arguing the matter. The Judges are applying their mind. Straightaway after the arguments are finished, they ask the counsel for the accused, well, what have you to say about our enhancing the punishment? This will be a question which will take him by surprise. I would say that the appeal should be heard at one stage. After appeal has been heard, some time should elapse. There should be a definite notice, to the accused as to why the sentence should not be enhanced. After such a notice, he should be permitted to engage a lawyer to show cause before such and such a date. Otherwise, the hearing of the appeals and the use of the revisional powers will be simultaneous, with great hardship and great harm to the accused himself. These are some of the points on which I think very seriously. I do not think these changes, instead of doing some good to the litigants that happen to be hauled up under the Criminal Procedure Code, will do more harm and will cause further mischief and therefore they are undesirable.

That is my submission.

Pandit Thakur Das Bhargava: I welcome the provision so far as the making over appeals to Sessions Judges is concerned. I have to say a few words on the District Magistrates, A. D. Ms., and other Magistrates of the First Class who are invested with appellate powers, and about the Sessions Judges or the Assistant Sessions Judges who shall decide the appeals from the order of Second and Third Class Magistrates. It is common knowledge that these cases were not heard with the care and attention that they deserved and in many cases, the judicial officers never applied their minds. It has happened like this, so far as these District Magistrates were concerned. They knew of certain Magistrates who were not corrupt, the appeals against their orders were rejected; whereas, in cases which were decided by certain Magistrates whose reputation was not good, the appeals from their orders were accepted. I know of even Commissioners behaving like this. Thirty or forty appeals were all rejected in one district where the Commissioner was pleased with the collector whereas in another district where the Commissioner was not pleased with the collector all the 30 or 40 appeals were accepted. This was being done. I do not want to waste the time of the House. Otherwise, I could give very many instances of cases which were decided by the District Magistrates according to their whims and vagaries without going into the merits of the questions. Now that the change has been made, I am very happy about it.

In regard to clause 85, and the matters relating thereto, I have something to say. In regard to appeals a new provision has been made especially in respect of private complaints. Previously, according to section 417, it was the State Government which made the appeals. In proper cases, when the case was based on a complaint, the State Government directed the Public Prosecutor to go into the question and the Public Prosecutor could file an appeal. Now, it appears that the new provision has been made where on a complaint case also an appeal is made competent. The High Court has been given the powers just like the Supreme Court, so that, first of all, there will be an application for leave to appeal and if the leave is given, then, in that case, an appeal will be filed. I have not got much experience of the way in which such powers are exercised by the Supreme Court or perhaps, in some other jurisdictions, by the High Court also. But I know that so far as leave for application is concerned, usually speaking, in more than 80 to 90 per cent. of cases such applications are rejected. In the Privy Council appeals we know that it was in very rare cases that the application for leave to appeal was granted. They had certain principles fixed on the basis of which they provided for it. But, all the same, we know from the decided cases that it was very rare that such leave was granted. I think so far as these cases are concerned, they will be very few and far between. Even now, in such cases, in which complaints are the basis of further proceedings, they only come in when the police has discarded them, when the police does not care to bring about what the complainant wants and when they do not challan of when the complainant is dissatisfied. It is only in these cases that the complainant brings a case before the court. But in the case of an acquittal, it would be very, very rare indeed in which an application will be made. At the same time, it is so clear that if the police handle a case and spoil, the case, everybody knows that in 99 out of a 100 cases, it is impossible that that case can succeed. As a matter of fact, in all these provisions which we have considered so far we have considered one aspect. There are many cases in which a corrupt police officer spoils a case, and against that corrupt police officer nobody has ever thought it was possible to succeed, and no provision has been made for meeting such a situation. When I was speaking about the statement made in section 162, I submitted for the consideration of the House that if the statements are written in such a manner that a police officer is out to spoil a case, then, that statement will be accepted by the Court for the purpose of contradicting the prosecution witness. Now, the prosecution will also take its chances and in such cases, it will be impossible for the accused to prove that the evidence of any person who has made that statement can be accepted on his behalf. Therefore, my humble submission is that we are really not justified in allowing this appeal on complaint. If we omit these provisions no harm will come. I have submitted my amendments that so far as these prosions are concerned, the provision of appeal should be omitted. As I read out sometime ago in this House when the Preventive Detention Bill was before the House the provision for similar kind of appeal, and said that in no civilised country such an appeal is allowed against acquittal. Had these provisions under section 417 not been in force for a long time in this country. I would have given amendments to the effect that no appeal at all from acquittal should be allowed. The only purpose for an appeal for acquittal is that we do not have full confidence in our judiciary. Otherwise, when a person described in section 3 of the Evidence Act has decided a case and regarded it as unproved, we ought to be content with that.

The principle of law that a person

[Pandit Thakur Das Bhargava]

is presumed to be innocent is too deep-rooted to be dislodged in any manner except the one which the law provides. Now, in appeals against acquittals we know that the higher courts have also established two or three principles. Number one, that is the presumption of innocence must be dislodged on appeal. At the same time, when the first Court sees the demeanour of the witnesses and the impression that it gets is the final thing, and no appellate court should rightly interfere with the opinion of the Judge who tried the case and who had the benefit of seeing the witnesses in the witness box. Even in such cases, very few appeals succeed, and our judiciary will improve in due course leading to more confidence in them. The reason why the Britisher wanted this sort of recourse to the High Courts etc., was for purposes of getting the judgments reverses in political cases etc. That reason is also fast disappearing. Therefore, we would have been well-advised if this provision relating to section 417 disappeared from the Criminal Procedure Code. Anyhow, I do not find any justification whatsoever for enlarging the scope of section 417, and therefore I must submit with all the emphasis that I can command that these new provisions which are sought to be put in—the new sections 3, 4 and 5 of section 417—are not justified.

Moreover, I can understand that the State or the public may be anxious to have an appeal against an original order of any Court when it acquits an accused. What is the sense in having two appeals, and then a third appeal. Even an appeal against an appellate judgment of acquittal is provided. I should think we are justfied in ommitting the words "or appellate" also.

Apart from that, I come to clause 86. The powers of enhancement to my mind are very drastic in this sense—not that I do not want that in any proper case the powers of enhancement must be in the High Court. But in cases of appeal I am loath to have these powers given. It means many people will not go to appeal.

Shri S. S. More They will be discouraged.

Pandit Thakur Das Bhargava: They will be discouraged from appealing. After all, in a criminal case it is most difficult to say beforehand what view the appellate Court will take. I remember of a case in which transportation was given in a section 302 case and when I appealed to the High Court, the Judges at first sight said: "What is this? This is a very brutal murder. Only transportation?". I said there is no appeal on behalf of the Government. The Government advocate was there, and he said: "All right, tomorrow I will file an appeal". They said: "No, no. The time has gone". But, at the same time, the next day he brought in papers and said: "I am going to file an appeal or revision". But the High Court said: "It is too late". Ultimately, the High Court was pleased to acquit all the accused.

So, my submission is that very ignorant people will be discouraged from appealing. They go with the hope that their sentence may be remitted or reduced or they may be acquitted but if you give these powers, then poor ignorant people, especially the poor people, will, as a matter of fact, think twice before appealing.

I also remember a case in which a person was sentenced to transporation for life, and I told him it was a good case and he should appeal. He told me. "No. It is possible I may be hanged there." He would not appeal. So, I do think that if these powers are given it may be that they may go to discourage appeals.

In regard to clause 87, I have put in an amendment. The powers are practically in the nature of powers enabling persons to make an appeal. At present in regard to bailable cases only the powers are being exercised by Courts. I have submitted that in non-bailable cases also these powers may be given, so that in proper cases

the Court may be pleased to suspend the sentence for the time being and allow the person to appeal. We should not determine the question of bail by the nature of the offence. Even a Court which sentences a person to imprisonment or others know perhaps that it is likely that the judgment may be reversed in appeal, and therefore, in such cases the Court should be empowered to enlarge the person on bail. Whether the case is of serious nomenclature is not a matter which should be considered on that occasion. After all, in a serious case also, the equities of the case may be that the Court may come to the conclusion that if the man was enlarged on bail, he may get the benefit of appealing himself and instructing his counsel and doing all that he can. But if it is only applied to bailable cases, then the benefit of this provision will not be given to those people. Even this bailing is quite discretionary. It is not in every case the Court has the right to use this power. Moreover, the provision is that security to the full satisfaction of the Court may be taken. More security may be taken, I do not mind, but in a proper case the person should be enabled to make an appeal. It is not every person who has got his friends and relatives to appeal for him. This is a beneficial provision and the benefit of this should be given in every case.

It may be argued that when a person is sentenced to death, he might become desperate and commit some other murder etc. In that case, the amendment which has been moved by Mr. Sadhan Gupta should at least be accepted, *i.e.*, in cases where the sentence is two years or less, the Court may be able to exercise these powers.

Shri Rane: My amendment No. 407 to clause 85 is very simple. I do not agree with the views expressed by the hon. Members Shri Sadhan Gupta, Shri More and Pandit Thakur Das Bhargava that there should be no appeal against acquittal. My amendment seeks to expand the principle of appeal against the order of acquittal. I do not agree with the view that a hundred guilty persons may escape but one innocent person should not suffer. I think this is a conservative view.

Shri S. S. More: What is your progressive view?

Shri Rane: I am coming to that.

The hon. Members who preceded me think that justice is always lying on the side of the accused. I do not subscribe to that view.

Dr. Katju I think for once truth is being spoken here.

Shri Rane: My view is that justice should be meted out to the complainant also. If he is wronged, his wrong must be done away with. If really the accused is innocent, he must be acquitted. There is no doubt about it. Of course, my experience at the bar, as compared with my learned friends, is not very much. I have been practising for about 25 years at the bar, but I find I am not alone in my opinion. I have heard even High Court Judges say that they are morally convinced that the accused is guilty, but that they cannot convict him legally. Now, we must change our attitude and must find out a *via media* to do justice to the complainant. I do not say that the innocent person must suffer. Therefore, my amendment is that the Sessions Judge should also be invested with powers of appeal against the orders of acquittal by the Magistrate, and if it is by the Magistrate, then the Sessions Judges alone should be invested with these powers of appeal.

Shri S. S. More: Enhancing?

Shri Rane: I am speaking only about appeal against acquittal. I am confining myself to section 417 only; if the acquittal order is by any other Court, that is, the Sessions Judge or the Assistant Sessions Judge etc., then the appeal should lie to the High Court.

My amendment is in consonance with the object of this amending Bill also. The hon. Home Minister has stated that he wants that justice

[Shri Rane]

should be speedy and that it should be least expensive.

My amendment seeks exactly to do the same thing. Sub-clause (3) says that the complainant should first seek the permission of the High Court if he wants to appeal. So the poor complainant from the village has to go Bombay, Delhi, Calcutta etc. He must engage eminent lawyers of the High Court whose fees, of course, will be exorbitant—there is no doubt about it. Therefore to give this right to the complainant to run to the High Court for seeking permission is most expensive and against the spirit of our present amending Bill. So, my suggestion is that if the powers of appeal are given, they must be given to the Sessions Court if the order of acquittal is by the Magistrate. I am not alone in this view. I would like to draw your attention and the attention of the hon. the Home Minister also to Group D of the Opinions on the Amendments of the Criminal Procedure Code, page 283. Here is the opinion of the Chief Presidency Magistrate of Bombay:

> "If the acquittal is by a Court of the First Class Magistrate in some small town, the right of appeal should be to the Sessions Judge of that District, and the party should not be troubled to go all the way to the High Court. On the other hand, the right of appeal from orders of acquittal should be limited and restricted by certain well defined provisions..."

Shri Raghubir Sahai (Etah Distt.—North East *cum* Budaun Distt.—East): Many other persons have said that.

Shri Rane: I am quoting them. On page 285, there is the opinion of the Bar Association of Sambalpur (Orissa). It says the right of appeal against acquittal should be provided in all cases. Now, here is the opinion of a Bar Association. My friends, Pandit Thakur Das Bhargava, Shri Sadhan Gupta and Shri More say: "No, no. This order of acquittal should be final. There should be no appeal". Against this view here is the opinion of a Bar Association of Orissa. It says:

> "Right of appeal against acquittal should be provided in all cases to the respective appellate Courts and there should be no provision for non-appellable sentence in the Code".

Shri S. S. More: Is there any civilised country where such an appeal against an acquittal is provided?

Shri Rane: I shall come to the civilised countries.

Mr. Deputy-Speaker: In some form, appeal has been allowed. That is so in the present Code. It is only extended. Is it that the present Code is uncivilised?

Shri S. S. More: It was uncivilised because it was framed by the Britishers. But we are carrying their tradition forward.

Dr. N. B. Khare (Gwalior): That we are.

Shri K. K. Basu (Diamond Harbour): They want to carry it.

Shri Rane: On the same page one retired Additional District Magistrate of Bihar says...

Shri S. S. More: Additional District Magistrate? Then we know his opinion.

Shri Rane: He is retired now and we should consider his view as most dispassionate because he has got that experience...

Shri Sadhan Gupta: Of British times.

Shri Rane: He says: that the provision must be there and he has suggested an amendment which is practically incorporated in my amendment—though I had not seen his amendment.

Then there are some other views to the same effect. What I am pointing out is this; that this is not my view only; but it is supported by many

Bar Associations. My friend, Shri S. S. More, may perhaps be knowing that the Poona Bar Association has passed, or recommended at least, such amendments to the Select Committee. I do not know whether he has read it or not, but from the Press I understand that even the Poona Bar Association has suggested this.

Shri S. S. More: I am not prepared to believe that the Poona Bar will be so reactionary.

Shri Rane: But that is what it is!

Mr. Deputy-Speaker: Notwithstanding that kind of remark or opinion, does the hon. Member feel that so far as the Poona Bar is concerned, it cannot be reactionary?

Shri S. S. More: They used to be reactionary in old times.

Shri Rane: My friend has asked about other civilised countries where there are such a provision. We must adjust ourselves to the circumstances in our country. Because there is one view always enunciated in the different jurisprudence, that does not mean that we should always stick to it. We must change according to the times whether it is in some civilised countries or not; we should not always be guided by that. I submit that we must take into consideration—whether my friend agrees or not—whether justice is to be denied to the complainant. I think many will accept this view that in many cases wrong is done to the complainant by acquittal and we must remedy this. Therefore, I submit that this principle of appeal against acquittal should be extended and extended as I have stated in my amendment. I commend it to the acceptance of the House.

Shri S. S. More: Under the present procedure, even complainants who feel a wrong can go to the Government and persuade them and convince them that a wrong has been done to them; so that Government can go in appeal.

Shri Raghubir Sahai: That will be very difficult.

Shri S. S. More: It is open to them.

Shri G. H. Deshpande (Nasik—Central): I rise to support the amendment moved by my friend, Shri Rane. I was very glad to notice that at least there was one Member from the Bar who had some concern for the poor complainant and some concern for the conditions that prevail in the society. During all these days on the discussion of this measure, I was rather surprised to find out that hon. Members, one after another, used to get up and show a very large and great concern for the accused, as if the conditions are that many innocent people are convicted for nothing or for want of evidence in this country. That is not the thing. The society has lost all sense of security. Many complainants find out that it is useless to lodge a complaint for under the present circumstances, it has become almost impossible to bring an offender to book. Some remedy must be found out. That is the clamour in the society everywhere, wherever you will go. The sense of security is being lost and our progress also is withheld on that account. Some sense of security must prevail and every offender must be brought to book. Nobody is interested in seeing that innocent people should be convicted for nothing; at the same time, there must be some concern for the complainant. It is not that all the complainants are bad people, just as nobody would like to say that every accused is a convict or should be convicted. He must have all opportunities to defend himself; at the same time, the complainant must have several opportunities if he can prove that his complaints are true, and the offender ought to be brought to book. That is why, I support this amendment.

Pandit Munishwar Datt Upadhyay: Although I agree with my friend, Shri Rane, when he says that we should not necessarily be inclined towards defence and it is not justice always to think that the accused must have sufficient opportunity or he must be help-

[Pandit Munishwar Datt Upadhyay]

ed in every manner by the legislation that we have in respect of criminal laws, still I am opposed to the suggestion that he has made, that the appeal should be filed in the Court of Sessions. I think that is highly improper. On principle, I would like to discourage appeal against acquittal. We find that a number of complaints come before the Court; sometimes these complaints are absolutely baseless, and when a Magistrate has gone into them and has dismissed the complaints, it is no use wasting time over them.

