

REPORT OF REHABILITATION FINANCE  
ADMINISTRATION

The Minister of Revenue and Defence Expenditure (Shri A. C. Guba): I beg to lay on the Table a copy of the Report of the Rehabilitation Finance Administration for the half year ended the 30th June, 1954 under sub-section (2) of section 18 of the Rehabilitation Finance Administration Act, 1948. [Placed in Library. See No. S-467/54.]

the best wishes of our Assembly to your Parliament."

CODE OF CRIMINAL PROCEDURE  
(AMENDMENT) BILL—concl'd.

Mr. Speaker: The House will resume the third reading of the Code of Criminal Procedure (Amendment) Bill, 1954. As the House is aware, five hours had been allotted for the third reading of the Bill, but, as agreed to by the House yesterday, two hours out of this were given for the conclusion of the second reading at 5 P.M. so that three hours may be taken up by the third reading today. Since the second reading concluded by 4-40 P.M. and the third reading was taken up 20 minutes before 5 P.M., two hours and 40 minutes now remain for the third reading. This would mean that voting on the Bill, as amended, will take place by about 2-40 P.M.

PREVENTIVE DETENTION  
(AMENDMENT) BILL

PRESENTATION OF PETITION

Shri K. K. Basu (Diamond Harbour): I beg to present a petition signed by sixty three thousand five hundred and forty-one petitioners in respect of the Preventive Detention (Amendment) Bill, 1954.

The House will, thereafter take up the motion for concurrence in the recommendation of the Rajya Sabha for reference of the Hindu Minority and Guardianship Bill to the Joint Committee for which five hours have been allotted.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

SEVENTEENTH REPORT

Shri Altekar (North Satara): I beg to present the Seventeenth Report of the Committee on Private Members' Bills and Resolutions.

Shri M. A. Ayyangar (Tirupatt): At the third reading stage, I would like to say a few words regarding the Criminal Procedure Code (Amendment) Bill. I had not the pleasure of participating in the debate, nor do I pretend to have contributed to the debate at all, because I had no opportunity. However, I had an opportunity of watching it from day to day and intervening from time to time in whichever manner I was able to.

MESSAGE FROM PRESIDENT OF  
GRAND NATIONAL ASSEMBLY  
OF TURKEY

Mr. Speaker: I have to convey a message which has been received from the President of the Grand National Assembly of Turkey through the leader of the Indian Parliamentary Delegation, which visited Turkey recently. The message reads:

Now, this is not a controversial Bill, as can possibly be said with respect to political and economic issues or Bills relating to them. But almost every clause provoked some controversy. I must congratulate the whole House on the goodwill that prevailed. No partisan spirit was there and no Party whip was ever issued so far as most of the clauses are concerned—indeed I can say, even with respect to

"It is a pleasant duty for me to assure Your Excellency that the goodwill of the Indian Parliament as conveyed by Your Excellency is fully reciprocated in the Grand National Assembly of Turkey, and to request you to be so good as to convey, in return,

all those clauses. As proof of this, we have in our midst the relentless fighter who fought to the last ditch, who belongs to the Party from which the Government is drawn. I refer to Pandit Thakur Das Bhargava who with his able advocacy and large experience did not let a single clause escape his attention. The discussion regarding this took 54 hours and 45 minutes minus 2 hours and odd which we have still to complete. Now, the time that was allotted was 55 hours. In recent years, we have not had a Bill of this kind to which Parliament—all sides of it and all sections of it—devoted so much thought and care and attention and spent so much useful time. I must congratulate the hon. the Home Minister for the sweet good humour and reasonableness which he exhibited almost at every stage. Nobody can deny his transparent sincerity and honesty of purpose, his enormous ability and standing at the Bar, his rich experience of the world. His idea was that criminal justice must be made speedy, consistent of course with justice, and it must also be cheap. That was understood and appreciated by the other sections of the House also whose intention was that speed ought not to be utilised for the purpose wherever it stood in the way of rendering justice. Therefore there is a balance on either side. Ultimately many of the amendments that had been moved have been accepted and now this represents the greatest common measure of agreement. There can still be some emphasis laid on one section or the other. On the whole we have to congratulate ourselves on the manner in which it has been done.

I ought not to fail to refer to some of the important Members here—that does not mean that other Members are neglected—who have taken part in the debate on this subject. I must refer to Shri Sadhan Gupta who, with his unfortunate defect, has been able to speak as if the book was before him. He read through almost every clause and was the first to get up; he did not let any single amendment go

unnoticed. Then on this side, there is Shri N. C. Chatterjee and Shri More, and on our own side—the Congress side—there are Pandit Thakur Das Bhargava, Shri Venkataraman and both the Ministers. This Criminal Procedure Code, I am sure, will help all sections, because women also are not excepted—the maintenance allowance has been raised from Rs. 100 to Rs. 500.

**Shri S. S. More (Sholapur):** But to get the benefit of that provision, they will have to be deserted first!

**Mr. Speaker:** Order, order. Let there be no interruptions.

**Shri M. A. Ayyangar:** Some objections were raised at the earlier stage. It was thought necessary that some other sections—though they did not flow from the amendments embodied in the Bill or provisions referred to in the Bill—should also be taken into consideration, and it was, no doubt, ruled by you, Mr. Speaker that only those matters which flowed from those sections which had been touched upon as auxiliary or ancillary or consequential should only be referred to here.

Now, there are many sections, particularly the security section and other sections with respect to which it is necessary that a Law Commission to go into them and present their report which will come in the form of another Bill later on. There was doubt and suspicion whether a Law Commission might or might not be appointed. A resolution was also tabled to that effect. We have the assurance of the hon. the Prime Minister that a Law Commission will soon be appointed and, therefore, it must set at rest that controversy. I am sure the whole criminal law will come under review by that Commission and ere long, in the light of the new circumstances and the progress of world conditions, the report of that Commission will be acceptable to all parties and will be soon implemented.

[Shri M. A. Ayyangar]

Regarding other amendments that have been tabled, I would say it was also urged that there should be immediate separation of the judiciary from the executive. Some of the important States have already separated the judiciary from the executive and I am sure the hon. Minister is in full sympathy with this object and will implement it ere long in the other States also.

So far as the provisions of this Bill are concerned, much headway has been made. I must at this stage refer to appeals. Hereafter, appeals from the judgments of each and every magistrate will be heard by the Sessions Judge. Thus, even in those States where the judiciary has not been separated from the executive, this will be a wholesome provision which has been introduced in the Criminal Procedure Code and much of the defect in the existing system will be remedied. Even if an executive officer is the Magistrate, there is an appeal to the Sessions Court and it will bring to bear an independent judgment on this matter.

I must say with respect to section 145 proceedings, hitherto the Magistrate was giving rough and ready justice. Now, wherever he is in doubt and is not able to come to a definite conclusion as to which party is in possession or whether the property is not in the possession of anybody, he will refer it straightaway to a subordinate judge or some judicial officer who gives a finding and that finding is implemented. I find it is an improvement and it has removed the sting of a Magistrate alone being in charge of giving decisions on civil matters and giving the decision as he likes.

There are various other improvements that have been made by this Bill. There is the supply of all papers to the accused even without his request. That is decidedly an improvement. The whole of the prosecution case is laid before the accused and it

is open to him even at an earlier stage to know it.

Regarding speed and the procedure before the Sessions Court, originally, in the Bill, it was thought of doing away with the preliminary enquiry altogether, and after taking only the statements, and sending the accused for trial before the Sessions Court: There has been a lot of opinion in recent times that the preliminary enquiry is absolutely unnecessary, because in serious cases the accused does not take the risk of cross-examining the witnesses at the preliminary enquiry stage lest any lacuna in the evidence of the prosecution may be filled up later on. That is what any chary lawyer advises his accused and he does not cross-examine at this stage. He would like to have a full picture. With that end in view, the hon. Home Minister originally, in his Bill, said that there need not be any preliminary enquiry at all and only the statements and other things may be recorded and even the presence of the accused was thought unnecessary. But the Select Committee made an improvement on that in that the accused might be present and on the basis of the material that was placed before the Court, it was open to him to argue that there was no case against him. Here, on the floor of the House, it was felt that the mere presence of the accused for the purpose of arguing out his case was not enough but important eye-witnesses should be brought in and allowed to be cross-examined. We have made a definite improvement here and there is a balance struck. A little more prolonged enquiry at the preliminary stage will be allowed. I believe this will be worked in the spirit in which this amendment has been made and there will not be any injustice at all in future so far as this matter is concerned notwithstanding the fact that full opportunity to cross-examine only some witnesses has been allowed. Enough has been done at this stage. A similar procedure to save time has been made in the case of warrant cases also. It is said that in warrant

cases, except in those of a private nature where it is a cognizable offence, the trial should be on the lines of summons cases. That was what was originally intended. But, an improvement has been made that even at the earlier stage a right of cross-examination is given and whichever witness, in the opinion of the Judge, is necessary to be cross-examined, is also allowed to be brought next time. I need not, at the third reading stage, refer in detail to all that has happened. I can only say that consistent with the idea of speeding up justice no injustice has been done to the course of justice.

Hitherto a kind of patronage was being exercised by the party in power and by the Government for the time being by appointing all and sundry as Honorary Magistrates. Today, under this Bill, it is necessary that before a person is appointed as an Honorary Magistrate of the First Class or the Second Class, he must satisfy certain qualifications which are prescribed by the High Court. This is a definite improvement over the existing provision.

Regarding speeding up, I find that there is a welcome provision. At the same time, it does not interfere with the discretion of the Magistrate. Day after day the case has to go on. I had also some experience at the Bar. I have found in many cases where the prosecution is ready the case is adjourned. I have also known cases where the prosecution is not ready the Magistrate sits tight upon him and throws out the case. I know personally of a case where I had gone for lunch because we had expected that the Magistrate would come late,—after one hour. Immediately he came, he began the case and called the witnesses and when the complainant was running, before his very eyes, to the Court, the Magistrate said, 'Complainant absent, case dismissed'. God save us from such Magistrates. Though this kind of restriction or a direction that the case must be proceeded with day after day is there, such kind of Magistrates are likely to continue to exist. I hope with the change of gov-

ernment and with the winning of freedom, they will feel more responsible.

I am in complete agreement with the hon. Home Minister in doing away with the assessors. The assessors have not done any good. There is no good comparing this country with other countries where for over seven hundred years they have worked it out and established a kind of democracy. The people are reasonable. Here in this country we know of cases where a murder takes place and a father and son have seen that. Though they have a right to testify to it on behalf of the prosecution, yet when the son speaks about it, the father comes and tells him, "You fool, you look to your prospects in future; why do you involve yourself in all this"? This happens even in very serious cases. It is very difficult to get witnesses in this country. You know the quality of the assessors chosen. Nobody who has got some business ever agrees to come as an assessor. You cannot force them very often, though the Court has got the power. Nowadays there is no need for assessors.

Regarding the jurors there has been some distinction made. Some cases, with the consent of the High Court can be tried by the Judge himself and in other cases the trial has to be with the jury. There is no good thinking that in Russia or China they are meeting out rough and ready justice. We have not seen all that. We cannot say that if a certain person is hanged for an offence—whether it is good or bad—others will not commit that offence. We have not yet agreed to that proposition that irrespective of the fact whether a man is innocent or not, if he is hanged, other people can certainly be put down and we can certainly put down all sorts of crime. We are not adopting that kind of ideology. Under these circumstances, it is necessary that no innocent person should be convicted. And, no complainant in our country ought also to go away if he has a right case. There has been too much of emphasis in recent times upon the right of the accused. I have also been tackl

[Shri M. A. Ayyangar]

these questions. I know of a case in which the accused who was a black-guard was acquitted. I chuckled over that. Of course, this was during the early stage of my life and not now. I ask my lawyer friends honestly how many of them have not done so in their early life. After he has become mature and experienced and has become rich when it is not necessary for him to take every case, he can afford to pick and choose. But, in the earlier stages he has to take up all sorts of cases. How many of us have chuckled when we have got an accused acquitted? We were more anxious to secure an acquittal than to have real justice. We were more anxious for a victory even though the accused may be a scoundrel rather than render justice. I am not accusing any other hon. Member. I myself have done it and there is no harm in accepting that. Therefore, is it not time for us to read just our ideas and impress upon the world at large that whoever comes to Court will not go unrequited? We are trying to see that no man who is innocent shall be convicted. In the earlier stages we always want that every accused should get away, that we should have a victory, a hectic victory over the others. I say the time has come when we ought not to allow a scoundrel to escape as far as possible; at the same time, no innocent person should be convicted. This is all I have to say in this connection.

So far as investigation is concerned, much has been said, but I would like to say one thing. The hon. Home Minister has introduced a very wholesome provision that if the case drags on for more than sixty days, if the accused is in jail, he shall be automatically or to a large extent released on bail except in exceptional cases. That is a very good provision. But what about the enormous period for which these persons are kept in custody during the investigation stage? I would urge on the Hon. the Home Minister to issue instructions that if any person has been kept in custody

for 15 days or a longer period, that period also should be taken into account in imposing the new sentence. At any rate 50 per cent. of the time he was kept in jail in remand ought to be counted in his favour and the sentence of imprisonment reduced accordingly. This alone would meet with the ends of justice. Also, in cases where the Judge finds that 15 days or half the time that he was in remand ought to be deducted in the case of imprisonment, the prosecution, the police officer, ought to be dealt with as to why he kept the investigation dragging on for such a long time. This alone will meet with the ends of justice.

