LOK SABHA

Tuesday, 7th December, 1954

The Lok Sabha met at Eleven of the Clock

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(See Part I)

12-06 P.M.

BUSINESS OF THE HOUSE

ORDER OF GOVT. BUSINESS FOR REMAINING PART OF THE SESSION

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): Sir, with your permission, I would like to inform the House that after the passing of the Code of Criminal Procedure (Amendment) Bill, Government business for the remaining part of the session will be taken up in the following order:—

1. The Hindu Minority & Guardianship Bill.
2. The Preventive Detention (Amendment) Bill.
3. The Tea (Second Amendment) Bill.
4. The Indian Tariff (Third Amendment) Bill.
5. The Industrial Disputes (Amendment) Bill.
6. The Prevention of Disqualification (Amendment) Bill.
7. Resolution regarding Railway Convention Committee's Report.

8. Supplementary Demands (General).
9. Supplementary Demands (Andhra).
10. University Grants Commission Bill.
11. Economic Policy Debate.
12. Debate on Progress Report of the First Five Year Plan.
13. Debate on Scheduled Castes Commissioner's Report.

The House is aware of the allocation of time approved by it for the various items mentioned by me except for item Nos. 7 and 10, that is, Resolution on Railway Convention Committee's Report and University Grants Commission Bill. The Business Advisory Committee will be moved shortly to allocate time for these items.

According to the programme submitted by me the debate on Economic Policy will take place on Monday, the 20th, and Tuesday, the 21st December, and the debates on the Progress Report and the Report of the Commissioner for Scheduled Castes and Scheduled Tribes on the 22nd, 23rd and 24th December.

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

Clause 22

Mr. Speaker: Before the House resumes clause by clause consideration of clauses 89 to 102 (excluding clause 97) which was not concluded yesterday, I will dispose of clause 22. As the House is aware, Shri Pataskar has moved his amendment No. 537

[Mr. Speaker]

to this clause and there are four amendments to this amendment which the hon. Members may now move, namely, amendments Nos. 541 by Shri V. G. Deshpande, 542 by Shri Sadhan Chandra Gupta and Shri V. P. Nayar and 571 and 572 by Shri K. S. Raghavachari.

The House will then dispose of the remaining clauses of the Bill, namely:—

(i) Clauses 89 to 102 excluding clause 97 which has already been adopted;

(ii) Clauses 103 to 116 and the Schedule excluding clause 114 which has already been adopted;

(iii) Clause 2 which has been held over; and

(iv) Consequential amendments.

As the House is aware, 35 hours were allotted for the clause by clause consideration of the Bill, out of which 31 hours and 57 minutes have so far been availed of and 3 hours and 3 minutes now remain. This would mean that the second reading of the Bill will conclude by about 3-10 P.M. or a few minutes later.

Thereafter, the House will take up the third reading of the Bill for which 5 hours have been allotted.

Now, in view of this allotment and the time available, the discussion on these amendments has necessarily to be very short and it was also agreed —if I mistake not—that it will be short.

Shri Venkataraman (Tanjore): Sir, in clause 114, only the First Schedule has been voted upon in connection with clauses 25 and 97. The other parts (b) and (c) of clause 114 should not be deemed to have been voted upon because they relate to an entirely different matter from the 3 sections which are kept together. Clause 25 deals with defamation. That was also what the Deputy-Speaker ruled the other day when this matter was brought.

Mr. Speaker: I will look into the matter and whatever is not voted upon will be placed before the House.

Shri V. G. Deshpande (Guna): I beg to move:

That for the amendment moved by Shri Hari Vinayak Pataskar printed as No. 537, the following be substituted, namely:—

"Provided further that such use of statement before the police will not be taken into consideration by the Magistrate while deciding upon the question of reliability of the witness to the prejudice of the accused."

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

That in the amendment moved by Shri Hari Vinayak Pataskar printed as No. 537, *add* at the end:

"and no part of the evidence of a prosecution witness which is favourable to any accused person shall be held to be discredited by reason of any omission in such statement or of any inconsistency or discrepancy with the evidence of such witness which may be contained in such statement."

Shri Raghuvachari (Penukonda): I beg to move:

(1) That in the amendment moved by Shri Hari Vinayak Pataskar printed as No. 537—

(i) *after* "prosecution" *insert* "to contradict the witness"; and

(ii) *omit* "as evidence".

(2) That in the amendment moved by Shri Hari Vinayak Pataskar printed as No. 537, *for* "be used as evidence" *substitute* "lead to any inference".

Mr. Speaker: The amendments are now before the House.

Shri Sadhan Gupta: I looked into Shri Pataskar's amendment, but I do not think it serves any purpose. Shri Pataskar seems to provide a new proviso.....

The Minister in the Ministry of Law (Shri Pataskar): After a good deal of consideration and having listened to the arguments on the other side, I would prefer to withdraw the amendment, which I had moved last time, if the House so permits.

Pandit Thakur Das Bhargava (Gurgaon): When the amendment was moved by the hon. Shri Pataskar, the Home Minister was pleased to say that, though he is not opposed to the amendment, it has got no effect and the law stands where it does in spite of the amendment. There is no use in our discussing the amendment when it is absolutely of no use so far as Government is concerned and we know it makes no difference so far as the law is concerned.

Shri S. S. More (Sholapur): Whatever interpretation the Home Minister might put on the amendment, it is not relevant for the purpose of withdrawing it. The Mover may give us some reasons why he wishes to withdraw it.

Mr. Speaker: We need not discuss it at this stage. As I see, the situation is that Shri Pataskar would like to withdraw his amendment, whatever his reasons may be.

Shri N. C. Chatterjee (Hooghly): May we know the reasons?

Mr. Speaker: If it is the pleasure of the House to allow him to withdraw it, the amendment will be withdrawn. If it is not the pleasure of the House, then, of course, the amendment will be discussed with the amendments to this amendment, and ultimately, the House will either vote it down or vote for it.

Shri Pataskar: I would like to ask the House to permit me to withdraw the amendment.

Mr. Speaker: Let me first put it to the vote of the House without any further debate on the question.

The question is:

> "That leave be granted to withdraw amendment No. 537 moved by Shri Pataskar."

Those in favour will say 'Aye'.

Several Hon. Members: 'Aye'.

Mr. Speaker: Those against will say 'No'.

Several Hon. Members: 'No'.

Mr. Speaker: I am not able to decide merely on voice as to whether the House voted for leave or against leave being granted to withdraw the amendment. I will put it again.

Shri S. S. More: May I bring to your notice that if permission for withdrawal has to be given, it ought to be unanimous?

Mr. Speaker: I am putting it as a motion to the House actually. Those in favour of the motion will say 'Aye'.

Several Hon. Members: 'Aye'.

Mr. Speaker: Those against will say 'No'.

Several Hon. Members: 'No'.

Mr. Speaker: The 'Ayes' have it.

An Hon. Member: The 'Noes' have it.

Mr. Speaker: If a division is required, that time will be taken away from the amount of 3 hours or so allotted for the clauses. Let the bell be rung.

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

Shri Raghavachari: May I make a submission, with your permission, Sir? Under the Rules of Procedure, the provision is that the withdrawal of the amendment cannot now be

[Shri Raghavachari]

put to the House. My submission is that I have myself moved two amendments to that amendment. Under Rule 124, unless my amendments have been disposed of, the question regarding leave to withdraw the original amendment cannot be put.

Shri K. K. Basu (Diamond Harbour): Withdraw the ruling.

Mr. Deputy-Speaker: What I find is this. I do not want that the House should divide on this small issue whether leave ought to be granted or not granted.

Shri S. S. More: It is not in accordance with the Rules.

Mr. Deputy-Speaker: Apart from the Rules, we shall take up the amendments to the amendment of Shri Pataskar, and afterwards find out whether the House is in favour of Shri Pataskar's amendment. It is good that all hon. Members are here so that they may watch the proceedings.

Shri Raghavachari: May I submit that there is another point? Just before you occupied the Chair, the Speaker was pleased to say, when we raised an objection that the amendment cannot be withdrawn even if it is objected to by one Member, that he would put it to the House as a substantive motion. He has already given this ruling. I am trying to place before the House the construction of Rule 124 and point out that the ruling that the Speaker gave that it will be put as a substantive amendment.....

Shri A. M. Thomas (Ernakulam): He is blowing hot and cold in the same breath?

Shri Raghavachari: What is wrong.....

Mr. Deputy-Speaker: There is absolutely no inconsistency. As pointed out in Rule 309, all that the Speaker meant was that this amendment of Shri Pataskar stood by itself. Then, what he said was quite in order. Rule 309 says:

> "But, if any dissentient voice be heard or a member rise to continue the debate, the Speaker shall forthwith put the motion."

Assuming that Shri Pataskar's amendment stood by itself, it may be treated as a motion, and if there is even a single dissentient voice, the motion will be put to the House: not the leave to withdraw, but the motion itself. That is what he meant.

Some Hon. Members: No, no.

Mr. Deputy-Speaker: Ultimately, my opinion regarding the matter is this. Can I ask any hon. Member to decide for me? This is the interpretation that I put upon it. All that he wanted to say was, as soon as there was opposition to leave being granted,—there was not one dissentient voice; at their top, there were many dissentient voices—he thought that the motion itself must be put to the vote of the House. I now find that the motion does not stand by itself. There are a number of amendments to that amendment. This comes under the proviso. The proviso is that if an amendment has been proposed to a motion, the original motion shall not be withdrawn until the amendment has been disposed of. Therefore, I will take up amendment after amendment and then put it to the vote of the House. Hon. Members may continue to sit in their places and take part in the discussions.

Shri Raghavachari: There is another point. When we have moved amendments to that amendment, our amendments cannot be put to the House unless there has been a short discussion about the matter which the Speaker was pleased to say. There will be. So without a discussion of all the amendments, you cannot put them to the House.

Mr. Deputy-Speaker: I shall allow a short discussion. Now, Shri

Pataskar's amendment, all the amendments to that amendment and the clause are before the House.

Shri Sadhan Gupta: As I said, the amendment of Shri Pataskar without further amendment, does not make any sense.

Shri Venkataraman: That is why he is withdrawing it.

Shri Sadhan Gupta: What he seeks to provide is that the statement to the police or any part thereof which has been used for the purpose of contradicting a witness, will not be used as evidence against the accused. It is not clear what Shri Pataskar meant. Evidence is either substantive evidence, that is to say, something to prove a fact or corroborative evidence, which corroborates an evidence given to prove a fact or to contradict such evidence. When Shri Pataskar say it will not be used as evidence, what does he mean? Obviously, it cannot be used as substantive evidence because a police statement cannot be used as substantive evidence under the Evidence Act. It cannot be used as corroborative evidence. The only other point which remains is that it should not be used as evidence to discredit a witness against whom it is used. That, I presume, was Shri Pataskar's intention. But, that intention has not been well expressed at all. Therefore, what I would suggest is either that amendment No. 371 or some similar amendment if there is any to clause 22 should be accepted or any amendment to Shri Pataskar's amendment should be accepted, which specifically provides that these police statements should not be used to discredit the witness whose evidence goes in favour of the accused. That is why I have suggested an amendment to Shri Pataskar's amendment, which is No. 542. What I propose is to add at the end of the amendment these words:

> "and no part of the evidence of a prosecution witness which is favourable to any accused person shall be held to be discredited by reason of any omission in such statement or of any inconsistency or discrepancy with the evidence of such witness which may be contained in such statement."

That part of it is explained by saying that it will not be used as evidence to discredit the prosecution witness in respect of that part of his evidence which is favourable to the accused. Why a prosecution witness should not be discredited by the police statement, I have submitted and others have submitted over and over again and so I need not repeat all that. I submit that this is only a fair course to the accused. This is the only amendment. Or, there may be similar amendments. I do not object to the acceptance of any similar amendment. But, this is the only kind of amendment which would make sense out of Shri Pataskar's amendment.

Shri Raghavachari: I have only moved two amendments.

Mr. Deputy-Speaker: The House is now debating clause 22, and the amendments relating thereto, and Shri Pataskar's amendment and the amendments to that amendment.

Shri Raghavachari: I have submitted all that I had to say about other matters. About the particular amendment of Shri Pataskar, I have given two amendments to make it clear because he said that no part of such evidence shall be allowed as evidence against the accused. His amendment relates to some part of the diary statement coming in cross examination and some other part in re-examination. I only wanted to make the matter clear as to what it is that should not be allowed as evidence. Is it that which has been used by the prosecution in cross examination or even in re-examination. All he has said is, by the prosecution, Therefore, I wanted to make it clear. There is no need to elaborate the arguments in this regard. That is all I have to say.

Mr. Deputy-Speaker: Does the hon. Minister want to say anything on these amendments?

The Minister of Home Affairs and States (Dr. Katju): Yes. The House will remember that there are two points to be considered. In every trial, criminal or civil, one question before the Court is: Is this witness reliable? The second question is: is this evidence on any particular point, the whole of it or part of it, admissible against the opposite party? In a criminal case, the question always arises: is this evidence admissible against the accused? Secondly, is the man who is giving the evidence worthy of credit?

Now, a prosecution witness is examined by the police. His statement is recorded in what I call always the diary. It is the diary statement. He comes before the Court, gives evidence on oath as the prosecution witness. The Code provides already that if his evidence is in any way contrary or materially differs from the statement as recorded in the diary, then it is open to the defence to contradict him by that in order to persuade the Court to hold that the witness is not a reliable witness. And the diary statement never becomes evidence in the case. It is the witness's credibility that is questioned. Of course, the object of the defence is to show that the statement which the witness is making on oath should not be believed, but the statement which he made before the Police was much more reliable. It does not matter to me whether it is reliable or not reliable, but the statement which he has made on oath is not to be depended upon. Similarly, when this witness says something in favour of the accused and the prosecution succeeds in satisfying the Magistrate or the Sessions Judge that the witness has been bought over, has been won over and has become hostile to the prosecution, then, in order to induce the Court to hold that the witness is not a reliable witness, is not a dependable witness, is not a truthful witness, according to the proposal in the Bill, the Court may grant leave to the prosecuting counsel to contradict the witness by the diary statement. But, by this process, the diary statement does not become evidence against the accused. The witness is demolished either in whole or in part. It may be only a sentence, but in no way does the diary statement become admissible against the accused.

Now, I suggest respectfully that the only thing that we are concerned with here is that in no circumstance should the prosecution be able to bring a diary statement as substantive evidence in the case. I entirely agree that the diary statement should not be used for that purpose, can never be used for that purpose. Even a 164 statement is not evidence against the accused, and what more is required? I submit that to place any restriction on the Court as to whether a witness should or should not be believed would be very improper. That is a matter entirely within the discretion of the Court. The witness is there. His demeanour is there, the way in which he gives evidence. The learned Judge will have to record that the diary statement is the correct statement and then draw his conclusion. When the witness, at the instance of the prosecution is confronted with the diary statement, it will be for him to say whether he made that statement before the police or not. If he does admit it and says: "Yes, I said so to the police, but I am saying something different today," then the Court will ask him what is the reason, and then it will have to enquire into it. If, on the other hand, the witness says: "I never said any such thing to the police", because he has not signed the statement and it has not been read over to him, then it will be for the police to prove by producing the Inspector, the man who made the diary statement, and he will come forward and say: "Yes the witness did say so", and then, it will be for the learned Magistrate or the learned judge to hold which one

was speaking the truth, whether the witness was speaking the truth, or whether the man who recorded the diary statement was speaking the truth. I respectfully submit that for the House to take any step, to enact any law which will throw any burden or cast any restriction upon the fullest exercise of the discretion and the liberty of any Court to come to a conclusion upon the reliability or otherwise of a witness would be very improper and would be contray to all notions of justice.

That is all that I have to say, and I submit, therefore, that the amendments to the amendment which have been moved, in so far as they say in so many words that it is not to be used for the purpose of discrediting the witness, will destroy the very object of the procedure.

Shri Bhagwat Jha Azad (Purnea *cum* Santal Parganas): Could I get one question answered by the hon. Minister? Then we will agree with him. What is the guarantee or the safety against the police exercising pressure or by torture getting something which the witness does not want to depose when he comes to the police to give evidence, and then contradict him in the Court and pin him down?

Dr. Katju: My hon. friend has done me little justice. When the witness is confronted before the Court, it will be open to him to say either "I never made that statement before the police", or, "I made the statement, but it was under torture", or that it was simply extorted out of him, and then there will be an enquiry before the Magistrate as to whether the witness was telling the truth or not. Please remember....

Shri S. S. More: How can there be any enquiry?

Shri Raghavachari: Where is there any enquiry?

Shri Bhagwat Jha Azad: What is the necessity for this improvement then?

Mr. Deputy-Speaker: The hon. Member put a question. He must wait for an answer. He cannot go on cross-examining.

Shri Bhagwat Jha Azad: I am not satisfied.

Mr. Deputy-Speaker: If he is not satisfied, he is not satisfied.

Dr. Katju: If witness admits having made that statement freely and voluntarily, no question arises and he will have to explain away the difference between the two, but if the witness has been bought over, made that statement, or he made that statement under torture, then it will be the bounden duty of the police officer to come into the witness box and to swear that the witness made that statement, and then it will be open to the defence to cross-examine him to his heart's content. And I must repeat once again that we are saying this about the diary statement—for the purposes of cross-examination by the defence, the diary statement is supposed to be a very valuable document, a truthful document, but when it comes to the question of its being utilised when the witness has been bought over, there is objection. Because, please remember if there is the possibility of a witness being tortured or a statement being put in his mouth, there is also the great possibility these days—it is a common experience—of witnesses being bought over deliberately either by money or by pressure or by anything, and we are here to see to it that justice is done.

Shri Bhagwat Jha Azad: Even now he is open to be bought over.

Mr. Deputy-Speaker: Order, order. We cannot go on having a discussion.

The question is:

That for the amendment moved by Shri Hari Vinayak Pataskar printed as No. 537, the following be substituted, namely:

"Provided further that such use of statement before the police will not be taken into considera-

[Mr. Deputy-Speaker]

tion by the Magistrate while deciding upon the question of reliability of the witness to the prejudice of the accused."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

That in the amendment moved by Shri Hari Vinayak Pataskar printed as No. 537,*add* at the end:

"and no part of the evidence of a prosecution witness which is favourable to any accused person shall be held to be discredited by reason of any omission in such statement or of any inconsistency or discrepancy with the evidence of such witness which may be contained in such statement."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

That in the amendment moved by Shri Hari Vinayak Pataskar printed as No. 537—

(i) *after* "prosecution" *insert* "to contradict the witness"; and

(ii) *omit* "as evidence".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

That in the amendment moved by Shri Hari Vinayak Patasker printed as No. 537, *for* "be used as evidence" *substitute* "lead to any inference".

The motion was negatived

Mr. Deputy-Speaker: The question is:

In page 6, *after* line 17, *add*:

"Provided further that the statement or any part thereof so used by the prosecution shall not be used as evidence against the accused."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 22....."

Shri Dabhi (Kaira North): There are amendments.

Mr. Deputy-Speaker: Have any amendments been carried to clause 22? No. All other amendments to clause 22 moved earlier are not being pressed.

Shri Venkataraman: Except Shri Pataskar's amendment and amendments to that, all amendments have been disposed of by the House.

The Deputy Minister of Home Affairs (Shri Datar): They have all been thrown out.

Mr. Deputy-Speaker: That is what I wanted to know—whether I should put the clause as it is or put it as amended.

The question is:

"That clause 22 stand part of the Bill."

The Lok Sabha Divided: Ayes 132, Noes 39.

AYES

[Division No. 5] [12-40 P.M.

Abdullabhai, Mulla
Achal Singh Seth
Agarawal, Shri H. L.
Agrawal, Shri M. L.
Akarpuri, Sardar
Alagesan, Shri
Anekar, Shri
Anseri, Dr.
Asthana, Shr
Azad Maulana
Balasubramaniam, Shri
Barman, Shri
Barupal, Shri P. L.
Basappa, Shri
Bhagat, Shri B. R.
Bhatt, Shri C.
Birbal Singh, Shri
Bogawat, Shri
Borkar, Shri N. A.
Brajeshwar Prasad, Shri
Chanda, Shri Anil K.
Chandak, Shri
Charak, Th. Lakshman Singh
Chaturvedi, Shri
Chavda, Shri
Chinaria, Shri
Choudhuri, Shri M. Shaffee
Das, Shri K. K.
Das, Shri Ram Dhani
Datar, Shri

Desai, Shri K. N.
Deshpande, Shri G. H.
Dholakia, Shri
Dhulekar, Shri
Dhusiya, Shri
Dube, Shri Mulchand
Dube, Shri U. S.
Dwivedi, Shri D. P.
Eacharan, Shri I.
Elayaperumal, Shri
Gandhi, Shri Feroze
Gandhi, Shri V. B.
Ghose, Shri S. M.
Gupta, Shri Badshah
Hasda, Shri
Hazarika, Shri J. N.
Hembrom Shri
Ibrahim, Shri
Jajware, Shri
Jangde, Shri
Jayashri, Shrimati
Jogendra Singh, Sardar
Joshi, Shri Jethalal
Joshi, Shri M. D.
Joshi, Shrimati Subhadra
Kakkan, Shri
Kale, Shrimati A.
Kasliwal, Shri
Katju, Dr.
Keshavaiengar, Shri
Krishnappa, Shri M. V.
Lakshmayya, Shri
Lallanji, Shri
Laskar, Shri
Lotan Ram, Shri
Madiah Gowda, Shri
Mahodaya, Shri
Malaviya, Shri K. D.
Malliah, Shri U. S.
Malvia, Shri B. N.
Malviya, Pandit C. N.
Mehta, Shri Balwant Sinha
Mehta, Shri B. G.
Minimata, Shrimati
Mishra, Shri Bibhuti
Mishra, Shri M. P.
Misra, Shri R. D.
Morarka, Shri
More, Shri K. L.
Mudaliar, Shri C. R.
Musafir, Giani G. S.
Narasimhan, Shri C. R.
Nehru, Shrimati Uma
Palchoudhury, Shrimati Ila
Parikh, Shri S. G.
Pataskar, Shri
Patel, Shri B. K.
Patel, Shrimati Maniben
Radha Raman, Shri
Raghubir Sahai, Shri
Raghubir Singh, Ch.
Ram Das, Shri
Ramananda Tirtha, Swami
Rane, Shri
Ranjit Singh, Shri
Raut, Shri Bhola
Roy, Shri Bishwa Nath
Saksena, Shri Mohanlal
Samanta, Shri S. C.
Satish Chandra, Shri
Sen, Shrimati Sushama
Shah, Shri R. N.
Shahnawaz Khan, Shri
Sharma, Pandit Balkrishna
Sharm Pandit K. C.
Sharma, Shri D. C.
Sharma, Shri R. C.
Shivananjappa, Shri
Singh, Shri D. N.
Singh, Shri Babunath
Singh, Shri H. P.
Singh, Shri L. Jogeswar
Singh Shri M. N.
Singh, Shri T. N.
Sinha, Shri A. P.
Sinha, Shri K. P.
Sinha, Shri Satya Narayan
Sinha, Shri Satyendra Narayan
Shri
Sundar Lal, Shri
Swaminadhan, Shrimati Ammu
Telkikar, Shri
Thimmaiah, Shri
Tiwari, Pandit B. L.
Upadhyay, Pandit Munishwar Datt
Upadhyay, Shri Shiva Dayal
Vaishnav, Shri H. G.
Vaishya, Shri M. B.
Venkataraman, Shri
Vijaya Lakshmi, Shrimati
Vishwanath Prasad, Shri
Wilson, Shri J. N.