Therefore, this principle of having no provision for appeal against acquittal, I think, is the right procedure. Up till now, our law allowed appeals on behalf of Government. That too, I think, was not proper on principle. But, as we have seen, there are some cases, where sometimes we find that injustice has been done, that a true case has been thrown away on no ground almost or that the particular magistrate happens to be prejudiced against certain complaints and he throws them out. So, there should be some sort of provision. That is why, probably, it was thought necessary that at least the Government should have a right. Sometimes an application used to be filed in revision before the District Magistrate and he used to refer the case to the High Court for taking steps in the matter where grave injustice was done.

But, the suggestion that has been made by my hon. friend Mr. Rane was, he said, in consonance with the suggestion made by my hon. friend the hon. Home Minister in the Statement of Objects and Reasons to the Bill that the trial should be speedy, it should not be cumbersome and that it should not be expensive. But, I want to tell him that it is going to be all against it. The suggestion that is made by him will be very expensive, very cumbersome and also there will be no expedition which he wanted to have there. His argument was that a person whose complaint has been dismissed has to run to a big lawyer, he has to engage an eminent lawyer and pay him heavily, take him to the High Court, file an application for leave and then get leave and all that. If the complaint is dismissed, he has to file an appeal to the Court of Session and if he fails there, he may go ahead and might try for leave in the High Court and if he gets leave he might file another appeal there. That might be the process. If he has to choose between the Sessions Court and the High Court, then, in every respect, the High Court would be preferable. Once for all, if he makes an application for leave and gets the leave, he might file an appeal before the High Court and have the question finally decided.

So far as the proposal of the hon. Minister is concerned, it is far superior to the proposal made by my hon. friend here. The provision which the hon. Minister has made that in complaint cases also there should be a provision for appeal is a new thing. I would submit that if in complaint cases he suggests that there should be leave for appeal, then in government cases also there should be that leave. Otherwise, in cases where some officer of Government or somebody is very keenly interested, he tries to take the case to the High Court without getting leave. So, if restrictions are to be placed—although that provision should be there—in respect of private complaints that restriction should be also in respect of Government appealing against acquittal.

It has been expressed by some hon. Members here that to file an appeal against acquittal means no confidence in the judiciary. Mr. More says that these magistrates are absolutely unreliable because if cases go to them they do not pay any attention to them; judgments are written by Readers and they simply sign the judgments; they do not take pains to study the cases. Then, he says the magistrate should be relied upon for the dismissal of private complaints and no appeal should lie against their decision. I could not understand that

logic. If the magistrates are such that they cannot be relied upon for attending to cases honestly, efficiently and diligently, then, I think, they should not be relied upon for dismissing complaints and there should be some remedy after the dismissal. If those persons are not reliable for one purpose, then, I think, there should be some provision against their orders in respect of private complaints also, if you want that justice should be done in all cases. Therefore, this argument does not in any manner serve the cause that he means to place before the House.

Then, probably it was Pandit Thakur Das Bhargava who said that it shows that we have no confidence in the judiciary. He also said that the magistrates who once go into complaints should not be disturbed, once they have heard the complaint, they have gone into the facts and looked into the evidence and have also seen the demeanour of the witnesses, the manner of behaviour of the witnesses when they make statements before the courts. That was the argument that was placed before the House when the question of trial *de novo* was under consideration. It is thought that it is the succeeding magistrate who is the proper person to say whether a witness has already gone into the witness box and made a statement before the court should be recalled and re-examined and it is he who is the competent person to say whether there should be a *de novo* trial or not. Therefore, we do not, of course pay any attention to that principle. I do not think that we pay attention to that principle here; though the best of magistrates can go wrong, they do not generally all go wrong. I do not agree with that view. I suggest that there should be provision for appeal in the High Court against the dismissal of complaints.

Shri S. S. More: May I clarify one thing? I observed this in the case of executive magistrates, who are saddled with executive responsibility. Where the judiciary has been separated from the executive, there are magistrates in whose honesty and integrity we have great confidence. What about an appeal against the orders of the sub-divisional magistrate or the District Magistrate, who are still in the executive......

Pandit Munishwar Datt Upadhyay: If the complaints are dismissed by the sub-divisional magistrates—I think they can do it even now—the observations of my hon. friend will not apply.

The other point I wanted to submit was regarding the enhancement of sentences, I used to think about this provision even formerly. When the accused goes on appeal before a High Court, the accused approaches the Court for being acquitted, if he is convicted by the subordinate court. But, on account of his own action of filing the appeal before that court, he sometimes has his sentence enhanced. That discourages the filing of an appeal very much.

Dr. Katju: I think it is good.

Pandit Munishwar Datt Upadhyay: Sometimes, it may be good; sometimes, it is very bad also.

Dr. Katju: My hon. friend is forgetting that there is always a revision application filed by Government for enhancing the sentence.

Some Hon. Members: Not always.

An. Hon. Member: Very rarely.

Pandit Munishwar Datt Upadhyay: If it is on the application of the Government for enhancement that it is enhanced, then it is a different matter.

Dr. Katju: Sometimes it is on the notice issued by the High Court itself.

Shri Raghubir Sahai: That is not so always.

Pandit Munishwar Datt Upadhyay: It is only when there is an appeal that an application for enhancement is also made. If there is no appeal, then we find only in very exceptional cases that

[Pandit Munishwar Datt Upadhyay]

an application for the revision or enhencement of the sentence is filed. But, if there is an appeal, we find that Government generally make an application for enhancement of the punishment. That opportunity need not be given. It should be done by a separate provision and when there is a special prayer separately made by Government for enhancement of the sentence. Otherwise, if during the hearing of an appeal an application is made and the enhancement is done, then it discourages appeals which is very much detrimental to the accused.

2 P.M.

The last point that I would submit is in respect of provisions that had been made regarding the appeals being now heard by either the Sessions Judge or the Assistant Sessions Judge. Really, it is a very welcome provision that the magistrates have been relieved of hearing appeals from convictions by subordinate magistrates. I think this provision was long overdue and now it has rightly been made here in this Bill.

But then, a provision has been made that a certain class of cases should be tried by the Additional Sessions Judges and Assistant Session Judge. I think that provision may create a little trouble. Therefore, cases that are filed in Courts of Sessions, the Sessions Judge, who is the really presiding judge, may send them over to the Additional or Assistant Sessions Judge and they might be tried by them. I think that would be a better course.

Shri Mulchand Dube (Farrukhabad Distt—North): The solicitude that has been shown by the House generally to the interest of the accused has the effect of ignoring the complaint or the victim of aggression altogether. The interests of the complainant have also to a certain extent to be safeguarded. So, I do not agree with my friend Mr. Sadhan Gupta when he says that the provisions of section 17 should be altogether abolished. There are cases which must have come to the knowledge of every one who has practised on the criminal side where they do not take into account the real matter at issue and for that reason it becomes necessary to have appeals against acquittals. I think ordinary appeals to a certain extent should be discouraged. There should not be a plethora of appeals against acquittals. But for that reason, the State Government does not also ordinarily permit an appeal to be filed. The matter has to be taken up by the legal remembrancer, and by the Government advocate. It is only after that, that the Government files an appeal or instructs the advocate to file an appeal. My submission is that the provisions in section 17 are necessary provisions and should be there.

In regard to right of complainant to file an appeal, the complainant goes to court when he is not helped by the police or in cases which are not cognizable by the police or in which police investigation has not taken place. I admit that certain cases are not true, but then, it cannot be said generally that all complaints are false and the general tendency of the magistrates about the complaint cases is to dismiss them. They do not take that interest or that care which they take in a case which has been *challaned* by the police. Therefore, the complainant also should have the right of appeal, but I do not agree with my friend Mr. Rane that the appeal should be filed before the Sessions Judge. It is only after the High Court has given sanction for filing an appeal against acquittal that appeal should be filed. I think the provisions in 417 should be left as they are.

In regard to the question of the power of enhancement given to the High Court in an appeal on a conviction, my submission is when the High Courts want to enhance a sentence, powers under section 435 are in the High Court and it is not necessary that anybody should move the High Court in revision.

Shri Altekar (North Satara): Sir, at the time of the general discussion, I have already pleaded for the complainant for justice being done to him without bringing any difficulties for defending the case of the accused. Now, clauses 85 and 86, as they stand here, are for the protection of the complainant. They do not bring any sort of difficulty in the way of, or do any injustice, to the accused. If, in any case where a sentence is pronounced after convicting the accused and the High Court thinks that that sentence is inadequate, I think it should have the power to punish the convicted person, the offender, adequately and sufficiently. It is quite a salutary provision and I would like to support it. It is necessary in order to have a sort of proper atmosphere in favour of peace and in favour of order, that the accused, if guilty, must always be brought to book. He will be severely dealt with; and when he is convicted, he should get punishment which is quite in consonance with the gravity of the offence. Therefore, I whole-heartedly support clause 86.

In connection with clause 85 I would like to say that appeals against acquittal should be there. It is said that to allow an appeal against acquittals is to show want of confidence in the judge or the magistrate. I would like to point out that if a Sessions Judge sits there deciding a criminal case and if on acquittal the complainant feels that no justice has been done and that there should be the right of appeal—to say so is in the opinion of some hon. Members, to say that there is no confidence in the judge. But if the same person sits as District Judge and decides the case then, according to these very Members, there should be an appeal to the High Court. Are we to say here that this betrays want of confidence in judiciary? Whenever a judge comes to a certain conclusion, he uses all his abilities and the knowledge of law. But even eminent judges are apt to commit errors. Why should there be no provision for appeal against acquittal? I do not in any way agree with that line of thinking which is shown here by the champions of the accused in this House. I want to approach the problem from the standpoint of social justice.

It is said that it may be regarded as a concept of civilisation that there should be all sorts of privileges for the accused only. I would rather think that civilisation is there where there is morality and peace, where the culprits are brought to book, where all offenders are punished and where no guilty person can run without any sort of fear in the society—if such a society is established, if there is such an atmosphere created in the country, then alone there is civilisation. What do we find in the so called civilised countries? We find that science and all sorts of modern methods are being used to perpetrate offences. All traces of offences are being removed and it is very difficult to find out and punish an offender. When such is the civilisation prevailing in a country, I am not in any way prepared to say that such countries are civilised countries. Where there is peace, where offences are controlled and people can live without fear of other people robbing them, then alone there is civilisation. We read in *Upanishada* when King *Janaka* was asked, he said:

"नमेस्तेनो जनपदे etc."

In that he says: "There is no theft in my country. There is no one who commits any sort of offence. In my country all are happy. They are going by the proper and moral method." When that sort of State is there, then alone we can say it is a civilised country. Any country where there is no peace, where science and all sorts of modern methods are used there for the sake of perpetrating offences and for the sake of bringing misery upon others, I am not at all prepared to call that a civilised country. Civilisation, I would like to urge, is that which will eradicate all sorts of offences, eradicate all sins, and all sorts of aggres-

[Shri Altekar]

sions upon others. If these things are entirely done away with; if these things are removed from the country then there is an atmosphere of peace; there is great flourishment of all sorts of various industries and occupations. Everything will go on peacefully when there are no offenders. When there are no persons who are stealing and robbing others, a country will flourish. If anyone goes amiss and commits any wrong or offence, he should be properly punished. Then alone, there is civilisation in the country. In order to have peace in the State and society offenders must always feel that they will be brought to book and punished. They must know that no portals will be thrown open to them to escape if they commit any offence. From that point of view I would like to support both clauses 85 and 86 that have been placed before the House.

One other point I would like to support Shri Rane's amendment. So far as appeal against acquittals—orders of Magistrate—is concerned, it should be to the Sessions Court because if the appeal lies with the High Court, it will be difficult for many poor persons as they cannot go to such long distances and cannot spend so much money. Therefore, if at all, there is really injustice in the decision that is given by the Magistrate, the remedy must be easy. The remedy must be at a place which is easily approachable to the person to go to Court and a Court which has got that full sense of justice. For that purpose Sessions Judges enjoy the confidence of the general public. They are experienced and endowed with high sense of justice. They are also well grounded in all laws. Therefore, in these circumstances, if that appeal is made preferable in the Court of Sessions, then ordinary and poor persons will have easy remedy and a remedy that they can avail of. I, therefore, support Shri Rane's amendment and I would say that the House should agree to the clauses that have been placed before it.

श्री आर० डी० मिश्र (जिला बुलन्दशहर) : मेरे भाई राने साहब ने जो अपना अमेंडमेंट नम्बर ४०७ दिया है मैं उसको सपोर्ट करता हूं। गवर्नमेंट ने इस बिल में यह बात रख कर के कि कम्पलेनेंट्स को भी हाईकोर्ट में अपील करनी चाहिये, इस उसूल को मान लिया है कि जो कम्पलेनेंट्स होते हैं उनके सम्बन्ध में न्यायालय अक्सर गलती करते हैं और गवर्नमेंट ने ऐसा महसूस किया कि उनको कोई मौका अपील का देना चाहिये। मेरा यह कहना नहीं है कि मजिस्ट्रेट जो हैं वह एक गलत काम करते हैं और जज ज्यादा बढ़िया करते हैं। बात यह है कि इंसान गलती करता है। "टू अर इज ह्यूमैन"। मजिस्ट्रेट से भी गलती होती है और जज से भी गलती होती है। मुलजिमों को सजा होने पर अपील करने का हक दिया हुआ है केवल इसलिये कि हो सकता है कि मजिस्ट्रेट ने उनको सजा करने में गलती की हो या जज ने गलती की हो तो वह आगे जाकर अपने लिये न्याय प्राप्त कर सकें। इसी तरीके पर यह जरूरी हो जाता है कि जिन लोगों ने इस्तगासा दायर किया और कम्पलेंट दायर की, उनका फैसला करने में अगर मजिस्ट्रेट ने या जज ने गलती की है और मुलजिमों को कानून का गलत इस्तेमाल करके छोड़ दिया है तो वह न्याय पाने के लिये ऊपर को जा सकें। ऐसी ऐसी रूलिंग्स सामने मौजूद हैं। यहां मेरे पास पंजाब की एक रूलिंग है जिसमें आप देखेंगे कि एक औरत है जिसका नाम पलवेन्द्र कौर है और जिन पर मुकदमा चलाया गया कि उसने एक आदमी से मिल कर अपने पति को मरवा दिया। उन्होंने इकबाल किया था और पुलिस ने उसका चालान किया और जज ने कालेपानी की सजा दफा ३०२ में कर दी लेकिन जब वह मुकदमा हाईकोर्ट में पहुंचा तो हाईकोर्ट ने कहा कि ३०२ उस स्त्री पर साबित नहीं होता, बल्कि २०१ साबित होता है कि उन्होंने लाश को गुम किया और इसलिये हाईकोर्ट ने उन्हें दफा २०१ के अन्दर सात वर्ष की सजा कर दी। हाईकोर्ट से मुकदमा आगे बढ़ कर सुप्रीम कोर्ट में पहुंचा। सुप्रीम कोर्ट ने