Now, there has been some difference between public prosecution and private prosecution. I would urge upon the Home Minister to take an early opportunity also to bring in a provision in order to remove any difference between public prosecution and a case where a complaint has been launched by a private individual. There should be no difference between a case started by a private party and one started by a police officer. Whatever applies to a police charge-sheet must also apply to a private individual. There is no meaning in giving three opportunities to cross-examine. That does not improve matters. It only means that the case is dragging on. I know of many cases. Whenever I appeared for some complainant, the accused went on taking time and swallowed up witness after witness. After the second hearing I found one witness less—eaten away by the others. How many times are we to contend against this? Is it abstract justice dropping from heaven that we are trying to provide or real justice according to the circumstances of each case? It is not one universal law applicable to the whole world. There is absolutely nothing like that. I do not want the hon. Minister to apply the same provisions to a private complainant. He may do so, but there is the other party who is brought before the Court of Law.

I appeal to all lawyers and all public men in the country to cooperate and raise the moral standard of our people. In criminal cases, particularly those charge-sheeted by the police, it is no man's concern. He complains to the police and then he enters into some kind of arrangement with the other side and then his own witness is placed over the prosecution. Let us not feel that the Criminal Procedure Code is intended to support rogues and scoundrels. That is the impression that is created outside. If one man who is a culprit escapes, it creates an amount of suspicion against Government as a whole. There are many cases where you want abstract justice. God must himself come. Let us have a balance so far as this matter is concerned. It is the duty of every lawyer to do what is his duty. In marginal cases God alone decides these matters. It is the duty of all interested in the welfare of the State to see that the offender is brought to book and to see that some technicalities of law do not stand in the way of rendering justice.

I thank all the hon. Members here and the members of the panel of Chairmen who had to sit and conduct the proceedings.

It is no very interesting story. It is no interesting piece of legislation to discuss clause after clause, amendment after amendment. So many amendments have been tabled, some of them being ticklish. Therefore, I must, on behalf of the House, thank all the members of the panel of Chairmen who had to sit and conduct the proceedings.

**Shri A. M. Thomas (Ernakulam):** I am very glad to echo the sentiments that have been expressed by the learned Deputy-Speaker: Lawyers have classified judges into two classes, namely, convicting class and the other, acquitting class. It is said that those lawyers who have been recruited to the Bench and who have had a lot of criminal practice and who have been responsible for the acquittal of so

many persons, generally have a convicting tendency when they come to the Bench, because they are aware of the fact that the accused take advantage of several technicalities that find a place in the Criminal Procedure Code.

The proposals brought by the hon. the Home Minister in the original Bill have been coloured to a certain extent in account of several acquittals that have taken place owing to technicalities. Dr. Katju himself an experienced lawyer has been responsible for several acquittals and there is no wonder that he has been influenced by that situation and his original Bill was coloured by many provisions because of that background.

[Mr. DEPUTY-SPEAKER in the Chair.]

I submit the Bill as it has emerged out of the Joint Committee and as it will be finally passed by this House, has got rid of very many objectionable features that have been pointed out by the hon. Members at the time when this Bill was referred to the Joint Committee and after it has emerged out of the Joint Committee. It is said that there cannot be vested rights in a procedural law. I submit that vested interests really came into conflict when we discussed the Bill at the prior stages. Mr. Chatterjee, when he spoke on the Bill, said that no less a person than Laski had pointed out that vested interests of lawyers form the greatest obstacle in law reform. I submit that Mr. Chatterjee himself has been a little guilty of being influenced by vested interests when he pleaded for several of the technical provisions in the original Criminal Procedure Code. That has been the experience, I should say, with regard to other experienced lawyer Members of this House.

It has been said that the Criminal Procedure Code is the 'Bible of the Police'. It has also been said that it is the Bible of an experienced criminal lawyer. A highly-placed police officer in his address to the law apprentices of Madras had occasion to remark very recently, after tracing the history

[Shri A. M. Thomas]  
of the Code of Criminal Procedure  
and the Evidence Act, that:

"the British administration of the past had a mistrust of the Indian officers with the result that this mistrust permeated all these Codes. In fact, books on medical jurisprudence commenced with the saying that the Indian witness was 'more not trustworthy' being prone to mendacity. The entire Code being based on this distrust, the enforcement machinery too came to have this distrust and just as trust begets trust, so distrust begets distrust and the policeman of that day was the object of distrust both by his higher officials and the members of the public."

This was the background under which the Criminal Procedure Code was enacted. We have had a hundred years' experience of the working of the Criminal Procedure Code and after the attainment of independence, it is high time that we change certain of the procedural aspects of this law.

It has been pointed out that there should not be any piecemeal amendment of the Criminal Procedure Code and that we should await the report of the Law Commission which the Government has in view. But the field with which the Law Commission would have to deal is a vast ocean and we should not certainly see that some changes which are long overdue should be allowed to lie over pending the report of the Law Commission.

In this connection I would submit that the first thing that we have to take up—and for that the Government should not await the recommendations of the Law Commission—is the Civil Procedure Code. We also know that years lapse after the filing of a suit for getting justice. People have so to say lost faith in the Courts. In administering speedy justice, the field which the Government has next to take up, is the field of the Civil Procedure Code.

It is also necessary that suitable amendments should be made to the Law of Evidence so that, that may also be brought in conformity with the changes that we have adopted to the Criminal Procedure Code.

A lot of criticism that has been levelled against the changes that have been brought about by this Bill, has been bottomed on the distrust of the officers and the police and unless we create such circumstances which will instill absolute confidence between the administration, police and the public, it is not possible to administer the law even as amended, to the satisfaction not only of the litigant public, but also of the public at large.

The very first thing that is necessary for that is the separation of the judiciary from the executive. We, as a matter of fact, know in States where the judiciary—the magistracy—is still under the control of the executive, they are influenced by the police officers. I know of instances where Magistrates have been demoted and where Magistrates have been sent away from service on the reports of mere Police Inspectors. Therefore, such circumstances should not exist. It has been stated by the hon. Home Minister himself that he proposes to convene a conference of the Home Ministers of various States. I should think, that, if in all States this reform has not been effected, it should be given the top priority and only if the magistracy is absolutely independent of the executive we will be administering justice under the changed law according to the objects that we have in view.

When Shri A. K. Gopalan and others spoke on this Bill they waxed eloquent on the pitiable condition of the various under-trial prisoners. Shri Gopalan cited instances to show that even in the committal stage a period of 3 to 3½ years usually passes. I should think that such a state of affairs will certainly not be repeated when we administer the provisions of the Criminal Procedure Code as is being amended by us now.

I would, at the same time, suggest to the hon. Home Minister one thing; that he may place before the conference of the Home Ministers. The Home Minister himself, not only when he discussed this Bill, but on previous occasions also, has narrated to this House the deplorable condition of the various lock-ups in our country. Sir, it is a blot on our civilisation, how the various lock-ups in the several States are being maintained. While we are zealous of seeing that the accused should not be an under-trial prisoner for long, we must also see that human conditions exist in the various lock-ups of the States. That is a reform which is long overdue and the Home Minister, I hope, will certainly devote his attention to that aspect.

The primary object with which this Bill has been brought is to avoid unnecessary delay. In several respects, I should think, if we apply the provisions of this Bill, unnecessary delay can be avoided. Sir, you pointed out how delay can be avoided in Chapter XII section 145 proceedings if we administer the law according to the amended procedure. We, as a matter of fact know that proceedings under section 145 of the Criminal Procedure Code, in the Magistrate's Court are carried on for years together—six or seven years—and even then there is no finality; we have to reach finality in a Civil Court. According to the amendments that we have now adopted, within a period of three to six months we will be able to reach a finality with regard to the question of possession by the Criminal Court and the parties can fight out their rights in the Civil Court. That is a very welcome provision that has been adopted by this Bill.

One subject which has been the subject of vehement criticism has been the changes that we have adopted in the matter of law of defamation. It is a well recognised thing that defamation is primarily a civil wrong, but, all the same, according to our Criminal Procedure Code, it is a criminal offence, and because the hon. Minister

was pleased to accept an amendment to the effect that the changed procedure will affect only with regard to the "written word", I should think that the class of people that is going to be affected is mostly the class of journalists. I should think that, if the journalists themselves take this in the right spirit, that will take us a long way in the matter of building up of healthy journalism in this country. It cannot be denied that there has been scurrilous journalism here; what we call "yellow journalism" and as circumstances at present exist nobody attaches any value to any sort of criticism in newspapers. Now, I think that situation will change and if any charge is made against a Minister or a public servant, that would be taken note of; and if the Minister or the public servant concerned does not choose to go to the Court himself, the Government itself will take up the matter and see that either, if the public servant is really guilty, he is not exonerated, and if, as a matter of fact there has been irresponsible criticism and charges without any basis, the persons who have been responsible for that will be punished. I should think that the changes effected in this respect are really good and they will certainly engender among journalists a healthy spirit.

Sir, I do not want to take up the time of the House any more. One important advantage that the criminal lawyers have now got is the advantage of getting the copies of relevant papers. We know that in regard to criminal lawyers the cheapest form of defence is an attack on the police investigation and to enable them to be well prepared and effective the copies of the relevant papers at the investigation stage will be very useful. That is a change which will be taken advantage of by the lawyers in the country at large.

When we charge the Home Minister of having brought before this House, so to say, a "Police Bill"—Shri Chatterjee even charged the Home Minister as having brought a "Police Bill"—we should take into consideration all these aspects also



[Shri A. M. Thomas]

whereby several of the abuses from the side of the police can be easily detected and taken advantage of by the accused.

As you have said, Sir, the amended Code should be given a fair trial and, if necessary, we can introduce amendments at a later stage.

**Shri H. N. Mukerjee** (Calcutta North-East): I rise to speak with some trepidation because in spite of a certain smattering of legal knowledge which I once sought to acquire, I am really no lawyer and I have practically no experience of the Criminal Courts so that I cannot draw upon my experience like so many of my hon. friends have done, and that is why I feel somewhat diffident in rising to speak. But I fear that this is a measure which affects not only those who are interested in the profession of law but it is a measure which affects the public, and that is why I rise to contribute whatever I can even at this late stage of our discussion.

In a very short while the Home Minister will be enabled to pack up his troubles in this House over the Criminal Procedure Code (Amendment) Bill and he will smile happily at his achievement in having piloted this tremendous measure, but I feel that it is a pity that he does not realise that already his tenure of office has been besmeared by a sequence of ugly and panicky anti-people legislation and that his latest performance is something of which, perhaps in his less complacent moments, he will have reason to be ashamed. I say so because the Bill, which he has brought forward, has roused something almost like indignation all over the country and it has met with a hail of opposition in the Press.

**Shri Raghbir Sahai** (Etah Distt. North East cum Budaun Distt.—East): That has died down by this time.

**Shri H. N. Mukerjee**: I find also that when this measure was being discussed in this House, all sections of

opinion in the House were wholly arrayed against it. Of course, there was the question of party discipline, and of course, on so many occasions the votes went against the Opposition to the Home Minister's Bill but the voices showed which way the minds of the Members of this House were working. Members got up from different sections of the House and in different ways, with different emphasis they have opposed this measure. I know, of course, they have to say that they welcome it, because after all, the Government has brought in this voluminous piece of legislation and there is no getting away from it, but all the same the trend of discussion has made it clear that all sections of the House have felt misgivings, more or less serious, more or less fundamental, in regard to this measure. I have been supplied by a friend who is rather statistically-minded information about how the discussion of the Bill has proceeded. I have been told that the Bill was discussed for over 70 hours and about 39 speeches were made during the general discussion, and of these 39 speeches, there is perhaps not a single speech, excepting of course the speeches of the Ministers, which supported, without qualification, the Bill or the original stand of the Government. There was almost unanimous opposition from all sides of the House to the Bill as it was drafted, and in spite of the changes made by the Select Committee, which were very far from adequate, in spite of certain amendments which have been accepted with a sort of ill-grace from the Home Minister from time to time, we find that the result is something with which the House surely cannot be happy. You, Sir when you spoke from the floor of the House, appeared to indicate that the House has reason to congratulate itself on the passing of this measure. I interpret your statement to mean that the House has reason to congratulate itself on the patience with which it has discussed this measure, but I do not think that it was in your mind even to suggest that this measure, as it has

come, is something which the House is very happy in being about to pass. It may be that I am not interpreting your mind correctly, but from the trend of the discussion which has gone on for so many days which I have tried to watch with some little effort, I have deduced that, after all, this is a measure about which we are not at all happy. When this Bill becomes law—and it will become law because after all, the Home Minister has an enormous majority in the House behind him—we shall find that the people will ask: How is it that this kind of legislation is thought to be necessary by the Government of the day? Why is it that this Government talks of this country being a welfare State? How is it that, when the Government talks about this country pursuing all the finest traditions of parliamentary democracy, this kind of legislation has got to be passed in this context? That is why I feel that this Bill is an illustration of Congress democracy in action and that Congress democracy is a sorry mess which will sooner rather than later have to be cleaned up by our people.