NOES

Achalu, Shri
Amjad Ali, Shri
Bagdi, Shri Madan Lal
Banerjee, Shri
Basu, Shri K. K.
Biren Dutt, Shri
Boovaraghasamy, Shri
Chakravartty, Shrimati Renu
Chatterjea, Shri Tushar
Chatterjee, Shri N. C.
Chaudhuri, Shri T. K.
Chowdhury, Shri N. B.
Das, Shri Sarangadhar
Gadilingana Gowd, Shri
Gidwani, Shri
Gopalan, Shri A. K.
Gupta, Shri Sadhan
Gurupadaswamy, Shri M. S.
Hukam Singh, Sardar
Kelappan, Shri
Kripalani, Shrimati Sucheta
Majhi, Shri Chaitan
Mascarene, Kumari Annie
Mehta, Shri Asoka
More, Shri S. S.
Mukerjee, Shri H. N.
Nayar, Shri V. P.
Pandey, Dr. Nutabar
Raghavachari, Shri
Ramnarayan Singh, Babu
Randaman Singh, Shri
Rao, Dr. Rama
Rao, Shri Gopala
Rao, Shri K. S.
Rao, Shri T. B. Vittal
Razmi, Shri S. K.
Shakuntala, Shrimati
Trivedi, Shri U. M.
Verma, Shri Ramji

The motion was adopted.

Clause 22 was added to the Bill.

Clauses 89 to 102 (excluding clause 97) and New clause 93A.

Mr. Deputy-Speaker: We will now take up further discussion on the group of clauses from 89 to 102. Mr. **Trivedi** was in possession of the House yesterday. He will continue his speech now.

Before that, I have to announce the list of various amendments that have been sought to be moved and chits with respect to which **have** been handed at the Table. Hon.

[Mr. Deputy-Speaker]

Members may now move these amendments, subject to their admissibility.

New Clause 89A: 521, 643.

Clause 90: 528, 529, 530. 630. 631, 632, 633.

Shri Barman (North Bengal—Reserved—Sch. Castes): Sir, I have given notice of an amendment to clause 90, No. 659 just now and I suppose it is acceptable to Government.

Mr. Deputy-Speaker: Yes, that will be included.

Clause 90: 659 also.

Clause 91: 531.

Clause 93: 334, 634, 532, 335 and 647.

New Clause 93A: 336 and 635.

Clause 94: 636, 463, 533, 569, 570 and 534.

Clause 96: 464

Clause 100: 638.

There are no other amendments.

New Clause 89A

Shri Sadhan Gupta: I beg to move:

In page 24, *after* line 42, *insert*:

"89A. *Amendment of section 478, Act V of 1898.*—In sub-section (2) of section 478 of the principal Act, for the word and letters 'Chapter XVIII' the words and figures 'Section 208 to Section 220' shall be substituted."

Shri Sadhan Gupta: I beg to move:

That in the amendment moved by me and printed as No. 521, *after* "Section 220" *insert* "inclusive".

Clause 90

Shri R. D. Misra (Bulandshahr Distt): I beg to move:

In page 25, lines 4 to 8, *for* "and that, 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 for the offence which appears to have been committed by him" *substitute* "and has thereby committed an offence punishable under sections 193, 194 or 195 of the Indian Penal Code (Act XLV of 1860)".

Pandit Thakur Das Bhargava: I beg to move:

(1) In page 25, lines 4 to 6, *omit* "for the eradication of the evils of perjury and fabrication of false evidence and"

(2) In page 25, *after* line 24, *add*:

"(IA) An appeal shall be from the order passed under sub-section (1) to the Court to which appeal would ordinarily have been made in the case in which such proceedings are taken at the instance of the person aggrieved by such order."

Shri R. D. Misra: I beg to move:

In page 25, *omit* lines 27 and 28.

Pandit Thakur Das Bhargava: I beg to move:

(1) In page 25, *omit* lines 27 and 28.

(2) In page 25, *omit* lines 29 to 39.

Shri R. D. Misra: I beg to move:

In page 25, line 30, *after* "preferred" *insert*:

"by any person aggrieved by the judgment or final order of the Court"

Shri Barman: I beg to move:

In page 25, line 11, *for* "shall, without making any further inquiry" *substitute* "may, if it so thinks fit, after giving the witness an opportunity of being heard."

Clause 91

Shri R. D. Misra: I beg to move:

In page 26, *for* lines 14 to 21 *substitute*:

"punished for the offence, the Court may make a complaint

under section 476 thereof in writing signed by the presiding officer of the Court and forward the same to a Magistrate of the first class having jurisdiction, after giving an opportunity of showing cause why he should not be prosecuted and punished for such an offence.".

Clause 93

Shri M. L. Agrawal (Pilibhit Distt. *cum* Barielly Distt.-East): I beg to move:

In page 26, line 28, *for* "five hundred rupees" *substitute* "one hundred and fifty rupees".

Pandit Thakur Das Bhargava: I beg to move:

In page 26, line 28, *for* "five hundred rupees" *substitute* "three hundred rupees".

Shri R. D. Misra: I beg to move:

In page 26, line 28, *for* "five hundred rupees" *substitute* "five hundred rupees but in no case exceeding fifty percent. of the monthly income of the husband".

Shri M. L. Agrawal: I beg to move:

In page 26, line 28, *add* at the end:

'and the words "in the whole" shall be omitted'.

Shri R. D. Misra: I beg to move:

In page 26, line 28, *add* at the end:

'and the following proviso shall be added, namely:—

"Provided that any person aggrieved by an order passed under sub-section (1) may appeal to the Court of Sessions."'

New Clause 93A

Shri M. L. Agrawal: I beg to move:

In page 26, *after* line 28, *insert*:

'93A. *Amendment of section 489, Act V of 1898.*—In sub-section (1) of section 489 of the principal Act, for the words "one hundred rupees in the whole be not exceeded" the words "one hundred and fifty rupees be not exceeded" shall be substituted'.

Pandit Thakur Das Bhargava: I beg to move:

In page 26, *after* line 28, *insert*:

'93A. *Amendment of section 496, Act V of 1898.*—In section 496 of the principal Act, for the words "other than a person accused of a non-bailable offence" the words "is accused of, complained of or suspected of any bailable offence or" shall be substituted.'

Clause 94

Pandit Thakur Das Bhargava: I beg to move:

In page 26, line 31, after "in sub-section (1)" *insert*:

"(i) for the words "When any person accused of any non-bailable offence" the words "When any person is accused of, complained of or suspected of any non-bailable offence or" shall be substituted;

(ii) after the words "before a Court" the words "as being accused of, complained of or suspected of any such offence" shall be inserted; and (iii)".

Shri U. M. Trivedi (Chittor): I beg to move:

In page 26, line 32, *add* at the end:

'and after the proviso the following further proviso shall be inserted, namely:—

"Provided further that when 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

[Shri U. M. Trivedi]

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.".

Shri R. D. Misra: I beg to move:

In page 26, line 36, *after* "offence" *insert* "excepting the offences of robbery and dacoity punishment under sections 392, 393, 394 and 401 of the Indian Penal Code (Act XLV of 1860)".

Shri Sadhan Gupta: I beg to move:

(1) In page 26, lines 37 and 38, *for* "from the first date fixed for taking evidence in the case" *substitute*:

"from the date on which such person was first arrested"

(2) In page 26, line 39, *for* "the whole" *substitute* "any part".

Shri R. D. Misra: I beg to move:

In page 26, line 41, *add* at the end:

"In every such case which is not concluded within a period of sixty days the Magistrate shall forward his explanation to the State Government through the District Magistrate for not concluding the trial within the period prescribed.".

Clause 96

Shri U. M. Trivedi: I beg to move:

In page 27, line 8, *add* at the end:

"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 correction thereof.".

Clause 100

Shri Sadhan Gupta: I beg to move:

In page 27, line 43, *add* at the end:

"in which such affidavit is affirmed or sworn".

Mr. Deputy-Speaker: All these amendments are now before the House.

Shri U. M. Trivedi: At the close of the day yesterday, the hon. Home Minister suggested that by my amendment, I was bringing down the noble profession of the advocates. I do not know from where he heard what I spoke or from where he read what I had spoken. I had only suggested that an advocate of seven years' standing may certify if he knows about it to the correctness of the affidavit, not that he will verify the affidavit, not that he will swear the affidavit, not that he will give any evidence on the affidavit. However, the position is only this much. So far as I am concerned, the harassment to the person by the police should not be there. Even as late as 15 Cal. 455, the Courts had laid down that leaving the decision as to the sufficiency of bail to the police is entirely illegal. The same thing holds good today. Making enquiries from the police and handing over the prey to the police to prey very well upon that victim is wrong. My suggestion was, therefore, only this that the Court must be enjoyed upon to make an independent enquiry and an enquiry from respectable persons as to the sufficiency of the bail instead of giving it over to some ministerial officer to carry on that enquiry or leave it to the police to make enquiries and carry on the harassment further. That was the object with which I had spoken.

I do not want to take much time of the House. I had already spoken on the question of anticipatory bail. But, I

heard some whisper going on that the hon. Minister wanted to accept some amendment on this question of anticipatory bail. It would be a very wise thing if he were to agree to this. The word 'appear' as laid down in section 497 as it stands to day, namely,

> "When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail,...."

has been properly interpreted to mean an appearance through an advocate also. It should not be insisted upon that the meaning of this word 'appear' should be whittled down to the extent that he should appear in person. At various other places, wherever the presence of the accused or the presence of the witness in person is insisted upon, the words used are 'appear in persons'. It is very clear. But, where the words 'in person' do not appear, to insist upon it and say that he should appear in person is, I say, hardship which he wants to perpetuate. It would be in the fitness of things to add a few words or make a proviso as I have suggested to indicate that we are not agreeable to the interpretation which has been put upon by the East Punjab High Court that there must be appearance in person. I think that a provision for anticipatory bail would be welcome to those who are made to run from one place to another. Not only that, we have seen that where the question of political offence is concerned, where the question is only breaking of the law under section 144 and the man is willing to go to court, the police sees to it that he does not surrender under any circumstance and that he falls into their clutches to be humiliated and subjected to all sorts of atrocities. Under these circumstances, it is quite proper that an appearance through the pleader should be made and that it should be provided for.

Shri Raghavachari: I only wish to offer a few comments on clause 90. This clause refers to the cases of false evidence, and a new provision is proposed now. This is, no doubt, intended to discourage perjury and the Home Minister fondly believes that this procedure will really discourage perjury. Before we can agree or disagree whether this purpose will be achieved or not, we must see why this perjury is committed. It cannot disappear merely at the threat of this clause being enforced. This provision, as I have already submitted, is not likely to root out perjury which is rampant. This is based upon other considerations. It may be that the man is serving his party or his group. It may be his desire for money. It may be his desire to succumb to influences and certainly those cases will not be either discouraged or prevented by this procedure.

The next thing I wish to urge is that these powers which are given to the Court, if compared with the existing procedure, serve very little purpose. It was clearly pointed out by hon. Pandit Thakur Das Bhargava yesterday that the question of this expeditious way of dealing with the man who has committed the offence does not materialise at all, and the purpose is not achieved at all. What happens then? Formerly, there used to be an enquiry under section 476 and then an appeal and then some proceedings against the man were taken after a finding was reached by the Court sending it up for prosecution. But now, even the procedure contemplated says that wnen there is an appeal against the original matter, the matter will again lie over and you know the present provision is to cover also civil cases. When proceedings are launched against the witness of a particular party—it may be one side or the other—who has come to the Court to support, and

[Shri Raghavachari]

then if the witness gives false evidence and thus exposes his neck, do you think that there will not be an appeal against that decision? Even if there is no substance, I am sure an appeal will be filed and we know the ways of the Court: it takes months, and if it is the civil Court, years. Therefore, this expeditious procedure anticipated to prevent this perjury, as I said, will not be realised.

The next thing is, the Home Minister does not want even to given an opportunity to the witness proceeded against to be heard. The Home Minister said, what was there to be heard? All the depositions and the two statements are there. One of them is false if the other is correct. What more should the man be expected to say? I say that opportunity should be given to the man; let him say what he has to say. Then, you can reject it if necessary. So, I think it is one of the fundamental principles of natural justice that a man, before he is condemned, must be heard, and if that is not to be done, I think it will be dangerous to the society.

Another aspect was pointed out yesterday, particularly about section 90. They said very little change is required under that provision, but I am not able to see why the Government persists in not considering it. I shall just read the provision appearing at pages 24-25:

> "Civil, Revenue or Criminal Court is of opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence".

So, practically everything required to be proved to convict a man and the Court has to make up its mind upon all of them. The clause further says:

> "It is expedient that such witness should be prosecuted, for the offence which appears to have been committed by him, the Court shall," etc.

The word "appears to have been committed by him" appear later, while the earlier provisions say "is of opinion that....intentionally given false evidence," etc.

Shri Venkataraman: The Court is of opinion. It is not a finding. If I may be permitted to explain, I shall do it.

Shri Raghavachari: I agree. "It is of opinion." So, the Court is of opinion that he has intentionally committed an offence at the time of writing the judgment, and later, "it appears that he has committed the offence." It is most absurd. These two must be consistent. If the Court is of opinion that he has intentionally committed it and later on says that he appears to have committed it; is it not inconsistent? "Appears" must come earlier and "opinion" must come later. That would be something appealing to reason. I am not finding fault, but I would say that you want to stick to it and say that the whole thing has been provided for. You think that it is now sacrosanct and you do not want to change. That is the whole point.

Pandit Thakur Das Bhargava also pointed out that we might permit sub-clause (6) to remain as it is. It is a safety valve or door that Government has provided: that no action shall be taken, and there is an end of it. There is no more bother about it. My submission is that the language requires to be carefully thought out and then amended. You should not insist upon your prestige and then spoil the language in the statute.

The next thing is, no appeal is provided. So, the suspicion seems to be that if an appeal is provided, that will go on endlessly, and therefore, there will be something for agitation and that therefore, there is no need for appeal. But the very section, as is now drafted, proposes that if an appeal is filed and the appeal, when decided upon, reverses

the judgment, then the other Courts must follow it up. Therefore, taking away this right of appeal from a person who should be prosecuted at an early stage, is not right. He must be given that right also.

Another point that I wish to submit is this. If you want to threaten every witness appearing in the Court by this kind of procedure, what would be the consequence? People who are prepared to come and speak false will always stick to it consistently and in the case of those people who would otherwise be truthful or willing to speak the truth, they might make a mistake now and then and such witnesses, because of this terrible weapon that you wield, will never appear before the court. Well, is that going to help the administration of justice or discourage some truthful witnesses to go before the court? The false people will persist consistently and the truthful people will hesitate to come. The only thing where you run the risk—I mean the Government—and in which we are all interested is to maintain law and order in the country. These independent witnesses, truth ful witnesses, will think hundreds of times before they lend their names to come as witnesses before the investigating officer. You write down nothing and troubles arise later on. Therefore you should encourage truthful witnesses to come forward to give assistance in the administration of justice.

Then I come to clause 93, relating I think, to section 488. The quantum of maintenance is invariably used in sections cases and in cases where some kind of pressure is to be applied on the husband for other purposes; they say you should give this maximum of Rs. 500 for maintenance". I think it is too much. It might possibly be thought, well, Rs. 200 is nothing; the cost of living has gone up; therefore it should be Rs. 500. I should think that Rs. 500 is too much and should be reduced.

An amendment was suggested by some friend "not exceeding Rs. 300". That should be sufficient.

Shri S. S. More: The husbands should not desert their wives.

Shri Raghavachari: The only difficulty will be that a wife who wants to be an instrument in the hands of other people will lodge a proceeding. That is also possible. Therefore Rs. 300 is enough and it does deter a husband. Rs. 500 is too much.

Then the only other thing is this.

I am glad and I wish to thank the Home Minister for having made at least this concession that after two months, a man will get out of this cramped atmosphere *i.e.* jail. That is something welcome. But the unfortunate thing is that this is only after the man appears before the Magistrate for hearing and there is no time-limit for that Stage. There also the man suffers. But the real trouble is, as our friends were submitting, there is no time-limit for the man rotting in jail during the course of the investigation. Remand every fourteen days. It may be extended and it goes on endlessly.

Pandit Thakur Das Bhargava: It was six weeks from the time the accused appeared *i.e.* from the first remand and now sixty days from the date evidence is begun. It is going to be retrograde now.

Shri Raghavachari: So, we are concerned and the whole society is concerned with people in jail. They must not be unnecessarily kept in jail consistent with the desire for expeditious disposal of justice and therefore, if you exclude that portion of it, it will not really serve the purpose for which it is intended.

You know, Sir, why it is that people abscond. The complaint petition is made against many. Often other innocent people are added as accused and the investigation will be delayed for months and months. The poorer innocent people, or, the poorer accused people are unable to run away and are caught and

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put in jail. In anticipation of the richer absconding people coming in, these people must rot in jail for months and months. It is under these circumstances that this trouble and inconvenience is suffered by the other people. Why is it that the other people run away? It is because of the very merciful treatment in jail, I should say! They suffer all the inconveniences in jail. So many things happen. In one or two cases, I had to prosecute the police people themselves for having killed a man in jail by beating him. It is because of this bad treatment that people run away and when you charge-sheet them, they come and surrender themselves in the Court.

So, if you make the bail a little more liberal, I am sure investigations will be quicker. The accused will run away and you will get all materials and the matter will be disposed of often expeditiously. I submit that this desire for expeditious disposal must also weigh in the case of the period suffered by an accused in investigation stage to be counted from the date on which he is arrested.

As regards 529, that is all right.

Shri M. L. Agrawal: Mr. Deputy-Speaker, the amendments standing in my name are 334 and 335 to clause 93. In 336 I have proposed a new clause 93A. The main section 488 provides for maintenance to the wife and children and is applicable only when the wife or child has no means of subsistence and they are unable to maintain themselves. That does not confer any absolute right for an absolute quantum of maintenance. This section provides that the maintenance amount should be given to a wife or a child if there is nobody to look after him or her. Therefore, the Criminal Procedure Code comes to their help so that they may get some relief and the amount fixed in section 488 is Rs. 100 in the whole. Originally it was only Rs. 20. Then it was raised to Rs. 50 and then in 1923 it was raised to Rs. 100 . Now, after 31 years, we cannot raise it to the fabulous sum of Rs. 500 for all children and wives. I submit, Sir, nothing has happened in 1954 that should go for raising the sum. As my learned friend Mr. Raghavachari suggested, these provisions are liable to be misused and to black mailing and therefore I submit that the amendment by which it is sought to be increased to Rs. 500 is quite uncalled for. This present sum has remained in the statute for over 31 years. As the hon. the Home Minister has said several times that he did not like any amendments to such clauses as have stood the test of time, I can very well claim, Sir, that this sum also has stood the test of time and I do not see on what grounds this increase is sought to be made.

The value of Rs. 100 has not increased from 1953 to 1954. The amount was fixed at Rs. 100 in 1923 and has remained so during the worst times of inflation and now there is no particular reason in 1954 why it should be raised. Our incomes have not increased five-fold that we should raise it five times. Sir, I would submit that there is very great tightness in the money market and the maximum of Rs. 100 is more than sufficient. As a concession, my amendment seeks to raise it by Rs. 50. Left to myself, I would have left the clause as it is; but since the question of raising the limit has come up, I would raise it to Rs. 150. That is more than sufficient.

Then the second point which I want to raise by my amendment number 335 is this. It is provided in this section that this sum of Rs. 100 would be awarded in the whole. I think the words "in the whole" are ambiguous and if my impression is correct, that has led to some different views by different High Courts. Some people take it that "in the whole" means that it should be given to all the people, although it is not so. There are only few who are in favour of this view, but still the ambiguity is there. Therefore, I want that these words "in the whole" should be deleted because they do not serve any

useful purpose. The interpretation put on these words is that taking everything into consideration—that is for education, clothes and so on—Rs. 100 is the maximum that should be allowed. But, these words "in the whole" are not necessary, because whenever they award any sum all these things will be taken into consideration. Therefore, by my amendment 335 I seek to delete these words "in the whole".