कहा हाईकोर्ट गलत है । यह कनफैशन नहीं है और उस औरत पर कोई मुकदमा साबित नहीं होता है और कत्ल बिल्कुल गलत है और नतीजा यह हुआ कि सुप्रीम कोर्ट ने हाईकोर्ट के जजों की राय को गलत बतलाया और कहा कि हाईकोर्ट ने २०९ में जो सजा दी वह गलत है, उसे कनफेशन मान लिया हालांकि वह कनफैशन नहीं है । हाईकोर्ट ने सेशन जज की अदालत के फैसले को गलत बतलाया और कहा कि इसमें कत्ल के जुर्म में सजा नहीं हो सकती, इसमें तो सिर्फ लाश को छिपाने की सजा हो सकती है । मेरे कहने का यह मतलब नहीं है कि जज ने कोई बेइमानी की या हाईकोर्ट के जज ने गलती की । गलती तो हर एक से होती है । सेशन जज ने गलती की, ऊपर के कोर्ट ने हाईकोर्ट ने उसको दुरुस्त किया । हाईकोर्ट ने उस मुकदमे पर जब गौर किया तो उसको दूसरे तरीके पर पहचाना और उन्होंने उस गलती को दूर किया लेकिन तब भी उसमें गलती रह गयी और उसको फिर आगे जा कर सुप्रीम कोर्ट ने दूर किया । तो गलती का जहां तक ताल्लुक है, गलती तो हर इंसान से होती है । हो सकता है कि मुलजिम को छोड़ने में अदालत से गलती हो जाय, ऐसी हालत के वास्ते गवर्नमेंट ने यहां पर इस बिल में यह रक्खा कि कम्पलेंट केसेस में जो मुस्तगीज हों अगर उनको कोई शिकायत हो तो वह जाकर सीधे हाईकोर्ट में जायें । यह बात जरा समझ में नहीं आती कि मुद्दई लोगों को जरा जरा सी बात में और अक्सर दौड़ दौड़ कर हाईकोर्ट अपील के वास्ते जाना पड़े । अगर आप अपील का मौका देते हैं तो क्यों न वहीं हेडक्वार्टर में जिले का जो जज होता है उसके पास वह अपनी अपील दायर करके उससे फैसला करवा सकते हैं । हाईकोर्ट तक जाने में और बड़े बड़े वकीलों को पैसा देने में और सफर आदि करने में काफी खर्चा होता है और बड़ी परेशानी होती है । जब हमें जनता को आराम पहुंचाना है, तब हमें उनको वहीं अपने हेडक्वार्टर पर अपील करने का मौका देना चाहिये ताकि अगर किसी मजिस्ट्रेट ने कोई गलती की है तो सेशन जज उस गलती को दूर कर दे । उसके बाद आगे अपील का मौका नहीं होना चाहिये । हां, अगर कोई संगीन मामला हो तो वह उसको हाईकोर्ट में ले जा सकते हैं । ऐसा सोचना कि हाईकोर्ट में बड़ा न्याय हो जायगा और सेशन जज के यहां नहीं होगा यह गलत है । गलतियां सब जगह होती हैं । हाईकोर्ट्स में भी गलतियां होती हैं । हाईकोर्ट में आपने यह जो अपील का मौका दिया है, इससे हाईकोर्ट में काम बहुत बढ़ जायगा । हाईकोर्ट्स के पास वैसे ही काफी काम करने को पड़ा हुआ है और आपने खुद अपनी जो रिपोर्ट दी है उसमें लिखा है कि हाईकोर्ट्स में काफी काम का एरियर पड़ा हुआ है और जजों की तादाद काफी न होने के कारण वहां काम पूरा नहीं हो पा रहा है और इस पर आप यह जो हर इलाके को ऐक्विटल के खिलाफ हाईकोर्ट्स में अपील करने का मौका दे रहे हैं इससे नतीजा यह होगा कि वहां काम और ज्यादा बढ़ जायगा जो आलरेडी ज्यादा है । आप हाईकोर्ट्स के जजों की तादाद बढ़ा नहीं सकते क्योंकि आपके पास पैसा नहीं है इतना कि उनकी तादाद बढ़ायें । इसलिये जरूरी हो जाता है कि आप सेशन जज को अख्तियार दें कि वह उन अपीलों पर फैसला दें और मजिस्ट्रेटों के फैसलों के खिलाफ जिन लोगों को एतराज होगा वह सेशन जज के पास अपील करके न्याय ले सकें और मैं समझता हूं कि इससे उनको तसल्ली हो जायगी कि जज ने हमारी बात सुन ली और लोअर कोर्ट की गलती को दुरुस्त कर दिया । अगर हम ऐसा करें तो हम देखेंगे कि हाईकोर्ट्स में जाने वाली हजारों अर्जियों में सिर्फ दो, चार ही बाकी रह जायेंगी जो हाईकोर्ट्स जा सकेंगी और बाकी को सेशन जज के वहां से तसल्ली हो जायगी और सारे मामलात सेशन जज के वहां से फैसला हो जायेंगे। हमें हाईकोर्ट्स के जजों के काम को और बढ़ाना नहीं चाहिये, हमें उनके काम को हलका करना है, हाईकोर्ट्स और सुप्रीम कोर्ट्स के ऊपर हमें भार नहीं डालना चाहिये बल्कि यह चाहिये कि वहीं हेडक्वार्टर में सेशन जज की अदालत में उन अपीलों को तय करवा दें । मैं गवर्नमेंट से अपील करता हूं कि आप इस न्याय के लिये जिसकी जिम्मेदारी आप पर है, मेरे सुझाव को स्वीकार करने की कृपा करें। आप पर सिर्फ यही

[Shri R. D. Mishra]

जिम्मेदारी नहीं है कि मुलजिम और डाकू लोग सजा पा जांय। सुप्रीम कोर्ट तक पहुंचने का हक कुछ कॉगनिजेबुल केसेज़ के अन्दर मुस्तगीसों को देना ही चाहिये जिनमें पुलिस मुकदमा नहीं चलाती और नान-कॉगनिजेबुल केसेज में पुलिस मुकदमा नहीं चलाती है दस्तअंदाजी नहीं करते हैं, उन सब में इस्तगासे को ऊंची अदालतों में अपील करने का हक दिया जाना चाहिये। बहुत से दस्तन्दाजी के मुकदमे होते हैं, लेकिन आप के रूल्स के मुताबिक पुलिस उन में दखल नहीं दे सकती। वहां मुद्दइयों को स्वयं पर इस्तगासा देना पड़ता है। तो मार-पीट आदि जितने जिस्मानी नुक्सान पहुंचाने वाले जुर्म हैं, सिवा कत्ल और संगीन बलवों के जितने जरायम हैं वह सब इस्तगासे के ऊपर ही चलते हैं। मान लीजिये, मारपीट हो गई, हड्डी टूट गई या और कहीं चोट लग गई, तो मुद्दई इस्तगासा दायर करता है, पुलिस नहीं करती। जब आप पुलिस को अपील का हक दे रहे हैं तो इन बेचारों को भी वह हक क्यों न दिया जाय। मारपीट हो गई, हड्डी टूट गई, आदमी मर रहा है लेकिन कानून के मामले में गलती कर के मजिस्ट्रेट ने दूसरी पार्टी को कुछ फायदा दे दिया। किसी वकील ने कोई पुरानी रूलिंग उठा कर दिखला दिया कि इस रूलिंग के मुताबिक मुकदमा चल ही नहीं सकता और उस रूलिंग को देख कर मैजिस्ट्रेट ने कोई गलत फैसला दे दिया तो कम से कम मुस्तगीस को यह मौका तो देना ही चाहिये कि वह कह सके कि इस तरह से उस का मुकदमा गलत तय किया गया। जो वाकई मुल्जिम है, जिस ने मारपीट की है, चोरी की है, डाका डाला है, उस को सजा होनी ही चाहिये और मुस्तगीस को इस का मौका जरूर देना चाहिये कि वह गलती की ही ऊपर की अदालत से दुरुस्ती करवा सके। असल में इस की जिम्मेदारी तो गवर्नमेंट की ही होनी चाहिये। गवर्नमेंट के न्यायलय में, कौन आता है जिस के घर चोरी होती है, जिस के साथ ज्यादती होती, है, डाका पड़ता है। तो वह इस्तगासे पर चलते हैं। इस में आप को जनता की मदद तो करनी ही चाहिये अगर उस को न्याय ठीक से नहीं मिल पाता है। जो कोई आप के यहां न्याय लेने के लिये आता है उस के साथ आप न्याय कराने की कोशिश कीजिये। अगर मजिस्ट्रेट या जज कहीं पर गलती कर जाय तो उस गलती की दुरुस्ती होनी ही चाहिये। न्याय की अदालतें इसीलिये होती हैं। मैं कहना चाहता हूं कि मजिस्ट्रेट की अपील जज के यहां होनी चाहिये और जज की अपील हाईकोर्ट में होनी चाहिये और इस तरह से न्याय होना चाहिये। आज कल समाज की हालत बहुत बिगड़ी हुई है। चारों तरफ चोरी डकैती, जुल्म, मार पीट, हर तरह की वारदातें हो रही हैं। हमें ला एंड आर्डर कायम करना है और गवर्नमेन्ट की जिम्मेदारी है ला एंड आर्डर कायम रखने की। जो जनता के आदमी कम्प्लेनेन्ट की शक्ल में आ कर आप की मदद करना चाहते हैं कि फलां शख्स ने जुर्म किया है, आप का काम है कि आप उन की सहायता करें। अव्वल तो गवर्नमेन्ट का फर्ज है कि सब जुर्मों की तहकीकात करे और मुजरिमों को सजा करायें। लेकिन अगर किसी वजह से काग्निजेबल और नान-काग्निजेबल का फर्क हो गया है तो जो मुद्दई और मुस्तगीस अपना इस्तगासा दायर कर के आप के काम को हल्का करना चाहें, मुल्जिमों को सजा कराना चाहें और कहें कि आप की अदालतों से उन के साथ न्याय होना चाहिये तो आप का फर्ज है कि आप उन को मौका दीजिये। उस के रास्ते में जो कानूनी रुकावट हो जिस की वजह से वह न्याय नहीं पा रहा है, उस को भी आप को दूर करना चाहिये। यही मेरा निवेदन है।

इन शब्दों के साथ मैं इस की ताईद करता हूं। आप ने जो यह बात रक्खी है कि एक्विटल के खिलाफ अपील होनी चाहिये, यह मुझे पसन्द है और आप ने यह निहायत माकूल चीज रक्खी है।

Shri U. M. Trivedi (Chittor): I rise to support this amendment which provides for appeal against acquittals to be laid before the Sessions Judges. It is really a good and happy departure. to which the hon. Home Minister has agreed, that there must be provision for appeals against orders of acquittal. It was a great handicap so far against informants and against complainants. It was a daily occurrence that Magistrates sitting in *mofussil* generally controlled by the executive—in 99 per cent. of cases controlled by the executive—afraid of displeasing the party in power, deliver judgment according to the dictates of such persons, and if the poor complainant fell foul of any such person, his case, however strong it might be, was sure to be a failure and the one sentence which is easy for the Magistrate to use is "benefit of doubt". Even for the purpose of benefit of doubt, the man would be left off and it was a very process. I do congratulate the Home Minister for having provided this salutary appeal, but it is not enough. You should also provide for this appeal to lie before the Session Judge, because High Courts are situated very far away. Only on one occasion Government agreed—perhaps on political grounds—that the High Courts should be nearer and that was only for Travancore-Cochin where the High Court was provided for the Trivandrum district. But it was not so in Rajasthan and in Madhya Bharat where worse conditions are obtaining. In Rajasthan, if a complainant has to file an appeal from one end of the Southern Rajasthan, he will have to travel practically for 48 hours before he can reach the seat of the High Court. Even the Courts of the Sessions Judges are very far away from the interior. Under those circumstances, it would be quite fit and proper that the amendment so considerably moved may be accepted. I do not know if the words of my predecessors have produced any effect on the mind of the Home Minister. If he has already made up his mind and does not want to listen to anything, he will not agree to any amendment; but sometimes he also sees reason and I hope he will see that on this occasion also.

The difficulties are very great as I have enumerated. The client has got to go to the High Court and engage a senior counsel. The moment the counsel comes across such a client, who has travelled all the way for 48 hours for filing an appeal, his is tempted to ask for a greater amount of fee than would have been asked if the man came from that locality. Therefore, for safeguarding the interests of such clients and to provide not only a speedy but also a cheap remedy, it is desirable that the Sessions Judge may also be empowered to hear such appeals. If such power is given, there will be another effect which is likely to result, namely, that the accused person will also derive some benefit, because as the clause now stands, the appeal in all such cases under section 417 would lie to the High Court and the accused person would have to go, on receipt of a summons, to the High Court. If the Sessions Judge is provided with this power to hear the appeal, the accused also will get this benefit and he may not have to travel long distances and may not have to incur very huge expenses to conduct his defence. On that principle also I say that this salutary amendment, which has been suggested by Shri Rane, may be accepted. The right of appeal which has been given to the Government, without any difficulty whatsoever, without putting any obstacle in the way of the Government, namely, that the Public Prosecutor may just file the appeal, has not been conceded to the ordinary complainant.

Difficulty is created by the provision of sub-section (3) of section 417. Such an appeal would lie only if the High Court gives special leave to appeal. If a man wants to appeal against an order of acquittal, he will have to go thrice to the High Court. First, he must obtain leave to appeal. After leave is granted, he will have to file an appeal. After the appeal is admitted, he will have to go for the hearing.

[Shri U. M. Trivedi]

That would be an expensive business. I therefore submit that the provision that he must get special leave to appeal before filing an appeal should also be dropped. This measure is not very necessary. On the contrary, it is highly discriminatory. It would be better if the High Court were to dismiss the case *in limine*. That would be a different thing. You allow Government officers to file appeals without any consideration whatever, as a matter of course. While their appeals will be entertained and notice will be issued, in the case of the ordinary complainant, this handicap would be placed, which is very discriminatory. I submit that even if the Government is not prepared to accept the amendment which has been suggested by Shri Rane, it must accept this proposition that there should not be any discrimination between a litigant and litigant, even if a litigant happens to be Government. In that case, an appeal may also be allowed to be filed as a matter of course. With these words, I support the amendment.

Dr. Katju: In so far as the arguments against appeals against acquittal are concerned, completely, I think it is too late in the day to put forward that proposition. Even our Constitution accepts the position that there can be appeals against acquittal. I wish to draw your attention to article 134 of the Constitution which confers jurisdiction on the Supreme Court to entertain appeals in criminal matters and article 134(1)(a) says that the Supreme Court can entertain an appeal where the High Court—

> "has on appeal reversed an order of acquittal of an accused person and sentenced him to death;"

The Sessions Judge acquits an individual in a murder case under section 302. The Government appeals against that acquittal. The High Court sentences him to death. Against that order sentencing him to death, an appeal to the Supreme Court is provided. This whole procedure is based upon the supposition that there is an appeal against an order of acquittal. The High Court entertains it, hears the appeal and allows it and sentences the man to death.

Shri U. M. Trivedi: Against conviction: not against acquittal.

Dr. Katju: The appeal to the Supreme Court lies against the conviction of the High Court. The High Court had entertained an appeal against acquittal by the Sessions Court. That is what I am saying. In India, an appeal against acquittal has been accepted for the last 100 years or more than that. Please remember also that an appeal against acquittal is not merely filed on facts, but very often, it becomes the machinery for obtaining an authoritative judgment of the High Court on important questions of interpretation, particularly of local laws. A Magistrate may acquit a prisoner under the Excise Act or other Acts. Then there is an appeal and the High Court may sentence the man to a fine of Rs. 5/-, but it entertains the appeal. Therefore, I say that it is too late in the day to expect that appeals against acquittals should be abolished completely.

Now comes the reverse proposition. Many Members have put forward the desirability of allowing a right of appeal to a private complainant. My hon. friend Shri S. S. More, who is not here, suggested that a private complainant should be left to go to the District authorities, to go to the local Government and try to persuade them that he has received no justice, that he has been a victim of injustice in the hands of a Magistrate and therefore the Government should file an appeal against acquittal in his case. That is one way of looking at it. That is exactly what happens these days. Private persons who suffer from a sense of injustice, knock about from door to door, they go to the Superintendent of Police, to the District Magistrate, to the headquarters of the Government and I know it for a fact that all these re-

quests are seldom accepted. They are summarily rejected. I suggest that this sense of frustration is no good. My hon. friends put forward a lurid picture of the enormous expenses. When I heard this, I thought to myself, where the enormous costs come in. If a man from Sholapur has to go from the Bombay High Court, I imagine a third class ticket will be about Rs. 5/- or Rs. 6 or say Rs. 10.

Shri Rane: Advocate's fees.

Dr. Katju: I shall come in a minute to that. I am now on the question of going from one place to another. One picture is this. He goes to the district headquarter and perhaps he may have to spend eight annas or one rupee.

Shri U. M. Trivedi: Why not take going from Thana to the High Court? He can walk. I was talking of from Kushalgarh to Jodhpur. The fare is Rs. 18/-.

Dr. Katju: My hon. friend is forgetting that in the total of the law costs, the travelling expenses is a very small and insignificant proposition. The picture that was being painted reminded me of the old days, 100 years ago, when a man wanted to go from Saharanpur to Allahabad, he had to undertake a month's journey on a bullock cart. Those days are gone. You can now go by rail within three hours.

Shri U. M. Trivedi: You are lucky..

Dr. Katju: What is the good of your standing up? It is not a point of order. I am sorry. (*Interruption*).