**Pandit K. C. Sharma** (Meerut Dist.—South): By your party.

**Shri H. N. Mukerjee:** The Home Minister said that there were two main objects in putting up this legislation—that he wanted facilities to be given for proper defence to the accused and even more than that he wanted speedy disposal of criminal business. When you spoke, I noticed one point which was of considerable importance and that was that you emphasised that crime, when it occurs, certainly has got to be published. Nobody would demur to that view. Certainly, wherever crime happens, it has got to be put down with a stern hand, but the point is: how exactly are we going to do it? You suggested moral reformation. That is, of course, a very sound prescription, but how is this moral prescription going to be achieved? Is it going to be achieved by greater and greater dependence on a certain apparatus of coercion, the

police, which we have inherited from the British and which we are now going to entrust with powers with which this particular measure is concerned? We certainly want moral reformation, but that kind of moral reformation will only come when the people have an idea that this country is wholly and truly theirs, that the resources of this country are not going to be monopolised by a privileged few, that this country is theirs to the extent of their being able to enjoy the products of their own labour in this country. Till we get that feeling in the minds of our people, we shall never have the kind of moral reformation which we want. Whatever sermons we deliver from time to time in Parliament or outside, our people will not show signs of moral reformation. If the Government had come forward with some serious intent to tell our people that it really wanted to do something big, then surely that moral reformation would start here and now. Government has to come forward with legislation of a very different sort, but Government chose to come forward with this kind of tightening up of the Criminal Procedure Code, so that it can be at any rate harsher than it was in many respects under the British dispensation. We have been told from time to time that Government have very comprehensive schemes. Only the other day there was a resolution backed by a large amount of popular support for the appointment of a Law Commission, and the Prime Minister was good enough to give an assurance that a Law Commission would very soon be appointed. Perhaps, a Law Commission would be appointed, after two years it will get out a report, for five years afterwards there will be a lot of cogitation over it, and perhaps after all that we might get some "Dead Sea fruit". I want to know here and now why is it that Government does not come forward with a really serious effort to change the legal system of our country. We are told so many times about Hindi going to be our

[Shri H. N. Mukerjee]

State language for all practical purposes. If we are serious about it, if we are going to employ Hindi for the purpose of judicial determination at the highest level in our country, we certainly have got to change the entire structure of law in this country. Today, the law that we administer is Indo-Anglian law and for the purpose of administration the Judges and lawyers have to refer to precedents, have to cite all sorts of judgments and things and have to quote English reports dating from the 12th century and refer to Lyttleton, Bracton and Fortescue, and so many other authorities from English law and then the Judge, after a great deal of mental gymnastics, has to come to a certain decision. Are we going to maintain this kind of complicated apparatus which helps nobody at all? If we are serious about the reform, if we are serious about Hindi, we have even to translate the enormous tomes of English law reports into Hindi and then have them referred to from time to time by the Judges and by the lawyers. Or, we have got to simplify the law. I do not see why we cannot have a simplified form of law. If in the Napoleonic Code they could do so, if in Turkey they could adopt that Code, why cannot we adopt some kind of simplified criminal law, simplified civil law and make them applicable to all people in our country? But the Government do not proceed on those lines. This Government is afraid of fundamental thinking. This Government does not like to go in for a basic change. This Government does not like to attack vested interests, even the vested interests of the lawyer Members of this House. That is why we find that Government does not come forward with comprehensive legislation.

Forgetting that aspect of the matter, I would now refer to another point which was raised in the course of the discussion earlier, and now that we are thinking of revising criminal jurisprudence in our country that point ought to be a justification of

whatever Dr. Katju is trying to put out. If we are going to do that, we are thinking deeply about the problem of crime and punishment? Are we thinking of the retributive and reformatory aspects of criminal jurisprudence? What is our contribution in that respect? What is our Government doing in order to mobilise the thinking of those who have tried to devote some of their time and talent to that subject? That is not being done. We have been promised a Law Commission which will in its own dilatory way, with which we are very familiar, produce some time in the future some kind of a report and something will happen. Government does not go to the fundamentals because Government is not sure of itself, and the Government is only refurbishing the weapon in the armoury which it has inherited from the British regime. That is why we have got this Criminal Procedure Code; that is why I said that however vehemently the Home Minister may deny it, there is one black thread running entirely through this Bill and that is this: that the accused must, to all intents and purposes be presumed not to be innocent—if not to be guilty, at least not to be innocent—and that the police are truthful and zealous servants of the public and that perjury is practised by defence and not by prosecution witnesses. (*Interruption*).

**The Minister of Home Affairs and States (Dr. Katju):** He is doing me great injustice.

**Shri H. N. Mukerjee:** I know that the Home Minister would vehemently deny all these things, but that is what we find to be the principal item in this particular piece of legislation. Why is it that so many difficulties, so many hurdles, have been additionally put in the way of defence?

**Mr. Deputy-Speaker:** Cannot the hon. Home Minister say, on the other side, that every complaint is false and frivolous and get on with the presumption that every accused is innocent? There must be a balance.

**Shri H. N. Mukerjee:** In trying to strike a balance, the Home Minister has produced something which is neither fish nor flesh. It is necessary for us to make up our minds...

**Mr. Deputy-Speaker:** A vegetarian is unable to understand this.

**An Hon. Member:** He certainly takes eggs.

**Shri H. N. Mukerjee:** Perhaps being a vegetarian himself, the Home Minister will be unable to understand the analogy that I gave, but I am sure, having practised before the English Judges so long, he would understand what I am driving at. It is absolutely clear that so far as this legislation is concerned, there is this idea at the back of the mind of the Home Minister,—though not at the back of his mind, it is almost in front of his mind,—the idea of false and fabricated cases. This appears to him something almost fantastic. My friend, Shri A. M. Thomas, was speaking a little while ago about certain things that are being done. Well, I do not wish to damn the entire police force. I know there are some very fine men in the police force, but, at the same time, the police force has inherited all the vices and the traditions of a certain system, and that system has not begun even faintly to change. Until we have it changed entirely we shall not get the results that we profess that we desire. This Bill gives to the police certain powers which should not be allowed.

There is not much time left for me. I would proceed to refer to certain things which have been brought very authoritatively to the attention of the hon. Home Minister but he does not seem to have taken much notice of them. One of the highest judicial authorities in this country, when sounded for his opinion on the amendments to the Criminal Procedure Code, told the Home Minister in these terms:

"Dissatisfaction has been voiced regarding the administration of

justice; it is not due to any material defects in the system; it is due to its faulty administration."

Personally I feel that the whole system is bad, lock, stock and barrel, but this particular judicial authority uphold the present system, but he says that the fault is not with the system but it is a question of faulty administration. He adds:

"Generally speaking, the machinery that is responsible for the administration of the system has become inefficient, indolent, dishonest and corrupt. No reform in the system can improve matters if the machinery for its administration remains the same."

Referring to the different parts of the machinery—particularly he refers to the magistracy and the ways of magistrates—he says:

"A Magistrate has very little time to attend to his judicial work. He has to perform multifarious duties apart from his dancing attendance upon higher executive dignitaries. Superadded to his various head-aches are the touring Ministers who tour about the country most of their time. They have to be received, attended to and their fads met with."

It is an observation which has come not from Members of Parliament who are sometimes presumed perhaps by the Home Minister to speak frivolously and irresponsibly, but from one of the very highest judicial personalities in this country, whom I need not and would not specify.

**Shri N. C. Chatterjee (Hooghly):** Justice Mahajan.

**Shri S. S. More:** Justice Mahajan.

**Mr. Deputy-Speaker:** Again and again, dances are referred to, but what kind of dance is it? Kathakali or Bharata Natyam?

**Shri S. S. More:** It is the ministerial dance.

**Dr. Katju:** Judges may be wrong. They are often found to be wrong by the appellate Court.

**Shri S. S. More:** Justice Mahajan said what Shri Mukerjee was reading.

**Dr. Katju:** I do not know.

**Shri H. N. Mukerjee:** It was Justice Mahajan whom I was quoting. That being so, it is very important for us to remember the implications of this measure and to see how this goes right against the spirit of the right kind of legislation that we desire. Shri A. M. Thomas also has referred to the defamation clause. The Home Minister was pleased, after a lot of quibbling, to accept certain amendments but they do not really touch the root of the matter. He has not really yielded at all and the difference he has shown is just the difference between tweedledum and tweedledee. He has made the written word amenable to the kind of stern punishment which he has in view. This is something which militates against the freedom of the Press, but the Home Minister has specialised in attacks on the Press over and over again by legislation and by other methods. But we cannot, without the stoutest opposition, allow a measure to go through, which attacks the Press in this fashion.

In regard to committal proceedings also, he has made the police position very much stronger than it was before. A shadowy committal trial is going to be the rule from now onwards. Many an innocent person would be put to harassment and worse on this score.

On the question of perjury also, the hon. Minister took up a stand which was opposed by almost all sections of the House. Whoever spoke about it said that the Government took up an attitude which was entirely wrong. It appears that a Magistrate or a District Munsiff or a tuppenny-hapenny person may, while writing a judgment, record a finding that a witness might have perjured and that would put him in a very difficult predicament. We

find also that the Home Minister, right at the very beginning, said that those particular aspects of the Criminal Procedure Code with which our people were very much concerned, and which they wanted to change altogether, should not be discussed at all. For example, we may refer to section 144, that perpetual pinprick on our people's patriotism, but we have not been allowed to discuss it at all. That is how the Home Minister has proceeded as far as this measure is concerned. I know that this Bill is going to be law in a few hours' time as far as our House is concerned. I know, even though we had the voices of all reasonable Members of this House with us, their votes will unhappily go against us. We know also that the Home Minister is paving the way for that state of serfdom to which this administration is trying to reduce this country. We know, however, that our people will not tolerate this kind of thing to go on for very long. In spite of whatever observations the Home Minister may choose to make, I repeat on behalf of our group that we are unalterably opposed to this measure and we shall oppose it tooth and nail.

1 P.M.

**Shri S. S. More:** At this third reading, I desire to make in as brief a manner as possible a retrospective survey of what we have done.

This measure will have to be viewed against the background of the approach of the Minister to the criminal problems of this country. I am very happy to say that this approach is neither a democratic approach, nor the approach of a Minister who is running a Welfare State. It is an approach which reflects the mentality of the hide-bound bureaucrat, out to perpetuate a Police State. Look at the provisions and see who has gained. The Magistrates have gained that is augmentation of the powers of the different categories of Magistrates. They have now the power to impose higher levels of fines. There is also gain to the Judges of the

Sessions Courts. Not only that. The police also have gained. For instance, under section 162, they can use their own statements, that is, statements recorded by them, not in a fair manner, to serve their own purpose of bringing the accused into some trouble. Along with that, they have a whip hand as far as the accused are concerned. Who has suffered? It is the accused who has lost all along the line. Under the old Code, he had three rights of cross-examination. He has lost some of those rights. Now, under the old Code, he had only to look to one sort of procedure. But, now, if he is prosecuted by the police, there will be one procedure. If he is prosecuted by a private person, there will be another procedure. We have been complaining that there are too many castes in this country. We have been complaining that there are too many Ministers sitting on the Treasury Benches. Yet, there is addition every day almost. We are now forced to complain that there are too many procedures: one public procedure, another private procedure. This multiplicity of procedure is not going to strengthen the criminal apparatus which we propose to set up in this country.

I am extremely unhappy over this defamation procedure. We are forced to refer to it again and again because, this is the crux of the whole matter. I think the main desire of the Home Minister is to have this particular provision in the statute-book and the other provisions come only in a subsidiary way. While the real bridegroom of this procession is this particular clause, others are persons who are accompanying the bridegroom. Particularly, why should there be protection to the Ministers? I am not speaking in a partisan spirit. I know that one Party may be there on the Treasury Benches today, but tomorrow, the chance may come to other parties or somebody else may be sitting on the Treasury Benches. But, we are politicians. We are dealing in politics. Politics is a dangerous game. You have to give and take. You have to develop the skin of rhinoceros

if you want to continue in politics. When we are sitting in the Opposition, we are exposed to all sorts of slings and arrows from the Treasury Benches. But there is no armour provided for us to shield us from those attacks. Why should the Ministers alone be chosen to give protection under this criminal law. My submission is that this is absolutely undesirable.

I may refer, with your permission, to the report that was submitted by Shri Gorwala who was appointed to go into the incidence of corruption and the different administrative laches that we find in this country. In a very well considered manner, on pages 16 and 17, he refers to the charges of corruption and inefficiency regarding the Ministers. He says that so many charges are being levelled against the Ministers in an open manner. Is there any machinery for enquiring into them? No. Literature is being produced, pamphlets are issued. People are going up seeking sanctions. They could not be prosecuted, even when the accuser has evidence in his possession, because section 197 of the Cr.P.C. comes in the way. He is treated as a public servant and he cannot be prosecuted without Government sanction. We have to apply for sanction. Here is a case. I need not refer to it by name. An application was presented to the Governor for sanction. The Governor is supposed to act on the advice of the Chief Minister. Sanction was sought against the Chief Minister. The person against whom sanction was really sought was the person who was to tender advice to the Governor. No sanction was given. Such things are happening. This is the way in which you want to maintain the purity of administration. Purity of administration should be the basis and foundation of a healthy democracy. If our democracy is to survive, is to gather health and put more flesh on its bones, this purity should be above suspicion. That should be the prevailing notion and the guiding star. Here attempts are made to give protection to Minis-

[Shri S. S. More]

ters, let alone public servants. Why should Ministers be protected in this way? With your permission, I shall quote a short passage from Gorwala.

"The best form of machinery would be a tribunal for the purpose of which is not to punish but to find out and establish facts. In other places such tribunals have found it possible to enquire into the conduct of Ministers of the Crown and high Government officials without in any way making it impossible for them to continue to work..."

It is argued on behalf of the Government that when prosecution is launched for the purpose of defamation against the Press or any individual, he will get an opportunity to prove corruption. Shri Gorwala, referring to several authorities, says:

"Corruption, it is said, is difficult to prove."