My next amendment number 336 is an amendment which I hope the hon. Home Minister would readily accept. He has sought to raise this sum from Rs. 100 to Rs. 500 in section 488, but the same sum appears in section 489 sub-section(1). In sub-section(1) of section 489 it is said:

> "Provided that if he increases the allowance the monthly rate of one hundred rupees in the whole be not exceeded."

So, Sir, this amendment becomes a consequential one. If we make any change in section 488 we are bound to make a change in section 489 also; otherwise it would be meaningless. I think it is not the intention of the Home Minister that whereas the maximum limit should be Rs. 500 or Rs. 150 in section 488, it should be only Rs. 100 in section 489.

Therefore, I submit that the sum should not be raised above Rs. 150 in section 488, the words "in the whole" should be deleted and a similar change for the same reasons should be made in section 489.

With these words I commend my amendments to the House.

श्री आर० डी० भिश्र: उपाध्यक्ष महोदय, मैं ने एमेंडमेंट नं० ५२८, ५२९ और ५३० क्लाज नं० ६० के मुताल्लिक दिए हैं, एमेंडमेंट नं० ५३१ क्लाज ६५ के मुताल्लिक, एमेंडमेंट नं० ५३२ और ६४७ क्लाज ६३ के सम्बन्ध में और एमेंडमेंट नं० ५३३ और ५३४ क्लाज ६४ के सम्बन्ध में दिए हैं।

इस से पहले कि मैं अपने एमेंडमेंट पर कुछ कहूं, मैं यह कहना चाहता हूं कि यह जो नया क्लाज ६० बनाया गया है उस से कोई ऐसा मतलब सिद्ध होने वाला नहीं है कि जो लोग झूठ बोलेंगे उनको सजा मिल सकेगी। यह समझना कि हम एक नई दवा तैयार कर रहे हैं क्लाज ६० के जरिए से जिस से आइन्दा परजरी जाती रहेगी गलत है। यह समझना भी गलत है कि हम कोई नया अख्त्यार अदालतों को दे रहे हैं। अदालतों के पास आज भी दफा ४७६ मौजूद है और उसके जरिए आज भी अदालतें झूठ बोलने वालों के खिलाफ कार्यवाही कर सकती हैं। उसके खिलाफ कम्प्लेंट फाइल कर सकती हैं। लेकिन क्या वजह है कि दफा ४७६ के होते हुए झूठ इतना बढ़ गया। अब तक अदालतें कोई कार्यवाही इन झूठ बोलने वालों के खिलाफ नहीं कर सकीं और झूठ इतना बढ़ गया कि होम मिनिस्टर साहब को यह कहना पड़ा कि अदालतों में जो पुलिस के गवाह आते हैं वह झूठ बोलते हैं, जो सबूत के गवाह आते हैं वह झूठ बोलते हैं। यह सभी मानते हैं कि आज देश में झूठ बहुत बढ़ गया है। जब अदालतों को यह अख्त्यारात दिए गए हैं कि अगर अदालत को यह यकीन हो जाए कि फलां शख्स ने झूठ बोला है तो अदालत को उसके खिलाफ इस्तगासा दायर करना चाहिए, तो फिर क्या वजह है कि अदालतों ने इस झूठ को बढ़ने दिया ? इसमें मैं यह समझता हूं कि होम मिनिस्ट्री ने गौर नहीं किया, यह नहीं देखा कि कौन सी रुकावटें थीं जिन्होंने इस अख्त्यार को काम में नहीं लाने दिया। अगर आप तमाम हाई कोर्ट्स की रूलिंग्स को देखेंगे तो पता यह लगेगा कि हाई कोर्ट्स ने अदालतों के हाथों को बांधा है। जब कभी किसी गवाह पर किसी अदालत ने इस्तगासा दायर किया कि इस शख्स ने झूठा बयान दिया है, दफा १६४ में इस ने यह बयान दिया था और हमारे सामने यह बयान दिया, कमिटिंग कोर्ट के सामने यह बयान दिया था और हमारे सामने यह बयान दिया, पुलिस के सामने यह बयान दिया था और हमारे सामने यह बयान दिया, जब यह मुकदमात हाई कोर्ट्स के पास पहुंचे तो उन्होंने यह तय किया कि नहीं इन्साफ के लिए यह ठीक

[श्री आर० डी० मिश्र]

नहीं हैं कि कोई कार्यवाही की जाए। जस्टिस ब्यूमान्ट ने, जो बम्बई हाई कोर्ट के चीफ जस्टिस थे एक रूलिंग दी कि ऐसे गवाहों के खिलाफ कार्यवाही करना ठीक नहीं हैं। उनकी रूलिंग के शब्द इस प्रकार हैं:

This is a case reported under 43, Cr. L.j. 167 (Bom.). There Justice Beaumount says:

"No doubt, a man making a statement on oath before a Magistrate under section 164, Cr. P. C. should speak the truth but if he does not, the least he can do is to tell the truth when subsequently he goes in the witness box. To prosecute a man who has resiled from a false statement made under section 164, is encourage him in the belief that it pays to tell a lie and stick to it. It is far better that a man should escape punishment for having made a false statement under section 164 than that he should be induced to believe that it is to his interest, however false the statement may have been to adhere to it, and thereby save himself from prosecution. The danger to such a course leading to conviction of innocent persons is too great to be risked".

यह फैसला उन्होंने दिया। इसी तरीके पर जब मद्रास हाई कोर्ट के सामने एक केस पहुंचा तो उस मद्रास केस में जो कि क्रिमिनल ला जर्नल सन् १९४९ की रिपोर्ट में दिया हुआ हैं, इस रूलिंग को कोट कर के हाईकोर्ट ने कहा कि ऐसी बातों पर परजरी केस नहीं चलना चाहिए। इलाहाबाद हाईकोर्ट, कलकत्ता हाईकोर्ट की तमाम रूलिंग्स मौजूद हैं, उन्होंने दफा ४७६ के मुताल्लिक यह तय किया कि:

"It is not expedient in the interests of justice to prosecute the man."

जब यह शब्द आपकी इस दफा में मौजूद हैं जिन शब्दों को कोट कर के हाई कोर्टों ने लोअर कोर्ट्स को इजाजत नहीं दी कि वह किसी किस्म का इस्तगासा दायर करें, और जिस का नतीजा यह हुआ कि आज तमाम जगहों पर झूंठ का बोलबाला हैं और अदालतें कुछ कार्यवाही नहीं कर सकती हैं, तो हमारा काम यह था कि जिन लफ्जों की वजह से हाई कोर्टों ने देश की तमाम अदालतों में कार्यवाही करने में रुकावट डाली, उन शब्दों को दफा ४७६ से निकाल देना चाहिए था। अगर यह यकीन हो जाए कि किसी शख्स ने कुछ झूंठ बोला हैं अदालत की राय में, तो इस्तगासा उसके खिलाफ दायर हो जाना चाहिए और तहकीकात होने के बाद उसको सजा हो जानी चाहिए। उसमें यह नहीं लिखना चाहिए:

"It is not expedient in the interests of justice."

इन शब्दों का लिखना ही जो हैं वह रास्ते में रुकावट डालने वाला हैं। तो मेरा कहना यह हैं कि होम मिनिस्ट्री को यह चाहिए था कि जब वह दफा ४७६ पर गौर कर रही थी तो उसको इन शब्दों को निकाल देना चाहिए था। इसके बजाय उसने सोचा क्या? यह सोचा कि जो इन्क्वायरी होती हैं उससे ऐसी गड़बड़ी हो रही हैं। लोग अदालतों में चले जाते हैं, इन्क्वायरी में गवाह पेश करते हैं, उन से जिरह करते हैं इस वजह से अदालतों को झूठ बोलने वालों के खिलाफ इस्तगासा देने में देर होती हैं उनका यह सोचना गलत हैं। दफा ४७६ में 'इन्क्वायरी' लफ्ज दो जगह इस्तेमाल हुआ हैं। जहां वह पहले इस्तेमाल होता हैं तो वह इस प्रकार हैं:

"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) .....such Court may,"

यह 'इन्क्वायरी' शब्द जो हैं वह स्पिर करता हैं कमिटमेंट प्रोसीडिंग्स के लिए क्योंकि जो १९३,

१९४ और १९५ के केसेज हैं वह ट्रायबल वाई सेशन कोर्ट्स हैं। कोई भी अदालत या मैजिस्ट्रेट जब यह तय करे कि इस शख्स ने झूंठ बोला है और झूठा एविडेन्स दिया है और वह ट्रायबल वाई सेशन्स कोर्ट है तो उसको ऐसे मैजिस्ट्रेट के पास इस्तगासा भेजना होगा जो उसे सेशन भेज सके। सेशन्स कोर्ट उस की कागिनजेन्स नहीं ले सकता है इसलिए वह मजिस्ट्रेट की अदालत को कमिटमेंट प्रोसीडिंग्स और इन्क्वायरी के लिए भेज देगा। कमिटल मजिस्ट्रेट की राय में अगर जुर्म बन गया है तो वह तमाम कागजात को इकट्ठा कर के उस केस को कमिट कर देगा। यह पहला शब्द 'इन्क्वायरी' तो कमिटल प्रोसीडिंग्स के लिए आया है और उसके बाद जो दूसरा शब्द 'इन्क्वायरी' का है:

> "The Sessions Court may, after such preliminary inquiry, any, as it thinks, necessary..... signed by the presiding officer of the Court."

इसमें इन्क्वायरी शब्द आया है वह उस अदालत के लिए आया जो झूंठ बोलने वाले गवाह के खिलाफ इस्तगासा दिए जाने से पहले इसकी इन्क्वायरी या जांच करे कि इस्तगासा दिया जाए या नहीं परन्तु यह प्रिलिमिनरी इन्क्वायरी लाजिमी नहीं है। अदालत जिस तरीके पर चाहे इन्क्वायरी करे। यह प्रिलिमिनरी इन्क्वायरी कोई बाइंडिंग नहीं है, कोई जरूरत नहीं है। अगर अदालत शहादत सुन कर के इस नतीजे पर पहुंच गई है कि किसी इन्क्वायरी की जरूरत नहीं है कि इन्क्वायरी की जाए। लेकिन हां, इतना जरूर जरूरी है कि जिस शख्स के मुताल्लिक आप यह कहें कि इसने झूंठ बोला है उस से आप कहें तो सही कि देखो, तुम ने झूंठ बोला है, तुम्हारा चालान होने वाला है। जब अदालतें फैसला लिखती हैं तो अपने खयाल में बैठ कर, अपनी धुन में बैठ कर लिखती हैं। अगर उसे डिफेन्स का सबूत अच्छा लगा तो डिफेंस के गवाह सच्चे और मुस्तगीस का सबूत झूठा, और अगर उसका झुकाव प्रोसीक्यूशन के सबूत की तरफ हो गया तो प्रोसीक्यूशन का सबूत सच्चा और डिफेंस के गवाह झूठे। यह एक खयाल होता है, एक विचार होता है जिसके मुताबिक अदालत का फैसला लिखते समय दिमाग चलता है। अगर कोई बात ऐसी है जो उस को सोचनी चाहिए थी परन्तु वह न सोची और बगैर उसको सोचे हुए इस नतीजे पर पहुंचे कि सबूत या सफाई का यह गवाह झूंठा है, तो गवाह को भी मौका देना चाहिए कि वह अदालत को बताने कि उस ने झूंठ नहीं कहा है। वह कहे कि मैं ने झूंठ नहीं बोला है, मैं ने तो यह बात सच कही थी परन्तु अदालत ने इस बात पर गौर नहीं किया और अगर वह उस पर विचार करे तो बयान झूंठा नहीं मालूम पड़ेगा और वह बात अदालत की समझ में आ जाए तो अदालत अपनी गलती को सही कर लेगी।

यहां पर आप गवाहों को यह मौका नहीं देते हैं, यह मौका देना बहुत जरूरी है। आजकल तो अगर अदालतें चाहें तो उस गवाह की सफाई में अगर शहादत लेनी है तो शहादत ले सकती हैं। लेकिन अब आप इस इन्क्वायरी को खत्म करना चाहते हैं। अगर आप यह मानते हैं कि प्रिलिमिनरी इन्क्वायरी खत्म की जाए तो आप को नई दफा के बनाने की कोई जरूरत नहीं है। दफा ४९६ में लिखा हुआ है after such preliminary inquiry, if any, as it thinks necessary ..... आप इन शब्दों को निकाल दें परन्तु मेरे कहने का मतलब आपसे यह है कि गवाह को हीयरिंग का मौका जरूर दिया जाना चाहिए और अगर ऐसा न किया गया तो बड़ी गड़बड़ हो जाएगी। इस सिलसिले में मैं आपको आप बीती सुनाना चाहता हूं कि अदालतें किस तरीके से कार्यवाहियां करती हैं और अगर अदालतों को मौका न दिया गया अपनी गलतियों को दुरुस्त करने का तो बड़ा भारी जुल्म भी हो सकता है। यह एक किस्सा है जो कि मेरे साथ ही घटा है मेरे वकालत करने के दौरान में। एक जमींदार था और उसके ऊपर कुछ मालगुजारी २४ या २५ रुपए बाकी थी। तहसीलदार ने मालगुजारी वसूल करने के लिए उसके वारंट जारी कर दिए। जिस तहसील में वह जमींदार रहता था, वह दूसरी तहसील थी और उस तहसीलदार को कोई हक

[श्री आर० डी० मिश्र]

नहीं था उसके वारेंट जारी करने का। यह काम तहसीलदार खुर्जा का था। उसने वारन्ट जारी कर के चपरासी को दे दिए चपरासी वारन्ट लेकर दूसरी तहसील में उसके गांव गए। जब वह उस जमींदार के घर पहुंचे तो उन्हें वह जमींदार घर पर नहीं मिला। वह कहीं और गया हुआ था। उसका लड़का १२, १३ साल का घर पर था। चपरासियों ने उस लड़के को ही गिरफ्तार कर लिया और १८ मील उसको गांव से पैदल घसीटते घसीटते लाकर तहसीलदार की अदालत में जा हाजिर किया। उसकी मां ने उस चपरासी को बहुत कहा कि आप इस लड़के को क्यों गिरफ्तार करते हो और इसको छोड़ दो पर उन्होंने उसकी एक भी न मानी। उसकी मां ने तब इस पर अपना एक आदमी उस लड़के के पीछे भेज दिया। अदालत में पेश होने के बाद जब लड़के के कुछ सम्बन्धियों ने तहसीलदार साहब से उसको छोड़ देने को कहा तो उन्होंने कहा कि जब तक मालगुजारी वसूल नहीं हो जाती तब तक इसको छोड़ा नहीं जा सकता। शाम के कोई सात बजे थे जब कि वे लोग मेरे पास आए और उन्होंने मुझे सारा किस्सा सुनाया और कहा कि आप एक बड़े आदमी हैं मुमकिन है आप की बात चल जाए। मैं उनके साथ चला गया और जा कर मैंने वकालतनामा लिखा और उसके बाद तहसीलदार से उस लड़के को छोड़ देने को कहा। उन्होंने जवाब दिया कि जब तक माल-गुजारी वसूल नहीं हो जाती तब तक इस लड़के को छोड़ा नहीं जा सकता। मेरे इतना कहने पर कि यह लड़का नाबालिग है और बेकसूर भी, उन्होंने एक भी न मानी। मेरे पास अब इसके सिवाय और कोई चारा नहीं था कि रुपया जमा करवा दिया जाए। इस पर तहसीलदार साहब ने हुक्म दिया कि लड़का जमानत पर छोड़ दिया जाए। उन्होंने कहा कि क्योंकि आप ने वकालत-नामा लगाया है और रुपया जमा किया है इस लिए लड़के को जमानत पर रिहा किया जा रहा है। जब मैंने ट्रेजरी चालान भरा तो मैं ने उसमें यह साफ लिख दिया कि यह रुपया हुक्म तहसीलदार साहब दाखिल करवाया जा रहा है। क्योंकि मुझे शक था कि कहीं तहसीलदार साहब इन कागजात को बदल न दें या कुछ और न कर दें। लड़के को दूसरे दिन उसका बाप आ कर ले गया। उसके पिता ने एक रौंगफुल कन्फाइनमेंट का मुकदमा खुर्जा तहसील के एस० डी० ओ० की अदालत में दाखिल कर दिया। एस० डी० ओ० ने उस मुकदमे को खारिज कर दिया। दो तीन महीने के बाद वह मुकदमा सेशन जज के यहां गया। सेशन जज ने भी खारिज कर दिया। अब वह हाई कोर्ट में गया। वहां पर हाई कोर्ट के जज ने लिखा कि बड़ा जुल्म हुआ है और उसने इस्तगासा खारिज करने का हुक्म रद कर दिया और इस मुकदमे को वापस भेज दिया। वापसी पर यह मुकदमा डिप्टी कलक्टर के सामने पेश हुआ। कागजात मंगाए गए। गवाह तलब किए गए। क्योंकि वकालतनामा मेरा था और रुपए भी मैंने जमा करवाए थे इसलिए मेरे नाम पर भी सम्मन जारी हो गए बहैसियत गवाह के। जब मुकदमा पेश हुआ तो मैं ने अपनी गवाही में कहा जो सब कुछ रिकार्ड पर था कि वकालत-नामा मेरा है और रुपया भी मैं ने जमा करवाया है इत्यादि इत्यादि। उसके बाद मुझ पर जिरह की गई और पूछा गया कि आप कांग्रेसी हैं। मैंने कहा जी, हां। आप कांग्रेस के प्रेजीडेंट भी हैं। मैंने कहा जी हां। आपको १९२१ और फिर १९३० में इतने लम्बे अर्से की सजा हुई थी। मैं ने कहा जी हां। क्या कांग्रेस का उसूल है कि लगान न दिया जाए? अदालत ने कहा कितनी फिजूल बातें हैं मुकदमे से इनका क्या ताल्लुक जो ऐसी बातें जिरह में पूछते हो। इस पर दूसरे पक्ष ने कहा कि यह कांग्रेस के आदमी हैं, कांग्रेस ने लगान बन्दी का आन्दोलन चलाया था इसलिए पूछना जरूरी है अदालत ने कहा कि इन बातों का इस मुकदमे से क्या सम्बन्ध है। यह मुकदमा तो रौंगफुल कनफाइनमेंट के बारे में है और हमें यह देखना है कि क्या मुल्जिमों ने मुस्तगीस के लड़के को रौंगफुली कनफाइन किया है या नहीं। मुकदमे की सुनवाई खत्म हो गई और मैं अपने घर चला आया। आखिर में जजमेंट

लिखा उस कोर्ट ने कि यह मुकदमा झूठा है। उसने लिखा कि मिश्र साहब जो इस मुकदमें में सबसे बड़े गवाह हैं कांग्रेसी हैं और कांग्रेस का उसूल है नान पेमेंट आफ रेंट इसलिए उन्होंने ही यह झूठा मुकदमा बना कर चलाया है। जिस वक्त वह फैसला मेरे सामने आया तो मैं बड़ा तलमलाया। मेरे उस डिप्टी कलक्टर के साथ अच्छे ताल्लुकात थे, बार में होने के नाते। जब मैं ने उससे इस मुकदमें के बारे में निजी रूप में पूछा तो उसने कहा कि हम सरकारी मुलाजिम हैं और हम ऐसा कोई काम नहीं कर सकते जिससे गवर्नमेंट को मालगुजारी वसूल करने में कोई बाधा पड़े। उसने अपने फैसले में यह भी लिख दिया था कि मेरा डिप्लोमा भी जब्त कर लिया जाए। जब मैं ने उससे पूछा कि आप ने मेरा डिपलोमा जब्त करने के बारे में क्यों लिखा तो उसने जवाब दिया कि अगर मैं ऐसा न लिखता तो मेरा फैसला कुछ नहीं था। इससे मुझे यकीन हो गया कि अंग्रेजी अदालतों में इंसाफ होने वाला नहीं है। मैं ने कहा कि जब स्वराज्य आएगा तो सब बातें ठीक हो जाएंगी। इसके बाद उस लड़के के बाप ने चपरासियों और तहसीलदार के खिलाफ अदालत दीवानी में लड़के को हब्स बेजा में रखने और मुआवजा पाने का एक दावा दायर कर दिया। वह अदालत दीवानी से डिक्री हुआ---मेरी गवाही सच्ची मानी गई। इस मुकदमें की अपील हाई कोर्ट में की गई और उसमें तहसीलदार को छोड़ दिया परन्तु चपड़ासियों पर डिक्री रही। हाई कोर्ट से डिक्री कायम रही और आज तक डिप्टी कलक्टर को या किसी और को यह साहस नहीं हुआ कि डिपलोमा के बारे में कोई नोटिस भी जारी कर सके।

मैं समझता हूं कि एक मौका मुलजिम को जरूर देना चाहिए कि जहां पर अदालतें गलती करें वहां पर मौका मिले मुल्जिम को कि वह अपील कर के ऊंची कोर्ट में जा कर उस गलती को दुरुस्त करा सके। तो मेरा कहना यह है कि इस क्रिमिनल इन्क्वायरी का जहां तक संबंध है उसके ४९६ में से शब्द निकाल देने चाहिएं थे परन्तु उसके बाद अपील करने का राइट रहने देना चाहिए था। अब तक ४९६ दफा के मुताबिक इस्तगासा देने में यह शर्त थी कि

> It is expedient in the interests of Justice.

लेकिन अब आप ने ४९६अ में लिखा है :

> "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 for the offence."

तो आप ने उसमें एक और शोशा जोड़ दिया है और आगे चल कर अदालतें कहेंगी जैसा कि काटजू साहब ने अपने नोट में लिखा है। जब फैसला लिखा जाएगा उस वक्त वह लिखेंगी कि जब तक जनता में सोशल कॉन्शेन्स नहीं आती तब तक परजरी दूर नहीं हो सकती इसलिए गवाह पर मुकदमा चलाना न्याय के हित में नहीं है।

Pandit Thakur Das Bhargava: This will be an issue in the case: whether it is for eradication of the evil of perjury, *cum* fabrication of false evidence.