Shri U. M. Trivedi: I only say you are lucky in this side.

Mr. Deputy-Speaker: Order, order. The hon. Member said many things. The hon. Minister is replying to those points.

Shri U. M. Trivedi: I am only giving information.

Dr. Katju: I do not want it.

Mr. Deputy-Speaker: The hon. Minister is aware of the conditions in India. Order, order; both the hon. Members must sit down. There is no good of the hon. Member interrupting. Hon. Members on all sides are fully aware of the conditions in this country. There is a desert in one portion of Rajasthan. Possibly, a client has to go on a camel's back or in a bus or he has to walk. These are all small points for the consideration of the hon. Minister.

Dr. Katju: I was suggesting that the best thing is one appeal to the highest court.

My hon. friend said, if you go to the District Court, you will get a cheap advocate; but if you go to the High Court, you have to engage an expensive advocate. I do not agree. In the High Court, you can get competent, clever, experienced advocates for reasonable fees. The man who wants to file an appeal, goes so far as his purse permits, engages an advocate and gets the matter done. The point is, do you want two appeals or one appeal. If the man goes to the High Court, the matter is finally disposed of. If he goes to the Sessions Judge and if the application is dismissed, he will feel that the Sessions Judge has not understood his case and that if he had gone to the High Court, he would have had better justice. It is much better to send him to the High Court straightaway rather than after a sense of injustice and frustration, that he would have got justice in the High Court and not here, there or anywhere else.

Secondly, two appeals are to be avoided any way. There is no question of reflection on any Magistrate. But, I was rather amused to hear this. If a Magistrate convicts, we have been hearing for the last two or three weeks of the Magistrate being under the thumb of the police, incompetent and their judgment being entitled to no weight. But, their judgment of acquittal bears the hall mark of competence, impartiality, commonsense and everything.

Shri Sadhan Gupta: In spite of the police.

Dr. Katju: The point, therefore, is there is a presumption of innocence. That presumption becomes strengthen-

[Dr. Katju]

ed by an acquittal. The High Court looks at it in that way. In acquittals by Government, we know that the Government is impartial in such matters. The Government have no personal predilections, and the Government is advised by the Legal Remembrancer, the judicial officers and the Government Advocate. All of them are independent persons. When there is an appeal filed under the Criminal Procedure Code, it is open to the High Court to dismiss it straightaway without issuing notice to the respondent. Sometimes they do it. So far as the private complaints are concerned, it is a matter of justice or it is a matter of expediency so that there may not be frivolous cases. We say, apply for leave to appeal. And when leave is granted, there is no further hearing under what you may call order 40 and the rules thereunder, under the Civil Procedure Code. It is a summary hearing, and the matter does not go further, though the High Court appeals its mind if there is something to be said there against leave being granted. I am, therefore, unable to accept the suggestion on the one side that there should be no appeal against acquittal by private complainant, and on the other side that there should be an appeal before the Sessions Judge, because, I submit, this will be laying down a very false precedent.

Lastly, something was said about clause 87, about the accused on a non-bailable offence and convicted of a non-bailable offence. This thing was inserted in the interests of the accused, because I was told that sometimes what happens is that a man is accused of a non-bailable offence but the Magistrate does not convict him of the offence on which he is charged but convicts him of a less serious offence which is bailable in nature. When the Magistrate convicts a man with, say, three charges framed against him: an application is made to the Magistrate, saying, "Please allow me a bail for two or three days to enable me to file an appeal." The Magistrate says, "I am very sorry, I am powerless, because this man was accused of a non-bailable offence. It is true that I have convicted him for a bailable offence, but there is a restriction." What I wanted was, after conviction, every accused person will be entitled to intermediate bail, provided he is convicted of a bailable offence. If he is convicted of a non-bailable offence, then, it is only the Sessions Judge who can give him bail. I submit there must have been some misapprehension. It is really in favour of the accused person. I submit, therefore, that these proposals should be accepted.

Mr. Deputy-Speaker: I shall now put the amendments to the vote. I shall first take up clauses 81 to 84.

The question is:

"That clauses 81 to 84 stand part of the Bill."

The motion was adopted.

Clauses 81 *to* 84 *were added to the Bill.*

Mr. Deputy-Speaker: I now come to clause 85.

Shri Rane: I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: I shall put the other amendments to the vote.

The question is:

In pages 23 and 24, *for* clause 85, *substitute*:

"85. *Omission of section* 417 *in Act V of* 1898.—Section 417 of the principal Act shall be omitted."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 23, line 45, *omit* "or appellate".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 24, *omit* lines 7 to 19.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 85 stand part of the Bill."

The motion was adopted.

Clause 85 was added to the Bill.

Mr. Deputy-Speaker: The question is:

In page 24, line 27, *for* "an opportunity" *substitute*:

"a reasonable opportunity".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 86 stand part of the Bill."

The motion was adopted.

Clause 86 was added to the Bill.

Mr. Deputy-Speaker: The question is:

In page 24, *for* lines 31 to 33, *substitute*:

"(a) in sub-section (2A), for the words 'other than a person accused of a non-bailable offence' the words 'other than a person sentenced to death or imprisonment for life or imprisonment exceeding two years' shall be substituted;"

The motion was negatived.

Mr. Deputy-Speaker: Now, amendment No. 629.

Pandit Thakur Das Bhargava: It does not arise.

Mr. Deputy-Speaker: Oh, it is barred. All right.

The question is:

"That clause 87 stand part of the Bill."

The motion was adopted.

Clause 87 was added to the Bill.

Clause 88 was added to the Bill.

Clauses 89 to 96 and 98 to 102

Mr. Deputy-Speaker: Now, we shall take up clauses 89 to 102, except clause 97. Amendments to these clauses may kindly be passed on to the officer at the Table. In the meanwhile discussion will go on.

Shri Sadhan Gupta: In this group of clauses, there is one very important clause which concerns the civil rights not only of the accused persons but of the citizens as a whole in a country like ours where the investigation machinery is so corrupt and where the police and the executive are so callous about the rights of citizens. That is the clause which seeks to amend section 497. Section 497 is the section which empowers the Court to grant bails in non-bailable cases. As it is well known to every one who knows anything of criminal procedure, under section 496, any person accused of a bailable offence has a right to get bail from the Court. But in non-bailable offences, the right is discretionary in the Court to allow bail. We find that in our country, even though there is a right to get bail in a bailable offence, yet in several cases the police manage it in such a way, they influence the Magistrates in such a way, that they impose such a heavy bail that it is impossible for the accused to take it. This happens in many bailable cases, but in non-bailable cases, all sorts of impediments are put before the accused in the matter of obtaining bail, particularly when the police have a grudge against the accused, particularly in political cases and cases of that kind where the police are interested in harassing the accused persons. As I have stated, I have seen cases going on for four years, the accused being kept in custody on very serious charges which were only put in in the police papers in order to justify the keeping of the accused in jail. This is the background, this is the situation in which

[Shri Sadhan Gupta]

we must give thought to the section empowering Courts to release accused persons in non-bailable cases.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

There are many non-bailable cases, many offences of a minor nature which are non-bailable offences. Even in those offences, there is a potent machinery in the hands of the police to harass the accused, to harass persons whom they choose to implicate in connection with cases and against whom the cases may not succeed in the end, but the object of harassing is achieved. Therefore, there should be some definite checks in the matter of refusing bail.

We know so many devices by which bail is refused or bail is not granted. Whoever has practised in Criminal Courts is aware that Magistrates, even in a case where there is a good case for granting bail, postpone the granting of bail, keep on harassing the accused by calling for the investigating officer's report. I have seen many cases myself where the Magistrate has first given about three days time to the investigating officer to report. Then after three days, the investigating officer has not submitted any report, he has got another four days, then perhaps another two days. In this way, the bail application has not been disposed of. It is being kept pending and the accused has been kept in custody for no fault of his. The investigating officer in his turn takes his time and thinks that he will get away with it in the Court of the Magistrate. This is what happens. That is one device to defeat the provisions as regards bail.

The other device is to ask for excessive bail or for a excessive number of sureties and that way to defeat the bail. I have seen in many cases there has been perhaps a bail of Rs. 500 but it has been provided that he should furnish two sureties of the like amount. The result is that he has to pay the sureties the same amount of money as he would have to pay if he had taken a bail for Rs. 1,000. This is another way.

There are many ways, but I can only think of two or three ways just at present. The third way, of course, is to refuse bail on very flimsy grounds.

The accused and the citizens as a whole should have a definite guarantee against this atrocious manner of keeping them in custody and depriving them of their liberty for no rhyme or reason.

Therefore, what I have suggested in my amendment Nos. 569 and 570 is just and reasonable, that is to say, that bail should be granted except in exceptional cases, when it is clear that the hearing of the case cannot be concluded within sixty days from the date of the first arrest of the person. Here, what is provided is that bail should be granted if the case cannot be concluded within sixty days from the date fixed for commencement of the trial. That is an absurd provision. That provision has no meaning at all, because very few cases perhaps last for sixty days from the beginning of the trial, but the problem is not that the accused are kept in custody during the trial because in most cases when the charge sheet is given, the trial is finished in sixty days, and even in cases where trials are not finished before Magistrates in sixty days, bail is usually granted after the charge sheet is given. The point is not that the trial lasts sixty days, the point is that the accused may have to spend months, or sometimes even a year or two in custody, although finally it turns out that he can be only put up for a very slight offence for which bail should have been given on the very first day. Therefore, I would submit that it must be provided that the length of time to be fixed for detaining an accused person in custody must be fixed not with reference to the length of his trial, but with reference to the period between his first

arrest and the conclusion of his trial. It must be provided that in no case, excepting in very exceptional cases, the accused must be kept for more than sixty days after he has been arrested without releasing him from custody.

Let us remember that this provision applies not to very serious cases. It applies only to cases where Magistrates try the accused. It does not apply even in commitment proceedings, because the provision is that his trial must finish, not his enquiry. Therefore, there can be no argument that this provision would let off people guilty of very serious offences. I would strongly urge upon the Home Minister to show at least this much consideration for the civil liberties of the citizens and to save them from interference by the callous executive and the corrupt police machinery. Therefore, I have proposed that if the trial cannot be completed within sixty days of his first arrest, he should be released on bail if he has been in custody for any part of the period. In the Bill it is provided that he must be in custody for the whole of the period. I do not see what the meaning of this provision is. Why should we insist that an accused should undergo an unsentenced imprisonment of two months before he is released on bail. Therefore, if he has been in custody for any part of the period, if he has been in custody say for a day even and it is found that his trial cannot be finished in sixty days' time, he should be released on bail. There is a good case for releasing him on bail.

3 P.M.

I have no amendment to that clause, but yet there is a clause which provides that the evidence of Chief Inspector of Explosives and the Director of the Fingerprint Bureau may be given on affidavit. I cannot for the life of me see why such a peculiar provision should be made. I can understand about the Chief Inspector of Explosives, but regarding the Director of the Fingerprint Bureau, I am absolutely at a loss to understand. The Director of the Fingerprint Bureau will give precisely that very evidence which will establish the identity of the accused, and you can always expect that his evidence will be very hotly challenged and there can be no question of his evidence at least being let off without a cross-examination. In these circumstances, I do not see what purpose will be served by making that his evidence should be given on affidavit.

There are other minor clauses on which I might have had to say something, but I am not going to take the time of the House with them. I shall only submit about the other clauses to which I have amendments. There is clause 105, to which I have an amendment which seeks to restore the position as it was in the Bill as it was presented before the House. Now, in the Bill as it was presented to the House, it was sought to be provided that when a case triable by jury was tried without a jury, if the accused took objection before the Court recorded its finding, then the trial would be vitiated and illegal and there would be a jury trial. It is now sought to be provided that the accused must record his objection before the Court proceeds to record evidence. Now, I submit it is meaningless. The very idea of enacting such a provision is that when the accused is aware that a case that should be tried by jury is being tried without a jury, he should make his objection with utmost expedition. Now, we know that in a Sessions case, the recording of the evidence starts at once. Therefore, before the accused has had any opportunity to realise what is happening, he is asked to take the objection. That is grossly unfair; that is absolutely subversive of a jury trial and I oppose it hammer and tongs. I, therefore, suggest the acceptance of my amendment No. 639 which seeks to restore the position as it is at present and as it was even in the Bill when it was presented before the Select Committee. I am sorry, there is a mistake. I think the number of the amendment is 638, to clause 100.

Mr. Chairman: The words are "in which such affidavit is affirmed or sworn".

Shri Sadhan Gupta: My reference was to clause 100, insertion of new section 510A.

Mr. Chairman: It is all right. It fits in there.

Shri Sadhan Gupta: That is the amendment, *i.e.* No. 638, which I recommend for acceptance in clause 100. That is all I have to say.

Shri N. C. Chatterjee (Hooghly): I do not know whose brainwave is clause 90 which incorporates a new section, 479A, and lays down a special procedure in certain cases of false evidence. My experience, and I hope, your longer experience, will support what I am saying. There is absolutely no difficulty today in making a complaint in case of perjury under the procedure which we have now got. What is the point of having a special procedure for prosecuting a man for perjury or for giving false evidence in a Court of law? We have got some high-sounding expressions. If you kindly look at page 25, lines 5 and 6 you will find: "for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted by him, the Court shall at the time of delivery of the judgment order the prosecution of that man without making any inquiry". So far as I can find out, the only difference is that there should be no preliminary inquiry, which is now required under section 476. I would have liked some explanation for this procedure. You know in the original Bill of Dr Katju, one of the most controversial and one of the most criticised measures or provisions was the old clause 92 which purported to prescribe a summary procedure for punishment for false evidence. That was a wonderful provision, and I am happy that the Select Committee had turned it down. It was impossible for any man with any sense of responsibility to accept that kind of summary procedure for punishment. The Court was authorised to try a man summarily. If he is in the witness box and said something and the Court warns him and he says 'Yes, that is true', immediately the Magistrate or Judge can punish him and sentence him to simple imprisonment. That was a very extraordinary, almost startling, provision, and I entered my *caveat* against such a provision being made. I pointed out that anybody who had anything to do with the administration of law and justice, knew that in a particular stage of the trial, a particular witness might come to the witness box and might deny the signature which, *prima facie*, might seem to be his. Naturally the Judge is bound to infer, *prima facie*, he is impelled to infer, that the man was telling an untruth. If a Judge is given extraordinary powers of inflicting summary punishment and conviction on him, he would immediately do so. But after a number of witnesses come and public documents are brought into the picture, he might conclude that his original impression was naturally wrong and that the man was telling the truth. You have seen in your experience and we have also seen in our experience—that sometimes a witness who has never been in a Court of law or never been in the witness box before, seems to prevaricate, but is actually not telling anything untrue. He is not used to that atmosphere. Of course, professional witnesses behave better because they know the art and the science of giving evidence. So it will not be right to clothe the Court with such extraordinary powers to inflict punishment for perjury straightway in the midst of the trial.

Now the Select Committee in its report has said that that provision was no good and that procedure recommended in the original Bill of Dr. Katju was not helpful. Therefore, they have inserted a new provision. May I ask my hon. friend, the Home Minister, whether the new procedure in clause 90 is a little more helpful? What is the necessity for initiating

this particular procedure? The only thing that I find is that certain very catchy expressions, as I said, are put down therein and the only other thing is that you eliminate the preliminary inquiry. You know that Court after Court and Judge after Judge have referred to this. I will read one judgment which is reported in 37 Cal. 250:

> "Great care and great caution are required before the criminal law is set in motion and there must be reasonable foundation for the charge in respect of which prosecution is directed".

They have always pointed out—I think there was at one stage a difference of opinion, but later on the different High Courts came round to the view—that a preliminary inquiry is practically mandatory. It is essential in law and without that the complaint would not be legal.