I need not at this stage quote extensively taking up the time of the House. You prevent the man who is out to expose the great ulcer running in our body; you punish that man. This is not the way of fighting corruption. The Planning Commission has said, corruption is rampant. They have said that we must carry on a continuous war against corruption. But, Government, by this measure are trying to carry on a continuous war not against the corrupt officers, but against those who are out to disclose, out to reveal corruption. We are extremely unhappy. Again I must say that the correct approach ought to be an approach of social welfare. In Western countries the criminal is treated like a mental patient. He is not hunted, hounded out, but there is something wrong, inherently wrong, in the mental make-up of the criminal. The social conditions have produced this urge for crime, this itch to commit some crime. For instance, persons who are congenitally deformed, ugly, are ridiculed by everybody. The result of that persistent ridicule is that a sort of bitterness develops in the mind

of such a person, and he may feel: "If everybody is out to ridicule me, to put me down, to find out my deformity, point out his sneering finger at me, I will take vengeance on the whole of society". And he goes through a long career of crime. So, plastic surgery is coming forward to take away this deformity. So, we will have to try something like that. It is not the bludgeon of the Home Ministry which will drive out the criminals. They will become more wary, they will take to more clever methods of avoiding the police. They will take to some other means of evading the noose that you are trying to put round their necks. This is not the way.

I will again say that this Government, if it is sincere in its desire that there should be a Welfare State, should look at this problem from the welfare aspect. It cannot look at this problem from the sergeant's point of view, going about with bludgeons, going about with handcuffs. The handcuffs might restrict the hands, but they will not change or affect the reactions of the bitter mind that has been produced by society.

With these words I say that this Bill has not been well-conceived, this Bill has not been well piloted, this Bill does not reveal the welfare attitude on the part of the Government. It only reveals an attitude on the part of Government which is determined to put down crime not like a mother trying to bring round an erring child, but it is the attitude of a sergeant who is going about with a big baton and trying to knock it on everybody's head who is supposed to commit some crime.

**The Deputy Minister of Home Affairs (Shri Datar):** The third reading has been meant more or less for the purpose of taking a view in retrospect of what we have done so far as the present Bill is concerned.

I would not go into any minute details, but so far as the question of the revision of the Criminal Procedure

was concerned, the Government of India have been at it for at least two years, if not more. A number of State Governments also had raised certain questions, appointed certain committees and the reports of these committees also were before the Government. Therefore, when early in 1953 this question was taken up by the Ministry of Home Affairs, we had considerable material which would show that the Code of Criminal Procedure required certain amendments.

There, one particular question of a fundamental nature presented itself before us, as to whether it would be proper on our part to change the fundamental principles of jurisprudence on which the Code of Criminal Procedure had been based, principles which had been more or less satisfactorily worked out over nearly a century. Then, after considering all the circumstances, the Government came to the conclusion that the fundamental principles should not be changed at all because they were sound and they had been found to be sound by experience not only in other countries, but in India as well over a period of one hundred years. It would be wrong at this stage to call in question the principles of British jurisprudence only because they come from a particular country. There are certain very sound principles, and every man, given the choice, would like to be governed by these principles than by others. I would not mention what those others are. After all, they worked for democracy, they worked for a certain satisfactory state of affair and a proper and efficient administration. Therefore, Government came to the conclusion that there was no justification for a fundamental change so far as the eternal principles were concerned.

Then, Government took into consideration a number of points on which changes were required because the administration of justice, especially the administration of criminal justice, has to be extremely sound, has to be also generally satisfactory so far as

democracy in India was concerned, and for that purpose, we had a circular issued to the State Governments. They consulted various Bar Associations and the Benches also and they made certain proposals to us. Now, after considering all these proposals, the Government of India placed before the democracy of India a Bill which was published in the Government of India Gazette in December, 1953. Thereafter, we had a volume of opinion including criticism, and I must here say that on the whole the criticism that we received was very intelligent and naturally critical also.

**Shri Tek Chand (Ambala-Simla):**  
But not acceptable.

**Shri Datar:** After considering these further comments, the Government of India accepted some of them, and they incorporated them in a Bill which was presented before Parliament in the Budget session just this year. Thereafter, we had a long discussion. Certain measures were considered as highly controversial, and then the matter was referred to a Joint Select Committee which made certain very valuable changes, because, after all, what we desired was not that all the changes that the Government desired should be carried out, but that in carrying out the changes, Government desired to have as large a measure of agreement from the public and from the hon. Members of Parliament as possible. Therefore, you will find that, in spite of what has been stated by certain hon. Members of Parliament from views which are interested because they are looking at all the changes from a particular viewpoint, my desire was and the policy of the Government has always been, so far as this measure is concerned, that we should carry as large a measure of agreement from both sides as possible.

**Babu Ramnarayan Singh (Hazari-bagh West):** No.

**Shri Datar:** It was. Therefore, a number of changes were made and after the report of the Joint Select



[Shri Datar]

Committee came here, we have also made some further changes which might kindly be noted here.

I would not go into the various changes, but I would point out to you that at least on nine or ten very important and controversial matters Government have accepted the views of the Members from all sections of this Parliament.

Take for example, the law relating to immovable property and the amendment that the Government accepted so far as sections 145 and 146 are concerned. There also certain changes were suggested and out of deference to the views of the Members of this House we accepted certain changes.

Then, in respect of defamation also, in spite of all that has been said by a number of hon. Members of the Opposition, I would point out to you in all humility that we have accepted more fundamental changes than the Government had bargained for, because Government desired that there was some evil which had to be taken into account and uprooted; and even though my hon. friend Shri More contended that a certain protection was afforded to the Ministers, I would submit to him again—this is almost a repetition—that the changes have not been made for the dignity or the prestige of the Ministers or officers at all...

**Shri S. S. More:** What else?

**Shri Datar:** ...but for the purpose of keeping the entire administration absolutely pure and absolutely above reproach.

In some cases, wherever there are guilty persons, either in the class of public servants or elsewhere, if the matter had been left to them, they might not go to a Court of law because they might fear that there would be a vindication in the other way—a vindication not of their character but the exposure of that character. It is for this purpose—I would again repeat—that the Government of India

desired that they should have an opportunity of initiating prosecutions in this respect. The point I am making is that even in this case, we accepted an amendment at the last moment which has taken from the purview of this section oral defamation. That is what the House has to understand. (Interruption).

**Shri S. S. More:** But not with regard to the Press...

**Shri Datar:** With due deference to my hon. friend, I am submitting that we have accepted very fundamental changes, though, left to ourselves, we would have liked, in the interest of the purity of administration, more stringent measures. Even so, so far as the Press is concerned, Government have no desire to put in any restrictions on the Press as such because, on the whole, it must be admitted that the Indian Press has been working in a very creditable and honourable way. Government have no desire to put any restrictions except where in the interest of the purity of public administration, it is necessary that certain scurrilous writings ought to be checked. It is only for that purpose that we have made certain provisions in the law with your consent, and there has been no desire to affect what is rightly called the Fourth Estate of the land.

Now, I would pass on to other provisions, very briefly. The right of cross-examination has been allowed in the case of committal proceedings. Government pointed out on a number of times that it was to be a summary proceeding and all that was desired was a complete abolition of the committal proceedings, but out of deference, especially for the lawyer Members of this hon. House, this right has been given, along with all the implications which the hon. Members know and realise.

**Pandit Thakur Das Bhargava (Gurgaon):** It is true that the vested interests of the lawyers have been protected!

**Shri Datar:** In other cases also, the warrant procedure has been simplified. Certain points have been accepted by us and even so far as the offences which are to be made compoundable are concerned, we had two views before us and a very happy *via media* was found as to whether offences which were of a private nature which also partook of a public nature could or could not be compounded. And there we accepted the view as a matter of compromise.

Lastly, so far as the question of perjury was concerned, Government were extremely anxious that perjury was to be uprooted. Government also were aware that perjury was, unfortunately, being carried on or exercised on a very large scale without proper restrictions or penalties being made thereof. That is the position which has to be checked because wherever we go, we find that it has almost become—what I can say, a farce—when a man comes into the witness-box and says something which is entirely false. I know there are very conscientious witnesses, but, on the whole, the degree of perjury that we find is very large and has to be provided against. That was the reason why in the original provision we had made a summary procedure, but out of regard to the views of the Joint Committee we have given up that procedure altogether, and another method, which is more in consonance with a natural procedure justice, according to most of the Members of this House, has been included. There also, I am happy to point out, we have accepted the amendment of one of the loudest critics of this House so far as this measure is concerned—I mean the hon. Pandit Thakur Das Bhargava. In spite of all that he said against us, I may here pay my tribute to the great interest and zeal that he displayed in this matter, and, therefore, when such an objection came forth, we accepted that amendment. Similarly, regarding bailable and non-bailable offences, certain changes have been accepted. Thus you will find that

in the light of what we have done almost from the beginning, that our claim that the consideration of this Bill has always been treated on a non-party basis is more than fully justified.

Now, it was also contended that the revision of the Criminal Procedure Code might not be of full and effective use. We are aware that it would be useful to a certain extent for meeting the ends that we have in view. But as I pointed out on a number of occasions, Government are going to tackle this problem from all the different ends and, therefore, we are aware that the system of investigation requires certain changes. Very violent things, and absolutely unjustifiable things, were said against the magistracy and against others, but we are taking steps, and the State Governments also are very active in taking steps, to see that the administration of justice, as also the other relevant matters, are carried along what can be stated to be human lines. Take, for example, the question of prison reform. The hon. Member, Shri More, and I come from a State where a very large measure of prison reform has already been brought into operation. I have seen a number of prisons and there a complaint has been made that the conditions are more comfortable than what they ought to be for prisoners. Apart from that contention...

**Shri S. S. More:** Are they more comfortable than on the Treasury Benches?

**Shri Altekar (North Satara):** The Treasury Benches are not offenders.

**Shri Bogawat (Ahmednagar South):** He compares the Treasury Benches with the accused. That is the nobility of the Member!

**Shri Datar:** The Bombay Government, as also other Governments, have taken up a number of measures for effecting a greater improvement on the human side of these various matters. We are also dealing with the question of juvenile delinquency and there are a number of matters on which Government are absolutely keen. The

[Shri Datar]

reform of the police is also undertaken and we do desire that there should be a proper investigation, a speedy investigation, and that the whole matter is done in such a way that there will be no scope for any legitimate complaint. Therefore, it would be wrong to say that the Government of India only desired the revision of the Criminal Procedure Code and left other defects as they were. The Government of India are anxious to take all proper steps so far as this question is concerned.

The last question in this connection is one which is extremely important, which is called moral reformation by the Deputy Leader of the Communist Party. But all that I can do is to make a reference to your very graceful speech this morning when you looked at it from different points of view. You have a long professional career to your credit, but in addition to this, you have also the opportunity of being in the Chair for a large portion of the day and looking at all these points from, what I can say, a detached and judicial point of view. Your speech, therefore, has heartened all those who are desirous of having a complete change, and the complete change is to look at the question of criminal justice not from the point of view of lawyers as a class. I am not prepared to say that the lawyers as a class are a vested interest; I am not prepared to go to that extent. But I do desire that the lawyers, though, after all, are lawyers, are citizens first and citizens last; they are lawyers only so far as their profession is concerned. So far as the traditions of the lawyers' profession are concerned, they are very high. I am quite confident that, though in the course of arguments put forward by some lawyer Members, the lawyer view was prominent, when the whole Act is looked at from the point of view of the interest of the citizen and justice, the Government will have the fullest co-operation of all the lawyers, because the lawyers are a highly

intellectual class. I am also confident that they are a patriotic class and, therefore, they would do everything in their power to help us. I am very glad that you made a reference to the purposes that the Government have in view. You also looked at the whole problem from the larger interests of justice and the public, and therefore, whatever you have stated in the course of your speech is naturally the policy so far as the Government of India are concerned.

Without taking any further time, I am happy to say that though the debate was very long on certain clauses, I am confident that it was pleasant, was co-operative and in spite of 70 hours having been spent, these 70 hours were well spent, because, as some Members stated, this Code of Criminal Procedure is, in some respects, more important than even the Constitution. It is true it embraces the lives of a number of persons and it ultimately affects the interests of law and order so far as the conditions of India are concerned. Therefore, it was very good that we spent so much time and we have produced a result of which I am fully proud and for which the whole House will give the credit to the present Government of India.

**Pandit Thakur Das Bhargava:** Sir, I have listened with great pleasure to your speech which was such a balanced speech and I am thankful to you for the reference you made about me as a member of the Congress Party. Your contribution, as I said on a previous occasion, even from the Chair will be regarded as a memorable thing, I should say, so far as the interests of the accused are concerned. Because, after all, in a good Criminal Procedure Code the interest of the accused should be justly safeguarded.

From the trend of your speech I understand that your idea is that the complainant should be equally protected and that is perfectly sound. I

agree with that proposition that so far as crimes are concerned, the crime ought to be punished and those who are affected by those crimes—their interests—also should be safeguarded. At the same time, I do not agree with my hon. friend Shri Mukerjee that Dr. Katju, after the Bill is passed, will find, while he is sleeping, some spectres before him and he will feel repentant for what he has done. It is entirely wrong.

**Shri V. G. Deshpande** (Guna): He does not repent.

**Pandit K. C. Sharma**: He is too tough for it.

**Pandit Thakur Das Bhargava**: When I made my speech at the consideration stage, I submit that I am perfectly certain that the purest of motives inspired him and I submitted that there is no question of any person in this House thinking that he is motivated by any sort of prejudice against the accused because he wanted speed and justice, both these things, as he has mentioned in his Statement of Objects and Reasons.