श्री आर० डी० मिश्र: हमारे डा० काटजू साहब ने खुद ही यह जो गरुप सी है उसमें सफाह २२ पैरा ८ में लिख दिया है :

> "I think this evil must be checked. It is of course, a matter for public opinion to make people feel that giving false evidence in Court is anti-social and even a sinful act, but public conscience will take time to awaken".

जब उनकी खुद यही राय है तो यही कोर्ट्स लिखेंगी। आप जस्टिस महाजन का फैसला देखें या दूसरी अदालतों का फैसला देखें वह यही कहेंगी कि जबतक जनता सच बोलना नहीं सीखती इस तरह के प्रासीक्यूशन से कोई फायदा नहीं। तो आपने ये शब्द क्यों जोड़े। ऐसा करके आपने अदालतों के हाथ में एक चीज और दे दी। आपको ये शब्द निकाल देने चाहिएं। आपको लिखना चाहिए कि अगर किसी आदमी ने

[श्री आर० डी० मिश्र]

इरादतन झूठ बोला है तो उसने आफेंस किया। जैसे कि अगर कोई बिला पूछे किसी की चीज उठा लेता है तो वह जुर्म करता है इसी प्रकार जो झूठी गवाही देता है वह भी जुर्म करता है। हो सकता है कि किसी अदालत की राय हो कि गवाह ने झूठ बोला है उस पर मुकदमा चले परन्तु आप इंटरेस्ट आफ जस्टिस और इरेडीकेशन आफ परजरी की बात क्यों जोड़ते हैं। अगर आप ईमानदारी से चाहते हैं कि देश में परजरी न रहे तो आपको इन सारे शब्दों को निकाल देना चाहिए। इसीलिए मैं ने अपना अमेंडमेंट नम्बर ४२९ रखा है। उसकी यही मंशा है कि इन शब्दों को खत्म कर दिया जाए। अगर अदालत की राय होगी तो वह मुकदमा चलाएगी। अगर उसकी राय नहीं होगी तब तो मुकदमा चल ही कैसे सकता है। अगर मुकदमा चलाना इन दी इंटरेस्ट आफ जस्टिस न होगा तो वह राय ही क्यों देगी। लेकिन आपने एक और बेकार की चीज रख दी है।

दूसरी बात यह है कि पहले तो अदालतों को सिर्फ यह लिखना पड़ता था कि "इन माई ओपीनियन इट इज इन दी इन्टरेस्ट आफ जस्टिस दैट दी एक्यूज्ड शुड बी प्रासीक्यूटेड"। अगर कोई अदालत ऐसा नहीं लिखती थी तो ऊपर की अदालत उसके फैसले को उठा कर फेंक देती थी कि तुमने अपनी राय तो लिखी ही नहीं। लेकिन आपने अब यह बात और बढ़ा दी है कि "दी कोर्ट शैल रिकार्ड ए फाइंडिंग टू दैट इफेक्ट, स्टेटिंग इट्स रीजन्स देयरफ" । इसके मानी यह हैं कि अदालत सिर्फ यही नहीं लिखेगी जैसी कि मैंने ऊपर बतलाया है :

> "The Court is of opinion that it is expedient in the interests of justice and for the eradication of perjury that the accused should be prosecuted."

बल्कि उसको अपनी फाईंडिंग की वजूहात

Pandit Thakur Das Bhargava: The Court must give a finding that it is necessary for the eradication of perjury and fabrication of false evidence and in the interests of justice.

Shri R. D. Misra: Yes Sir, the Court must record a finding stating therein the reasons thereof in addition to its opinion.

अब अदालत को रीजन्स लिखने पड़ेंगे। अगर हाईकोर्ट का जज या सेशन जज यह समझता है कि गवाह ने झूठ बोला है तो उसको उस पर अपनी फाइंडिंग देनी पड़ेगी और वजूहात लिखने होंगे और वह फाईनडिंग मजिस्ट्रेट के सामने जाएगी। अब जब हाईकोर्ट के जज ने या सेशन जज ने रीजन्स दिए हैं तो कौन ऐसा मजिस्ट्रेट होगा जो उनके खिलाफ जाने की हिम्मत करेगा और उनके खिलाफ अपने रीजन्स देगा। इसका नतीजा यह होगा कि हर आदमी सजा पा जाएगा। अब फर्ज कीजिए कि किसी मजिस्ट्रेट के सामने हाईकोर्ट का यह फाइंडिंग जाता है और वह उससे एंगी नहीं करता और दफा २०३ में उसको खारिज कर देता है और लिखता है कि मैं हाईकोर्ट के फाइंडिंग से एंगी नहीं करता, मुलजिम ने परजरी का आफेंस नहीं किया है, और वह उसको डिस्चार्ज कर देता है, अब ख्याल कीजिए कि ऐसी हालत में हाईकोर्ट के जज की या सेशन जज की क्या पोजीशन रहती है, अगर मजिस्ट्रेट यह लिख देता है कि उनके दिए हुए रीजन्स ठीक नहीं हैं और जज साहब गलती कर गए हैं, और मैं जो रीजन्स देता हूं वह ठीक हैं। और मजिस्ट्रेट का फैसला फाइनल होगा। तो इस तरह से कंट्रीडिक्टरी जजमेंट दिए जाएंगे। इसलिए मैं यह कहता हूं कि फाइंडिंग देने की बात बिल्कुल गलत है। दूसरे आप अपील का मौका नहीं दे रहे हैं। पहले ४७६ में यह अपील का हक था। आप क्यों यह कानून बना कर इस हक को छीन रहे हैं। क्या नुक्सान होता था अगर अपील का हक दे दिया जाता। इसलिये मैं ने अमेंडमेंट ४२६ दिया है इसलिये कि सबक्लाज २ निकाल दिया जाय और अपील का मौका रहने दिया जाय।

तीसरा मेरा अमेंडमेंट है नम्बर ४३० । आप कहते हैं कि अगर उस मुकदमे की जिसमें

से यह मुकदमा पैदा हो अपील हो जाय तो मजिस्ट्रेट साहब को चाहिये कि उस कार्यवाही को रोक दें। अब मैं आपसे कहता हूं कि एक मुकदमा हुआ उसमें एक्यूज्ड छूट गये लेकिन मजिस्ट्रेट साहब ने लिख दिया कि डिफेंस के गवाह बिल्कुल झूठ हैं और उन पर अदालत ने मुकदमा दायर कर दिया था अगर मुल्जिम छूट गया और मुस्तगीस के गवाहों के लिये अदालत ने लिख दिया कि वह झूठ हैं तो ऐसी सूरत में कौन अपील करेगा। जिस आदमी के खिलाफ आप परजरी का मुकदमा चलाना चाहते हैं उसको यह हक नहीं देते कि वह अपील कर सके। लेकिन एक्यूज्ड और कम्प्लेनेंट को यह राइट है कि वह अपील करें तो मुकदमा रोका जाय। यह तो कुछ समझ में नहीं आता। इसलिये मेरा कहना यह है कि चाहे मुद्दई अपील करें, चाहे मुदायलेह अपील करें, चाहे मुल्जिम अपील करें, फिर भी उस आदमी को कि जिसके खिलाफ परजरी का चार्ज लगाया गया है अपील का मौका देना चाहिये, और अगर वह अपील फाइल कर दें तो मुकदमा उस वक्त तक रुका रहना चाहिये जब तक कि अपील का फैसला न हो जाय। हां आप अपील की अदालतों को यह हिदायत कर सकते हैं कि अगर इस तरह की अपील आवे तो उसको जल्दी फैसला कर दें ताकि मुकदमा जल्दी तै हो सके। यही मैं ने अपने अमेंडमेंट नम्बर ४३० में कहा है कि एंग्रीव्ड पार्टी को अपील का मौका देना चाहिये।

अगर हमारे होम मिनिस्टर साहब यह चाहते हैं कि इस देश से परजरी दूर हो जाय तो जो मैं ने तजावीज दी हैं अगर उन्हें वह मानेंगे तो मुझे उम्मीद है कि परजरी दूर हो जायगी। लेकिन अगर आप चाहें कि अपील का हक न दें और बेकार की बातें दफात में रख कर गरीबों का गला घोटना चाहें, जैसा कि दफा ४७९ए में किया गया है तो यह परजरी रुकने वाली नहीं है।

फिर आप कहते हैं कि जो इस तरह के आप मुकदमे लाते हैं उन पर दफात ४७६ से ४७९ लागू नहीं होंगी। यह दफा लागू होगी सिर्फ उन पर जो १९३,१९४ और १९५ में कंसेज होंगे। उन पर लागू नहीं होगी जो फोर्जरी के कंसेज या दूसरे कंसेज होंगे जो १९५ में दिये हुए हैं।

इसके बाद आप देखें क्लाज ९९ को। डिप्टी स्पीकर महोदय, मैं कहना चाहता हूं कि हमारे क्रिमिनल प्रोसीज्योर कोड में दफा ४८७ मौजूद है। अगर आप दफा ४८७ को पढ़ेंगे तो आप देखेंगे कि उसमें लिखा हुआ है :

> "Except as provided in section 480 and 485, no Judge of a Criminal Court or Magistrate..... shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceedings."

इसका मतलब यह है कि कोई अदालत ४८० और ४८५ को छोड़ कर बाकी कोई जुर्म जो दफा १९५ में आता है उसका कागनीजेंस लेकर उसको स्वयं ट्राई नहीं कर सकती है। आप देखें कि जो क्लाज ९९ में दफा ४८५ए रखी गयी है अगर इसके मातहत १७२ का जुर्म हो गया तो वह ४८० और ४८५ में नहीं आता। आपने ४८७ को माडीफाई नहीं किया है, आपने उसमें कोई तरमीम नहीं की है। जब तक ४८७ मौजूद है कोई कोर्ट १७२ का मुकदमा नहीं कर सकती है। और इस अमेंडमेंन्ट के जरिये जो आप अख्तियारात दे रहे हैं यह बिल्कुल गलत है और आउट आफ आर्डर है।

दूसरी बात मुझे यह कहनी है कि अगर सम्मन जारी होने के बाद कोई गवाह हाजिर नहीं होता है तो आपने उसके खिलाफ कार्यवाही करने के अदालत को अख्तियारात दिये हैं। जाबता फौजदारी के मुताबिक अगर कोई शख्स सम्मन जारी करने पर नहीं आता तो उसके लिये वारंट जारी किया जाता है। वारंट जारी करने के बाद उसका बांड लिया जाता है। और अगर बांड लेने पर भी वह न आवे तो उसका बांड

[श्री आर० डी० मिश्र]

जबत कर लिया जाता है। जैसी कि थानेदार के सामने हाजिर होने की बात दफा १६० जाप्ता फौजदारी में मौजूद है वैसी दफा यहां कोई नहीं है। यहां तो आप यही कर सकते हैं कि अगर समन पर कोई न आवे तो वारंट जारी किया जाय। उसके लिये यह लीगली बाइंडिंग नहीं है कि वह हाजिर हो। अगर वारंट पर भी न आये तो आप उसका बांड जब्त कर सकते हैं। अगर किसी आदमी का बांड भी जबत कर लिया जाय और उसको बाद में सजा भी दी जाय तो यह तो उस पर एक जुर्म के लिए दो सजायें हो जायंगी जो कि नहीं किया जा सकता है। इस तरह की दफा रखना बिल्कुल गलत है। दफा ४८७ के होते हुए आप ऐसा संक्शन नहीं रख सकते हैं। इसलिये मैं ने अपना अमेंडमेंट ४३१ रखा है कि अगर कोई गवाह अदालत के सम्मन पर अमदन नहीं आया है और अदालत ऐसा समझती है कि उसके लिये हाजिर होना लीगली बाइंडिंग है तो उसके ऊपर १७२ दफा में मुकदमा दायर किया जा सकता है उसको दूसरी अदालत में जा कर सजा हो जायगी। यह ठीक नहीं है कि वही अदालत सजा कर दे। यह तो दफा ४८७ के बिल्कुल खिलाफ है।

अब इसके बाद क्लाज ६३ में आप देखेंगे कि सौ रुपये की जगह पांच सौ कर दिया गया है। आप अन्दाजा कीजिये कि हर शख्स अपनी बीवी को ५०० रुपये कैसे दे सकता है। यह तो वही दे सकता है जिसकी तनख्वाह १००० रुपये हो।

ऐसे एक हजार रुपये की तनख्वाह वाले कितने मुलाजिम आपकी गवर्नमेंट में हैं, कितने देश के अन्दर ऐसे आदमी हैं जिन की हजार रुपये की आमदनी है। स्त्री अर्द्धांगिनी कहलाती है, आधे हिस्से की साथी कहलाती है। मतलब यह कि अगर पति की आमदनी हजार रुपये मासिक है तो वह पांच सौ की हिस्सेदार है और अगर पचास रुपय उसके पति की आमदनी है तो पच्चीस रुपये की वह हकदार है। बच्चे भी बीवी के साथ हैं। बीवी प्लस बच्चे एक बात तभी तो पूछा जाता है कि तुम्हारे बालबच्चे अच्छे हैं, उसमें बीवी और बच्चे सब आजाते हैं। यह जो आपने पांच सौ रुपये की बात रक्खी है उसको घटाने की बात तो शायद डाक्टर साहब न मानें, लेकिन मैंने उस सम्बन्ध में अपने अमेंडमेंट में यह सुझाया है :

> "but in no case the amount shall exceed fifty per cent. of the income of the husband."

जो हसबेंड की आमदनी हो उसकी आमदनी के पचास फीसदी से ज्यादा किसी हालत में नहीं होना चाहिये। अगर आदमी की आमदनी हजार रुपये है तो बीवी पांच सौ ले और आठ सौ रुपये है तो चार सौ रुपये ले; लेकिन फर्ज कीजिये कि अगर एक मिडिल क्लास क्लर्क, जिसकी आमदनी केवल पचास रुपये माहवार है और वह अपनी बीवी को दिक करता है या तंग करता है और बीवी अलग हो गयी तो ठीक है उसकी बीवी को मेंटेनेंस एलाउन्स मिलना चाहिये लेकिन इसके यह माने नहीं कि आप मजिस्ट्रेट को ऐसा अख्तियार दें दें कि एक क्लर्क जिसकी आमदनी ८५ रुपया माहवार है उसको वह आर्डर दें कि वह अपनी बीवी को पांच सौ रुपये दे और न देने पर डिग्री हो जाय। वह बेचारा गरीब कहां से इतने रुपये जुटा सकता है। इसकी मेरे कस्बे में एक मिसाल मौजूद है। एक बड़े लम्बे-चौड़े जमींदार थे उन के ऊपर बीवी को मेंटेनेन्स एलाउन्स दिलाने के लिये डिग्री होगई। पैसा उनके पास है नहीं, जमींदारी जब्त होगयी, वह बेचारे डिग्री से बचने के लिये हरिद्वार और दूसरी दूसरी जगहों पर मारे फिरते हैं। पैसा कहीं से मिलता नहीं, बीवी को कहां से लायें। बीवी के डर के मारे हरिद्वार वगैरह घूमते फिरते हैं। इसलिये आपको यह देखना बहुत जरूरी है कि पति की आमदनी क्या है और उससे मेंटेनेन्स अलाउन्स उसकी आमदनी को ध्यान में रखते

हुए दिलाया जाये और इसी चीज को मद्देनजर रखते हुए मैंने अपना अमेंडमेंट दिया है कि पचास फीसदी आमदनी हसबेंड की बीवी ले सके, बच्चे ले सकें, इसमें कोई डर नहीं है।

दूसरी बात जिसकी तरफ मैं हाउस का ध्यान दिलाना चाहता हूं वह यह है कि मजिस्ट्रेट के आर्डर के खिलाफ कोई अपील नहीं है, हम देखते हैं कि हर आर्डर में अपील का प्राविजन है लेकिन मजिस्ट्रेट के इस आर्डर की कोई अपील नहीं है चाहे वह चार सौ कर दे या पांच सौ कर दे और गलत ही हुक्म दे दे। इसके विषय में हाईकोर्टस के जजों ने और दूसरे लोगों ने राय दी और कहा कि मेंटेनेन्स अलाउन्स का आर्डर अपीलेबल होना चाहिये। अपने अमेंडमेंट नम्बर ६४७ में मैंने यह सुझाव रक्खा है कि अगर कोई आदमी मजिस्ट्रेट के मेंटेनेन्स अलाउन्स के आर्डर से एग्रीव्ड हो तो वह सेशन जज के यहां अपील दायर कर सके।

क्लाज ६४ के मुताल्लिक मैं ने दो संशोधन रक्खे हैं। मेरा कहना यह है कि आजकल डकैतियां बहुत बढ़ रही हैं, वैसे होम मिनिस्टर साहब की बात मुझे पसन्द है कि साठ दिन के अन्दर मुकदमा फैसल हो जाये। उनका कहना है कि केसेज की तहकीकात जल्द होनी चाहिये और ट्रायल जल्दी खत्म हो जाना चाहिये, मैं भी उनकी राय से सहमत हूं, लेकिन तहकीकात उन मामलात में जल्दी पूरी हो सकती है जिनमें कि मुलजिमों का नाम मालूम हो जैसे फलानें ने कत्ल किया है, या फलां शख्स ने गबन किया है और उन मामलात में जल्दी से तहकीकात करके भेज दें। लेकिन चोरी, डकैतियों और कांसपिरेंसीज के मामले होते हैं जिन में मुजरिमों का कुछ पता नहीं रहता और उनकी तहकीकात दुनियां का कोई भी थानेदार किसी एक मुद्दत के अन्दर नहीं कर सकता, हो सकता है कि दस वर्ष बाद मुलजिम का पता जाकर लगे और तब उस को सजा दिलवायी जाये। इसलिये ऐसे मामलात में तहकीकात की साठ दिन की मियाद मुकर्रर नहीं होनी चाहिये, क्योंकि हो सकता है कि उसमें देर लग जाय। मुलजिमों का पता नहीं है; तमाम सबूत इकट्ठे करने पड़ेंगे। इसलिये जो लोग गिरफ्तारी से साठ दिन की मियाद रखने की बात कहते हैं वह ठीक नहीं है। इसके साथ ही आप ने कहा है कि साठ दिन की मुद्दत के भीतर जो मजिस्ट्रेटों द्वारा ट्रायेबल मुकदमे खत्म न हों तो मुलजिमों को जमानत पर छोड़ देना चाहिये, यह बात मेरी समझ में नहीं आयी यह मियाद बहुत कम है जब कि खास कर आज कल डकैतियां बढ़ रही हैं। दफा ३६४, ३६५, ३६६ और ४०६ जो ट्रायेबल बाई मजिस्ट्रेटस हैं, इन मुकदमों में जैसे डाकू मानसिंह, लाखनसिंह और दूसरे डाकू हैं उनके मुकदमों में बड़ी लम्बी चौड़ी गवाहियां गुजरेंगी और साठ दिन के भीतर उनका पूरा होजाना मुश्किल है। तो ऐसे खतरनाक डाकुओं को आप इस बिना पर छोड़ दें कि साठ दिन के अन्दर उनके केसेज पूरे नहीं हुए, यह मेरी समझ में नहीं आता और इसी को रोकने के लिये मैंने अपने संशोधन में कहा है कि दफा ३६४, ३६५ आदि में मुद्दत की गाउन्ड पर मुलजिमों को जमानत पर छोड़ने का मौका न दिया जाये लेकिन हां जैसे मेरे भाई कहते हैं कि कोई बेगुनाह आदमी पकड़ा जाये तो उनके लिये ४६७ में लिखा हुआ है कि अगर कोई प्राइमाफेसी केस न हो तो अदालत उस बेगुनाह को छोड़ सकता है

When there are no reasonable grounds against him, he should be let off.

2 P.M.

लेकिन इसके यह मानें नहीं कि आप ऐसा जनरल रूल बना दें कि हर एक केस साठ दिन में खत्म हो जायें। डकैतियों और कांसपिरेंसीज के केसेज में जानता हूं कि अगर रात दिन भी काम किया जाये तो भी वे साठ दिन में नहीं

[श्री आर० डी० मिश्र]

खत्म हो सकते। और पुलिस तहकीकात तो खत्म हो ही नहीं सकती, क्योंकि जहां मुलजिम का नाम नहीं मालूम होता उसके लिये तहकीकात करनी पड़ती है और सबूत इकट्ठा करने पड़ते हैं, उनमें हमको टाइम लिमिट नहीं रखनी चाहिये। हां, अलबत्ता ऐसे केसेज में जिनमें मुलजिमों का पता हो मामूली तरीके पर साठ दिन में खत्म हो जाने चाहियें। मैं तो यहां तक कहूंगा कि अगर कोई कत्ल का मुकदमा है और साठ दिन के अन्दर अगर वह फैसल न हो सके तो मुलजिम को जमानत पर छोड़ दीजिये। लेकिन जहां आपका साबका डकैतों और डेस्पेरेडीज से पड़ता हो जो थानेदार को मार डालें, तहसीलदार को मार डालें और गवर्नमेंट के गवाहों को मार डालें उनको अगर आपने इस बिना पर जमानत पर छोड़ दिया तो फिर खैर नहीं जनता के जान और माल की। आज हम देख रहे हैं कि हम भयंकर डाकुओं को पकड़ नहीं पा रहे हैं। तीन तीन स्टेट्स की पुलिस इस काम में लगी हुई है, लेकिन डाकू मानसिंह अभी तक पकड़ में नहीं आ सका है, ऐसे और दूसरे लोगों को मुद्दत की बिना पर छोड़ना मैं समझता हूं किसी तरह की बुद्धिमानी नहीं है और देश और समाज के लिये घातक सिद्ध होगा।

मेरा दूसरा अमेंडमेंट नम्बर ५२४ है जिसमें मैं ने कहा है कि अगर साठ दिन के अन्दर मजिस्ट्रेट केस खत्म न कर पाये तो वह अपना जवाब डिस्ट्रिक्ट मजिस्ट्रेट की मारफत स्टेट गवर्नमेंट को भेजे और यह बतलाये कि इन वजूहात से वह उस मकदमे को खत्म नहीं कर सका और स्टेट गवर्नमेंट का फर्ज हो जाता है कि अगर पुलिस ने किसी तरह की कोताही की है तो उसका जवाब तलब करें और उसके खिलाफ एक्शन ले। अदालत का एक्सप्लेनेशन ले कि क्यों डिले हुई। मैं यह चाहता हूं कि रूल कर दिया जाये कि अगर कोई मजिस्ट्रेट साठ दिन के अन्दर मुकदमा खत्म न कर सके तो He must submit his explanation through the District Magistrate, to the State Government for proper action.