What I am pointing out is this. Will it be fair to adopt such an extraordinary procedure? Would it be right to initiate such an extraordinary procedure against a witness. I can understand that in the case of a plaintiff who has fabricated a document and on the basis of that document comes to court and it has been proved and demonstrated that that document is forged for the purpose of being used in a court of law and to snatch a decree against the defendant. Supposing a particular witness comes to court in a particular suit, say, for a plot of land or for some coparcenary property and the question is whether there was legal necessity or not. You will find two sets of witnesses coming. They may be giving contrary evidence. You have to discard the evidence of somebody and you have got to accept the evidence of the other side. Simply because you find that some person has given false evidence, would it be right, when he is merely a witness, that you immediately order, at the time of delivering your judgment that that man should be prosecuted? We know from experience and men of experience have also cautioned us against this. When a High Court Judge, sitting on the original side and trying a large commercial suit makes a complaint or makes a finding that a particular man in the witness box has deliberately perjured himself or has intentionally produced forged documents, he is practically condemned and it is very difficult for him afterwards to get an acquittal even if there is a reasonable chance or if some reasonable defence could be put up, because, after all, the Presidency Magistrate or any other magistrate is, to a large extent, influenced by the deliberate finding and careful verdict of a High Court Judge, who is much above him in the official hierarchy. Therefore, I am submitting that there should be no departure from the cardinal principle of jurisprudence. What is the cardinal principle of jurisprudence? It is *audi alteram partem;* that is, no man should be condemned unheard. You are certainly condemning the witness when you initiate the proceedings, when you make an order under section 476 or make an order under 479A proposed by the Joint Committee. Would it be right at that stage without giving them a chance, without any preliminary enquiry that you straightaway order that man to be prosecuted? I am asking Dr. Katju to enlighten us, if he can, what is the point in this new procedure. So far as I know, no magistrate or no judge who wants to punish a man for perjury has found or finds any difficulty in taking proper steps under the existing procedure. Now, in order to suppress perjury, in your anxiety to suppress perjury—and no doubt perjury has increased and you should diminish it and every effort should be made to penalise perjury—you are doing this and it may create hardship in some case......

Dr. Katju: Is my hon. friend in favour of summary punishment?

Shri N. C. Chatterjee: I have already forwarded a memorandum to the hon. Minister incorporating my view that summary punishment should not be inflicted.

Dr. Katju: If that is unsuitable and this is unsuitable, then it will be lies,

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more lies and still more lies. How will that be stifled? Is he in favour of that?

Shri N. C. Chatterjee: It is very unfair on the part of the hon. Minister to say this. I may assure him that I am at one with him that perjury should be suppressed. As a matter of fact, I am asking him how this particular clause, section 479A help him in suppressing perjury.

Dr. Katju: You give us a suggestion.

Shri N. C. Chatterjee: What has happened till now? What is wrong with the existing code? Has any Judge reported about any difficulty? From my experience, I can tell you, whenever I wanted to prosecute a man, there was absolutely no difficulty. I simply gave him a chance to come before me. I hold an enquiry and then immediately start a complaint. The only thing is, you should give him a chance. With all due deference to Dr. Katju, I would tell him that it will not be fair to a witness, particularly to deprive him of the opportunity of having a preliminary enquiry. As a matter of fact, that has been held always to be essential. That preliminary enquiry would give him a chance to clear himself of the charge if he has some document or something to say..........

Dr. Katju: He will certainly get a chance before the magistrate.

Shri N. C. Chatterjee: What I am pointing out is this. Dr. Katju should realise, as every lawyer of any responsibility should realise, that when a High Court Judge or a Sessions Court orders a prosecution, that man is practically condemned. (*Interruption*). Should you not at least give him a chance?

Dr. Katju: No. The Magistrate or the Judge has found him to be guilty: and has actually pronounced judgment in the main case, disbelieving his evidence. What more do you want?

Shri N. C. Chatterjee: As a matter of fact, you know that in some cases although a Judge has made the complaint, the complaint has been quashed and the accused let out by the Appellate court and sometimes he puts forward some defence and he is acquitted by the trial magistrate. (*Interruption*). What I am pointing out is that it is only fair that he should get a chance at that stage. The principle is that no man should be condemned unheard. You are practically condemning him; you are sending him to the magistrate with the finding in the very interesting phraseology of this clause, for the eradication of the evil of perjury, for the eradication of the evil of fabricating false evidence, in the interests of justice etc....

Dr. Katju: Would you like to have this language?

Shri N. C. Chatterjee: He would say, I hold this man, this witness has intentionally given false evidence in my court in this case or has intentionally fabricated false evidence and therefore I forward this case to the magistrate and so on and so forth.

Dr. Katju: Very fair.

Shri N. C. Chatterjee: Very unfair. This is the executive mind working and not the legal mind, I am sorry to say. (*Interruption*). This is not the mind of a great lawyer, this is not expected of a lawyer of great eminence. What I am to point out is this; was there any difficulty felt? Has any High Court Judge or any Supreme Court Judge said that he is paralysed because of the absence of such a provision? I have heard one thing of that great commercial Judge, Lord Justice Macaulay. He said, perjury in commercial cases in England has increased and is increasing and ought to diminish. But, he was always very firm in suppressing it by making complaints; but, never did the English judge require any special procedure for immediate condemnation along with the judgment. What I am saying is, what is already there in our Code is quite fair. The

courts have held that when a complaint under section 476 is made, it has to decide whether any offence of the kind contemplated appears to have been committed and whether it is expedient in the interests of justice that it should be further enquired into. The court, therefore, should hold an enquiry. Of course, the nature of the enquiry is in the discretion of the court. I submit that no grounds have been really put forward for having a summary procedure for punishment. It would be very dangerous. At the same time, for this innovation the Joint Committee has given no reason. The Joint Committee only states:

> "When any person appearing as a witness before any Court gives or fabricates false evidence and the Court is of opinion that such person should be prosecuted for the offence committed by him, the Court which sees and hears the witness should, at the time of the delivery of the judgment, record a finding to that effect and make a complaint to a Magistrate of competent jurisdiction."

Now, the real rub is in the next sentence. No enquiry is required in any such case. I am pointing out that is not fair. As a matter of fact I remember a great judge, Mr. Amid Ali who became Rt. Hon. Amid Ali and became a judge of the Privy Council, he held that a man had perjured himself and condemned him in very strong terms. He wanted to prosecute him and then he gave certain explanations during the stage of the preliminary enquiry before sanction. You know there was the sanction and then the man gave some explanation and the judge had to change his mind. Therefore, it is fair that at that stage there should be some enquiry and the special witness should be given a chance. Now, I am against taking away all rights of appeal. I think in the new clause there is a sub-section which eliminates all appeals. I appreciate the anxiety of expediting the disposal of cases and of punishing perjury.

If you will look at sub-section (3) of the new section 479A, it is provided:

> "No appeal shall lie from any finding recorded and complaint made under sub-section (1)".

Then in sub-section (4) it is said:

> "Where, in any case, a complaint has been made under sub-section (1), and an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred shall be adjourned until such appeal is decided...."

Therefore, in such cases it must automatically adjourn and must be kept pending. What I am pointing out is this. Supposing a witness had come into the witness box and he is held to have perjured. A complaint is made under sub-section (1). Assuming some parties do not come back, then the poor witness will not have any chance. It is not fair for the defendant, if he is ordered to be prosecuted and a complaint is made against him and there is no proceeding actually going on in the police court or in the magistrate court under sub-section (4). But if the witness is there and the parties do not want to prefer an appeal then he is finished. Therefore, I am asking for some real cogent grounds that the present procedure should be kept untouched.

With regard to clause 94, I am endorsing the suggestion made by the previous speaker. You will notice, Sir, that section 3A is going to be inserted at page 26, line 35.

> "If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the

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first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs."

This is a salutory provision, but I am very strongly urging the hon. the Home Minister to seriously consider one amendment. The object is that men should not be kept under trial for an indefinite period of time. He must be released on bail within sixty days from the first date fixed for taking evidence in the case. But the real delay is not in taking evidence. The delay is not there. The period of sixty days should be from the date he is taken into custody.

You can have a perfect Criminal Procedure Code. That will do no good unless you expedite the improvement of your investigating machinery, unless you improve your police machinery. One object is to make the police active. That is the object behind this new section 3A. Hundreds of men are now in jail waiting there for the trial to take place. There should be a time limit fixed from the date a man is taken into custody and it should not be sixty days. Sixty days should not run from the first date fixed for taking evidence. The whole trouble is you never get the stage of taking evidence. After that it is very rarely that people are rotting in jail without any bail. Therefore, I strongly urge that the Hon. the Home Minister should take into consideration our suggestion that some period should be fixed and that period should be fixed from the day of the person being taken into custody, so that the police would be more vigilant. Then the scandal of hundreds of persons rotting in jail for days and days, weeks and weeks and months and months, the whole jail population being crowded with undertrial prisoners, under-investigation prisoners—that scandal would be abolished.

Pandit Munishwar Datt Upadhyay: There is no doubt that perjury is the greatest evil and the hon. the Home Minister tried to amend the provisions in the Criminal Procedure Code. It appears he was very much disgusted with the entire idea that he had of falsehood prevailing in the courts and he made very drastic suggestions in the original Bill. I am very glad that he did not stick to those suggestions and the Select Committee has amended that provision considerably.

As it is now, it does not remain in the hands of the Magistrate before whom the witness is making a statement. He finds that that statement is false. Immediately he takes proceedings and punishes the witness summarily. It is very likely that courts should go very wrong. The changes that have been made upon the original Bill are of very great importance. Still, I would submit, Sir, that the provisions that are there in clause 90 have also number of drawbacks. So many things here are omitted that some of them are very deliberate. Going through this provision, as Shri Chatterjee has just now mentioned, we find that two things are badly lacking. Preliminary enquiry may not be unavoidably necessary. The witness is before the Court; the Court finds that he is making certain statements or he made certain statements formerly and now in cross-examination he is making a different statement or that he is being confronted with certain documents from which it appears that he is telling lies and on that account the Court may think that preliminary enquiry is not very necessary and the Court may, when delivering judgment, record something regarding this evidence also and might file a complaint against him. But, then, the other provision which is lacking is very serious. As regards opinion of the Magistrate before whom he had made the statement and that Magistrate thinks that a complaint should be filed against

him, if he wants that, that order of the Magistrate should be questioned in any higher court, it is not possible for him to do so. If there is any possibility that rests in the hands of others and that is his helplessness. What steps can he take? The poor fellow, even if he wants to do it, even if he is worried about it, he can take no steps and he is absolutely helpless in that respect. If none of the parties goes to higher courts, no steps can be taken by him and the man is punished. Then, of course, he goes before the Court, before the Magistrate to whom the complaint has been sent and it may be argued on behalf of the Government that the full proceedings are to be gone through before the Magistrate before whom the complaint has been filed. But, our experience is that, after a certain Magistrate has given his findings and reasonings, if the party files a complaint, that complaint is not a complaint like so many other complaints that are dismissed. Not much weight is attached to that. It is not like the prosecution by a police source. There is the opinion of a Magistrate and that opinion has weight over the mind of the Magistrate who is trying the case. My experience has been—and I think it may the experience of other hon. Members who had been in practice for some time—that most of these cases end in conviction. I do not think there may be even 5 per cent. acquittals in such cases. So, if the opinion of the Magistrate has that force, when it goes before another Magistrate, that Magistrate thinks that already another Magistrate has come to a particular conclusion and that conclusion should not be disturbed unless there be very serious grounds or very serious reasons to disturb it. Therefore, there must be some remedy for this man, this poor witness, who happens to annoy the Magistrate on account of which he thinks that a complaint should be filed against him. There should be some remedy for him to go in appeal and to see that, that order—if the parties do not go up in appeal—is set aside, if he has got cogent evidence to get it set aside. But, that provision is lacking. I think that is a very serious drawback and to that I want to draw the attention of the Hon. Minister.

Then, the other point that I find here is with regard to sub-section (5) under clause 90. It says:

> "In any case where an appeal has been preferred from any decision of a Civil, Revenue or Criminal Court but no complaint has been made under sub-section (1), the power conferred on such Civil, Revenue or Criminal Court under the said sub-section may be exercised by the appellate Court;........"

In this the appellate Court also is being authorised to file a complaint against a witness if it finds from the statement of the witness that he has perjured or told lies. I think that is going a little too far. The Magistrate before whom the statement was made should alone have the right of filing a complaint. The appellate Court should also not be authorised to look into the records and after looking into the records try to find whether that person has told lies and whether a complaint should be filed or not. That right should not be given to the appellate Court; it should be confined to the Court before which the statement has been made.

Then, I could not follow one provision here. It might be argued that there is already a provision by which an appellate Court can withdraw a complaint and therefore, there should be this provision also that if the appellate Court wants to file a complaint, it should have the right to do so. In that case, I would submit that even that provision may be withdrawn and the person against whom the complaint has been filed or such remarks have been made in the order of the Court, should have the right to go in appeal against that order which has been passed against him. That will provide a remedy for him and in case nobody goes up in

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appeal, he can himself get the order set aside. These two provisions of the appellate Court withdrawing or the appellate Court filing a complaint in case there is no complaint by the original Court, are also avoided.

Sir, I could not follow this remark in this Report of the Joint Committee, which says:

> "The Committee have made it clear that for the prosecution of a person who appears as a witness and gives false evidence, the provisions of this section shall apply and the provisions of sections 476 to 479 inclusive shall not apply."

That is not my reading of the section. At the bottom of this clause 90, in sub-section (6) it provides:

> "No proceedings shall be taken under sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence. . . ."—now the most relevant words come—". . . . . .if in respect of such a person proceedings may be taken under this section."

Proceedings under section 476 are barred only when proceedings have been taken under this section.

Mr. Chairman: It is not 'have been taken', it is 'may be taken'.

Dr. Katju: It is open to be taken. It can be decided whether action can be taken or not.

Pandit Munishwar Datt Upadhyay: If that be the case, the position is worse: that position is deplorable. There is no doubt that enquiry is barred, but there is no such enquiry. I was going to suggest, as I submitted just now, that if this provision of withdrawing a complaint and also filing a fresh complaint by the appellate Court be dropped, then that provision might remain, that any person who is aggrieved or any person who wants to make an application that such and such a person has perjured, he may do so and enquiries be made under section 476 of the Criminal Procedure Code. What I mean is, that Courts are also barred if this provision in the Report means—as was just now suggested by the Chair—that it is only open and not if the proceedings have been taken.

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

So far as these drawbacks are concerned. I would submit that unless these drawbacks are removed, this provision is a provision which makes a witness appear before a Court almost helpless in certain circumstances. It is likely to discourage persons going to the witness box. Already there is an antipathy against going to the witness box. People do not like at all to go there. They think that respectable persons should not go into the witness box before a Court. Now, if such provisions are there, it might further discourage the right sort of people going into the witness box, which might mean deterioration in the administration of justice in the Courts in our country. Therefore, my submission is that these drawbacks should be looked into and corrected wherever it may be possible according to the views of the hon. Minister.

The other provision to which I wanted to refer is the provision under clause 91. I would submit that it is a very welcome provision. A suggestion was made, if I remember rightly, that in this case also, a complaint should be filed by the Magistrate whose orders are being disputed by the person who does not appear when he is asked to appear as a witness and when he does not turn up when summons have been served upon him to appear as a witness. The suggestion is made that in such cases also a complaint should be filed, but I do not agree with that suggestion. My submission is that here not much is to be enquired into and not much is to be seen. If a person has been summoned and if he does not appear, or if he appears but meticulously

avoids coming to the Court and he has left the Court before he was called for evidence, in those cases the Magistrate. whose orders are being disobeyed, is the proper person to deal with it. But the provision made here appears to be rather lenient; it is only Rs. 100, and I think the provision of Rs. 100 may not meet the need of the situation.

The other thing that has been criticised by some hon. Members is this. After the period of 60 days if the case is not finished, the person who is in custody and has not been released on bail, should be released on bail. Now, it is argued that the case does not take more than 60 days. Shri Sadhan Gupta said so and all along we have been hearing from hon. Members on that side that the cases go on for years and months.

Shri Sadhan Gupta: What I stated was that it is the investigation that really takes a long time and the trial does not usually last too long. Therefore, what I suggested was that the investigation period should be taken into account, not only the period during which the trial takes place.

Pandit Munishwar Datt Upadhyay: I listened to him quite closely. I am not referring to his statement of today, but I am referring to his statement of other days when the discussion on the Code of Criminal Procedure was going on and almost all of them said that it takes one year or two years—when I was speaking, some hon. Members said it takes even three years sometimes....

Shri Sadhan Gupta: Due to investigation.

Pandit Munishwar Datt Upadhyay: Investigation also is taken along with the trial of the case. If the trial and investigation take three years, then at least the trial should take one year......

Shri Sadhan Gupta: Not necessarily.