You have been pleased to say that in the conduct of the legislation he has shown sweetness and good humour which is his usual characteristic. I join with you in the tribute that you have given. At the same time, I am certain in my mind that when the Bill is passed, he will feel very happy, because, after all, according to him, the Bill is very good. While praising him for all this, I cannot, at the same time, resist the temptation of saying that his good nature has not resulted in good to the accused. His responsiveness was such that he accepted amendments from all sides of the House and I must thank Shri Venkataraman for his valuable help in this matter. I must thank Shri Sadhan Chandra Gupta who did so much in this House and he was successful in getting an amendment accepted for which I had absolutely no hope. I am thankful to Shri Chatterjee for getting another amendment accepted; it was a good one. In fact, it is invidious for me to

mention the names of those gentlemen, who tried their best, in the interests of justice, to do all that they can. I cannot at this stage, at the same time, refrain from paying my tribute to Shri Raghubar Dayal Misra who put in such an amount of industry so far as this Bill is concerned. The manner in which the hon. Home Minister addressed himself to this Bill was remarkable. At the consideration stage, he was pleased to say that the whole field including whatever amendment was there will be considered by the Select Committee. I think that also expressed the kind man in him. He had agreed to all this. It is unfortunate that the Select Committee, in their wisdom, did not consider all these amendments. It is very unfortunate that the Select Committee put in certain things against the wish of the hon. Home Minister which we had to amend here in this House. We did succeed in amending some of them but we did not succeed in amending some others. These things do even now disfigure this Bill, I am sorry to say.

The responsiveness of the hon. Home Minister, which I have commended, is really responsible for much of our difficulties in this Bill. His original idea was that there should be no commitment proceedings and I was very happy when I saw the Bill. This was a reform of the first magnitude and had it been carried, it would have saved the country a crore of rupees and perhaps much more, and speed would have been obtained. My idea is that as soon as a crime is committed, within fifteen days the accused must be in the dock before the Sessions Judge. I remember an occasion in Lahore where a Muslim killed a Hindu out of fanaticism. Mr Ogilvie was the Deputy Commissioner and in seven days' time the case was committed and tried and the man was sentenced and hanged. I want justice of that kind in this country. If we really mean business, we ought to see that crimes are punished with speed. The hon. Minister's mind was working in that direction, when he introduced this Bill. Hon. Members will

[Pandit Thakur Das Bhargava]

be pleased to see from the Statement of Objects and Reasons that in fact he wanted to see that there is no commitment stage. But, the Select Committee, in their wisdom, introduced this commitment stage in a truncated form and now, in spite of the fact that Shri Datar was kind enough to give us some amendments and the Home Minister was kind enough to allow the right of cross-examination etc., we have not been able to do what we should have done. I would have been most happy if this commitment proceeding had not been there. If you want to have this for a particular purpose and the purpose being this that the innocent person is not sent up, then, have the right sort of commitment proceedings. Previously, we had this right sort of commitment but by the rulings of the High Courts the powers of the committing courts were curtailed to a certain extent. But, now they are practically taken away. At present the words are, 'if there are sufficient grounds for commitment' and now the words used are 'if the whole thing is groundless'. It means that there will be no discharges in future and almost every case will have to be committed. Previously the committing court could hear the defence and also call witnesses and he had powers under section 540. Now, all these have been taken away and no defence witness will be examined, no extra witness can be called. The entire justification for commitment proceedings has been taken away and yet commitment proceedings exist.

I am rather afraid that we have been doing very inconsistent things in this House. We have not allowed the amendment of section 342. Section 342 of the amended Bill has been replaced because the hon. Minister was pleased to accept an amendment after great discussion in this House, that the accused should be examined only to explain any circumstance appearing in evidence against him while in clause 31 we have accepted an amend-

ment that at the commitment stage the accused can be cross-examined. These are two inconsistent things. In one section in the Code you have got the provision that no question can be put to any accused unless it is for the purpose of explaining some circumstances in the evidence against him, whereas in clause 31 you have accepted that in the commitment stage the person can be cross-examined. Then again in a warrant case there can be no circumstance in evidence against him at the stage you propose to examine him; not a witness appears before he is examined or cross-examined. I fail to see how these provisions can be reconciled or worked. They cannot be reconciled. My humble submission is that this sort of discrepancy is a wrong which we have done and we must remedy it.

Then again, you will be pleased to see that that is not all. There are other contradictions. We have stated in section 162 that only for one single purpose you can utilise the statements and that is when the prosecution witness comes. They will be utilised for the purpose of cross-examination by the accused. At the same time in the warrant case what do we do? The Magistrate is not supposed to look at the diaries unless he calls for them under section 172 to his aid. Yet, he will base his entire charge upon these statements under section 162. The charge will be framed not on the basis of evidence, but on the basis of these statements. That is entirely wrong. In one place we say it shall not be used for any other purpose and in the other place we give the Magistrate the right to frame the charges on the basis of these statements. This is again a contradiction.

As Mr. Misra was pleased to point out, under section 487 no Court can take cognizance of a crime which has been committed and which is covered by the provisions of section 195 and yet under section 174 or 176, we have made the provision that the Court will be able to fine a person Rs. 100 if he

does not come in obedience to summons or leaves upon he is allowed to leave that Court. This is again a contradiction.

The general rule is that no Court shall take cognisance of a crime which is committed in relation to itself. Without even referring to section 487, you have got this provision that the Court can take cognisance and fine the defaulter. These are the contradictions.

Apart from that, Sir, I feel that in certain respects the Code is an improvement on the present provisions and I have nothing but praise and congratulations for the hon. the Home Minister for bringing about those amendments. For instance, now, the assessors go away. Transportation has been done away with and many of the sections which deal with these two—omission of assessors as well as transportation—have been amended.

Then comes the question of copies. This, I think, so far as the hon. the Home Minister is concerned, is a very great improvement. Previously persons did not get copies. I am sorry that the amendment relating to the 7 days or 10 days period elapsing between the giving of copies and the appearing of the accused before the Court or before the trial begins has not been accepted. I understand this is a great wrong. If this had been accepted, then speed would have been attained. I know giving of copies is a very difficult matter. Supposing there are 50 accused in a riot case. All the 50 will have to be given copies.

[SHRI BARMAN in the Chair]

**Shri Tek Chand:** Cyclostyle them.

**Pandit Thakur Das Bhargava:** It is easier to say than to do. Something like six lakhs of cases are brought in courts. At the rate of Rs. 15 per copy, it means rupees one crore. I consider 50 per cent. of the persons will be persons who will not be defended in Courts, who will be absolutely illiterate. Are you going to give counsels to them free? Are you going to give them copies? What will they do with

it? If a person makes an application, give him a copy. If all the persons are literate I can understand. I think it will be useless to entail this expenditure. The advantage will not be commensurate with the trouble taken.

**Shri S. S. More:** There will be larger income from fines.

**Pandit Thakur Das Bhargava:** Considering all the advantages, the change in sections 145 and 146 is a salutary one. But I am afraid that the change from summons cases to warrant cases is not a healthy one. I want that the traditions of this country should be kept in tact. People do not want to be convicted. But in a summons case, the first question asked is: "Show cause why you should not be convicted." Now that so many warrant cases have been turned into summons cases, I am afraid that people will get more conviction minded. The Courts will convict them and the old tradition will, to a certain extent, be tampered with. I do not like that these cases should be turned into summons cases. I would rather like all cases to be treated in the same way. I do not like that persons who are convicted for serious offences should be given much more facilities, out of proportion to those who are put up in small cases. The procedure must be fair to all and based upon established principles.

Then again, this change under section 117 that all the cases will be tried as summons cases is very retrograde, and it should not have been accepted by this House. In regard to some other amendment, for instance perjury, I am sorry the change that has been made is really very retrograde. I should think that instead of arresting further progress of perjury, it may to a certain extent, just narrow down the scope of the powers of the court. In every case, the first thing that the Magistrate would have to certify is the eradication of the evils of perjury and fabrication of false evidence; and in the interest of justice, a prosecution is to be launched against the perjurer.

[Pandit Thakur Das Bhargava]

We have got to repeat this unnecessary prelude for the eradication of evils of perjury and fabrication of false evidence and interest of justice and prove it by reasons. This reads like *Bhagwat Gita Shloka*:

परित्राणाय साधूनाम विनाशाय च दुष्कृताम् ।  
धर्मं संस्थापनार्थाय सम्भवामि युगे युगे ।

Are we enacting a statute or writing *Alaf Laila*? This is purely pedantic pedagogy. I do not understand. The provision is that the Court shall launch prosecution "for the eradication of the evils of perjury". It means that a person will not be sent to jail for his giving false evidence and committing a crime but for the purpose of deferring others in future. He will only be punished so that others may not commit any offences. I have never seen in any statute words like these and I think these words will produce complications.

Now, the right of appeal of a person proceeded against has been taken away. That is a very great wrong. In regard to defamation affair, I am bound to think that the hon. Minister has been kind enough to take away the slander aspect of it.

**Mr. Chairman:** I may point out that we have to close this discussion at 2.40 P.M. and the Home Minister wants 20 minutes. There are many other Members who are very eager to speak. After all, the Bill is passed; the hon. Member may just touch his points.

**Pandit Thakur Das Bhargava:** I am also very anxious that others should speak. I do not want to take more time, but, with your permission, Sir, I will take another five minutes.

I was submitting about defamation I thank the hon. Minister for making that change, but, at the same time I do not agree that the approach was right. I should think, that if large number of persons bring a complaint

to the hon. Home Minister against any person about taking bribes etc., the right course is to enquire into the matter and punish the culprit instead of making the complainants to go to the dock and making the accused a complaint. It is topsy turvy. At the same time, with regard to Ministers etc., I do think that it will be very effective and it should produce some results because the idea of the Home Minister is to drive those persons who do not want to go to Court, to the Court and vindicate their character. So far as the Ministers are concerned, I think this is very effective and a good change. But, I do not know whether in respect of public servants this will prove of great use. It may, on the contrary, prove detrimental and stifle criticism and complaint and produce terror in the minds of complainants.

Then, Sir, in regard to section 350 I am not satisfied. I must say that in regard to section 350 a wrong has been done to the accused. In regard to warrant cases, I am glad that the Home Minister, in spite of himself, because he is so responsive, accepted the amendment of Shri Sadhan Gupta which restored the hated section 257. He hated section 257 and he has restored it now. In regard to further cross-examination, though he has taken away the right of the accused, he accepted the amendment of Shri Chatterjee allowing the deferring of the cross-examination of defence witnesses as well as further recall under 256. So, all the three occasions stand secured which he himself said should not be secured. Though according to me only two occasions should have been secured, he has been kind enough to give all the three because he is quite responsive and has no sheet anchor of his own.

Now, in regard to warrant cases on police reports, the charge will be framed and he has taken away sections 253, 254 and 256. In a warrant case, now there will be no discharge

except when it is found that the entire thing is wrong from the very start. Apart from that there is no discharge in other cases. The entire prosecution evidence and the defence evidence will have to be gone into in every case. This will never make for speed. This will worsen the matter in warrant cases. As I have said before, when you accept certain basic principles of the criminal law of England—I should say, British jurisprudence—you must accept the fundamental principles underlying them. Now, so far as charge is concerned, you have made it very easy. On the basis of police statement a person is charged and no discharge is possible and evidence must be gone into. This will not make for speed. My submission is that the hon. Minister's motives are perfectly right. He wants to attain speed. I am afraid there are certain provisions here which will not make for speed.

So far as justice is concerned, I think the hon. Minister has been desirous of giving the accused all the necessary rights. But he has placed too many powers in the hands of the Courts and taken away some of the powers of the accused. This is not right. At the same time, I do say that when the separation of executive and judiciary comes, we will have Magistrates who will care more for justice than for anything else. That day is not far away. When I think of the entire circumstances of the case I certainly congratulate our Government for having the best of motives for doing the right thing. When I consider that—as the Deputy-Speaker himself pointed out—it is not treated as a party question, I am very glad and I am thankful to the Deputy Minister and the Deputy-Speaker for having said kind words about me. It is not a party question. The whole House must realise that, while we were framing the Constitution, while we were discussing here in this House certain measures which affected the liberty of the people the Congress members have been not less—I should say—conscious of their duties and they have done

their very best to see that the liberties of the people are not put into jeopardy and they are safeguarded.

Now, Sir, with your permission, I must enter a protest against the manner in which some lawyers of this House have been treated. I do not care for myself; I have got the skin of a rhinoceros and any person can say anything about me; I do not care. But, it is entirely wrong to say that the lawyers have approached this question from the point of view of vested interests. It is entirely wrong. We have looked at the matter from the point of pure reason and the lawyer in us has not dominated with a view to see that the accused gets much more than what he is entitled to. After all, a country's contested laws are judged by the manner in which it deals with its accused persons and miscreants. We gave even Godse full benefit of a legal trial and I may tell the House that the jail rules were changed for giving full facilities and amenities to Shri Godse the murderer of Mahatma Gandhi. This is the way in which democracy works and this is the way in which the Government of India works. Therefore, it is idle to attribute to us motives by which we were never actuated. We discharged our duties in a just and judicious manner.

I hope, Sir, when the Law Commission comes, all these defects which we have yet got will be removed. There are a good many defects. I have not been able to deal with all of them in the short time available to me. After all, when there is a clear picture about what we want, as to how we can put our house in order, everything will be clear. At one stage, the hon. Minister was pleased to point out that this is not the time when we can go into all these matters in a procedural law. He said that we cannot go into all those matters about lawyers, police etc. But, I must complain about one thing which I cannot resist. So far as the police is concerned we all now respect the police because it is our own police and our



[Pandit Thakur Das Bhargava]

own Magistrates. We do not now go against them. At the same time, the Home Minister did not have a word to say against the police. In all his speeches the hon. Home Minister did not have a single word of condemnation against the police. On the contrary when I pressed sections 172 and 161, which went into the very root of the matter, which are the princely sections so far as investigation sections of the Criminal Procedure Code are concerned, I am extremely sorry that my views and suggestions which I made were not considered by the Joint Committee and no amendment was allowed to be put here as they were ruled out. Those two provisions, if accepted, would have gone to the root of the matter and at the same time paved the way for future reforms. This can only be brought about if we have confidence in the police. If we have no confidence, I maintain that all these things about procedure shall remain in the Code and we will not be able to bring about any reforms. If we want real progress, then the police, lawyers, and magistracy have to be reformed fully. Unless that is done I feel no good reforms can be brought about.