इन शब्दों के साथ मैं अपने होम मिनिस्टर साहब से निवेदन करूंगा कि वह अगर वाकई पर्जरी को दूर करना चाहते हैं तो जो मैंने अमेंडमेंट दिये हैं उनको मंजूर कर लें। हमारा देश बहुत गरीब है, पांच, पांच सौ का मेंटेनेन्स अलाउन्स यहां के लोग अपनी बीवियों को नहीं दे सकते। अगर किसी को चार सौ रुपये माहवार मिलते हैं तो वह बीवी को देने के लिये पांच सौ रुपये कहां से लायेगा, वह पांच सौ का मेंटेनेन्स अलाउन्स किस के घर से लायेगा। मैं कहता हूं कि जिसकी जितनी आमदनी हो उसके मुताबिक आप कीजिये, वैसे हम तो आपकी पार्टी में हैं जैसा आप कहेंगे हम वोट कर देंगे। लेकिन हमारा और आपका जो मंशा है कि जनता फौजदारी ठीक होकर और सुधर कर देश में न्याय हो मुल्क में अमन, चैन और नेकनामी का बोलबाला हो, सच्चाई का बोलबाला हो और समाज हमारा ठीक हो और सारी बुराइयां उसकी निकल जायें तो उसके लिये जरूरी है कि हम एक ठीक और वाजिब न्याय प्रणाली देश में स्थापित करें और अपने मौजूदा कानून को ठीक कर लें। अगर हम ऐसा करेंगे तो हम अपने मकसद में जिसके लिये हम कोशिश कर रहे हैं जरूर कामयाब होंगे। यही मेरी आपसे प्रार्थना है।

Shri S. S. More: I would first refer to clause 90—procedure in certain cases of false evidence. The clause looks very innocent; at the same time, the remedy prescribed appears to me to be very superficial. We should go to the root of the malady and find out the causes.

In this country it is not Dr. Katju's first discovery that perjury is rife. The Britishers applied their minds to it; they studied social problems and came to the conclusion that in India there is almost an incurable tendency for witnesses to perjure. I would refer you to the Despatch from the Secretary of State in 1859.

They were discussiong what law should be brought on the Statute-book of this country in the light of the objective conditions prevailing. This is what they stated:

> "It was agreed in the course of the discussion which preceded the passing of the Act V of 1840, that there was no doubt of the fact that perjury prevailed to a great extent in all the Courts in India".

This is from the Judicial Procedure in India Despatch dated 12th May 1859 from the Secretary of State. Before this Act was passed in 1840, what was happening? Witnesses were coming in the Courts and they were asked to swear by *ganga jal* or to swear by the cow, and the result was that people had that sort of religious pressure on their minds and due to that, they used to tell the truth. But this Act of 1840 was passed and the witness was made to say: 'I swear that I shall tell the truth, the whole truth'. It was contended, when this Act of 1840 was debated in the old Council, that the old oaths had gone and whatever religious effect those oaths had on the minds of the people to tell the truth had gone; on the contrary, a belief developed that 'A Court is the place where a man can say any falsehood'. If in the ordinary course of business, he says, something which is false, they will ask him—they used to ask him; that has been quoted there when this Bill was discussed—'Are you in a Court? Are you in an *adalat*, so that you are telling something which is not true'? So we have to go to the root of the matter. In 1872, one Mr. F. Stephen, whose name I have already quoted, was in charge of the Criminal Procedure Code of 1872. But before that, he had submitted to the Government of India a very erudite and constructive memorandum, in which came to the very deliberate conclusion that in India it was very difficult to secure the conviction of a rich man, since that man could win over witnesses. In this country, there were two forces which compelled witnesses to perjure. Either the police or the purse—these are the two 'p's' which are responsible for the third 'p'—perjury. When I say that it is the police which is the major cause of the perjured evidence, I am trying to support my argument by what Dr. Katju himself has stated in one of his reminiscences at the Bar. He says in one of his articles that there is a tendency, almost an irresistible tendency, on the part of the witnesses to say something which is false to oblige the police, to favour the police. Take, for instance, an average case. Every rich is not an accused in a prosecution, but every policeman in a cognizable case is the prosecutor. Therefore, he applies all the machinery. Every screw is tightened to force that man to say something which will be supporting the prosecution. Then what happens? His statement is recorded. If he is distrusted, then section 164 is operated on. My friend, Shri R. D. Misra has quoted from different High Courts that a witness may come under any such screw, but when he is in the secret witness box may revert back to truth and say nothing else but truth and thus contradict what he has stated in his statement under section 164. The result is that he has deviated from his own testimony; an offence of perjury has been committed. But perjury for what? Is it a deviation in the interest of falsehood or is it one due to an awakened conscience reverting back to truth—that is the point which we have to discuss. In this case, if these provisions become part of our Statute-book as we are perpetuating poverty, as we are perpetuating unemployment in this country, we shall be perpetuating nothing but falsehood. This amended section will be hanging over his head and that poor fellow will, in spite of his best inclinations which are acting with spurts or with occasional lapses, be committed to stand by the statement that he has already made. I do appreciate that Dr. Katju is very serious—the Home Minister is very serious—in seeing

[Shri S. S. More]

that prejury should be eliminated, that it should disappear, but perjury is a social evil. Perjury emanates from the live-springs from the social conditions that prevail in this country, and unless these springs are stopped for ever, it will not disappear. What is the way out? Some hon. Members have stated that it is a social evil. You cannot, by only enacting a penal provision, whip people into goodness. You might whip people into something worse but you cannot whip people into good citizens. That is hardly the remedy. Therefore, I would say—I would not dilate on this point further—that for this purpose, you should remove the social inequality, remove the poverty of man which makes him either to succumb to the pressure or the torture of the police or to the temptation of the long purse. If you do that, then only such social crimes will disappear. I can quote to you from the *Times of India* where certain articles by the correspondent of the *Times* who has been in China appear in a serial. He has stated that since Mao Tse-Tung came into power and our Prime Minister has the great regard for Chinese leaders though he hates our local communists, and I do not know for what reasons—he abolished to some extent, by drastic methods, poverty, inequality and such other evils which are responsible for leading men to commit offences. He says that the incidence of crime has perhaps slumped to a very large extent and it is now a rare sight to see a man committing certain crimes. So, I would say that we must do something to remove this evil. There is something wrong in society. There is something wrong with our social conditions. It is not the perjurer who is to be punished. The society which creates this, abject condition by which perjury thrives has to be remedied or cured. That is the only remedy.

Now, let us come to the other provisions. I do welcome to some extent clause 94.

Mr. Deputy-Speaker: I understand that the second reading must be finished by 3-10 today.

Shri S. S. More: We are much ahead of the time.

Shri Venkataraman: There are other groups of clauses.

Dr. Katju: I also wish to speak for a few minutes.

Shri S. S. More: I would rather say that some of these clauses are important. You will realise that even the opposition side, when some of the unimportant clauses were taken up, and though the time-limit was raised, did not exploit that time to their advantage, and went on speaking though those speeches were not quite needed.

Mr. Deputy-Speaker: I find from the note here that though we finished certain groups early, time has been taken for the other groups. Therefore, all the other clauses have to be finished.

Dr. Katju: This group should have been finished yesterday by five of the clock.

Shri S. S. More: Yesterday, debate on two groups did collapse, giving us larger time, for the others.

Dr. Katju: We saved nearly two hours yesterday and this group has consumed more than the hours allotted. More than two hours were allotted to this group but it has lasted four hours.

Shri S. S. More: I do not want to take up more time of the House. I shall finish with a few more words.

I was referring to clause 94. I do appreciate that this clause will to some extent give relief, but it is not enough. If within sixty days the trial is not concluded, then a person will be released at least on bail by the Magistrate unless the Magistrate, for reasons to be recorded, thinks otherwise I submit that this is not enough. Without further amplifying

my comments, I would refer Dr. Katju and this House to what appear in Kenny's *Outlines on Criminal Law*. I am quoting from page 501 of that book:

> "'Justice' says Lord Bacon, 'is sweetest when it is freshest'. Hence, in grave cases, the Hebeas Corpus Act makes definite provision to secure this freshness, by providing that if any man, who has been committed of a charge of either treason or felony, be not indicted at the next assizes after commitment, he must be released on bail."

The present clause 94 comes up to this. What follows is much more relevant.

> "and if at the next subsequent assizes he be not both indicted and tried, he must be discharged altogether."

Dr. Katju: Altogether?

Shri S. S. More: Altogether. I am not giving something from the *Arabian Nights*. I am quoting.

> "The Assizes Relief Act; 1889, ensures the speedy trial of persons committed to quarter sessions whether charged with felnoy or misdemeanour."

So, my submission to this House will be, and particularly to the very kind Home Minister who is overflowing with kindness as far as the accused are concerned, that if the accused could not be taken to the final period of sentence within a certain time, we should take courage and follow the English provision and say that he is entitled to complete discharge. That is my submission. As it was pointed out by some Members, the original proposal submitted to this House, before it was committed to the Select Committee, was this: "from the date on which he is brought to the Court." He is produced before the Court. The Statement of Objects and Reasons do confirm that object, but somehow the Select Committee, in order to accommodate our slow machinery of the judiciary or the Magistracy has prolonged the period of agony. I would say that the number of under-trials is a shame to us. In reply to the Punjab query, so many opinions have been sought, and all of them say that the number of under-trials rotting in jails is going up. If we want to reduce the number, if we want drastically to do something which will accelerate the speed of the Government machine and its wheels, I would say that unless such provision, as on the pattern of the English provision, is brought on the statute-book, the objective of having speed of the trials will not succeed. That is my submission. With these few words,—I do not say exactly that I oppose the measure—I recommend my suggestions to the acceptance of the Home Minister.

Babu Ramnarayan Singh (Hazaribagh West): Sir, I wanted to speak.

Mr. Deputy-Speaker: Not now. The hon. Member came a little late. I was anxious to call the hon. Member but I find that we have exceeded the time by even two hours. There is another group. I will call him in the next group.

Dr. Katju: Mr. Deputy-Speaker, I shall very briefly take one by one the points which have been made. Taking first the very last matter, namely, the question of release if the trial does not terminate within sixty days, I suggest that the provision made is beneficial and is very fair. It has been criticised in this House on both sides.

My hon. friend, Mr. Misra took the cudgels against me and said that in dacoity cases, where the number of accused is very large, it is impossible to expect that the trial will conclude within sixty days. That is perfectly correct. It was for the purpose of providing for such exceptional cases that these words were inserted and the power was given to the Magistrate to refuse bail if he thought that for reasons to be recorded in writing there was justification for not concluding the trial.

[Dr. Katju]

So far as my hon. friend Mr. More is concerned, he wants complete release. That, I submit, is almost an impossible proposition in India. We can only do our best to see to it that the prosecution does not delay by holding out the threat before them of release on bail. If the man is released on bail, he will be no longer in detention.

Then it was said that there was something insidious in the Joint Committee putting in the starting point from the date first fixed for trial or the examination of witnesses. It was pointed out before the Committee that if we took the date from the date the man was sent up, then it may be that there may be many accused and trial may not come on because of somebody's illness or because of somebody's absence and therefore for all these reasons the commencement of the trial may have to be postponed. It may have nothing to do with the Magistrate, it may have nothing to do with the prosecution; it may be a completely innocent reason, having nothing to do with the parties. It was for this reason that the Select Committee after fullest deliberation said that the starting point should be the first date fixed for taking evidence in the case, when the case comes on for trial and the Magistrate should try to finish the case in accordance with the procedure laid down.

Shri S. S. More: That was the government proposal at the beginning.

Dr. Katju: That is all I can say and I would ask the hon. House to finish the matter and leave it there.

Then there have been certain amendments moved to section 497 itself, which are not covered by this. I submit that there has been some misapprehension. As the hon. Members know, the Code deals with bailable and non-bailable offences. So far as bailable offences are concerned, the very name shows that the accused is entitled to bail and that is provided for by section 496. Then remain the non-bailable offences. The number of non-bailable offences is very large—I have not got the exact number, it may be 100 or it may be 200—offences of a serious nature which are considered to be non-bailable. The policy laid down in section 497 is that in the case of most serious offences, namely, offences punishable with death—it is not only section 302 which is punishable with death but there are some others, like treason, conspiracy to commit murder and so on which are also punishable with death—and secondly, which are punishable with life imprisonment or transportation for life, not even the Magistrate can give the bail. The accused must go and remain in custody unless it is a case of illness or something like that.

As to the rest, the procedure, I understand, is this. The accused is either arrested by the police or is detained by the police and produced before the Magistrate within 24 hours of the arrest by the police, and, sometimes, the accused go and surrender themselves to the police and they are brought before the Court. The physical presence of the accused is presumed. The Magistrate looks at him and there is an application for bail. Either the bail is granted or it is refused and the accused, who is present in court, is remitted to custody. Sometimes he says he wants police custody, sometimes he wants judicial custody. Whatever the case may be, he is remanded either to police custody or to judicial custody. But, I have never heard of any man—leaving aside the case of illness—appearing before the Magistrate through a pleader. The application will say that the accused would have liked to come to Court but as he is lying ill with typhoid in such and such a hospital—the medical certificate is produced—he is appearing through the pleader and the pleader is asking for bail. Otherwise, the accused appears before the Magistrate and the Magistrate has got the discretion either to release him or to remand him to custody. Here, some amendments have been moved where the endeavour is that the accused should not go

before the Magistrate at all. He should be in absentia and some pleader should go on his behalf and say, 'this man has committed this offence or that offence or not committed that offence, please release him on bail'. That would be virtually abolishing of any difference between bailable and non-bailable offences. Practically, every offence, except an offence under section 302 will become a bailable offence and secure release without the Magistrate knowing anything about it. Please remember also that the police arrests a man or detains a man or the accused appears himself before the Magistrate and there are always two parties who can say to the Magistrate what the facts are. There will be the police to say that the offence has been committed and there will be the accused who will say that there is no evidence against him. The Magistrate hears both the sides and pronounces judgment. This endeavour to get what has been called anticipatory bail is something almost revolutionary. Our criminal jurisprudence at present is not aware of it, because in the case of anticipatory bail the police will not be there and they may not know what sort of offence is there. Secondly it is really —I may be pardoned for saying so— discriminatory because the poor person will not be able to apply for anticipatory bail. If there is a man who has committed criminal breach of trust or misappropriation of funds or forgery or perjury where large sums of money are involved may be rich enough and he applies for this anticipatory bail. Sections 496 and 497 are already there, the structure is there and it may be let alone. The words are, 'accused of any offence'. My hon. friend Pandit Bhargava wanted the addition of the words 'or suspected of'. I cannot understand that. The basic thing is that he must have been either arrested by the police or detained by the police, in which case even the police can give him the bail, or he must be physically present, leaving aside the cases of illness etc. That is all I have to say.

Pandit Thakur Das Bhargava: It is exactly on these lines that the new proposal is here.

Dr. Katju: My hon. friend is giving a new.....

Pandit Thakur Das Bhargava: I have amended it according to your wishes.

Dr. Katju: It is rather very unjust to me.

Pandit Thakur Das Bhargava: It is very just.

Shri S. S. More: Sir, is crossing the floor permitted?

Mr. Deputy-Speaker: Only temporarily.

Pandit Thakur Das Bhargava: My hon. friend must know the rules.

Dr. Katju: My hon. friend wants that words 'or suspected of' may also be added. I have no objection.

When my hon. friend Mr. Misra was arguing, I was rather wondering. I suppose that our Magistrates are sensible individuals. I never heard or thought or never suspected that a husband who is earning a hundred rupees will be asked by a Magistrate in India to pay Rs. 200 as maintenance allowance to his wife. What is the good of contemplating such cases? I can understand a Magistrate saying, "Your income is Rs. 100, but you are a zamindar and your income from your properties is Rs. 400 a month; therefore your total income is Rs. 500. You should give away to your wife Rs. 200 instead of Rs. 100". That may be so. But imagine the possibility of the husband being left starving and a lunatic Magistrate saying, "you must pay to your wife all your income and something more than your income. I cannot imagine. It will be a sheer case of lunacy.

Shri N. C. Chatterjee: He should see the doctor.

Dr. Katju: Rs. 100 of the year 1900 are equal to Rs. 500 to-day for all practical purposes—domestic, health etc. In olden days you can get a

[Dr. Katju]

maid servant for Rs. 5. Then I do not want these wives to be driven to the Civil Court because the Civil Court has become pretty expensive now. If you bring any suit to a Civil Court for maintenance, I do not know how much court fees you have to pay. I think the court fee is ten times the maintenance required. Then again, the Civil Court takes months and even years. Where should the poor wife get all this money from? She will become a pauper soon. Therefore, in suitable cases where, as my hon. friend said, the husband is getting Rs. 1,000 and has neglected his wife, the Magistrate can say, "Pay your wife Rs. 200 or Rs. 300". If the same is excessive, the husband can go and file an appeal.

Mr. Deputy-Speaker: What about the amendment of Mr. Barman about commitments?

Dr. Katju: In regard to that, I should like leave of the House to say a few words because there has been concentrated attention about that section and very hard things have been said. Now let me explain what passed in the mind of the Select Committee when they framed it. They had before them in the Bill a provision for summary punishment of people who were lying before the Magistrate or Judge. My hon. friend Mr. More said, the Magistrates do so because they were permitted by the police to do so.

Shri S. S. More: I have got it from your book.

Dr. Katju: My experience and your experience is that it is muddy atmosphere in Civil Courts. In Civil Courts, I believe, all the Judges will tell you that probably 95 per cent. of the witnesses who come are liars. The same is the case in the Revenue Courts. Therefore, when we are considering this there is no use concentrating attention on the police.

Secondly, Sir, the Select Committee thought that sections 476, 477, 478 and 479 should be there. But they have proved useless, practically useless, because the evil of perjury has risen and for one reason or other, attention is not paid to it and false witnesses have increased. I am telling you how the mind of the Select Committee was working. They said, there may be lots of cases of perjury and fabrication of evidence, records and all sorts of things. But try to reduce perjury. Let us put this matter prominently before the Judge. Here is a case, here is evidence. It may be that when the witness is before the Magistrate, he may be rather disguested with the Magistrate. But having heard the entire evidence, having the entire picture before him, he may think it is right. So they said, do not interrupt here while the trial is going on. Let us wait for the conclusion of the trial. At the conclusion of the trial, the whole picture is put before the Judge and the Judge will then be in a position to conclude as to which side is correct.

Secondly, is it desirable in public interest, in the interest of eradication of perjury that action should be taken against the witnesses who have told a lie? It can be said, the Judge has watched their behaviour, has seen their demeanour, he comes to the conclusion that witnesses are liars and that the interest of the public demands that they should be prosecuted. The Select Committee thought, there is no need for further enquiry. The Magistrate is not pronouncing a judgment; the Magistrate is not sentencing him. What the Magistrate does is to file a complaint and before the Magistrate to whom the complaint goes the witness will appear. The Select Committee further thought that this procedure should be a subdued one and should be merciful to the witness against whom the complaint is made. I quite realise his position. I have been a lawyer myself and therefore I shall give him an opportunity. The opportunity is that he goes and engages a pleader. The Judge who has heard that very witness and who has come

to the conclusion that the man is a liar will probably say to the vakil "Do you hear it? I have heard it."

Shri Barman: It may be that he may not be the same Judge.

Dr. Katju: Of course, in that case, the party will not start the prosecution at all.

Then, my hon. friend says that he should have the right of appeal. Right of appeal against what? At that time the appellate Court has the material of the record, the case having been heard on its merits. The man who is prosecuted for having perjured himself is being penalised after having one hearing and a second hearing before the Magistrate. So the Select Committee thought, it will be only in extreme cases where interest of justice requires it, that action has to be taken; and, action having been taken the witness is not going to suffer because he will have the fullest opportunity to defend himself before the Magistrate.

Now, my hon. friend has moved an amendment yesterday in a challenging mood. I have no objection what so ever—namely, where the Judge says of a particular witness that he should give him an opportunity of showing why he should not be sentenced, there is no harm done.

There is no harm done. But, I protest against appeals, a series of appeals; that is all improper. That is all that I have said. Ultimately I say, this has nothing to do with me. I do not take shelter under it. But, the House will attach some importance to the fact that there were 45 members of the Joint Committee who joined in this proposal and while they have sent pages of dissenting notes including a very long one from Shri S. S. More, not one has said a word about this. It may not be generally done and therefore there may not be something insidious in it.

Lastly, Sir, there was one thing about verification. I sometimes think that wherever I have introduced something in order to facilitate the task of the accused, I have been criticised. I said, the man applies for appeal and sureties are offered. The sureties must be in Rs. 1,500. Then the Magistrate generally says; "Let there be an enquiry as to whether this fellow has got property worth Rs. 1500". Let him give the affidavits. If the affidavits are there they will be generally accepted. I cannot dictate to the Magistrate that the affidavits should be accepted. My hon. friend suggested that the lawyers should come in. I understand a lawyer saying that he identifies the man. Generally they say that they indentify the person who is swearing the affidavit. They can say something about the identity of the man swearing the affidavit, but they cannot possibly say or verify as to whether he has the required property. Then, where is the object of their coming in.