Pandit Munishwar Datt Upadhyay: That must be the proportion if you give a longer period to investigation.

As regards the granting of bail, I think in ordinary Courts, the bail shall be granted to the accused and it is only in cases where bail is not granted and the accused is compelled to remain in jail if sixty days have passed after the trial has started, that this question comes in. Sometimes in sixty days the case is not finished, and if bail is allowed, it is quite a reasonable period. To say that investigation takes a very long time is a separate question altogether. I would submit that if bail is not granted and the accused has to live for a year or two in custody because investigation is going on, that is very wrong and there is no doubt about it, and the period of investigation should be shortened. We should make a provision so that the investigation may not take too long a time. I think we should have made it in the beginning of the Criminal Procedure Code and we failed to do it. Now, when the next instalment of clauses comes in, it may be possible to make that provision and it is very essential no doubt. So far as the trial of the case goes, sixty days' times is more than enough for the purpose. This provision, I submit, cannot very much improve upon what is already mentioned in the amendment that has been suggested by the Government.

The other provision that has been made under clause 96 is a welcome provision. There provision has been made that for the purpose of determining whether the sureties are sufficient, the Court may accept affidavits. Our experience has been that sometimes when we got sureties and the sureties were present in the Court—sureties having a good deal of property also—even then, because the bond which the sureties execute has to be referred to the Tehsil Board or other places for verification, it used to take a long time and sometimes the people had to go in spite of the fact that they had sureties who were propertied people or monied people. It could not be verified and it was

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physically impossible for the bonds to be verified within that period and therefore they had to go to jail. This provision is a welcome provision. If affidavits are relied upon by Courts, that person who has got sureties shall not have to go to jail. Affidavits shall be relied upon by Magistrates and he shall be released on the basis of affidavits. Of course, if afterwards it was found on investigation that the sureties were not sufficient, again he might be taken into custody, and I think there is already provision for it.

The only one thing that I wanted to suggest is that if these five words are dropped, namely, if it so thinks fit, the provision would have been much better. That much of discretion, if left to the Court, may sometimes create difficulties, and as regards the further enquiry as it deems necessary, it is already provided. Why should you make a double provision for that? I shall read out the provision:

> "For the purpose of determining whether the sureties are sufficient, the Court may, if it so thinks fit, accept affidavits in proof of the facts contained therein relating to the sufficiency of the sureties or may make such further inquiry as it deems necessary."

Dr. Katju: It makes no difference.

Pandit Munishwar Datt Upadhyay: It makes no difference, but I think the wording lays a little emphasis and it may be that the Magistrates might be inclined the other way, namely, that they have the option and probably it would be proper that they should not release on the basis of an affidavit. If those five words are dropped, it might help matters further.

The provision that has been made under clause 100 is also a good provision: "the Court may, if it thinks fit and shall, on the application of the prosecution..............."

Mr. Deputy-Speaker: For the extent of properties, they get a certificate from the village *patwari* and affidavits are normally accepted except in cases where they are challenged or impeached.

Pandit Munishwar Datt Upadhyay: Now it is a very helpful provision. No emphasis appears to be laid on this side on "if it thinks fit". It may be that the Magistrate might be led to think that he should not generally accept affidavits. Therefore, I say that.......

Mr. Deputy-Speaker: This is only an alternative.

Pandit Munishwar Datt Upadhyay: The latter provision is quite enough and these five words "if it so thinks fit" might be dropped. The provision is:

> "The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit."

This provision now having been made, the complaint that I made in the beginning has no ground now. While speaking on the general discussion, I submitted that this sort of evidence of affidavit was not enough. This provision having now been made, I think it is good enough.

Pandit Thakur Das Bhargava: I am very sorry, I do not like this provision in section 479A which has been inserted here by the Select Committee. There is no doubt that the original provision was much worse. I am very glad that the original provision has been substituted. I am referring to the summary trial by the same Court. We took exception to that because we thought that the same Judge before whom the evidence was given was not the proper judge because he has to be the Judge in his own cause. At that time, we thought that justice could not be given in a summary trial. Now also, the position has not improved. In fact, the original provisions in sections 476 to 479 dealing with the subject are much better and more sound. I do not

know what has led the Select Committee to practically overrule these provisions in respect of perjury and fabrication of false evidence. Section 479A(6) reads like this:

"No proceedings shall be taken under sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under this section."

I understand it only means this. If it is possible to take proceedings under sections 476 to 479 of the principal Act, to that extent they are repealed. I hope I am correct.

Dr. Katju: I do say that for a lying witness or a witness whom the Court considers to have told the untruth, this should be the procedure and no other procedure.

Shri N. C. Chatterjee: In such cases section 476 becomes nugatory.

Dr. Katju: This is a comprehensive procedure laid down in the case of witnesses alone and nobody else.

Pandit Thakur Das Bhargava: Suppose a witness instead of committing perjury, commits forgery, what happens to him?

Dr. Katju: I think he will come under sections 476 to 479.

Shri Venkataraman: Will not "fabricating false evidence" cover that?

Pandit Thakur Das Bhargava: It does not mean forgery alone.

Dr. Katju: The wording is "has intentionally fabricated false evidence".

Pandit Thakur Das Bhargava: It does not mean forgery alone. It may happen in many ways.

Mr. Deputy-Speaker: It is a comprehensive thing which includes forgery also.

Some Hon. Members: No, no.

Pandit Thakur Das Bhargava: With great deference, Sir, I must submit that forgery under section 471 is different from perjury, under section 191.

Dr. Katju: If I may intervene, this is intended to cover the case of an individual who has given false evidence in the case or who has fabricated evidence for the purpose of that case, which matter has been investigated by the learned Judge who hears the case and has come to a definite conclusion. Sections 476 and other sections are very general.

Pandit Thakur Das Bhargava: Those general sections relate to perjury and fabrication of false evidence also. In those general sections, the language used is fairly wide to cover 479-A and at the same time, fairly cautious. Here, the fate of that witness has been practically sealed by the hon. Home Minister. That is my complaint. Section 476 says:

"When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195 sub-section (1), clause (b) or clause (c) which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect..."

It means that now action can only be taken in such cases where an absolute finding is given that this man has committed perjury or has been guilty of fabrication of false evidence. Here, the words are: "....the Court is of opinion that any person appearing before it as a witness has intentionally given false evidence...." Here, the Judge commits himself to a certain finding and leaves no loophole. Therefore, it will be applicable only in cases where the judgment is absolutely *pucca*, leaving no loophole for the accused to get out. It applies only to these cases. Where a Judge comes to the conclusion that an offence appears to have been committed, that would not be covered. It means that in a very large number of cases, a

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person can go on with impunity speaking falsehood, committing perjury and fabricating false evidence. This is a very retrograde provision. It takes away the power of the Court. This will not remove perjury. This will only strengthen the hands of those who commit perjury and fabricate false evidence. This goes against the declared purpose of the hon. Home Minister which is to stop perjury and fabrication of false evidence. In ninty-nine out of hundred cases, no court will be able to say for certainty that perjury has been committed or fabrication of false evidence has been made. In many cases which are on the border line, in more than 50 per cent. of the cases, the Court can only say that probably this has been done or appears to have been done. He can say, I am of opinion 75 per cent. that this has been done. Unless the Judge is of opinion that 100 per cent. this man is guilty, he will not be able to proceed. It takes away the powers of the Court, Civil, Revenue or Criminal, to stop perjury in those cases where the Court is not certain that that has been committed.

Mr. Deputy-Speaker: This is notwithstanding what is contained in sections 476 to 479.

Pandit Thakur Das Bhargava: If these words were there, it is all right. If you were there, you would have got these words.

Some Hon. Members: These words are there.

Pandit Thakur Das Bhargava: No. The words are:

> "No proceedings shall be taken under sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under this section."

This practically repeals sections 476 to 479.

Shri U. M. Trivedi: Not only repeals, but does greater mischief.

Pandit Thakur Das Bhargava: At least 90 per cent. of the cases of perjury and fabrication of false evidence, which it was the intention of the framers of the original Criminal Procedure Code to put down, are taken from the purview of the Court.

Shri Raghubir Sahai: It is only an opinion.

Pandit Thakur Das Bhargava: But, the opinion must be certain that perjury has been committed. If it is doubtful, he cannot take action.

Mr. Deputy-Speaker: Would it meet the purpose if, in respect of such a person, instead of the wording 'proceedings may be taken', it is said, 'proceedings have been taken under this section'?

Pandit Thakur Das Bhargava: It would have been quite different, I agree.

Mr. Deputy-Speaker: Proceedings have already been started. There is no purpose in proceeding under section 476. All that the hon. Member wants is........

Pandit Thakur Das Bhargava: I do not want an amendment. I am going to submit for your consideration many other reasons why this section should be abrogated and should not be taken into consideration. I have also given 4 or 5 amendments. This is not all.

Mr. Deputy-Speaker: I only wanted to clear the position. Government wanted to do something speedy. We will assume that those persons who forswear in the witness box will be very few. There must be a summary procedure to deal with them. The original Bill contained a provision that straightaway the man on the spot, as if it were some small contempt case, can punish the witness.

Shri Datar: After conclusion of the trial.

Mr. Deputy-Speaker: He can do so. An exception was taken to that because he was the prosecutor himself, and so he ought not to be the Judge. Therefore, it was thought that an independent mind should be brought

to bear upon that. So, in the Select Committee this was modified. I do not think that the original framers of the Bill intended to do away with or abrogate that provision in sections 476 to 479. Those provisions are there.

Shri Datar: This is independently of that. Those provisions are of wider import.

Mr. Deputy-Speaker: Any person can invoke those provisions. Hitherto only sanction was taken. Sanction has been taken away under the new provision. If the Court finds it necessary in the interests of justice, it will send a complaint. It is not abrogated. I think inadvertently, this word 'may' has crept in. Hon. Members are aware that where a revision is allowed, say, before a District Magistrate, the revision before the Sessions Court is not competent though a revision lies to the District Magistrate and the Sessions Judge. The point is, two Courts ought not to try the same matter twice. The hon. Minister will consider that it is not the intention to take away the provisions of sections 476 to 479.

Pandit Thakur Das Bhargava: The hon. Home Minister said just now that that was the intention.

4 P.M.

Shri Datar: He is making a reference to sub-section (6) of the proposed section 479A under Clause 90.

Mr. Deputy-Speaker: The position is this. So far as sub-section (6) is concerned, the intention of the Government seems to be a speedy punishment of the person who commits perjury. Originally, the hon. Minister intended that the very Judge before whom the perjury was committed should have the right at the close of the trial to fine that person if he comes to the conclusion that he committed perjury. That was modified.

Dr. Katju: It was slightly different. It was for a matter not under issue; it was for a collateral matter.

Mr. Deputy-Speaker: Objection was raised on the ground that the person who wishes to bring some prejudice may do it, and therefore, an independent mind will be brought to bear upon the case.

Dr. Katju: If you question the prosecuting witness while the trial is going on, the truthful witness may not come in. There may be great injustice done to the parties, and so on.

Mr. Deputy-Speaker: The only point is, there are other provisions—sections 476 and 479—under which, the Judge, in a calmer mood, looks into the whole matter when the complainant brings it to the notice of the Judge and asks him to initiate proceedings in a Court of law. Many things are taken into consideration in the interests of justice—whether it is the correct method, or whether it is a method of blackmailing and so on. Those provisions are not abrogated but the hon. Minister will kindly see that in all cases where proceedings could be initiated under these sections, the proceedings cannot be taken under section 476.

Dr. Katju: That is for the benefit of the witness.

Mr. Deputy-Speaker: In all cases where proceedings have been taken, let sections 476 to 479 be there.

Dr. Katju: Then we shall have a saving clause. It is better to have a saving clause. I shall have a saving clause to say that in the case of proceedings pending, they shall be protected.

Mr. Deputy-Speaker: The suggestion is that that it may be an alternative. If the Judge conducts proceedings under this section, then, no proceedings can be started under 476, or, for any reason, if proceedings have already been started under section 474, this shall not be invoked.

Dr. Katju: Supposing this Act comes into force, then, two years later, proceedings start. and then, as the object is—it can be done only under this section and not under the other one. The reason is, speed; good or bad, it does not matter. After the decision of the Magistrate, that man goes away. There are six

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months' stay. Then, there is the appeal against the order. Then another six months' stay comes about. That was the object. I may tell you for your information and for the information of the House that 49 witnesses of the Select Committee have approved of this. The object was that when the Judge comes to deliver the judgment, at that time, he considers the whole case. He considers the evidence of every witness and if at the time of delivering the judgment,—by that time—he has come to the conclusion that witness A and witness B have told nothing but lies, then, he should send the case to the Magistrate without making any further enquiry, because he has been making an enquiry all through. He has been making enquiries from the very hearing of the case. There is no appeal, so that the lying witness may have to face an enquiry before a Magistrate within two or three weeks and the case is protracted. As lawyers we all know that if a Magistrate sends a complaint, an enquiry starts which takes six months. Then there is the appeal against the order. That takes nine months. So, we have now provided that if there is an appeal against the judgment by any of the parties, then, the proceedings will stop, because the appellate Court will then consider whether the evidence was correct or false, whether it is good or bad. But the whole procedure has been most carefully considered in the Select Committee.

Pandit Thakur Das Bhargava: I accept what the hon. Deputy-Speaker has been pleased to say. It is perfectly right. If they had written the words "having taken", the whole thing could have been saved. But the hon. Home Minister has himself made a statement that his purpose is to exclude those sections. Your amendment is not acceptable to him.

Mr. Deputy-Speaker: It is not my amendment. I only made a suggestion.

Pandit Thakur Das Bhargava: I like that amendment. You have suggested it, as a result of your wide experience. We are all impressed by it. I am very much impressed by it. You have really taken away my criticism in a minute. If your suggestion is accepted it will be good, but the hon. Home Minister is not in a mood to accept it. He is always citing before my eyes the 49 Members of the Select Committee whom he has now called witnesses. He says that whatever wrong has been done, those 49 witnesses or persons are responsible. I wish those Members were here and heard what the hon. Minister is saying by implication.

My submission is that, even apart from that, the hon. Home Minister says it is a question of speed. Let me examine the speed. He says that a witness who will be examined will not be prosecuted on the basis of his own statement. On the contrary, he says, when the Judge has heard the entire evidence in the case, heard both the parties and come to the settled conclusion that the evidence was false, then, he will make a complaint! Without hearing that man against whom he wants to prosecute, without any preliminary enquiry, proceedings are to take place. The safeguard given in the original section 476 was very good. Without that provision, now, the thing would become like this: supposing I appear in the witness-box. Two years after, a Civil Court judgment involving Rs. 3 lakhs is delivered, after two years, without hearing me, without my knowing what my evidence is, without my knowing what the other persons have spoken in evidence against me, without knowing how the mind of the Judge has worked against me, the Judge wants one fine morning to deliver the judgment in a civil case and condemns my evidence. After that civil case, one of the parties—not the witness but one of the parties—takes the case to the High Court. Four years are spent there in the first appeal. The

case is not decided. Then the appellate Court will not call me. How should I know? I am not a party to that case, now. They will not hear me; will not hear my point of view. If the parties are fighting for four years, my case shall remain pending, and so, it will be hanging like a sword of Damocles. Supposing the case is then decided and the matter is taken to the Supreme Court, another four years may lapse, and the man might die within this period, and sword of Democles will still be there. So, what is the present provision? This the Home Minister calls, speedy trial. Shri N. C. Chatterjee has been kind enough to read out to us the decisions of some of the learned Judges who have been pleased to say that this preliminary enquiry is a very great safeguard.

Mr. Deputy-Speaker: What happens? There is an appeal against the original judgment and it is going to the Supreme Court.

Shri N. C. Chatterjee: Then, the prosecution will be kept pending.

Shri Datar: The complaint will be held up.

Mr. Deputy-Speaker: So, it will be held up.

Pandit Thakur Das Bhargava: After the appeal is over. I may also read the section, that is, sub-clause (4) of clause 90 in respect of section 479:

> "(4) Where, in any case, a complaint has been made under sub-section (1) and an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred shall be adjourned until such appeal is decided; and the appellate Court, after giving the person against whom the complaint has been made an opportunity of being heard, may, if it so thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistrate before whom the hearing of the case is pending."

Mr. Deputy-Speaker: What happens under the present Code?