In the end I thank the hon. Minister for having put up with a bad man like me. I had absolutely nothing personal against him when I criticised his Bill at the consideration stage. But, lawyers are very apt to be misunderstood and I am one of those lawyers who can be misunderstood. I do not care if others misunderstand me, but I can tell them from the bottom of my heart that I have nothing against the hon. Home Minister in my mind and I have as great a respect for him as any other Member can have in this House and he need not entertain any idea of frightfulness in respect of me.

**Shri N. C. Chatterjee:** Sir, I think we should not convert the third reading into a "mutual admiration" stage..

**Shri S. S. More:** Why not? We have already done it.

**Shri N. C. Chatterjee:** ...or exchange bouquets or distribute them all round.

I wish we had approached this difficult problem with an architect's mind and we had really tackled it on a higher level and in a more comprehensive manner. I have been pleading that the Commission should have been appointed before we had started amending this Code and that Commission should have not only taken upon itself the duty of suggesting improvements in this Code and other cognate statutes, but also should have formulated, after hearing all interested parties, proposals as to how to improve the investigating machinery; how to purify both the police and the magistracy. Sir, even at this stage of the third reading this Parliament will stultify itself if it thinks it has done the right thing by the country in merely enacting this piece of legislation. The more real reason for all the scandals and delay in law is the inefficiency and dilatoriness of our machine and that machine must be improved; that system radically altered; otherwise no amount of codification or recodification will bring about the desired change.

I am reading, Sir, from a note on the system of criminal administration and criminal justice in India, which the Home Ministry has circulated to the State Governments in the year 1953. That note starts with this very important statement:

"The investigation of crimes by the police does not appear to be satisfactory. It is often highly defective and inefficient besides being dilatory, with the result that when the matter comes before a court of law, the irregularities in investigation are exploited on behalf of the accused, and in a very large percentage of cases, decisions have to be given by the courts on technical grounds alone, resulting in unwarranted acquittals or light punishments to the offenders."

I do admit that a wrong acquittal is as much a source of demoralisation as a wrong or illegal conviction, but unless our investigating machinery is thoroughly remodelled, unless we have a proper Scotland Yard, and unless they have been given scientific instruction how to detect crimes, this objective will not at all be realised.

**Mr. Chairman:** Just a request. I hope you will finish by 2-10 P.M.

**Shri N. C. Chatterjee:** Yes, Sir. I will finish. I am happy that this Bill, as you are passing today in the House, is a distinct improvement on the measure that was introduced and I should point out that posterity, yet unborn, would have pointed its unerring finger to Parliament and condemned it if we had not brought about these changes which we have secured through the passage of the Bill. We have discussed and taken 70 hours, but we have done altogether a good job of it. What have we done? Just remember the points that we have scored in the process of these discussions. Firstly, we have secured the right of recall and deferred cross-examination. I am happy that the hon. Home Minister accepted my amendment, and although as my friend, Pandit Thakur Das Bhargava has pointed out, it is not a statutory right for the accused, it is still a distinct gain. Secondly, we have restored section 162 of the Criminal Procedure Code and you know that it is the bulwark of the defence and it was a very very unsatisfactory, if not amazing, provision which wanted to delete section 162; that has come back with some modification which I do not like, but certainly the restoration of section 162 of the Criminal Procedure Code, to a large extent, would mitigate the dangers which the defence would have faced otherwise. Thirdly, we have scored one great victory that the accused now can cross-examine at the committal stage and that is a distinct gain. Fourthly, we have got from the hon. Minister, and the House has passed it, that it is not a question of mere recording the statement but

evidence being taken so that even at that stage questions can be put and cross-examination can be effected. In the Bill, as it emerged from the Select Committee, that was deleted and we have cut it down. The fifth point, which is important, is that even now, in accepting our suggestion, the Minister has been good enough to accept our practically passionate plea that those persons, whose statements have been recorded under section 164, must be produced before the Magistrate. Even at that stage, the accused can cross-examine them. Lastly, section 342 has been restored to its pristine purity, and I am very glad that section 342 has come back. A dangerous innovation had been made—I do not know whose brain wave it was—that the Magistrate could cross-examine the accused. That was not limited to the purpose which is the only purpose for which such examination should be held—for the purpose of enabling the poor accused in the dock to explain circumstances which appear to be unfavourable and from which the Magistrate can possibly make certain conclusions detrimental to his interests. It was not being confined to that, and unfettered discretion was being given under that cross-examination, and that might finish the accused. We pointed out that it was repugnant to the Constitution, article 20, sub-clause (3), and I am happy that that has been restored.

At the same time, as against these white spots, there are still black spots, and some of them are still very very black indeed. The worst, of course, is the defamation clause. We have made our point and we still maintain that the Republic of India is, to a large extent, tarnishing its reputation by bringing in a special privileged category, both the Ministers and the public servants, and after what has happened, I am afraid the Press is justified in thinking that Dr. Katju's real object was to enact some kind of Press Act and not really enact for punishment for defamation. He has excluded oral defamation, that is,

[Shri N. C. Chatterjee]

slander has gone, and Pandit Thakur Das Bhargava was referring to me. Take for instance Shri Gopalan speaking in Ram Lila grounds and it would have been a hundred times more dangerous if extracts on some slips of paper were circulated, sometimes against some hon. Ministers or still more honourable public servants. This omission of slander would, to a large extent, help in alleviating the apprehensions on the part of the Press, as it was meant to strike at the opposition Press. Secondly, I do not like the perjury clause as it has emerged. We have made our suggestion and we thought that it was not necessary to have this special kind of thing with a high sounding nomenclature, with prefatory remark. Thirdly, we are opposed to duality of committal proceedings. We made our point and repeated it. The main thing I am still pressing is that the real gain would be not in having these section 30 Magistrates everywhere in India, which is a retrograde step, but to have a real separation of the judiciary and the executive. You can never have honest justice and impartial justice otherwise. It is not so much a question whether the officers are corrupt in their dealings or not; you must convince people that you are doing justice and that is the cardinal principle. In a case, which was tried by Lord Hewitt in England, a local attorney was engaged to advise the Magistrate. The magistracy is not always composed of lawyers and the local attorney was made a Clerk of the Court to advise the Magistrate. In a particular running trial action, there was a civil claim for damage and at the same time there was a criminal case prosecution started. What happened now? Unknown to that Clerk of the Court, the other partner of the firm to which that attorney belonged, had been advising the other side in the civil matter and therefore the Lord Chief Justice said "I am issuing a writ of *certiorari*". The cardinal principle of justice is really to do justice and behave in such a way that

even the Clerk of the Court shall not have any association with a firm, one partner of which is advising the other side in a contract matter. That principle should be upheld and that can only be done if the Congress Ministers today really translated into practice the cherished principles for which the Congress has stood for so many years and been preaching for so many years from the days of Manomohan Ghosh and Lal Mohan Ghosh right up to Deshbandu Chittaranjan Das. We have been shouting for it and big volumes have been published on that. Unfortunately when in power, these principles are being cast to the winds, and I hope if the hon. Minister had deleted the clause with regard to defamation, that spot, which has been looked upon as a spot of standing disgrace to the Republic would have been removed. I hope the Law Commission, when they will scrutinise it, will also turn their attention to these provisions to which objection has been taken by Pandit Bhargava, by me and also by other Members, and radically improve it to the satisfaction of all concerned.

**Mr. Chairman:** Shri R. D. Misra may please finish his speech within ten minutes, that is, by 2-20 P.M.

श्री आर० डी० मिश्र (जिला बुलन्दशहर): मैं अपने होम मिनिस्टर साहब को मुबारकबाद देता हूँ कि उन्होंने जो महानत इस बिल के तैयार करने में की वह बहुत ज्यादा है। शुरू में उन्होंने अपनी निवत दिखलाई, अपने आन्वैक्टस दिखलाये कि हम भारत में एफिशिएन्ट और अच्छा क्रिमिनल ला का एंडीमिनिस्ट्रेशन चाहते हैं ताकि लोगों को अच्छी तरह से न्याय मिल सके, बंगुनाह सजा न पावे और गुनहगार बच कर न जायें। इस ध्येय को ले कर उन्होंने काम किया। बड़ा सुन्दर ध्येय था। उन के साथ मेरी बड़ी हमदगी है और मैं उन के इस ध्येय के साथ पूरी तौर पर मुत्तफिक था कि यह बरूर होना चाहिये।

लीकिन जितनी मेहनत उन्होंने की उतनी मेहनत के बाद जो बिल हम पास कर रहे हैं वह बिल ऐसा नहीं है कि जिस के लिये हम उन को मुबारकबाद दे सकें। इस की वजह यह है कि हम ने इस बिल में कोई खास बात ऐसी नहीं पढ़ा कर दी है कि जिस से हम यह कह दें कि अब हिन्दुस्तान में क्रिमिनल जस्टिस का एंटीमिनिस्ट्रेशन जो है वह कुछ सादा हो जाने वाला है या कम खर्च का हो जाने वाला है। अभी हमारे विट्टी मिनिस्टर साहब ने कहा कि उन्होंने बहुत से वकील मंत्रियों की बातें मान लीं और इस तरह से उन का फायदा हो गया है। हां, इस बिल में बहुत सी फायदे की बातें हो गई हैं। कुछ बातें वकीलों के माफिक और फायदे की हैं, कुछ पुलिस के माफिक हैं, कुछ जजों और मजिस्ट्रेटों के माफिक हैं और कुछ जरायम पेशों के माफिक हैं। लेकिन जनता के माफिक कोई दफा इस में नहीं है। आप कहेंगे क्यों? आप उसे सुनिये। जजों के माफिक तो यह हो गया कि आज तक सेशन जज दौरा नहीं कर सकते थे, गांवों की हवा नहीं खा सकते थे, लेकिन अब यह हो गया है कि जैसे पहले मजिस्ट्रेट मजा लिया करते थे वैसे जजों को भी खुली छूट मिलेगी, सरकार का पैसा हो और सरकार की गाड़ी हो, गांव के बाग में जज साहब कचहरी कर रहे हों और आनन्द लेते हों। चलिये सेशन जजों को भी यह हक मिल गया। हम ने बड़ी मुश्किल से जब हमारे डा० काटजू ५० पी० में मिनिस्टर आफ जस्टिस थे तब उन से कह कर कि मजिस्ट्रेट लोग बड़ा परेशान करते हैं, वकील परेशान, मुद्दे मुद्दालय परेशान, किसी को आराम नहीं, इस चीज को बन्द कराया था।

**डा० काटजू :** आप नामुक्मल बात कह रहे हैं इस का मुझे अपमांस है। मुस्लिम और इस्लामासा दोनों की सलाह और इजाजत से इस को बन्द किया गया था।

**श्री आर० डी० मिश्र :** आप जो सलाह की बात कर रहे हैं वह भी मैं आप के सामने

रक्खूंगा। मैं यह बता रहा हूँ कि जजों को क्या हक मिल गया। आप ने कहा कि मुस्लिम और मुद्दालय की सलाह से किया गया। मुस्लिम की मरजी को पछता कौन है? वकालत करते करते मैं पुराना हो गया हूँ, मैं जानता हूँ कि क्या होता है। जज साहब ने कहा कि वकील साहब, गंगा जी के मेल पर चलने का इरादा है। वकील क्यों एतराज करेंगे? अगर जज कहे कि हम गंगा नहारेंगे तो मैं क्यों एतराज करूंगा क्योंकि अगर जज दौरे पर जाता है तो मुझे दूना मेहनताना मिलेगा। जिस वकील को दूना मेहनताना मिलेगा वह अपने मोक्किल से कहेगा कि तुम्हें थोड़ी परेशानी तो होगी लेकिन अगर जज नाराज हो गया तो सजा हो जायेगी अगर जज गंगा जी जाना चाहता है तो तुम क्यों रोड़े अटकाते हो? अदालत को खुश करना पहला फर्ज है। अगर अदालत सफा हो गई तो फॉरेन सजा हो जायेगी, इस लिये कोई वकील हिम्मत नहीं कर सकता कि वह जज की मुसालफत करे अगर जज चाहता है कि मेरी अदालत किसी और मुकाम पर लगे या गांव में हो। जितने एयाशी पसन्द मजिस्ट्रेट मैं ने दूँसे हैं उन सब ने यह एयाशियां की हैं। मुझे उन से सलत नफरत थी। ऐसे लोग अंगरज भी थे और हिन्दुस्तानी भी थे। मैं तर्ही कहता कि सब लोग ऐसे होंगे, लेकिन आप ने रास्ता खोल दिया है ऐसे लोगों के लिये कि वह ऐसा किया करें।

वकीलों को जो हक मिला वह क्या मिला? आज की तारीख तक हाई कोर्ट में मुस्लिमों की तरफ से अपीलें हुआ करती थीं। लेकिन अब एक्विटल के सिलाफ अपीलें हाई कोर्टों के पास जायेंगी। वकीलों को मेहनताना मिलेगा। जजों और सेशन जजों के जो मुफ्तसल कोर्टों के वकील थे उन को कुछ मिला नहीं। यह बात हाई कोर्ट के वकीलों के माफिक हो गई कि तमाम एपिलकेशन अब हाई कोर्ट जायेंगी और इस से वकीलों का फायदा होगा।