I, therefore, submit that these clauses should go in as they are subject to the amendments which I have accepted out of regard for the House and out of regard for my hon. friend Pandit Thakur Das Bhargava.

Shri Raghavachari: Sir, I want to point out one thing. The Home Minister made an argument as to why the Select Committee shifted the short duration of detention from the moment of his arrest to that of his appearance for hearing and then said, it is because, if at an earlier stage it is given the accused might not appear and therefore delay the hearing. May I invite his attention to clause 109—section 548, where it is provided that the presence of the accused may be dispensed with? Therefore, that argument for this new provision which is now made loses its strength.

Shri Sadhan Gupta: May I enquire of the Home Minister as to whether he wants to leave section 478 unamended and leave a lacuna in that section, or whether he is willing to accept my proposed clause 89-A by amendments 521 and 643, by which I seek to provide for.....

Dr. Katju: What is the number of your amendment?

Shri Sadhan Gupta: The numbers are 521 and 643. Amendment No.

[Shri Sadhan Gupta]

643 is an amendment to amendment number 521.

Mr. Deputy-Speaker: Amendment number 521 is:

In page 24, *after* line 42, *insert*:

"89A. *Amendment of section 478, Act V of 1898.*—In sub-section (2) of section 478 of the principal Act, for the word and letters 'Chapter XVIII' the words and figures 'Section 208 to Section 220' shall be substituted."

Shri Sadhan Gupta: Amendment number 643 is only to add the word "inclusive".

Dr. Katju: Sir, you may please put some other clauses to vote; I shall just look into it because this is a new clause.

Shri R. D. Misra: What about my amendment number 533?

Mr. Deputy-Speaker: No amendment has been moved to clause 89. I will put it to the vote of the House. The question is:

"That clause 89 stand part of the Bill."

The motion was adopted.

Clause 89 was added to the Bill

Mr. Deputy-Speaker: Now, we come to clause 89-A—Amendments 521 and 643. What is the difficulty? Are not these sections covered by Chapter XVIII? Are they different?

Shri Sadhan Gupta: The difficulty is: in section 478, the Revenue Court or Civil Court is asked to follow the procedure prescribed for Chapter XVIII in order to commit an accused person to the Court of Session. Now, two procedures have been introduced: one for commitment on police report and the other for commitment of cases other than on police reports. It is not stated which procedure the Revenue Court or Civil Court should follow. I wanted to prescribe that the Revenue Court or Civil Court would follow the procedure for cases other than on police report. That is why instead of "Chapter XVIII" I provided. Section 208 to Section 220".

Mr. Deputy-Speaker: This is a new clause and Shri Sadhan Gupta does not press his amendments.

Now I will put Shri Barman's amendment to the vote of the House. The question is:

In page 25 line 11, *for* "shall, without making any further inquiry" *substitute* "may, if it so thinks fit, after giving the witness an opportunity of being heard."

The motion was adopted.

Mr. Deputy-Speaker: I shall now put to the House the other amendments to this clause.

The amendments were negatived.

Mr. Deputy-Speaker: The question is:

"That clause 90, as amended, stand part of the Bill."

The motion was adopted.

Clause 90, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

In page 26, *for* lines 14 to 21 *substitute*.

"punished for the offence, the Court may make a complaint under section 476 thereof in writing signed by the presiding officer of the Court and forward the same to a Magistrate of the first class having jurisdiction; after giving an opportunity of showing cause why he should not be prosecuted and punished for such an offence."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 91 stand part of the Bill."

The motion was adopted.

Clause 91 was added to the Bill.

Mr. Deputy-Speaker: There are no amendments to clause 92. I shall put it to the vote of the House.

The question is:

"That clause 92 stand part of the Bill."

The motion was adopted.

Clause 92 was added to the Bill.

Mr. Deputy-Speaker: I shall now put the amendments moved to clause 93.

The amendments were negatived.

Mr. Deputy-Speaker: The question is:

"That clause 93 stand part of the Bill."

The motion was adopted.

Clause 93 was added to the Bill.

New Clause 93A

Shri Datar: I beg to move:

In page 26, *after* line 28, *insert*:

"93A. *Amendment of section 489, Act V of 1898.*—In sub-section (1) of section 489 of the principal Act, for the words "one hundred" the words "five hundred" shall be substituted.'

This is only a consequential amendment and it was left out through oversight.

Mr. Deputy-Speaker: In section 488 the maintenance allowance has been raised from Rs. 100 to Rs. 500 and therefore it has to be increased in section 489 also. I will put it to the House now.

The question is:

In page 26, *after* line 28, *insert*:

'93A. *Amendment of section 489, Act V of 1898.*—In sub-section (1) of section 489 of the principal Act, for the words "one hundred" the words "five hundred" shall be substituted'

The motion was adopted.

New Clause 93A was added to the Bill.

Mr. Deputy-Speaker: Now, clause 94.

Pandit Thakur Das Bhargava: I have an amendment to this clause. I beg to move:

In page 26, *for* lines 31 and 32, *substitute*:

'(a) in sub-section (1),—

(i) after the words "accused of" the words "or suspected of the commission of" shall be inserted; and

(ii) for the word "transportation" the word "imprisonment" shall be substituted.'

Dr. Katju: It is an amendment to section 497, sub-section (1).

Pandit Thakur Das Bhargava: I am substituting it for my amendment No. 636.

Mr. Deputy-Speaker: Amendment No. 636 is for clause 94.

Dr. Katju: For part of clause 94.

Mr. Deputy-Speaker: That is all right. The hon. Home Minister means that in clause 94 a portion of section 497 is touched and this amendment touches another portion of the section.

Dr. Katju: Yes, this touches another part of section 497.

Mr. Deputy-Speaker: Amendment No. 636 is an amendment of clause 94 and so it must deal with section 497.

Dr. Katju: This is really an addition to clause 94, not an amendment.

Mr. Deputy-Speaker: Pandit Thakur Das Bhargava's amendment No. 636 was for the original clause 94.

Pandit Thakur Das Bhargava: I am substituting my amendment No. 636 by this amendment.

Mr. Deputy-Speaker: We will put it to clause 94.

The question is:

In page 26, for *lines* 31 and 32, *substitute*:

'(a) in sub-section (1),—

(i) after the words "accused of" the words "or suspected of the commission of" shall be inserted; and

(ii) for the word "transportation" the word "imprisonment" shall be substituted.'

The motion was adopted.

Mr. Deputy-Speaker: Now, I shall put all the other amendments to clause 94 to vote.

The amendments were negatived.

Mr. Deputy-Speaker: The question is:

"That clause 94, as amended, stand part of the Bill."

The motion was adopted.

Clause 94, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 95 stand part of the Bill."

The motion was adopted.

Clause 95 was added to the Bill.

Mr. Deputy-Speaker: I am putting amendment No. 464 to clause 96 to vote. The question is:

In page 27, line 8, *add* at the end:

"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."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 96 stand part of the Bill."

The motion was adopted.

Clause 96 was added to the Bill.

Mr. Deputy-Speaker: There are no amendments to the other clauses upto 100; of course, clause 97 is excluded due to having been already passed.

The question is:

"That clauses 98 and 99 stand part of the Bill."

The motion was adopted.

Clauses 98 and 99 were added to the Bill.

Mr. Deputy-Speaker: There is an amendment No. 638, moved by Shri Sadhan Gupta, to clause 100.

The question is:

In page 27, line 43, *add* at the end:

"in which such affidavit is affirmed or sworn."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 100 stand part of the Bill."

The motion was adopted.

Clause 100 was added to the Bill.

Mr. Deputy-Speaker: New clause 101-A was not moved.

The question is:

"That clauses 101 and 102 stand part of the Bill."

The motion was adopted.

Clauses 101 and 102 were added to the Bill.

Clauses 103 to 116 and the Schedule (excluding clause 114) and New clause 115A and clauses 1 & 2.

Mr. Deputy-Speaker: The House will now begin consideration of

clauses 103 to 116 and the Schedule, excepting of course clause 114.

Shri Altekar (North Satara): It has been passed.

Shri A. M. Thomas: Only a part has been passed.

Mr. Deputy-Speaker: There are some consequential amendments which will be allowed in the third reading. For these, two hours are allotted. These clauses also must have been finished by this time. We have exceeded the time by two hours. For the third reading, five hours are allotted, and till the end of today, that is, from 3 to 5 p.m., the time that is allotted for the third reading will be utilised for the disposal of all the clauses, so that the second reading will be over today. The third reading will commence tomorrow, for which three hours out of the five hours will be used.

The amendments may kindly be passed on to the Table as usual. Hon. Members will kindly bear in mind the number of the clauses and the fact that the time is two hours.

Shri Venkataraman: I shall just explain my amendment and stop with that.

My amendment is No. 648 to clause 103. As you are aware, under section 526 of the Criminal Procedure Code, there is a right granted to the accused to move the High Court for transfer of his case. There was considerable complaint that this power was abused, and in 1934 an amendment was carried by which it was provided that if the accused person wants to make an application under section 526, he should execute a bond with sureties for Rs. 200 and that he should move the High Court within a reasonable time prescribed by the Magistrate. In the amendment which the hon. Home Minister has brought forward in clause 103, he has provided that notwithstanding anything contained in section 526, the first application should be made to the District Court, that is, the Court of Sessions, and not to the High Court directly. On this matter there has been considerable divergence of opinion about what an accused person should do. The Madras High Court for some time held that a person cannot move the High Court immediately without first going and moving the Court of Sessions or any other authority under section 528 of the Criminal Procedure Code, but after this amendment, they felt that because a bond is executed by the accused person that he will move the High Court within a stipulated period, the bond could be forfeited if he did not move the High Court and nevertheless moved the subordinate Court to which the power of transfer is granted under section 526. I had a very funny experience in which actually when a person executed a bond for moving the High Court for transfer of his case, he moved the District Court and got his case transferred. Nevertheless, the Magistrate said that he would take proceedings for forfeiture of the bond because he had not complied with the wording of the bond, namely, that he undertook to move the High Court. He did not not move the High Court but moved some other authority.

Mr. Deputy-Speaker: Other hon. Members have a similar experience.

Shri Datar: Ultimately, what happened?

3 P.M.

Shri Venkataraman: Ultimately the bond was forfeited. We went up in appeal and the forfeiture was set aside. Now that the hon. Home Minister has made it obligatory on the part of the accused to move the Court of Sessions in the first instance before moving the High Court, certain consequential provisions become necessary. For instance, if the accused person is obliged to move the District Court, you will appreciate that under the clause 63 as adopted by this House, the case will go on from day to day, *de die in diem*. If the accused wants to move the District Court.....

Pandit Thakur Das Bhargava: Sessions Court.

Shri Venkataraman:...and the local Magistrate refuses to give any adjournment for the purpose or moving the District Court, by the time the accused person moves the District Court, the case would have been over against him. In fact, section 526 as it stands now will compel the Magistrate to give an adjournment only if he gives notice of his intention to move the High Court. If according to the amendment made in clause 103, it is obligatory on the part of the accused first to move the District Court, then, the law must provide that an adjournment shall also be granted in cases where the accused person wants to move the District Court. I can understand that this concession may be abused. Even in the amended Criminal Procedure Code of 1934, they said that a person shall be allowed to make an application under this section only once. Sufficient safeguards may also be taken. With this safeguard, if a person is compelled to move the District Court in the first instance and he does not get an adjournment for the purpose of making that motion to the District Court, the case is likely to be over and he will be greatly prejudiced. I have given notice of my amendment No. 648. This is how the amended section will read: when at any time before the defence closes its case, he intends to make an application under this section or under section 528, that is to say he intends to make an application not only to the High Court but also to the Court of Sessions under section 528, in both the cases it shall be obligatory on the part of the Magistrate to give a reasonable time and then adjourn the case. Unless that is done, the case is likely to proceed and the accused is likely to be prejudiced.

Then, there is the proviso, which says:

> "Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party."

Having made it obligatory on the part of the accused to move the Sessions Court in the first instance, if the accused wants to move the Court of Sessions and thereafter to move the High Court, he should not be barred from making a second application or getting an adjournment or time for the purpose of making a motion to the High Court. The second part of the amendment makes provision for this. If the application is intended to be made to the same Court to which the party has been given an opportunity to move, only in such cases, he should be debarred from getting an adjournment. The object of this is very simple. It is to enable the accused person to get an opportunity to move the Court of Sessions in the first instance and for that purpose to enable him to get an adjournment and reasonable time for making that application. The second purpose of this amendment is to allow the accused person a further opportunity of making an application for transfer under section 526 to the High Court if it became necessary. The amendment will give protection against any abuse because only in one instance in the case of a motion to the District Court and in the second instance of motion to the High Court will the Court be obliged to grant an adjournment. The Court will refuse adjournment if similar applications are made a number of times by the same person for the purpose of moving either the Court of Sessions or even the High Court. I trust that my amendment will be acceptable to the Government.

Pandit Thakur Das Bhargava: I have given notice of amendments numbers 637, 95 and 96. Amendment No. 637 relates to clause 528. We have passed a provision in this House that instead of the District Magistrate, it will be the Court of Sessions which shall hear applications for transfer. So far, so good. Nobody can object to it. At the same time, I find in section 528, you have sub-sections (2) and (3). Sub-section (2) runs as follows:

"Any Chief Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate may withdraw any case from, or recall and case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into the same."

The words here are 'withdraw' and 'recall'. 'Any case' means any particular case. This means that practically the powers of transfer still in here in the District Magistrate. The Sessions Court will be one authority for transfer of the case and the other authority to withdraw or recall will be the District Magistrate. I fear that when there are two concurrent authorities on the same subject, conflict may arise between the two. I can visualise a case in which a person is dissatisfied with a particular Court, he goes to the District Magistrate and asks him to withdraw a case and make it over to another Court. This is practically nothing but a transfer. My humble submission is that when we have given powers of transfer to the Sessions Court, it should not be possible to the District Magistrate to withdraw any particular case from any particular Court and make it over to another Court. Therefore, I am anxious that the powers of the Sessions Court should remain intact and the District Magistrate should not interfere with these powers. It may not be interference as I have put it. But it will be an exercise of jurisdiction which has not been given by clause 103 and yet he will be able to bring about the same result in exercise of the powers given to him under sub-section (2) of section 528.

In regard to sub-section (3) of section 528, the powers are there and in exercise of these powers, he can bring about the same result. But, they are not so objectionable as those given in section 528(2). I do not know if I am clear to the hon. Deputy Minister. I would request him to kindly consider this.

[SARDAR HUKAM SINGH *in the Chair.*]

I was submitting in reference to section 528(2) that this gives power to the District Court in particular cases. Sub-section (3) has reference to a class or particular class of cases. Sub-section (3) may be necessary for administrative convenience or for just easing the heavy file of a Magistrate. Those cases may be withdrawn. I can understand that. If in a case the District Magistrate sides with the complainant, he can bring about the result by the exercise of this power. Anyhow, it is not so objectionable. Section 528(2) has reference to a particular case. Therefore, though the power is inherent in the Sessions Court according to the amendment, the District Magistrate will utilise this power of transfer in the name of withdrawal and recall. I want the powers to be exercised by one authority only. Therefore, I submit that my amendment may be accepted.

I have two other amendments, numbers 95 and 96 which have reference to clause 1. I am anxious as far as clause 1 is concerned. The accepted principle of jurisprudence in regard to procedure is that the procedural sections apply from the date when the Act is passed. So far as the substantive rights are concerned, well, they may be kept in tact, may or may not be interfered with, but so far as the procedural law is concerned, this is the law that from the date of enforcement of any Act relating to procedure, the procedure comes into force. My submission is that by clause 1, sub-clause (2) (a) and (b) it is sought to be enacted that if the case has not begun, the case is already challaned and it is lying in a certain Court, then also this new procedure shall not apply. My submission is that if the enquiry or trial has commenced, after that this procedure will not apply; the old procedure will apply. But, if it has not begun, the new procedure will apply.

In clause 1, sub-clause (2) (c), the words are:

[Pandit Thakur Das Bhargava]

"nothing in this Act shall affect any trial which has begun before a Court of Sessions either by jury or with the aid of assessors and is pending on the date of such commencement;"

When it has begun, there is no question of pending. The words "and is pending" are unnecessary. These words may be taken away.

I am anxious that in cases which have been challaned in a particular Court, the procedure applicable should be the one which we are now enacting so far as the conduct of the case is concerned. But, if the trial or enquiry has begun, only in that case it may be that the old procedure may apply.

This is all that I have to say.

Shri Raghubir Sahai (Etah Distt.—North East *cum* Badaun Distt.—East): I have a small amendment to the original section 562, but it is a very important amendment at that. My amendment is No. 13 and it reads like this:

In page 30,—

(i) line 27, *after* "the principal Act" *insert* (a); and

(ii) *after* line 28, *add*:

"(b) after the words 'offence was committed' the words 'and to the fact that he has made a clean breast of the whole thing, concealing nothing' shall be inserted".

At present, section 562 of the Criminal Procedure Code provides that when any offence has been committed, firstly by any person not under 21 years of age and punishable with imprisonment for not more than seven years, or, secondly by any person under 21 years of age or any woman not punishable with death or transportation for life and no previous conviction is proved against the offender, then the Court may, regard being had to the age, the character or antecedents of the offender and to the circumstances in which the offence was committed, adopt two courses. First, instead of sentencing him at once to any punishment, release him on his entering into a bond with or without sureties, and, as provided in a subsequent sub-section, it can also release the accused on admonition, and that can happen only in the case of theft, dishonest misappropriation, cheating or any offence not punishable with more than two years. It is a very salutary provision. Its salutariness has been proved by dint of time.

In the United Provinces, in accordance with the provisions laid down here under section 562, another law has been enacted in 1938 known as the United Provinces First Offenders Probation Act in which virtually all that has been provided in section 562 has been embodied with an addition that first offenders can be released either on entering into a bond or on admonition; and whereas in section 562 the Magistrate is required to see or to consider the fact of the age, the character and antecedents, here it has also been further provided that he will take into consideration the physical or mental condition of the offender in coming to a conclusion that he may be released on entering into a bond. I only wish that in addition to the considerations about age, character, antecedents and other circumstances, the Court may also be pleased to consider the fact that the offender has made a clean breast of the whole thing, concealing nothing.

This amending Bill on the Criminal Procedure Code has been before this august House for a number of days, and day in and day out a number of learned arguments have been advanced and the greatest stress has been laid on the fact that one of the objects of this Bill is to put down or to mitigate the prevailing evil of perjury. I quite agree that that evil should be minimised, should be mitigated, but my submission has been on previous occasions also, and on this occasion is, that whatever provision we have so far made with regard to the mitigation of perjury amounts to almost nil. By enacting those provisions or by retaining the provisions that already exist on the statute-book, perjury has not so far been put down, nor do I think that it will be put down

hereafter. But whatever provision has been made is welcome and should be welcome to every well-wisher of the country. But, my submission is that side by side with the provision that we have already made, there should be some incentive provided in the law that truth may be encouraged. My submission is that the law as it at present stands does not provide any incentive for speaking the truth. So, in section 562 where a very salutary provision has been made that a Magistrate or a trying Court, if he or it considers that the offender has committed the offence in circumstances which have been laid down here and also that he has not been convicted of any other offence previously, will have regard to his age, to his antecedents, to the circumstances in which the offence has been committed, I say another circumstance should also be added, *viz.*, that he may have regard also to the fact that the accused or the offender has made a clean breast of the whole thing, he has concealed nothing. You will thereby be giving some sort of incentive to speaking the truth. My object is only that truth must be given some preference, some consideration in the eyes of the law. It is not mandatory provision. Section 562 is not a mandatory provision. It is only discretionary, entirely discretionary. Even if all these conditions are fulfilled, the trying Court may come to the conclusion that it is not satisfied. His age may be such, his antecedents may be such, the circumstances may be such, but the Court may not be satisfied that he should be released on probation, or he should be released only on having been given an admonition. So it is entirely discretionary. You have provided for all these considerations. Please add one more to them 'and to the fact that he has made a clean breast of the whole thing concealing nothing'. My grouse is that till this time, the fact that a person should speak the truth or that the accused should speak the truth has not been rightly emphasised. That right sort of atmosphere has not been produced in the Courts.

With your permission, I will mention one specific instance in which I found—and there are other instances that can be quoted by other hon. Members—that in the present circumstances Courts do not attach any importance to the speaking of the truth. They go by the material that is produced before them. Some years back I was appearing for a confessing accused in a criminal conspiracy case. The case was that some merchants and some railway employees had conspired to defraud the Municipal Board of my own District—the city of Budaun—of the terminal tax that was due to them. Now that conspiracy was exposed sometime after thousands of rupees had been so defrauded. Now, the railway employees concerned were arrested. Those merchants were arrested. After the investigation was completed, the case was *challaned* and it came up before the First Class Magistrate. Now, there was one telegraph clerk, aged about 20 years. He was also arrested, and that telegraph clerk made a clean breast of the whole thing, made a full confession of the whole story. It so happened that I appeared for him and I was satisfied that the confession that he had made was *bona fide* and perfectly true. To put it in brief the whole case was gone through before the trying Magistrate. Every one of them was convicted including my client, that confessing accused, but the judgment of the case was entirely based upon that confessing statement. The Court believed from start to finish the story as was propounded in the confessing accused's statement, but the sentence that was awarded to him was the same as was awarded to the other accused. The court agreed that the confessing accused, a young boy, was made a tool by the more experience and senior Railway Staff. The matter went up in appeal. What happened there? The confessing accused stuck to his confession. Now before the Sessions Judge, some of the worst criminals, the conspirators—they were let off. The sentence of my client was not at all reduced. The matter went up in revision before the Alla-

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habad High Court. And what happened there? Everybody was let off except the confessing accused. Since that day, I have come to the conclusion that it is not the fact of the truthfulness that weights with Courts, it is the fact whether they have complied with the terms of the law or not. They are not concerned with truth. I beg to say that some importance should be attached to truth-speaking, and until and unless you make a specific provision in law that truth-speaking will be encouraged and will be given some amount of consideration and some preference, by having resort to the negative provision for punishment of perjury summarily or by other processes, you cannot put down perjury. So my submission is that for God's sake, under section 562 make this amendment. That will not in any way at all go against the interests of the accused or against the prosecution. I commend it to the notice of the hon. the Home Minister.