Pandit Thakur Das Bhargava: Under the present Code, as soon as a complaint is made, he is allowed to have an appeal. Whatever may happen to the original case, as soon as the complaint is made, the person against whom the complaint has been made can go to the higher Court and pray that the complaint be withdrawn, and he may be exonerated. That is the present provision.

Mr. Deputy-Speaker: Is it not open to the Magistrate before whom the offence was committed to say: "All right, pending the appeal, I shall keep it pending."

Shri Datar: Yes, they can. Usually when the appeal is made, the file goes there. Unless the appeal is decided, the proceedings are stayed.

Mr. Deputy-Speaker: The same thing is done here also.

Pandit Thakur Das Bhargava: Here it can be done. I have given an amendment to that effect. I knew you are bound to make that suggestion when you are in the Chair. But that amendment is not accepted.

Mr. Deputy-Speaker: My point is it seems to be already there.

Shri N. C. Chatterjee: When a complaint is made against a witness and no party lodges any appeal, then the poor witness has no chance of filing an appeal or of being heard.

Pandit Thakur Das Bhargava: There is no appeal because he says the appeal will be in the hands of the parties. There will be no appeal no *vakil*, and no *daleel* because our reasons are not attended to by the Home Minister. Just as in the case of Rowlett case. This is a piece of Rowlett Act.

Now, I was submitting ordinarily when you send a man for being tried by another Magistrate, in that judicial

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proceeding the accused can hope certainly: "I will be acquitted if I can prove my case, if I can prove that whatever is stated was not untrue, was not untrue to my knowledge". I believed certain things, and I had reasons to believe them. Then also, he will be acquitted. The words in the original section are "offence.... appears to have been committed"—very cautious words. Now, he says definite finding—one hundred per cent finding that this man is guilty and he should be guillotined. I think it is unfair. First of all, he is not heard by the Magistrate who passes the order, and then there is no loophole left for him to escape. If the words "appears to have been committed" are there, then he has a chance. Supposing a High Court Judge or a Sessions Judge says "this man is found to be guilty of perjury", in an honorary Magistrate's Court, he will not be heard. My submission is that there also under section 476 the finding was to be recorded on a preliminary enquiry, but that finding is not that the man has committed perjury. The finding is that an offence appears to have been committed, and that is the reasonable thing. Either finish him here, or give him a reasonably good chance. Here what has been done is he has been strangulated by the section and sent as a dead corpse to another Magistrate. He is not allowed to appeal; for years together this thing may hang on his head and he may not have occasion to take free breath. What for is he making this provision? What is the difficulty? What is wrong about sections 476 to 479 which have been for so long in the Criminal Procedure Code. A person who can proceed under this section can similarly proceed under section 476. If this gave more rights, if really this was an improvement, I would have welcomed it. Under section 476, if the Magistrate or the Judge of a Revenue Court or any Court comes to the conclusion when evidence is given that an offence appears to have been committed, it can hold a preliminary enquiry and record its finding and forward it to another Court for trial. There is absolutely no difference. The present provision was very good, and our misfortune is that some brainwave came and because the summary jurisdiction that was there has been taken away, it has been thought that something must be substituted whatever may happen.

Shri Datar: Does the hon. Member desire that in place of the words "without making any further enquiry" there should be some further enquiry or show cause notice before a complaint is filed? Is that what the hon. Member wants?

Pandit Thakur Das Bhargava: The hon. Member wants to know why the change is necessary.

Shri Datar: That is the hon. Member's first contention. Assuming that this section has to remain, do I understand him to say that there ought to be some further enquiry before a Court files any complaint?

Pandit Thakur Das Bhargava: I want four things. Firstly, the Magistrate or Judge when he sends the case, should not send it in a sealed cover. He should send it in an open cover. He should say: "According to me it appears an offence has been committed", without giving a definite finding that it has been done. Otherwise, the fate of that man is sealed, especially when it comes from a High Court Judge. This is not the way judicial proceedings are taken.

Mr. Deputy-Speaker: Of course, the hon. Member is reversing the order. Let us start from the very beginning. I understand that the hon. Member wants that the witness against whom proceedings are sought to be taken or initiated by the Court should have an opportunity of showing cause why he ought not be prosecuted, as in section 476.

Pandit Thakur Das Bhargava: Yes, Sir.

Mr. Deputy-Speaker: Then he wants also that the Judge should not come to a conclusion, but only say that in his opinion there is a *prima facie* case and say that the matter may be looked into.

Shri Datar: That itself is the meaning here.

Mr. Deputy-Speaker: That is the meaning of this expression here. It is a provisional finding and does not bind the Criminal Court at all.

Pandit Thakur Das Bhargava: It actually binds. The King is dead, long live the King.

Shri Datar: He wants to make it clear.

Mr. Deputy-Speaker: That is not the intention evidently.

Shri Datar: He will record his opinion.

Pandit Thakur Das Bhargava: Whereas it ought to be that in his opinion an offence appears to have been committed. Further, I want the right of appeal.

Shri N. C. Chatterjee: "After such preliminary enquiry as the Court deems fit" would serve the purpose.

Pandit Thakur Das Bhargava: I am quite clear in my mind that an appeal to that person must be provided.

Shri Datar: Two suggestions have been made. One is "finding" should not be there. It should be "opinion", and not the word "finding" as it is here.

Dr. Katju: I have no objection.

Shri Mulchand Dube: In section 476, the word "finding" is there.

Shri Datar: That we shall accept. The second objection is to the expression "without making any further enquiry".

Dr. Katju: That is a matter of vital importance.

Pandit Thakur Das Bhargava: If you are sending the man to be tried by a Magistrate, what is the harm in hearing the man? There is no question to delay. There and then be will be heard.

Dr. Katju: You are very persuasive, but you have been practising, I have been practising. It is not such a simple matter. He says: "I want to produce five witnesses." Then the summons is not served on him. He says "My mother is ill". I do not want all that.

Pandit Thakur Das Bhargava: Supposing a document is interpreted in one way, and his counsel says it should be interpreted in another way.

Dr. Katju: This is one way, the persuasive way of putting the thing. The other way is to prolong it for ages, for months.

Shri N. C. Chatterjee: In a preliminary enquiry, no evidence is heard.

Dr. Katju: Let me just put it before you. The procedure which has been devised by the Select Committee is this. It is not procedure. They say that for the purpose of delivering the judgment, the Judge has to consider the whole case.

Mr. Deputy-Speaker: Why? Mr Chatterjee seems to say that an opportunity should be given to the witness to explain why he made a false statement.

Dr. Katju: He will never come.

Mr. Deputy-Speaker: There and then.

Dr. Katju: Where? He should be there. He may have been examined ahead. Please remember that according to the procedure as it stands it will be on the day of judgment. If the witness is present, have no objection, but he may have been examined two months ahead, three months ahead. He may be a plaintiff witness. In a civil case the plaintiff witness is examined in March, let us say.

Mr. Deputy-Speaker: As soon as a false statement is made before a Magistrate or a Sessions Judge, let him take the statement of the witness there and them as to why he made a contradictory statement.

Dr. Katju: Please remember that it was strongly objected to when the Bill was referred to the Select Committee.

Pandit Thakur Das Bhargava: At present, the wording of section 476 is very clear. The words are these: "…. may, after such preliminary inquiry, if any, as it thinks necessary,..."

Mr. Deputy-Speaker: The hon. Home Minister feels that further preliminary enquiry may lead to delay.

Dr. Katju: That is it.

Mr. Deputy-Speaker: Should not the witness for this purpose be asked as to why he changed the previous statement.

Dr. Katju: Suppose the point in controversy between the parties is—I am taking a random illustration—whether a boy was given away in adoption or not. There are five witnesses produced who swear that the actual ceremony of adoption, giving and taking, took place. On the other hand, it is suggested that no adoption ever took place, that the boy was not there and so on and so forth. After considering all the evidence in the case, the Judge records the clear finding that in his opinion the whole thing was bogus, there was no adoption and the witnesses had been lying.

Now, what is the preliminary inquiry?

Mr. Deputy-Speaker: It is not the only instance that will come before the Court.

Dr. Katju: There are others. I was only giving one. As my friend put it, these witnesses will be there. Please remember one thing. There are many cases where a Judge delivers judgments and he is transferred. If a date is fixed by that interval and the Judge is transferred, who will do it?

An Hon. Member: The next man.

Dr. Katju: The man who delivers judgment and on the day he delivers judgment. Either he says it in his judgment or he records it in a separate note. He says, 'Having delivered judgment, I have recorded a finding in the judgment that this evidence is untrustworthy. In my opinion, there should be a fresh complaint'. In a preliminary inquiry, the man has got the Magistrate before him. He will go and prove his own innocence, if he is innocent.

Pandit Thakur Das Bhargava: With your permission, I will read the words which exist in the present section which is very good. The words are:

> "The Court may, after such preliminary inquiry, if any, as it thinks necessary".

What is the harm—I do not understand. My hon. friend, the Home Minister, wants that in every case one party should be challaned. Supposing he comes to the conclusion that there was adoption, then the other party says, 'no adoption', is that what he wants? The case cannot be decided in this way.

Dr. Katju: Men will go on with flourishing lies.

Pandit Thakur Das Bhargava: There is no question of flourishing lies. When the case is being made, he must be asked, 'Why do you make this statement? What is the reason?'. After all, he must be heard like this. If he thinks that a preliminary inquiry is necessary, no oral evidence will come, but only interpretation of documents. He will show cause. What is the harm? First of all, if a Sessions Judge or a High Court Judge writes a judgment of this nature without his being heard, he is not allowed to be heard when the case is being made. I understand that the first and fundamental principle of criminal law is that when you proceed against a person, you must hear him. No order can be passed to his prejudice unless he is heard.

Dr. Katju: He will say 'I have given you my evidence. It is correct'. That is what he will say.

Pandit Thakur Das Bhargava: I will say a hundred other things. I will give an example. Here there is the question of interpretation of documents. This is the meaning of the document. I will say: 'No, this is wrong'. I will say further, 'It is very difficult. Another Judge comes after two years who has never seen the witness's demeanour. He will be able to make a case against me'. It is against all principles. I should say. If perjury is to be avoided or punished, then proceeding must be taken in rarest of cases. It is not of everyday occurrence.

Now, suppose he has accepted these two things. First of all, that it may be a preliminary inquiry or this one, that this finding is not so definite. The words are "appears to have been done", and he provides for appeal What is the difference between section 476 and the proposed section 479A? Does he propose to take away the right of appeal? It is most unjust. I am accused of perjury by him. I am not given the right of appeal. This case will hang on my head for ten years or more. Even criminal cases—murder cases—may not be decided, according to my hon. friend, for two years. What would happen? This will go on. It is most unjust. In the other case, forgery and other offences etc. will be governed by sections 476 to 479, but in this particular case this will be governed in some other way. This is not the way of making laws.

Now, I come to the other sections. As regards appeal case, I have to submit a word.

Mr. Deputy-Speaker: How can there be other cases after this section is enacted?

Shri Venkataraman: This applies only to witnesses and not to complainants.

Mr. Deputy-Speaker: That is all right.

Pandit Thakur Das Bhargava: Unless the party himself is a witness.

Mr. Deputy-Speaker: The complainant is a witness.

Pandit Thakur Das Bhargava: In civil cases and in criminal cases also.

Mr. Deputy-Speaker: The accused is not a witness.

Shri Raghavachari: Even he is a witness now.

Mr. Deputy-Speaker: He can be a witness, but he may not be.

Pandit K. C. Sharma (Meerut Distt.—South): Generally he can be, but he may not be.

Pandit Thakur Das Bhargava: Accused can be a witness now.

Mr. Deputy-Speaker: This can be applied in civil cases where the written statements are verified. There can be perjury.

Shri S. S. More: They will give a false statement on oath.

Pandit Thakur Das Bhargava: If you kindly see section 191 of the IPC, all these verified plaints and written statements etc. come under it.

Mr. Deputy-Speaker: So far as witnesses are concerned, this will be the only procedure—witnesses who are not parties to...

Shri S. S. More: Even parties will be treated as witnesses.

Mr. Deputy-Speaker: Witnesses who are not parties will be governed hereafter only by this section.

Shri Raghavachari: Even parties will be governed.

Pandit Thakur Das Bhargava: Any person appearing as a witness in this sense—these are the words.

Mr. Deputy-Speaker: All witnesses who are not parties will be exclusively governed by this section. If the party is also a witness, he will come under it.

Pandit Thakur Das Bhargava: That is perfectly right.

[Pandit Thakur Das Bhargava]

At least so far as he is concerned, he will be quite immune because he will take his case to the Appeal Court—four years in a big case. For years together he will not be proceeded against.

I have done with this section. I very humbly beg of the hon. Minister to kindly consider this section in the light of the criticism of Shri Chatterjee and others and please take it away and restore sections 476 to 479, which are much better, more cautious and better considered sections.

Now, I come to clause 91. At the time when the general discussion on this Bill was on, I submitted that it was not right to make more than one provision on the same subject. Now, we have already got in the Penal Code a section whereby if a person does not come before the Court when he has been served with a notice or goes away etc., then he is liable. I do not understand why this section has been put in. It gives power to that very Court. Again, the same objection is there. After all in a criminal case, it is much better that it should be taken to another Court so that the person may have some confidence. I understand under section 191 of the Criminal Procedure Code there is a provision like that. An accused is asked whether he would like to be tried by the same Court or some other Court. I should have liked a provision like this, but the 49 blessed Members of the Select Committee came to different conclusion.

Now, I come to clause 93 which deals with section 488. I have given an amendment to substitute Rs. 300 in place of Rs. 500. I think so far Rs. 100 is concerned, it errs on the side of being a very small amount and Rs. 500 is rather on the side of being very excessive. We should not give such excessive powers.

Now, I come to clause 94, on which I want, with your permission, to take some time of the House. Now, so far as these bail provisions are concerned, I am thankful to the hon. the Home Minister because he has put in sub-clause (3A). If the trial is very much protracted beyond 60 days, then he says that ordinarily—unless for good reasons—the man is to be bailed out. I would have liked this provision to be extended to investigations also. But even if he does not want to give this concession to the accused in the matter of investigation, so far as it goes it is an extent beneficial, because in some cases the trials also go on for a greater number of days than 60. Anyhow, if the amendment is accepted, it would have helped the accused very much. All the same, I say this, that the hon. the Home Minister is helpful to the accused in at least this matter that he may not have to undergo a long trial, though he does not seem to accept the other amendments which I have tabled in reference to sections 497 and 496. I brought in a Bill in this House several years ago which has not come up for discussion before this House. That was for the amendment of sections 496 and 497. I have taken this occasion to refer to it because section 497 is now being amended. I maintain that so far as the liberty of the subject is concerned, though we should see that no person takes undue advantage, we ought to see that an innocent man is not also injured by the fact that today the police is not what it ought to be. This is common ground that even today people are very much afraid of the police. A person would actually come before the Court and stand his trial, but for the fact that he is afraid of the police, of going to the *havalat* and remaining sometime in jail. I have argued very many times here, and I do not want to repeat it. I have got a vast experience of these cases. I know in not one case but many cases in which people would not be unwilling to go to the Court but for the fact that they have to go to the police for some days and remain in *havalat* and go to jail also.

In Ferozepur, where there are so many murders—it is the most notorious district in the Punjab for mur-

ders—there is a regular choki No. 2 where, while in custody people are subjected to third degree methods and are beaten. Everybody is afraid of that and many people have become dacoits and have run away. They do not want to come there. If this could be assured, innocent persons can come to court and get bail, they would certainly not fly away from justice

Some years ago, I had the misfortune to appear in a case where an innocent person was involved. He was held to be innocent by the Sessions Judge and he was really innocent, so far as I came to know. That man was a very influential man, a moneyed man and a man of lakhs. He was implicated by his adversaries, in a 302 case.

Mr. Deputy-Speaker: It is a murder case.