[श्री आर० डी० मिश्र]

जरायम पंशा वालों को क्या फायदा मिला ? अब की तारीख तक पुलिस के कागजात मुल्जम को नहीं मिलते थे। लेकिन अब तमाम कागजात की नकल कर के पुलिस के थानेदार साहब और प्रासिक्वशन इन्स्पेक्टर साहब मुल्जिमान को दूंगे कि यह दीखिये, जनाब वाला यह मुकदमा आप के खिलाफ है। डाक्टर का सीटीफिकेट पढ़ेंगे कि  $1 \times \frac{1}{2}$  व  $2 \times \frac{1}{2}$  चोट लग गई थी, चाहे मुल्जम को जरूरत हो यान हां। डाक्टर की पोस्टमार्टम रिपोर्ट साथ है। सारा कड़ा करके, जिस का ७५ फीसदी वकील के लिये बिल्कुल बंकार होगा, मुफ्त मुल्जमों के घर पहुंचाया जायेगा। फायदा इस का किस को पहुंचेगा ? जो बड़े बड़े डाकू कालिल, जानी होंगे, जिन के ट्रायल सेशन कोर्ट में होंगे और जो वार्ट कंस से ट्राई होंगे। लेकिन गरीब तांगे वाले, इक्के वाले, मुसीबत में ही पड़े रहेंगे। पुलिस वाले को नहीं बिठाला, गाड़ी में उस के जगह नहीं है। कहा तुम नहीं जानते, लाल पगड़ी में पास है ? तुम्हारा चालान। किस बात का चालान ? सवारी ज्यादा थी। सवारी तो कम थी, लेकिन चालान। कहीं मार पीट हां जाय गरीब पिटने वालों का कोई खयाल नहीं। छोटे छोटे जुर्मों में भूठे चालान होते हैं उनका कोई खयाल नहीं। पैसे लेने के लिये गरीब आदीमियों के भूठे चालान होते हैं। कोई इलाका नहीं है जहां यह रिश्तों न बंधी हों, अड्डे अड्डे पर बंधी हैं, लेकिन बंधार गरीब आदीमियों की कोई सुनवाई नहीं, उन के लिये कोई रास्ता नहीं। उन्होंने कहा कि भूठा चालान कर दिया, तो सरसरी में मुकदमा होगा। क्या होगा ? न फौसला लिखा जाएगा, न गवाहों के बयान लिखे जायेंगे, कुछ नहीं होगा। मीजस्ट्रेंट साहब बैठें होंगे, उन की अदालत में कोई चीज नोट नहीं हुई, आखीर में लिख दिया मुल्जम का नाम, बाप का नाम, फलां मुहल्ले का रहने वाला। १० रु० जुर्माना, १५ रु० जुर्माना, २० रु० जुर्माना। छोटे छोटे जुर्मों

के चालान भूठे करके जां गरीब आदीमियों पर जुल्म होते हैं, उन से जनाब में एक रोष की भावना उत्पन्न होती है उनका कोई सुनवाई नहीं होती और कहीं न्याय नहीं मिलता है।

आप कहेंगे कि पुलिस का क्या अस्वारात मिले ? उस को भी बड़े अस्वारात मिल गये। अब उस को ज्यादा परेशानी नहीं। अब थानेदार साहब जां गवाह का बयान लिख लिया करेंगे, वह अदालत में इस्तेमाल होगा। अब तक यह था कि तम्मम अदालतें उस को भूठा मानती थीं। आप की दुफा १६२ उस को भूठा मानती है, एविडन्स एक्ट की दुफा २५ और २६ उस को भूठा मानती है। लेकिन अब यह हक पंदा हो गया कि अगर पुलिस ने कोई गवाह ऐसा पंशा कर दिया जिस का बयान पुलिस ने सही और ठीक नहीं लिखा है और वह अदालत में आ कर सच्चा बयान देता है तो दुरोगा जी कह सकते हैं कि यह गवाह भूठे बोलता है। डायरी में जो मैंने लिखा है वह सही है। वकील कहेगा कि तुम ने थानेदार साहब को यह बयान क्यों नहीं दिया था ? थानेदार साहब गवाही में आयेंगे और कहेंगे कि नहीं साहब, उस ने मेरे सामने यह बयान दिया था। तो अदालत के सामने यह सवाल आयेंगा कि थानेदार भूठा है या गवाह भूठा है। ७५ फीसदी गवाह ही झूठा ठहराया जायेंगा और फिर उस के खिलाफ परजरी के कंस चलने लगेंगे। कोई शरीफ आदमी यह हिम्मत नहीं करेगा कि किसी अदालत में सबूत की तरफ से गवाही देने के लिये जाये। अगर वह ईमानदारी से गवाही देना चाहता है तो भी सांचेगा कि पता नहीं जज साहब का दिमाग कियर धूम जाय और लिख दें कि यह आदमी परजरर है। मेरे सामने एक रूफिंग है जो कि सुप्रीम कोर्ट की रिपोर्ट सन् १९५२ के पेज ९४ पर छपी है। एक मुकदमा है जिस में प्रनीन्द्र कौर के हस्बैंड के मार जाने का किस्सा है। उस के हस्बैंड को मारा गया। उस को पोर्टीशियम

साइनाइड दिया गया। उस ने खुद खाया हो या दिया गया हो, लेकिन उस की लाश को एक ट्रंक में भर कर एक कुएं में जा डाला। एक महीने बाद एक लाश निकली। निकलने के बाद पुलिस के थानेदार आये, डाक्टर को दिखाया, उस की दंस भाल के बाद उन्होंने कहा कि पता नहीं लगा कि किस की लाश है। सिपाही ने बताया कि साहब, यह लाश जसपाल सिंह की है जो कि फलां मुसम्मात का खाविन्द है।

**Mr. Chairman:** Your time is up.

**Shri R. D. Misra:** One more minute is there.

उस मुसम्मात से तहकीकात की गई। मुसम्मात ने कंफेशन दिया कि हां साहब, इस तरीके से पोर्टीशियम साइनाइड खाया गया और मैं ने और एक दूसरा आदमी महेंद्र पाल है, दोनों ने इस लाश को ट्रंक में भर कर यहाँ पहुँचाया। अब पुलिस क्या करे? आप का कायदा यह है कि एक एक चीज साबित होनी चाहिये। मुसम्मात कहती है कि वह मरा और, उस की लाश को डिस्ट्रॉज आफ किया। अब इस का जोड़ मिलना चाहिये। कंफेशन पर सजा नहीं हो सकती। शहादत आई। सिपाही ने कहा कि फलां की लाश है, कुएं तक कैसे पहुँची? जीप में लाश ले जाई गई और इस तरीके से लाश वहाँ डाली गई। अदालत क्या करती है? जब साहब ने मुसम्मात को क्लब करने के जर्म में २०२ के मातहत काले पानी की सजा दी। उन्होंने कहा कि यह चीज साबित हो गई और इस से कल साबित हो गया। हाई कोर्ट में जब अपील गई तो कह दिया गया कि जितने गवाह पुलिस ने पेश किये सब भूँटे हैं। आप पढ़ कर देखिये कि किन शब्दों में लिखा है।

**Mr. Chairman:** Order, order. There is no time please.

**Shri R. D. Misra:** I may refer to

this page in the book. इस में लिखा है :

"There is in our opinion considerable force in the contention that not only are foot constable Lachman Singh and Assistant Sub-Inspector Banta Singh testifying to the facts which are false to their knowledge but that the prosecution are responsible for deliberately introducing a false witness and for asking the other witnesses to support the story narrated by Lachman Singh that he identified the body to be that of Jaspal Singh on the 11th March and communicated the information to the father of the deceased on the following day."

इस बात को सुप्रीम कोर्ट ने भी माना कि न सिर्फ पुलिस के अफसरों ने ही भूँटे बोला है बल्कि जो गवाह पेश किये गये हैं उन से भी भूँटे बूलाया गया है। तो आप देखिये सुप्रीम कोर्ट ने भी मान लिया कि गवाह भूँटे हैं। कनफेशन को सेशन जब न माना। हाई कोर्ट ने माना लेकिन उसने मुल्जमा को २०२ की बजाय २०१ में सजा दी। उन्होंने कनफेशन के हिस्से को माना। सुप्रीम कोर्ट ने कहा कि या तो सारे हिस्से को माना जाय या बिल्कुल ही न माना जाए और इसी बिना पर मुल्जमा को छोड़ दिया गया। तो जब जब कनफेशन को नहीं समझ सकते तो मामूली साधारण आदमी इसे किस तरह समझ सकते हैं। आप को एविडेंस एक्ट और क्रिमिनल प्रोसीजर कोड को सुधार कर अच्छा और सुन्दर बनाना चाहिये था। आप जैसा प्रोसीजर बनाना चाहते थे वह अब बनने जा रहा है। मैं आप को मुबारिकवाद देता हूँ। इश्वर करे आप इसके जरिये अपने ध्येय में कामयाब हों और परजरी वर्गों को दूर कर सकें। इतना कहते हुए मैं इस बिल को सपोर्ट करता हूँ।

**Mr. Chairman:** Let me first put to the House the consequential amendments moved yesterday. These are amendments 652 to clause 40, 653, 654, 655, 656, 657, 658 to clause 114.

[Mr. Chairman]

The question is:

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

*The motion was adopted.*

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

**Mr. Chairman:** The question is:

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 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."

*The motion was adopted.*

**Dr. Katju:** This is the concluding stage of this great debate. I need not

say that my heart is rather, full. I have worked long over it. Not I alone, but, I believe hundreds of people, distinguished, learned, competent people, full of anxiety for serving the best interests of the country have worked over it. We have examined in the Ministry with the greatest care the whole of the Criminal Procedure Code, section by section. I have been assisted by my Secretaries. I have been assisted particularly by a Special Officer whom we appointed and he has rendered a most signal assistance to me. We have also been assisted by a competent legal draftsman. Shri Mallayya and Shri Sarkar have worked over it for nearly 14 months. I have already acknowledged my deepest gratitude to all the Judges of India, the Judges of the Supreme Court, Judges of the High Court, Judicial Commissioners innumerable District and Sessions Judges. Bar Associations, Central and State Governments, States Government Advocates General—they are too many to enumerate who have assisted us and favoured us with their recommendations and with their criticism. The Bill does not represent the views of a single individual.

The House has been very kind to me. My hon. friends have been very kind in their references to me. My contribution has been to a certain extent. But, I have profited by what others have told me. I should like to say one thing at the outset. I claim no particular learning. But, I do claim the utmost anxiety to protect the interests of the accused and to see that justice is done in our Courts. This Parliament does not sit here for the purpose of either protecting the complainant or protecting the accused. It is interested only in seeing that a Court of justice is established where justice is rendered according to the law to the best of the capacity of the Judges, where the Judges could function entirely free from fear and render justice according to the judicial oath without fear or favour and goodwill or illwill to any party.

[Dr. Katju]

Much has been said about the police about the Magistrates, about the lawyers having visited interests, etc. I do submit that the police is our police. Please remember,—my hon. friend Shri R. D. Misra was just now referring to it—that in England, a statement in the nature of an admission or in the nature of a confession made to a police man is admissible if it is established on the police man's saying that before the making of the confession or admission, the prisoner had been warned that it might be used against him. Here, I say, it would be not only unwise but grossly unfair to the Indian police to say that every single statement is a fabricated statement. I have spent 40 years in the Bar and I know myself of cases in which it has been found that the diary was wrongly recorded. When you are reading one passage from a particular judgement, there are lakhs of cases in which the police act rightly and fairly and your whole structure of criminal justice is based upon it. What is the good of singling out a report in a country inhabited by 36 crores of people in which lakhs of cases have been decided year after year? You single out one policeman, one police *daroga* who may have gone wrong, who may have acted in a wrong manner and say, here it is.

I am not at this stage going to re-argue. We have had plenty of arguments. Hon. Members have said that they are satisfied with one particular feature of the Bill and that they are not satisfied with another feature of the Bill. But, I do claim this. Throughout the debate—it started when the Bill was introduced—I think all Members of the House have looked at it from a dispassionate angle. It has not been considered to be a Party measure. It has not been considered from a Party point of view. It has been considered by all hon. Members from a patriotic point of view. Because all of us recognise that the Criminal Procedure Code is designed to facilitate the administration of justice in a Criminal Court not in favour of one particular accused or another accused

or the accused belonging to one particular party or another party or to no party. And therefore, the approach has been that justice should be administered, but I should like to say one word at once, because much has been said about investigation, about prison reform, about reform of the Magistrates. All this is necessary, should be done, but it has nothing to do with the Criminal Procedure Code. We are dealing here with one particular topic, viz., as to how the case should be put before a Criminal Court,—I am afraid of talking platitudes—how the case should be started, of what cases should Magistrates take cognisance, and how the trial should take its course right up to the conclusion of the judgement, what powers should be there of the appellate Court, the revisionary Court—that is the function of the Criminal Procedure Code. A Criminal Procedure Code is not entitled to be a manual for detection of crimes. That may be the function of an institution over which a Sherlock Holmes may preside and that Sherlock Holmes may give rules and directions and guidance and teach police officers as to how to go about and detect crime and investigate crime. I have already informed the House that that topic also is under our constant attention. We are doing our best. We have appointed officers to look into it. An institute is to be opened. I believe it will be done in every State. There is already a Police Training School. That Police Training School will have a branch on detection of crime. Then there are laboratories—I mean all those additional things which are supposed to facilitate detection and observation. That is all being done. The House may be satisfied that the Government is keen about making progress. You may ask questions about it. You may show your interest in these matters by a discussion, by passing resolutions and by seeing that the Government is serious about it. But the point I am making is that it is not the Criminal Procedure Code where you can deal with these matters.