Pandit Munishwar Datt Upadhyay (Pratapgrah Distt.—East): Before making my own suggestions, I would like to refer to the hon. the previous speaker's suggestion made just now. I appreciate the suggestion and also the idea behind it, that truth-speaking should be encouraged in Courts. We said the other day that perjury was the worst evil that was prevailing in the Courts and when witnesses go to the Courts, people say: 'Well, they are going to the Court. They have to say certain things'. There, as I find, they say that generally no regard is paid to truth-speaking. And sitting in their parlour, if any question is put to them regarding truth-telling and truth-speaking, they say, 'Well. It is not a Court of law. Here I should say the truth'. So it is to a Court of law that people go, their mind made up, to say certain things. They do not have any regard for truth. In these circumstances, the suggestion made by my hon. friend is really very laudable and very good and I think any person who has any regard for morality, any regard for truth, is bound to appreciate it. But then, when he went on arguing to support that suggestion, I think that the logic was not very correct. He says that if a person tells the truth, that he has committed the offence, the sentence should be minimised or it may be that there should be no sentence at all—probably he might go to that extent.

Shri Raghubir Sahai: Not necessarily. The provision was entirely discretionary.

Pandit Munishwar Datt Upadhyay: So all that he means is that there should be concession for telling the truth before the Courts. If the accused who appears before the Court admits the guilt, then the punishment should be lenient.

Shri Raghubir Sahai: My hon. friend has perhaps misunderstood me. I have simply added the stating of the truth as one of the circumstances which would weigh in section 562.

Pandit Munishwar Datt Upadhyay: I am just coming to that. So my submission is that the suggestion that has been made—the implication of that suggestion—is that for telling the truth in the Court, for confessing to the guilt, that he has committed any crime, there should be some sort of regard paid. That appears to be the idea behind the suggestions, and in the mind of the hon. Member who has made it. Of course, the real object is just to introduce an amendment to section 562 to say there should be consideration not only for age and other factors that are there, but also for telling the truth and making a confession that he has committed a certain offence or stating the circumstances in which he was placed on account of which he had been prosecuted for that offence. I would submit that the Courts are meant for punishing persons who commit

offences and the offences are provided. The law is very clear on that. So far as the law goes, so far as dealing with the crime goes, I think there can be no leniency for telling the truth. Therefore, the basic principle behind it, as betrayed by the suggestion of the Mover, is that there should be some amount of regard for telling the truth, meaning thereby that if confession is made, if a person commits murder and goes to the Court and admits and confesses that he has committed murder, in that case a certain amount of regard should be shown to that person in probably awarding the sentence.

Shri Raghubir Sahai: Under section 562, the case of a murder does not come in. I would submit that my friend thinks that the principle that he has enunciated is confined only to particular sections. I am referring to the idea behind that suggestion. So far as the suggestion for section 562 goes, as I said, in the very beginning, I very much appreciate it.

Babu Ramnarayan Singh: On a point of order. There is no quorum.

Mr. Chairman: Now there is quorum; the hon. Member may resume his speech.

Pandit Munishwar Datt Upadhyay: I was submitting that the amendment that was suggested is very laudable, but then, in the circumstances, I would not only suggest that but something more. If that aspect of the question is to be emphasised, there can be many more factors also along with this factor. If the person admits the guilt or if he makes a clean breast of it, as he has suggested, I think in that case regard should be had to that factor. So far as the introduction of that amendment is concerned, I would really commend it. But I wanted to submit that the idea behind it, the logic behind it is really not very helpful in that matter.

Now, I shall come to one or two suggestions that I have in mind. Under clause 109, a suggestion has been made that if in certain circumstances the Court thinks that the presence of the accused is not essential, then, he might allow the accused to appear in the Court by his pleader. But then, sub-clause (2) contemplates certain cases where probably no arrangement is made and it so happens on a certain day nobody is present and therefore, the Court has to take certain steps in the absence of the accused. My suggestion is that at present, the law is very clear. In the Court of the Magistrate, if the accused requires to be absent, he makes an application and on the application of the accused, his pleader is bound to appear every day as soon as the case is called. It is obligatory on the counsel to be present in the Court instead of the accused. He cannot be absent and as soon as the pleader is absent, the accused is taken to be absent and a warrant is issued or other proceedings are taken against him. Therefore, I would like that that sort of provision is essential. Under sub-clause (2) of section 540A at present, probably there is no such necessity of the accused making an arrangement that his pleader shall appear, as soon as the case is called, in the place of the accused, because it has been said here in the proposed clause that if the accused in any such case is not represented by a pleader, or if the Judge or the Magistrate considers that his personal attendance is not necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such an enquiry or trial or order that the case of such an accused be taken up or tried separately. In this section, the question of adjourning immediately occurs. It shows that it is a case where the accused is not present before the Court. Otherwise, the question of 'adjourning' would not be here, in the proposed clause. So, I would submit that it should be so worded that it may be essential for the accused to make an arrangement, before he leaves the Court, that he shall be represented by his pleader and that in-

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pleader shall appear before the Court when the case is called. Otherwise, considerable difficulty would arise in the proceedings of the Court. This is one suggestion.

The other suggestion that I would like to make is in respect of clause 106. In clause 106, "misjoinder of charges" is mentioned. Misjoinder of charges—as we all know, we who have been practising in Courts of Law—is a serious matter on which the conviction is set aside, and orders are quashed. They cannot stand. It has been mentioned in clause 106 (i) that in clause (a), the word "charge" shall be omitted, and after clause (a), the following clause shall be inserted, namely:—

> "(b) of any error, omission or irregularity in the charge, including any misjoinder of charges."

That means, this will not be a ground for revising confirmation of sentence. So, I would submit that this misjoinder of charges is a serious matter, and on the ground of misjoinder of charge, the sentence cannot stand. Therefore, to add "misjoinder of charges" is not necessary. "Charge" has already been mentioned in the clause.

Dr. Katju: I have not heard of a man who was let off on this ground. There was a retrial. The man got six months and not two years.

Shri N. C. Chatterjee: You are peculiarly unlucky.

Pandit Munishwar Datt Upadhyay: With his large experience, the hon. Minister, of course, has so many instances where, in spite of this provision of law, the law became almost ineffective. But I would submit that it is a serious matter. I think the word "charge" occurring in the clause is quite enough.

Mr. Chairman: The hon. Minister has not told us whether the fault lies in the procedure or with somebody else.

Dr. Katju: The fault lies with the Court which got up with it softly. A kind Magistrate gave him six months; then came a fine Magistrate who gave him two years.

Shri Sadhan Gupta *rose*—

Mr. Chairman: When the time comes, he can answer this also.

Pandit Munishwar Datt Upadhyay: In cause 105, trial by jury is mentioned. In the proposed clause, it has been provided that unless objection is taken to the proceedings before evidence starts, if there is any miscarriage of justice, if the accused is to object to it at any other stage, that objection will not be allowed. The objection shall be allowed only when "the objection is taken before the Court proceeds to record evidence in the case". Unless this objection is taken before the evidence starts, at the very beginning, the objection taken later on would be of no avail. Under the provisions, as amended, if objection is taken at any other stage, it is illegal. My submission is that if the trial is illegal it is illegal. We have seen that we have already done away with the assessors. But, we are maintaining the trial by jury. I think we have realised the importance of this. There was a good deal of discussion over it and I will not go into the details. But, if it is provided that the trial should be with a jury, to say that if the trial starts without a jury and if no objection is taken at the very beginning it can go on without a jury is not legal. If a trial which should start with a jury starts without a jury then the trial is illegal. The objection may not be taken at the very beginning probably because at that time the accused might not have been represented by his counsel. It happens sometimes like that. The accused is not represented by his counsel. He does not know what are the objections he should take

and what are the objections that he should not take. He does not take the objection at the beginning (*Interruption*). Therefore, if he does not take objection in the beginning that objection is not allowed. A trial which is illegal *ab initio* because it starts without a jury is being maintained if an ignorant accused has not at the beginning objected to it. What is illegal is illegal and this illegality should not be tried to be removed in this manner. In certain cases, grave injustice may accrue because the person who is standing in the dock does not know whether he should object or not object, especially when his pleader is not present, as happens sometimes. Therefore, my submission is that this provision should be dropped that trial without jury should be allowed to stand even though the trial should have been with jury and the objection has not been taken at the beginning, when the evidence starts.

These are the suggestions that I would like to make and I would like that at least the last suggestion may be accepted because it is likely that sometimes some accused may be in trouble.

Shri Sadhan Gupta: Mr. Chairman, in this group of clauses I will express my emphatic opposition to three provisions which are contained in four clauses, namely, the provision regarding curing defects of cases which are wrongly tried without a jury, the provision for transfer and the provision regarding petition-writers.

Before I come to these clauses, I would like to dispose of certain remarks of Pandit Thakur Das Bhargava on clause 1. He says that in accordance with the principles of jurisprudence the procedural sections should come into operation as soon as the Act is enforced and, therefore the provision in section 1 to the effect that the procedural sections would not operate in a pending trial should be done away with. With due respect. I would submit for his consideration and I would submit also for the consideration of the House that these new procedural sections are inseparably connected with certain other privileges granted under the Code to the accused which are not present in the present Code. Before you can follow the new procedure you must have some notice of what the case has been made out against you. You cannot both be denied of the notice as well as be deprived of the notice which the proposed procedure gives you. Therefore it is very essential in the interests of the accused that this new procedure should not come into force and should not be applied to him until he had the documents which are prescribed by this Code.

I am not saying that these documents are enough or those papers are enough to give him adequate notice. I stick to my view they are not enough. But the amendment presupposes that those documents are adequate notice and even those documents will not be available to the accused in the case of a pending trial when he has been charge-sheeted. Therefore, I submit that the provision that the new procedure will apply only in cases charge-sheeted after the present Bill comes into force is a wise provision.

Now, I come to my main point, the three provisions regarding the curing of cases wrongly tried without a jury, regarding provisions for transfer and petition-writers. I must say that this matter of trial with jury has been treated by the Government in a most flippant manner. Trial by jury is a very valuable right which the accused can have, a right which the accused has of having his case heard and determined by his countrymen, by men of ordinary common sense, unsophisticated by the sophistory and technicalities of legal training. That is a very valuable right for every accused and it should be made an indefeasible right. But, what the present amendment states is that the accused must take objection when a case which should be tried with a jury

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is being tried without a jury before the evidence is being recorded. Sir, do the Government consider the consequences of such a provision? The Code provides that the Government may, by notification, declare what offences are triable with a jury and all other offences are triable without a jury.

Now, all sorts of notifications exist in the different States. In some States murder is tried without a jury, dacoity is tried with a jury, rape is tried without a jury, some other very serious offence is tried with a jury and so on and it is impossible to keep track of the notifications. If there is any error, it is not the fault of the accused; it is the fault of the Court that does not know the proper procedure and for that fault the accused should not be made to suffer. The Code as it stands at present, and even the Bill as it was originally introduced, had the provision that the accused should raise the objection before the Court records its finding. I would be opposed even to such a provision because such a valuable right as the right of being tried by his countrymen should not be made subject to the errors of the Court and the accused should not be penalised for a position in which he cannot possibly be expected to know which offences are triable with a jury and which offences are not so triable. He cannot be expected to get track of all the notifications. Even the best lawyer, unless he practises in that particular court or area cannot be expected to know what offences are triable with a jury and what offences are not triable with a jury in that particular area. This argument applies with even greater force when the accused is not defended at all by any lawyer as often happens.

Why should the accused be deprived of a trial with a jury when through no fault of his an error has been committed? Therefore, I would oppose any restriction on this right of being tried with a jury and, particularly, any estoppel on the ground that he did not raise the objection at a particular time. But, if you must have a time-limit, have it as the Code prescribes, have it as the Bill originally introduced prescribed, namely, that it must be raised before the Judge records his finding. That is a much more reasonable provision then the present one that it must be raised before evidence is recorded. What is the use of this privilege which is so imposingly given if the objection is to be raised before recording the evidence? The evidence is recorded. Almost the first thing in the trial after the Public Prosecutor opens his case is the recording of the evidence. Sometimes the case does not take more than five or ten minutes and then the evidence is recorded. It is provided that within this short time of the trial beginning, the accused has to take objection or lose the invaluable right. Sir, with great respect I should say it is nothing but cheating the right of trial by jury. If you give him the right of trial by jury, for God's sake, give it to him honestly, give it to him fairly. If you do not want to give it, face the country and take it away if you dare to. Don't cheat the accused of the right of trial by jury.

Sir, I have moved an amendment which is No. 639 to clause 105 which seeks to restore the position as it is in the Code and restore the position as it was in the Bill when it was first introduced, namely, that the objection must be raised before the recording of the finding. Sir, I would repeat that I am against curtailing the right of objection at any stage; but, if you must curtail it, curtail it before the finding is recorded and not earlier.

Sir, the next provision to which I have objection is the provision regarding the transfer on a different ground, the ground canvassed by the Home Minister in his speech.

Sir, up to now we had no mistakes. We had only one transfer petition to the High Court under section 526. Now what the Home Minister provides is that the accused must first go to the Sessions Court under section 528 before he can go to the High Court under section 526. I do not see the use of this provision. The Home Minister wants to make justice speedy. He said it again and again and I do not know how this contributes to speed. First you go to the Sessions Court. There the proceedings are held up. Again you go to the High Court with another transfer petition, another hold up of the proceedings. Does that increase speed? Why not have a simple petition to the High Court and be done with it? Therefore, I would oppose the provisions of clause 103 and clause 104.

Now Sir, I have a very fundamental objection to clause 111 which prescribes, which introduces a new section in respect of petition writers. The section says that the High Court can make rules regarding petition writers, rules prescribing, I presume, the qualification of petition writers and also the penalties for petition writers. But there is one very disgraceful condition that it must be done with the previous sanction of the State Government. I do not know why the Government has started treating the High Courts with this kind of disrespect. The High Court is asked to prescribe the rules for petition writers. Naturally the High Court is the most competent authority to do so. The rules it would prescribe, presumably, refer to the qualifications of petition writers. They would presumably refer to the tests which a petition writer would have to undergo before he can be admitted to the duties of a petition writer. It would probably prescribe the mode of conduct of petition writers and would prescribe penalties for exceeding the Court. I do not see where State Government comes in there. What the High Court is interested to see is that the petition writer's work is properly done, that the petitions or documents they make or write conform to proper standards, proper judicial standards and that compartment of the petition writer is beyond reproach. It is the High Court and the High Court alone which is interested in these things. It is the High Court and the High Court alone that is competent to prescribe rules for these things. Why should the State Government come in at all and still more, why should the previous sanction of the State Government be necessary in order that the High Court can make such rules? I would submit, Sir, that any High Court would think it a disgrace to frame rules under these conditions.

Now, Sir, I have said so many things. I would make only a constructive suggestion regarding clause 107 which I would request the Home Minister to consider very carefully. Clause 107 introduces two sections instead of the old section 539A. It introduces a section 539A and section 539AA. Section 539A, as the Code shows, deals with affidavits in proof of conduct of public servants. It provides by the first sub-section that affidavits may be filed in proof of conduct of public servants by applicants. Now, in the second sub-section, it says what the contents of this affidavit should be, namely, they should give such facts which are true to one's knowledge and when it is not true to one's knowledge, the applicant should really state the grounds of his belief. 539AA, which is the new section, deals with authorities before whom the affidavit should be sworn. Sub-section (1) prescribes those authorities, namely, that it can be sworn to an authority prescribed under section 539 or it can be sowrn before a Magistrate. Then, Sir, sub-section (2) goes entirely out of context. It says that a Court may order any scandalous or irrelevant matter in the affidavit to be struck out or amended. I submit that this sub-section should really come under 539A where the contents of the affidavit and where the purpose

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of the affidavit are given. This sub-section should form part of 539A. 539AA should consist only of the first sub-section, namely, which prescribes the authority before which the affidavit can be sworn. It is not an objection which is technical or an objection as to literary excellence. It might also mislead to a wrong interpretation of the scope. When sub-section (2) occurs in 539AA, it might be interpreted to mean that the Court before whom the affidavit is sworn, or the Magistrate may order any scandalous matter to be struck out. I do not want it to stand this way. Therefore, what I have suggested by way of amendments 640 and 641 is this. By 640 I have sought to introduce this sub-section (2) as sub-section (3) of section 539A and by 641 I have sought to delete from 539AA the sub-section (2) and the figure (1) which means sub-section (1). So that, 539-AA consists of only one sub-section. Sir, I would commend this amendment to the acceptance of the Home Minister because really 539-AA(1) is better placed as compared to 539-AA(3) and 539-AA(1) should be the whole section 539-AA. Therefore, I would ask the Home Minister to consider carefully this amendment and either accept it or bring forward his own amendment to this effect

4 P.M.

Regarding clause 111 I have made my observations. There also I have moved an amendment which is number 642, in which I seek to delete the words "with the previous sanction of the State Government".

With these few words I conclude and commend my amendments particularly my amendments numbers 640 and 641 to the consideration of the House.

Mr. Chairman: Hon. Members were asked to intimate to the office the amendments they wanted to press and in response to that these amendments have been received:

Clauses 103.....648.
104.....637.
105.....639.
107.....640, 641.
111.....642.
112.....13.

New Clause 115A.....649.

Clause 1.....644, 645, 95, and 96.

Hon. Members may now move these amendments subject to their admissibility.

Clause 103

Shri Venkataraman: I beg to move:

In page 28,—

(i) lines 8 and 9, *for* "After sub-setion (1) of section 526 of the principal Act" *substitute*:

"In section 526 of the principal Act—

(a) after sub-section (1)"; and

(ii) *after* line 16, *add*:

'(b) in sub-section (8),—

(i) after the words "make an application under this section" the words and figures "or under section 528" shall be inserted; and

(ii) in the proviso, after the words "from the same party" the words "if the application is intended to be made to the same court to which the party has been given an opportunity of making such an application" shall be inserted.'

Clause 104

Pandit Thakur Das Bhargava: I beg to move:

In page 28, *after* line 32, *add*:

"(d) sub-sections (2) and (3) shall be omitted."

Clause 105

Shri Sadhan Gupta: I beg to move:

In page 28, line 39, *for* "proceeds to record evidence in the case" *substitute* "records its finding".

Clause 107

Shri Sadhan Gupta: I beg to move:

(1) In page 29, *after* line 15, *insert*:

"(3) Such court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended."

(2) In page 29,—

(i) line 17, *omit* "(1)".

(ii) *omit* lines 21 and 22.

Clause 111

Shri Sadhan Gupta: I beg to move:

In page 30, lines 9 and 10, *omit* "and with the previous sanction of the State Government".

Shri Raghubir Sahai: I beg to move:

In page 30,—

(i) line 27, *after* "the principal Act" *insert* "(a)"; and

(ii) *after* line 28, *add*:

"(b) after the words 'offence was committed' the words 'and to the fact that he has made a clean breast of the whole thing, concealing nothing' shall be inserted".

New Clause 115A

Shri Datar: I beg to move:

In page 33, *after* line 30, *insert*:

115A. *Savings.*—Notwithstanding that all or any of the provisions of this Act have come into force in any State,—

(a) the provisions of section 14 or section 30 or section 145 or section 146 of the principal Act as amended by this Act shall not apply to, or affect, any trial or other proceeding which, on the date of such commencement, is pending before any Magistrate, and every such trial or other proceeding shall be continued and disposed of as if this Act had not been passed;

(b) the provisions of section 406 or section 408 or section 409 of the principal Act as amended by this Act shall not apply to, or affect, any appeal which, on the date of such commencement, is pending before the District Magistrate or any Magistrate of the First Class empowered by the State Government to hear such appeals, and every such appeal shall notwithstanding the repeal of the first proviso to section 406 or of section 407 of the principal Act, be heard and disposed of as if this Act had not been passed;

(c) the provisions of clause (w) of section 4 or section 207A or section 251A or section 260 of the principal Act as amended by this Act shall not apply to, or affect, any inquiry or trial before a Magistrate in which the Magistrate has begun to record evidence prior to the date of such commencement and which is pending on that date, and every such inquiry or trial shall be continued and disposed of as if this Act had not been passed;

(d) the provisions of Chapter XXIII of the principal Act as amended by this Act shall not apply to, or affect, any trial before a court of Session either by jury or with the aid of assessors in which the Court of Session has begun to record evidence prior to the date of such commencement and which is pending on that date, and every such trial shall be continued and disposed of as if this Act had not been passed;

and, save as aforesaid, the provisions of this Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of this Act and also to all proceedings pending in any Criminal Court on the date of such commencement."

Clause 1

Shri Datar: I beg to move:

(i) In page 1, line 7, *add* at the end "and for different provisions of this Act".

(ii) In pages 1 and 2, *omit* lines 8 to 23 and 1 to 5 respectively.

Pandit Thakur Das Bhargava: I beg to move:

(i) In page 1, line 13, *for* "is pending" *substitute* "has begun".

(ii) In page 2, line 3, *omit* "and is pending".

Mr. Chairman: All these amendments are now before the House.