Pandit Thakur Das Bhargava: Yes, it is a murder case. In that case, he ultimately flew away from justice and went to a renowned doctor whose name I do not want to mention. That doctor said, 'All right, I shall see that for three months you are here in the hospital'. He was suffering from hernia for the last 15 years and there was no need for undergoing a surgical operation. The doctor said that it would be a very minor operation and that he will be all right. He was operated upon and two days after he died. The Superintendent of Police and the District Magistrate, both of them knew that the case was false but they were afraid to take bail because they thought that they would be suspected of having taken bribes. I appeared before the Magistrate and asked him to grant anticipatory bail. There are a number of cases—one from the Calcutta Weekly Notes case where it has been held that anticipatory bail could be taken. Here the conflict comes in. The Lahore High Court, that is now in Pakistan, held in a Full Bench case that anticipatory bail could be taken in proper cases. But the Simla Court is not of the same view. By the time I brought in this Bill, the Simla High Court had not given this decision. I brought in that Bill to set at rest this doubt. I maintain that if a person comes to court and wants to give bail, in proper cases anticipatory bail should be accepted. Therefore, I have sought to amend section 497. You will be pleased to see my amendment. In any case, when the accused is there either as accused or who is complained of or suspected or is brought before the Court as being the accused or complained against or suspected, in both these cases the Court may grant bail. It is not obligatory on the Court to give bail in all cases. It will be only in one out of one hundred cases that the bail would be given. I beg of the hon. Minister to kindly enlarge our liberties. What is the use of having a Criminal Procedure Code like this wherein all the liberties of the people are taken away? It is only in the interest of the enlargement of the liberties of the people of India that I want to have this provision of anticipatory bail accepted by the House. This is not the only case; I have known many other cases. I have myself got anticipatory bail for many persons. I have given two amendments, which I hope the hon. Minister would accept.

Mr. Deputy-Speaker: What are the numbers?

Pandit Thakur Das Bhargava: One is for the addition of new clause 93A and the other relates to section 497 itself which is sought to be amended.

Dr. Katju: You are moving a new clause?

Pandit Thakur Das Bhargava: Yes: 93A and that relates to section 496 of the Act.

Mr. Deputy-Speaker: The amendment is No. 635.

Pandit Thakur Das Bhargava: The other amendment is 636 relating to clause 94. My humble submission is that this provision should be made in the Code of Criminal Procedure so that people may get anticipatory bail in proper cases.

[Pandit Thakur Das Bhargava]

I now come to clause 100. When an expert comes in the witness box, especially a technical expert, a finger print expert, many questions are put to him. As you know very well, finger print experts are also subjected to cross-examination as handwriting experts and it is proved that there was not that loop or parabola and all other things, which are generally spoken about by the experts.

Shri R. K. Chaudhuri (Gauhati): Would they come under the definition of formal witnesses or technical witnesses?

Pandit Thakur Das Bhargava: I think Mr. Chaudhuri will kindly excuse me and look at clause 99 where the words used are that after the words "Examiner to Government" the words "or the Chief Inspector of Explosives or the Director of Finger Print Bureau or an officer of the Mint" shall be inserted. The Court shall, on the application of the accused or the prosecution, summon these witnesses. My humble submission is that it is not only the right of the accused or the prosecution to apply for these witnesses to be called, but it is the duty of the Court also to do justice. In all cases, these persons should appear before the Court and be liable to be cross-examined. It is the duty of the Court to see that the accused is not deprived of the benefit of cross-examining these witnesses.

Mr. Deputy-Speaker: It is not prevented here.

Pandit Thakur Das Bhargava: It is not prevented. Ordinarily, they will not come unless an application is made. There is no obligation on the Court to call them.

Mr. Deputy-Speaker: The word used is 'may'. You want that it should be 'shall'? Otherwise, how can the Court take it upon itself?

Pandit Thakur Das Bhargava: It is not only the accused or the prosecution that is interested in this. The Court would not be doing its duty conscientiously if it does not call these people.

Mr. Deputy-Speaker: I am unable to understand this. How can the Court do it if you change the word 'may' into 'shall'? 'The Court shall, if it thinks fit'. If it thinks fit, it will.

Pandit Thakur Das Bhargava: I am not objecting to the language. You may use, 'may' or 'shall'. (*Interruption.*) I am submitting what is ordinarily happening today. The experts etc. should all be produced before the Court as witnesses and they should be allowed to be cross-examined. I have known many formal witnesses making statements which go to the very root of the matter. I do not understand why these persons should not be produced before the Court.

Mr. Deputy-Speaker: It is only a question of summoning.

Pandit Thakur Das Bhargava: Summoning and producing. They will not be produced unless the prosecution or the accused specifically wants it.

Shri R. K. Chaudhuri: Their report would be evidence.

Pandit Thakur Das Bhargava: I would submit that in the interests of justice, it should not be discretionary with the Court, though it is obligatory on them to call them on the application of the accused. There is no obligation on the Court to go into the matter *suo motu*.

Shri U. M. Trivedi: I have got two amendments 463 and 464 in my name. Before I come to these amendments, I want to advance one small argument about this new clause 90, that is the new section 479A. By this new Criminal Procedure Code, we have practically done away with the provision of a *de novo* trial. In other words, as this law stands, any magistrate before whom a witness has not appeared, may, at the time of passing the judgment, pronounce a judgment making comments and coming to the conclusion that the witness has done any of

the particular wrongs enumerated in the section without calling upon him to explain anything and without hearing anything, send him up for trial. If this procedure is accepted I do not see any reason why this exception and discrimination is made in favour of the accused when he goes before the appellate Court, because when he goes to the appellate Court as provided for in sub-clause (5), the power conferred under sub-section (1) may be exercised by the appellate Court; and where the appellate Court makes such complaint, the provisions of sub-section (1) apply accordingly, but it is provided that no such order shall be made without giving the person an opportunity of being heard. When he goes to a higher Court, it becomes incumbent that notice must be given and the man cannot be prosecuted without such notice. Why is a similar provision omitted where the lower court or the original Court is concerned. I see no reason behind it except that it may be argued that here in the appellate Court the man does not go before the Court, but the man may not have appeared before the lower Court also and yet without seeing him while pronouncing judgment by reading the material before it, the Court may pronounce orders of having come to the conclusion that the man has done such and such wrong thing; and then prosecute him.

I submit that there is some force, nay there is very great force in making this suggestion that no such order shall be made without giving the person affected thereby an opportunity of being heard. The hon. the Deputy Minister was probably agreeable to this, but I do not know whether the Home Minister will agree to it.

Mr. Deputy-Speaker: Both of them have got only one mind.

Shri Sadhan Gupta: An adjusted mind.

Shri U. M. Trivedi: There is very great force in the arguments advanced by a very great experienced lawyer like Pandit Bhargava. A very small change has been suggested by the Deputy-Speaker about substituting the words "have been" instead of the words "may be" in line 51.

Mr. Deputy-Speaker: I would like Hon. Members to know that wherever I intervene to make some suggestion, it is not my own suggestion. I explain what is passing on this side and try to interpret it to the other side. I have no views at all so long as I sit in the Chair.

Dr. Katju: It is a two-way traffic.

Pandit Thakur Das Bhargava: It is very helpful.

Shri Sadhan Gupta: It was a very helpful and welcome suggestion.

Mr. Deputy-Speaker: Interpretation.

Shri U. M. Trivedi: The hon. the Home Minister being out when I was speaking on that amendment, has not grasped the point and instead, he has taken us—in an irrelevant manner—over the whole scheme of this Criminal Procedure Code which we have been hearing *ad nauseam* day after day. But the very serious problem is, that the word 'may' as it stands to-day would only mean......

Mr. Deputy-Speaker: In what sub-clause?

Shri U. M. Trivedi: In sub-clause (6) of clause 90. As long as this word 'may' stands in its present position, this would only mean that prosecution under 476 to 479 will be completely denied. That is why my submission is that only because this suggestion has come from the opposition, he should not refuse to accept it. This suggestion has come from every moderate speaker and loyal Members who do belong to the Congress Party and thus there would be no loss of prestige in accepting this. That would be a very wise thing. But, as we know, at the end of the show, with all the nice arguments, when it comes to voting the whip will work and they will say "no, no". That is why I submit that you please do realise that this is a very sensible suggestion and you may accept it.

[Shri U. M. Trivedi]

I then go over to the amendments which I have suggested—amendments 463 and 464 in clauses 94 and 96, in page 26, line 32.

Add at the end.

"Provided further that any person either by himself or through a pleader appears before a court and makes a statement on oath that he has been accused of a non-bailable and/or cognizable offence and desires to stand his trial in a court having jurisdiction to try such offence and is prepared to furnish bail to the satisfaction of the court for his appearance in any court of law if and when so required to attend the court may if the offence does not relate to one under section 302 of the Indian Penal Code 1860 (Act XLV of 1860) admit him to bail and thereupon such person shall be deemed to be on bail for the purposes of this Act and with relation to the accusation for which a prosecution may be launched thereafter."

Many times it happens that accusations are levelled against very respectable persons. Unfortunately, in our country even to-day there are people who do not like that they should be heard cuffed and carried through bazaar to the police-station. I have seen hundreds of cases where on every false and flimsy accusations with absolutely no basis, extortions have been made up to Rs. 2000/-. This happens in non-bailable offences. The man is accused of a non-bailable offence and then the mischief begins and this is always the case. The provisions of 496 and 497 are such that money is extorted from the people who are prepared to stand their trials. They are prepared to go before courts. They want to surrender themselves before the courts, but are not prepared for humiliations before the police and the public.

One of the judges in the Madhya Bharat High Court held that anticipatory bail must be accepted, because the word 'appear' does not mean that he must appear in person. The appearance may be through lawyers and yet it must be accepted. Then the Division Bench came to the conclusion after the Simla ruling that 'the Simla ruling holds good'. Whatever it may be, there would be nothing wrong in accepting this amendment. It will only help some persons to stand their trial without any fear. They say:

"We are prepared to stand our trial. We like to undergo every trouble that may arise in the court. We do not want to go to a lock-up in the custody of the police."

They are not only beaten, but they are also humiliated in a thousand and one ways. There have been cases, which I do not think the hon. Home Minister is unaware of, where people have hanged themselves inside the lock-up. Very recently, only about two years back, there was a case of a suspected dacoit who was arrested in my native town. In the lock-up he was beaten: people heard his cries, and the next day, early morning he was found dead hanging by a rope. Perhaps it was a case of suicide, or perhaps the rope round the neck was an afterthought: God alone knows, because there was no subsequent enquiry about it. Under these circumstances, it is meet and proper that some provision must be made to prevent this sort of atrocities against such persons who are prepared to stand trial. After all, bail is provided for to enable one to stand his trial. One of the fundamental principles of law is this, that a man must stand his trial. I quite agree with the views expressed by several Judges of High Courts that bail must be a rule rather than an exception. The exceptional provisions are there. You go to those exceptional provisions when it is a question of life and death. A man may do a heinous crime for

which he would not like to stand a trial. But, ordinarily, when a man wants to stand trial, it is up to us as legislators to provide facilities so that he may stand his trial and make his defence. Under these circumstances I agree with Pandit Thakur Das Bhargava who has put down the question of anticipatory bail which also is a form of bail which a man must be allowed to tender if he comes to know that an accusation of a very serious nature, of a cognizable or a non-bailable offence is made out against him.

Then I come to amendment number 464 to clause 96. I will not take a very long time on it, but it has been my experience for the last at least 25 years that whenever a bail is accepted; whenever a Magistrate orders acceptance of a bail, the police, lambardars and various other persons—bailiffs etc.—always try to grab money out of the whole business. My amendment reads like this:

> "but such enquiries shall not be left in the hands of ministerial officers and no officer of the police force shall be asked to conduct such enquiry, and the Magistrate shall always accept the affidavits in proof of the facts contained therein if an advocate of the court of not less than seven years standing certifies to the correctness thereof."

My submission is only this. The Magistrate may order: "Here, accept the bail." As soon as the order is passed for acceptance of the bail, and if this mischievous sentence is there: "If it so thinks fit", this discretionary order—generally there are inexperienced Magistrates in some cases and in some cases they are not very straight also—then what happens is, the Magistrate will think it fit to make enquiries. He knows that by ordering this enquiry he will allow his underlings to make some money. This happens daily in Delhi Courts—I do not know what it is in other places, but Delhi is very notorious for it. You go there and see. Immediately bail is ordered, it has to be verified and this verification busineess always costs Rs. 20, Rs. 30 or Rs. 50 rising according to the amount of bail that is being offered.

Shri S. S. More: It is always *ad valorem.*

Shri U. M. Trivedi: Yes; It is *ad valorem.* Whatever good that we want to do to help the poor accused person, the poor litigant, is washed away by this provision. The desire at the bottom of this amendment of the Criminal Procedure Code has always been that we must have a speedy trial and also an honest trial as the new provision in section 479A is suggestive of it. I say that the underlying desire is really *bona fide.* It is just possible that our phraseology may not be very good and the provisions that we have made are not very good, yet the desire is very transparent. The desire is that a man must get not only speedy and fair trial, but that our Courts must dispense honest justice. But, when we make such a provision and we are for it, we should also be careful that no loopholes must be left whereby dishonest people may still try to make money out of poor ignorant persons. Therefore my suggestion is that a man sitting on the bench may be dishonest, yet he has his dignity and as he sits on a higher pedestal, people look upon him as something high. Therefore, they trust him and are prepared to satisfy him in one way or the other. They say: "Here is the surety that is being offered and it is a proper surety for the amount of the bail that you have asked for." But, what he does? He does not accept that version. What we have provided is only, that for the purpose of determining whether the sureties are sufficient, the Court may accept an affidavit. Why should the provision be 'may' and 'if it so thinks fit'. These two discretionary things are in his hands. My humble submission is, that under such circumstances, if there are advocates—advocates are always present in such places—of long standing

[Shri U. M. Trivedi]

the Magistrate may verify from them—I mean some other advocates, and not necessarily the advocate who may appear for the accused person or the person offering the bail—regarding the surety offered. That advocate may be able to say: "Yes, Sir; I know him. He lives at such and such a village in such and such a mohalla. He is quite good and is worth the bail." I remember, in a case at Rangoon, there was one very good Magistrate, the Eastern Sub-divisional Magistrate named U Ba Kya. He always insisted upon having the sureties produced before him and he would only enquire from Indians who had not even residential quarters of their own: "What business you are doing?" Even if he were a *pan-gumtiwala*, a betel seller, he would only ask that question. If the man replied: "I am a betel seller worth Rs. 1000 or Rs. 2000", he used to accept his bail without going into further details. That is a salutary way of doing things. So long as he was the Eastern Sub-divisional Magistrate, it changed the whole atmosphere so much that the police, perhaps, forgot the methods of extorting money from the poor accused persons. I say that a similar provision must be made here. If an affidavit is filed and if the correctness of such an affidavit is verified by substantial witnesses; persons of a reputable type and who know our present law, it should be accepted. If persons who have seven years standing as advocates of Supreme Court, say that what is stated in the affidavit is correct, then that version must be accepted.

Dr Katju: Do you want an affidavit from the advocate?

Shri S. S. More: Even a certificate will do.

Dr. Katju: I do not understand the meaning of the word 'verification'.

Shri U. M. Trivedi: I have not used the word 'verification'.

Dr. Katju: The second point I would like you to deal with is: do you want now that an advocate should, in addition to practising before a Court, become a verifier of affidavits?

Pandit K. C. Sharma: He cannot do it under professional etiquette.

Dr. Katju: You are dragging up the profession or you are dragging it down?

Shri U. M. Trivedi: I do not want to drag it down or raise it up in the manner the hon. Minister wants.

Mr. Deputy-Speaker: The hon. Home Minister does not know the practice in Madras. In Madras an advocate is competent to register a *vakalat* and is also competent to register an affidavit. All that he is responsible for while registering an affidavit is whether the statement has been made on oath; he is not responsible for the correctness of it.

Dr. Katju: My hon. friend is suggesting that verification should be made by the advocate whether the statement made in the affidavit is correct.

Mr. Deputy-Speaker: I do not think any lawyer ought to take that responsibility.

Dr. Katju: Just ask my hon. friend.

Shri U. M. Trivedi: I do not want to say that the advocate himself will make the verification. My learned friend has not followed me. I have merely said......

Dr. Katju: You may now deny that statement because the Deputy-Speaker said that. But, the sense of what you said was that the advocates should verify whether the facts stated in the affidavit are correct. It is in writing here.

5 P.M.

Shri U. M. Trivedi: Everything is in writing; what you said is also in writing. Anyhow, what I was saying......

An Hon. Member: The time is up.

Mr. Deputy-Speaker: The hon. Member is likely to take some more time. He may continue tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, the 7th December, 1954.