Shri R. K. Chaudhuri (Gauhati): Sir, I happen to be one of those 49 members who, unfortunately or fortunately, had a seat in the Joint Committee of this momentous Bill. I find, Sir, that in our attempt—I would say, in the attempt of a certain section of the House—to find fault with the provisions of the Bill as it has emerged out of the Joint Committee, it is apt to forget the very admirable provisions which have found their place for the first time in this Criminal Procedure Code. I refer particularly to the amendment of section 528 as also section 526. I may mention here that we in Assam had no High Court of our own till the year 1948 and we have been always, during the British rule, under the jurisdiction of the Calcutta High Court. Calcutta was at a great distance from Assam in those days when the air communication had not come into operation. In those days it was a wonder if anyone could go up to the High court in order to move an application. We had to be content sometimes with an application under section...

Shri V. P. Nayar (Chirayinkil): Sir there are hardly 30 Members in the House.

Mr. Chairman: Now, there is quorum; the hon. Member may continue his speech.

Shri R. K. Chaudhuri: As I was saying, Sir, we had to content ourselves even in the most serious cases, merely by application under section 528 and through that section we could hardly gain any relief. Now, this provision which has been put in this amended clause, I consider, will be of great help to the litigant public because they will be able to make an application for transfer of cases within the same sessions division. That will give the relief which has been denied to us for so long.

[SHRI BARMAN IN THE CHAIR]

I do not see what objection there could be in insisting upon this that unless an application is rejected by the Sessions division no direct application should be made to the High Court itself. I do not see any possibility of any abuse of process or injustice if this clause remains there.

In this connection I should bring to the notice of the House—doubtless the hon. Home Minister is aware of it—that section 528 as it stands today is likely to be abused and it has been more often abused than rightly applied in cases in the past. So long as the District Magistrate remains the head of the police in a particular District, the withdrawal procedure has been more than once used by the District Magistrate in order to withdraw a particular case to his own file wherever and whenever he has been advised by the Superintendent of police that if this particular case was not handled by him or tried by him, it may end in acquittal of the accused. Unless, Sir, there is some restriction placed on the power of withdrawal of the Magistrate, there is every chance of justice being denied when a particular case of a political nature or a particular case in which there is lot of prejudice against the accused. That accused may be denied justice if the case is withdrawn and taken on to the file of the District Magistrate himself or is transferred to some other man. Then, it may be pointed out that the Magistrate who withdraws a case has got to record his reasons for doing so and those reasons, whether they are right or wrong, may certainly be scrutinised by the High Court

when finally the application for transfer is made there, or scrutinised by the Judge himself when the order or application is made before him for transfer of a case.

So, I do not really see any objection to the provisions as laid down in this amending Bill. Rather I would claim it as an improvement upon the existing state of things.

As regards the objection which has been raised by my hon. friend, Shri Gupta, to the amendment of section 537 that an accused is divested of an important right when he in a case triable by jury is tried without jury. After the experience of our law for nearly 41 years, it is very difficult for one to say positively that the trial by jury has been always a source of unmixed blessing. Even then, I have found very many instances where experienced members of the legal profession would sometimes welcome a trial without a jury; particularly in those cases where law and facts are loosely mixed together, they would rather welcome a trial without a jury than having all the apprehensions and anxiety, when a case which stands very well on merit and stands very well on point of law. The case is after all tried by jury and that point is neither here nor there. We are committed in this amending Bill to the continuance of trial by jury and, therefore, a trial without a jury may be rightly criticised, and if that criticim is of any value, that is to say if a trial by the jury even in the present day is a failure, I submit that that right should not be taken away very lightly. The condition has been laid down that an objection to the trial should be raised before recording evidence in the case. I submit that it is a very difficult thing for a lawyer, not to speak of a party to know what cases are triable by jury in a particular area and what cases are particularly not triable by jury in another area. Take for instance the case of Gauhati Courts and Shillong Courts. Both are under the jurisdiction of the same Sessions Judge and it is very difficult to know which cases are triable by jury in Shillong and which cases are triable by jury in Gauhati. Some cases which are triable by jury in Gauhati are not triable by jury in Shillong. It is very difficult for an ordinary party and even for a lawyer of a party, to know from the very beginning whether the case is triable by a jury or not. If, as I say, the trial by a jury is considered to be an important right, non-trial by a jury is certainly a misfortune for the accused. Some little time ought to be given for the party to be able to raise his objection. In some cases there might be a miscarriage of justice. Therefore, I would request the hon. Home Minister to consider whether the period of objection on this ground should not be pushed back a little further so that the accused may be in a position to find out whether his case is triable by a jury or not. I say this on another ground also. If a case can be actually tried wrongly by a Sessions Judge without a jury—a judge who ought to know better—and if such an accident, as I would call it, is likely to happen, it is better that he should have some precaution against it, when this provision has been enunciated, it really contemplates that the Judge has wrongly tried a case without a jury. If a Judge is liable to commit a mistake, is it not more possible that an ordinary party or a lawyer might not be cognisant of the position? I say it again that if the trial by jury is considered to be a valuable right, then this provision should not be allowed to correct a mistake which involves a miscarriage of justice.

As regards the objection against clause 111, I say I welcome this provision and I think the House also would welcome it, but I submit that it is not necessary to obtain the previous sanction of the Government. How could the State come into the picture in a provision of this nature? I fail to see it. I can understand it instead of 'previous sanction', a consul-

[Shri R. K. Chaudhuri]

tation with the State Government is provided for and that would be something. Government may be consulted before the action is taken under this section, but it is not necessary to take the previous sanction of the Government. A State Government, as Members of the House must be aware, sometimes admits into the legal profession members of the revenue side, by enrolling members to practise as a revenue agent or revenue pleader. It will be dangerous to leave it to the discretion of the State Government when a High Court has to make legislation, when important judgments are given by the High Court with the help of the legal profession and the legal profession in their turn take the help of the petition-writers. I submit that it is unnecessary to take the previous sanction and that much of autonomy should be allowed to the High Court so that it may decide what should be actually laid down. Of course, it may consult the State Government and consider their suggestions, if any, but the last word in this matter should not be left with the State Government.

In this connection I would also like to commend the hon. Minister for the new amendment made under section 540A. I welcome this provision because it is a great improvement on the existing provision which could be only applied when there are more than one accused. There are many cases, important cases, where the accused's presence could be dispensed with. There is always the difficulty that in that case the accused may be the only accused. Under this provision, even if he is the only accused, the Court, in deserving cases, would dispense with his attendance. It may be pointed out that under section 205 of the Criminal Procedure Code, the presence of an accused could be dispensed with, but in that case there is the other limitation, and the limitation is that in the first instance a summons should be issued If, unfortunately, a warrant had been issued in the same kind of case, section 205 would not be applied to such a case and section 548 could not be applied to a case where there is only one accused. So, the new section is a very great improvement on the existing law. I really commend the hon. Home Minister for this.

Dr. Katju: To these concluding clauses, a few objections have been taken. I may deal with some of the important ones at once.

Objection was taken to the proposal about trial by jury. Ordinarily, I imagine, mistakes seldom arise. It may arise in States where every criminal case is not triable by jury and only some are triable, some are triable with assessors, some are tried by the Judge sitting alone and only some minor offences are triable by a jury. The Judge may make a mistake, the lawyer may make a mistake. The original section as it stood was an abnormal one. It says that the Judgment will stand unless objection was taken to the propriety of the trial before the Judge recorded his finding. The case may take 10 days. The case starts before the Judge with the assessors, or may start with the Judge sitting alone. All parties, the prosecution and the accused take part, witness come, they are cross-examined, a lot of money is spent and a lot of trouble is caused to everybody. The Judge has formed an opinion one way or the other. Either he is going to acquit him or convict him. Immediately someone says, will you please order re-trial because this is triable by a jury or *vice-versa*? I submit that this is playing ducks and drakes with the law: heads we win, tails you lose. It is an extraordinary thing. The change that has been made is that objection should be taken before the evidence is taken. Then, witnesses have not been examined. It is a fair game. Please remember that I am anxious in a matter of this kind to save the accused from harassment, from further expenses at the cost of his wife and children and also harassment to the witnesses. It is not as if some great

calamity was to fall on the accused because if there is a trial by jury, there is no appeal. There is an appeal against the verdict of the jury on the ground of misdirection. There is no appeal on law and facts. When you have a trial by the Sessions Judge, sitting alone, the right of appeal to the High Court is so much prized. I therefore suggest that once the trial starts without objection, it ought to be allowed to come to an end in the normal way, the case should proceed, the Judge should deliver his judgment. There is an appeal. If the appeal is over, the whole thing is finished. No harm is done. Against an acquittal by jury, there is section 307 which allows the Sessions Judge to refer the case to the High Court if he considers that, the Judgment was perverse. Therefore, the Select Committee has rightly approved a welcome correction. Any attempt to go back would be not fair. It would be injurious to the accused himself and to the prosecution also.

Another point was raised by my hon. friend Shri Raghubir Sahai. I quite sympathise with him. I am anxious myself that Courts of law should have the happy occasion of hearing confessions of judgment. In the Civil Court, the defendant comes and says, I confess judgment, money is due from me, will you please allow instalment payments. The moment he says that, the Judge becomes kind to him. Similarly, in a criminal case, if the accused were to confess and state what they have done and why they did it, section 562 or not, the sentence will be lenient.

Shri U. M. Trivedi: On points of law also?

Dr. Katju: But, we know they do not. My fear is this. As the section stands, it is a very liberal one. It does not take into consideration the indulgence of the Court merely on the question whether the man has confessed or not. It says, age, circumstances, environment. If it is a case of first conviction, all these factors are taken into consideration. A man may be released on probation or may be simply admonished. If you insist on putting this in, I fear very much; the Court will ask, have you confessed? If you have not, the section becomes meaningless.

Shri N. B. Chowdhury (Ghatal): There is no quorum.

Dr. Katju: When you are an accused person, I submit with great confidence that the inducement to state the truth is very weak. There is your own fear and you fumble. You are very hesitant. Then, there are your lawyers and advisers. Then, there is the police saying, you say that, we will get you off.

Shri R. K. Chaudhuri: The hon. Minister will have to say once again what he has said. There is no quorum.

Dr. Katju: Who has counted the quorum?

Shri Venkataraman: The bell is ringing; people will come.

Mr. Chairman: I think there is quorum now.

Dr. Katju: I suggest that as the law stands, it is very favourable to the first offender. It might become a little more strict if my hon. friend's suggestion were adopted. Therefore, I am not in its favour. There is nothing more for me to say. Vote may be taken.

Mr. Chairman: We have finished up to clause 102. I shall now begin with clause 103. There is one amendment moved by Shri Venkataraman. I think it is acceptable to the Government.

Shri Datar: We accept it.

Mr. Chairman: The question is:

In page 28,—

(i) lines 8 and 9, *for* "After sub-section (1) of section 526 of the principal Act" *substitute*:

"In section 526 of the principal Act,—

(a) after sub-section (1)"; and

(ii) *after* line 16, *add*:

'(b) in sub-section (8),—

(i) *after* the words "make an

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application under this section" the words and figures "or under section 528" shall be inserted; and

(ii) in the proviso, after the words "from the same party" the words "if the application is intended to be made to the same court to which the party has been given an opportunity of making such an application" shall be inserted.'

The motion was adopted.

Mr. Chairman: The question is:

"That clause 103, as amended, stand part of the Bill."

The motion was adopted.

Clause 103, *as amended, was added to the Bill.*

Mr. Chairman: Clause 104. There is only one amendment moved, No. 637.

The question is:

In page 28, *after* line 32, *add*:

"(d) sub-sections (2) and (3) shall be omitted".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 104 stand part of the Bill."

The motion was adopted.

Clause 104 *was added to the Bill.*

Mr. Chairman: Clause 105. Amendment No. 639.

The question is:

In page 28, line 39, for "proceeds to record evidence in the case" *substitute* "records its finding".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 105 stand part of the Bill."

The motion was adopted.

Clause 105, *was added to the Bill.*

Mr. Chairman: The question is:

"That clause 106 stand part of the Bill."

The motion was adopted.

Clause 106 *was added to the Bill.*

Mr. Chairman: Clause 107. I am putting both the amendments 640 and 641.

The question is:

In page 29, *after* line 15, *insert*:

"(3) Such court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended."

The motion was negatived.

Mr. Chairman: The question is:

In page 29,—

(i) line 17, *omit* "(1)".

(ii) *omit* lines 21 and 22.

The motion was negatived.

Mr. Chairman: The question is:

"That clause 107 stand part of the Bill."

The motion was adopted.

Clause 107 *was added to the Bill.*

Clause 108 *was added to the Bill.*

Clauses 109 *and* 110 *were added to the Bill.*

Mr. Chairman: Clause 111. Amendment No. 642.

The question is:

In page 30, lines 9 and 10, *omit* "and with the previous sanction of the State Government."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 111 stand part of the Bill."

The motion was adopted.

Clause 111 *was added to the Bill.*

Mr. Chairman: Clause 112.

Shri Raghubir Sahai: I beg to withdraw my amendment No. 13.

Mr. Chairman: Has the hon. Member the leave of the House to withdraw his amendment?

Hon. Members: Yes.

The amendment was, by leave, withdrawn.

Mr. Chairman: The question is:

"That clause 112 stand part of the Bill."

The motion was adopted.

Clause 112 was added to the Bill.

Clause 113 was added to the Bill.

Mr. Chairman : Clause 115. Clause 114 has been passed already.

Pandit Thakur Das Bhargava: Two portions of clause 114 have not yet been passed.

Shri Venkataraman: May I just explain this? I thought that (b) and (c) of clause 114 had not been passed and that only the Schedule in clause 114 had been passed. I raised this point, but subsequently on going through the record I find that the whole of clause 114 has been passed. Therefore, any amendments to (b) and (c) will have to be carried by way of consequential amendments at the third reading. The whole of clause 114 is deemed to have been passed.

Mr. Chairman: Since it is deemed to have been passed, the consequential amendments will have to be taken up at the third reading.

Shri Raghavachari: It was definitely stated that the consequential amendments would be made.

Shri Venkataraman: I said in the third reading the consequential amendments could be carried.

Mr. Chairman: That will be at the time of the third reading.

The question is:

"That clause 115 stand part of the Bill."

The motion was adopted.

Clause 115 was added to the Bill.

Mr. Chairman: New clause 115A.

The question is:

In page 33, *after* line 30, *insert:*

"115A. *Savings.*—Notwithstanding that all or any of the provisions of this Act have come into force in any State,—

(a) the provisions of section 14 or section 30 or section 145 or section 146 of the principal Act as amended by this Act shall not apply to, or affect, any trial or other proceeding which, on the date of such commencement, is pending before any Magistrate, and every such trial or other proceeding shall be continued and disposed of as if this Act had not been passed;

(b) the provisions of section 406 or section 408 or section 409 of the principal Act as amended by this Act shall not apply to, or affect, any appeal which, on the date of such commencement is pending before the District Magistrate or any Magistrate of the First Class empowered by the State Government to hear such appeals, and every such appeal shall, notwithstanding the repeal of the first proviso to section 406 or of section 407 of the principal Act, be heard and disposed of as if this Act had not been passed;

(c) the provisions of clause (w) of section 4 or section 207A or section 251A or section 260 of the principal Act as amended by this Act shall not apply to, or affect, any inquiry or trial before a Magistrate in which the Magistrate has begun to record evidence prior to the date of such commencement and which is

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pending on that date, and every such inquiry or trial shall be continued and disposed of as if this Act had not been passed;

(d) the provisions of Chapter XXIII of the principal Act as amended by this Act shall not apply to, or affect, any trial before a Court of Session either by jury or with the aid of assessors in which the Court of Session has begun to record evidence prior to the date of such commencement and which is pending on that date, and every such trial shall be continued and disposed of as if this Act had not been passed,

and, save as aforesaid, the provisions of this Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of this Act and also to all proceedings pendng in any Criminal Court on the date of such commencement."

The motion was adopted.

New Clause 115A was added to the Bill

Mr. Chairman: The question is:

"That clause 116 and the Schedule stand part of the Bill."

The motion was adopted.

Clause 116 and the Schedule were added to the Bill.

Mr. Chairman: Clause 2. There is an amendment by Shri Datar. I shall treat it as having been moved, and put it to vote.

The question is:

In page 2, line 7, *for* "principal Act" *substitute* "Code of Criminal Procedure, 1898 (hereinafter referred to as the principal Act)".

The motion was adopted.

Mr. Chairman: There are other amendments. I put them together.

The question is:

In page 2, *for* clause 2, *substitute*:

"2. *Amendment of section 4' Act V of 1898.*—In section 4 of the principal Act, clauses (V) and (w) of sub-section (1), shall be omitted."

The motion was negatived.

Mr. Chairman: The question is:

In page 2, *for* clause 2, *substitute*:

"2. *Amendment of section 4' Act V of 1898.*—In section 4 of the principal Act, in clause (w) of sub-section (1), for the words 'six months' the words 'three months' shall be substituted".

The motion was negatived.

Mr. Chairman: The question:

In page 2, line 9, *omit* imprisonment for life or"

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 10 *for* "one year" *substitute* "six months".

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 10, *for* "one year" *substitute* "six months".

The motion was negatived

Mr. Chairman: The question is:

In page 2, line 10, *for* "one year" *substitute* "three months".

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 10, *for* "one year" *substitute* "three months".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended was added to the Bill.

Mr. Chairman: Clause 1. There are amendments to this clause by Shri Datar and Pandit Thakur Das Bhargava. I shall put them to vote one by one. The question is:

In page 1, line 7, add at the end "and for different provisions of this Act."

The motion was adopted

Mr. Chairman: The question is:

In pages 1 and 2, *omit* lines 8 to 23 and 1 to 5 respectively.

The motion was adopted.

Mr. Chairman: I shall now put Pandit Thakur Das Bhargava's amendments. The question is:

In page 1, line 13, *for* "is pending" *substitute* "has begun".

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 3, *omit* "and is pending".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Mr. Chairman: The question is:

"That the Title and the Enacting Formula stand part of the Bill."

The motion was adopted.

The Title and the Enacting Formula were added to the Bill.

Dr. Katju: Will you continue or shall I move....

Shri Datar: I have to move some consequential amendments.

Shri V. P. Nayar: Before the third reading starts?

Shri Datar: In the third reading.

Shri V. P. Nayar: The second reading is not finished. How can he move now?

Shri Datar: That is why I am asking the Chair.

Shri V. P. Nayar: Let the third reading to begun.

Shri Datar: I am going to move:

Shri V. P. Nayar: After sometime.

Shri Datar: All right.

Dr. Katju: I beg to move:

"That the Bill, as amended, be passed."

May I continue tomorrow or just now?

Shri Venkataraman: It would be convenient if the Deputy Minister moved all his amendments, and then the discussion might be continued tomorrow.

Mr. Chairman: Motion moved:

"That the Bill, as amended, be passed."

Shri Datar: I beg to move:

(1) In page 13, line 40, *after* "contained in" *insert* "any order made under".

(2) In page 31, line 6 *after* "Defamation" *insert* "(other than defamation by spoken words)".

(3) In page 31, line 16, *after* "public functions" *add* "when instituted upon a complaint made by the Public Prosecutor".

(4) In page 31, line 34, *after* "functions" *add* "when instituted upon a complaint made by the Public Prosecutor".

(5) In page 32, line 22, *after* "functions" add "when instituted upon a complaint made by the Public Prosecutor".

(6) In page 33, lines 5 and 6, *omit* "379, 381, 406, 407, 408".

(7) In page 33, *after* line 9, *insert*:

"(cc) in the entries relating to sections 379, 381, 406, 407 and 408 in the 6th column, for the words "Not compoundable" wherever they occur, the words, "Compoundable when the value of the

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property does not exceed two hundred and fifty rupees and permission is given by the Court before which the prosecution is pending" shall be substituted."

These are only consequential amendments in view of the decision that the House has taken in respect of several provisions of clauses 40 and 114. These are the two clauses which are being consequentially amended.

Mr. Chairman: These amendments Nos. 652 to 658 to clauses 40 and 114 are now before the House.

Shri A. M. Thomas: Have they been circulated?

Shri Datar: They have been circulated.

Shri Raghavachari: They may be circulated.

Mr. Chairman: They have been circulated.

Shri Venkataraman: They are in list No. 41.

Mr. Chairman: Shall we adjourn now?

Shri Venkataraman: The Home Minister also is tired.

Shri V. P. Nayar: With your permission, I would ask for some information from the hon. the Home Minister. The other day when we were discussing the provisions regarding libel and slander, the Home Minister said that he was prepared to accommodate one amendment from us. May I know whether Government have taken any action thereon. I quoted some British law....

Dr. Katju: I considered that matter, but I do not think we need follow the English procedure, because it is entirely different. I came to the conclusion that here we had the warrant procedure in the first stage, and that very object could be served by having consultation with the Judge.

Shri V. P. Nayar: Does it mean that the Minister holds that hearing at the chamber of the Judge is not necessary?

Dr. Katju: Across the floor of the House I have to be formal, but I should like to discuss this matter with my friend tomorrow. Let us meet tomorrow.

Shri V. P. Nayar: All right.

Shri Venkataraman: May I suggest that the amendments moved by Shri Datar may be voted upon now so that we may have the whole of tomorrow for discussion?

Mr. Chairman: The amendments moved by the hon. Deputy Minister are consequential. Now, shall we adjourn or sit a few minutes more?

Shri Venkataraman: It is better that those amendments are voted upon and general discussion is continued tomorrow.

Mr. Chairman: But Shri Raghavachari wants that the amendments should be circulated.

Shri Datar: They have been circulated.

Shri Venkataraman: In that case, I suggest that the discussion may continue and we may save 15 minutes.

Mr. Chairman: That depends on the House. If the House wants to go on, we will continue.

Shri Venkataraman: I want to speak on the third reading. I am going to speak.

Shri Dhulekar (Jhansi Distt.—South): Let us adjourn now. (*Interruptions*). It is adjourned.

Shri Venkataraman: It is not adjourned.

Shri Dhulekar: No, it is adjourned.

Mr. Chairman: Let us adjourn now.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday the 8th December, 1954.