Similarly, about the separation of the judiciary from the executive.

[MR. DEPUTY-SPEAKER in the Chair.]

That is one of the directions of the Constitution, and as was remarked by many speakers, there is a constant movement, pressure, in every State that there should be such separation. There are States where separation has already been carried out—in Bombay, for instance. In each State something is being done in that connection. We have taken a step here that from the order of every Magistrate there shall be an appeal to a Sessions Judge, and the Sessions Judge, it is universally agreed, is not a part of the executive at all.

Similarly I believe in many States they have appointed Magistrates who are called Judicial Magistrates, and these Judicial Magistrates, though they may be appointed by Government, have nothing to do with executive functions. They discharge no executive duties. As the name indicates, their purpose is just to decide cases and do nothing else. So, the principle is sound. Government is pledged to it. The Constitution directs it. But I repeat again, it is not the function of the Criminal Procedure Code to see that is effected.

My hon. friend Shri Chatterjee and Pandit Bhargava and many others have referred to many things. One thing I really somewhat did not like about Shri Chatterjee's speech where he said—I hope not very seriously, in a jocular way—"we have secured victories". Victory pre-supposes enemies. Enemies pre-supposes two camps, I mean two armies, one army advancing and the other army retreating. That has not been my out-look.

**Pandit Thakur Das Bhargava:** The victory has been scored by your acceptance of the amendments.

**Dr. Katju:** I did not like the word "victory" at all. As I said, I do not want to argue. For instance one thing he said: "We have secured the right of cross-examination and that changes

the landscape altogether". Wonderful. Now, I say that this matter had been considered in the Select Committee, and the Select Committee which also consisted of lawyers thought that it would be much better to have the evidence so recorded in the committing Magistrate's Court that it is useless against the accused, that it cannot be used against him, and therefore they said "no cross-examination". Nothing lost, because in many States the procedure is, the practice is, not to cross-examine witnesses in the commitment stage. Somewhere it is done, somewhere it is not done, but you took the other view, I said: "Very well, let us have it". Perfectly open mind. Now, the statement goes that under section 288 it can be used.

One thing I did not understand during Pandit Bhargava's speech. He said: "A charge is going to be framed against the accused on the strength of diary statements in warrant cases." Very fine debating point. But in the same breath he said that he was most anxious that there should be no intervening commitment stage at all and that.....

**Pandit Thakur Das Bhargava:** May I just submit that my statement only referred to warrant cases, not to commitment.

**Dr. Katju:** Will you just sit down.

But, so far as a serious crime is concerned which goes to the Sessions Court, my hon. friend has been saying times out of number that he was in favour of no commitment stage at all, he was in favour of the police committing a case straight to the Sessions. And now, I respectfully ask what would have happened. I do not know what was done under the emergency enactment which was made in the Punjab, but just consider this. The Police submits a charge-sheet to the Sessions Court. The Sessions Judge sits down and takes the case. What has he before him? Nothing but the diary statement. Whatever charge he may make, whatever opinion he may form, he forms on the

[Dr. Katju]

diary statement. The diary statement today is a little better. As I said to you, the basic part of the structure that I had put forward was an examination-in-chief, an examination of all the chief prosecution witnesses, what we call eye-witnesses to the commission of the crime on oath, under section 164. The House did not like it. The Select Committee did not like it. They said such recording must be in the presence of the accused. So, we brought it over here. We brought it before the committing Court, so-called. Otherwise, it might have been any Magistrate, but let them have it I said. This House, in its wisdom, said there should be cross-examination. Very well, let them have cross-examination. But, I do submit that there is no question of a bargaining spirit here—a profit here and a profit there. The whole spirit underlying this Criminal Procedure Code is to protect the accused, so that no injury may be done to him.

I must also record my protest against one particular aspect. My hon. friend, to some extent Shri Chatterjee also, said: "Look at this. The accused can be examined by the Magistrate." I have already said, and I have always felt, that the Magistrate is the person—we presume that he is a fair and impartial man—who is there to see that the accused does not suffer in any way and the completest justice may be given to him. You may be afraid of cross-examination at the hands of the prosecuting counsel. You may say that he will have an intense desire and a longing to somehow or other entangle the accused and extract wrong statements out of him by very clever questions and cunning devices, but the Magistrate is there whose only interest is to see that justice is done. Why should you attribute a desire to him or a longing to him to entangle a man who is free, or who is innocent. I do not appreciate this. I would say to any Judge, I would leave it to him to put any question he likes. Why should

he go out of his way to put curring questions?

**Pandit Thakur Das Bhargava:** You see your goodness reflected in every Magistrate. Magistrates are generally police-ridden in these days.

**Dr. Katju:** I look at Magistrates as an incarnation of justice.

**Shri V. P. Nayar (Chirayinkil):** That is a counter-blast.

**Dr. Katju:** If he errs, correct him in the Court of appeal. How many persons are acquitted and convicted on appeal? The appeals which are allowed are very few. Most of the appeals are dismissed.

There has been another tendency here, Sir, during these debates, to attribute virtue to oneself and to distribute on a large scale, in big baskets, all demerits and all devices to everybody else—police, Magistrates, lawyers. My hon. friend said every Bar Association is a den of perjury.

**Pandit Thakur Das Bhargava:** This is not a realistic picture which the hon. Minister is painting. He can dwell in a paradise of his own.

**Dr. Katju:** He called the Bar Associations 'dens of perjury'. He called the chamber of every single Magistrate a sort of 'torture chamber'.

**Pandit Thakur Das Bhargava:** Then why are we separating the judiciary from the Magistrate? If the Magistrates are so good, as you make them to be, why separate the judiciary from the executive and why effect police reforms and appeal to the Bar.

**Dr. Katju:** I have got my own notion about Magistrates.

**Pandit Thakur Das Bhargava:** You reflect your goodness everywhere.

**Dr. Katju:** I am a very virtuous man; I think good of myself, I think good of everybody else....

**Shri V. P. Nayar:** Question.

ashamed of myself when I think of this Criminal Procedure Code....

**Shri K. K. Basu** (Diamond Harbour): Question. (*Interruptions*).

**Shri V. P. Nayar:** Are you not so?

**Mr. Deputy-Speaker:** It does not mean that others are not virtuous; they are also virtuous.

**Dr. Katju:** I would tell him that I am proud of it.

**Mr. Deputy-Speaker:** The question is:

**Dr. Katju:** Before I sit down, I must acknowledge, shall I say, the fairness with which the Deputy Leader of the Communist Party addressed this House. He said that I should be

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

*The Lok Sabha divided: Ayes 133; Noes 31.*

### Division No. 6

### AYES

2-41 P.M.

Abdullahal, Mulla  
Abdus Sattar, Shri  
Aohuban, Shri  
Agarawal, Shri H. L.  
Akarpuji, Sardar  
Altekar Shri  
Azad, Maulana  
Balakrishnan, Shri  
Balasubramaniam Shri  
Balmiki, Shri  
Barman, Shri  
Basappa, Shri  
Bhagat, Shri B. R.  
Bhakt Darshan, Shri  
Bhargava, Pandit Thakur Das  
Bhatt, Shri C.  
Birbal Singh, Shri  
Bogawat, Shri  
Bose, Shri P. C.  
Brajeshwar Prasad, Shri  
Chaliha, Shri Binlaprasad  
Chandak, Shri  
Charak, Th. Lakshman Singh  
Chaturvedi, Shri  
Chaudhary, Shri G. L.  
Chaudhuri, Shri R. K.  
Chaudhuri, Shri M. Shaffee  
Das, Dr. M. M.  
Das, Shri B.  
Das, Shri B. K.  
Das, Shri K. K.  
Datar, Shri  
Deb, Shri S. C.  
Deshmukh, Shri C. D.  
Deshpande, Shri G. H.  
Dholakia, Shri  
Dhulekar, Shri  
Dhusiya, Shri  
Digambar Singh, Shri  
Dube, Shri Mulchand  
Eacharan, Shri I.  
Elayaperumal, Shri  
Gandhi, Shri M. M.

Gandhi, Shri V. B.  
Ganga Devi, Shrimati  
Gounder, Shri K. S.  
Hasda, Shri  
Hazarika, Shri J. N.  
Hem Raj, Shri  
Hembrom, Shri  
Iqbal Singh, Sardar  
Jaiwara, Shri  
Jangde, Shri  
Jayashri, Shrimati  
Jena, Shri K. C.  
Jena, Shri Niranjan  
Joshi, Shri Jethalal  
Joshi, Shri Krishnacharya  
Joshi, Shri M. D.  
Kale, Shrimati A.  
Kasiwal, Shri  
Katju, Dr.  
Keshavaiengar, Shri  
Khongmen, Shrimati  
Krishna Chandra, Shri  
Kureel, Shri P. L.  
Lal, Shri R. S.  
Lallanji, Shri  
Lingam, Shri N. M.  
Lotan Ram, Shri  
Madiah Gowda, Shri  
Mahodaya, Shri  
Majhi, Shri R. C.  
Malliah, Shri U. S.  
Malviya, Shri B. N.  
Malviya, Shri Motilal  
Masuodi, Maulana  
Mehta, Shri Balwant Sinha  
Minimata, Shrimati  
Mishra, Shri Bibhuti  
Mishra, Shri Lokenath  
Misra, Shri R. D.  
Mohd. Akbar, Sofi  
Morarka, Shri  
More, Shri K. L.  
Nathwani, Shri N. P.

Falchoudhury, Shrimati Ila  
Pande, Shri C. D.  
Parikh, Shri S. G.  
Pataskar, Shri  
Patel, Shri B. K.  
Patel, Shrimati Maniben  
Patil, Shri Kanavade  
Raghubir Sahai, Shri  
Raghunath Singh, Shri  
Ram Das, Shri  
Ram Subhag Singh, Dr.  
Ramananda Tirtha, Swami  
Ramaswamy, Shri S. V.  
Rane, Shri  
Raut, Shri Bhola  
Reddy, Shri Viswanatha  
Roy, Shri Bishwa Nath  
Sahu, Shri Rameshwar  
Saksena, Shri Mohanlal  
Samanta, Shri S. C.  
Sankarpendian, Shri  
Satish Chandra, Shri  
Sewal, Shri A. R.  
Shah, Shri R. N.  
Sharma, Shri D. C.  
Sharma, Shri R. C.  
Singh, Shri M. N.  
Singh, Shri T. N.  
Sinha, Shri Nageshwar Prasad  
Sinha, Shri Satya Narayan  
Sinha, Shrimati Tarkeshwari  
Sundar Lal, Shri  
Suriya Prashad, Shri  
Tek Chand, Shri  
Telkikar, Shri  
Thimmiah, Shri  
Thomas, Shri A. M.  
Tiwari, Pandit B. L.  
Tyagi, Shri  
Upadhyay, Pandit Munishwar Das  
Upadhyay, Shri Shiva Dayal  
Upadhyay, Shri S. D.  
Veishnav, Shri H. G.

## NOES

Vaishya, Shri M. B.  
Varma, Shri B. R.  
Venkataraman, Shri  
Wilson, Shri J. N.  
Amjad Ali, Shri  
Begdi, Shri Magan Lal  
Banerjee, Shri  
Basu, Shri, K. K.  
Chakravarty, Shrimati Renu  
Chatterjee, Shri Tushar  
Chatterjee, Shri N. C.  
Chowdhary, Shri C. R.

Chowdhury, Shri N. B.  
Das, Shri B. C.  
Dasaretha Deb, Shri  
Deogam, Shri  
Deshpande, Shri V. G.  
Gadilingana Gowd, Shri  
Gidwani, Shri  
Gurupadaswamy, Shri M. S.  
Kripalani, Shrimati Sucheta  
More, Shri S. S.  
Mukerjee, Shri H. N.  
Nayar, Shri V. P.

Raghavachari, Shri  
Rannarayan Singh, Babu  
Randaman Singh, Shri  
Rao, Dr. Rama  
Rao, Shri P. Subba  
Rao, Shri T. B. Vittal  
Reddi, Shri Ramachandra  
Singh, Shri R. N.  
Veeraswamy, Shri  
Velayudhan, Shri  
Verma, Shri Ramji

*\*The motion was adopted.*

HINDU MINORITY AND  
GUARDIANSHIP BILL

The Minister in the Ministry of  
Law (Shri Pataskar): I beg to move:

"That this House while concurring in the recommendation of the Rajya Sabha that the House do join in the Joint Committee of the House on the Bill to amend and codify certain parts of law relating to minority and guardianship among Hindus made in the motion adopted by the Rajya Sabha at its sitting held on the 25th August, 1954 and communicated to this House on the 27th August, 1954:—

(a) recommends to the Rajya Sabha that the Joint Committee be instructed to report on or before the 31st March, 1955; and

(b) resolves that the following Members of the Lok Sabha be nominated to serve on the said Joint Committee, namely; Shri Narendra P. Nathwani, Shri Moreswar Dinkar Joshi, Shri Badshah Gupta, Shri Sohan Lal Dhushiya, Shri P. Ramaswamy, Shri B. L. Chandak, Shri Liladhar Joshi, Shri Mathura Prasad Mishra, Shri Mahendra Nath Singh, Shri Bheekha Bhai, Pandit Thakur Das Bhargava, Shri Raghubar Dayal Misra, Shri M. L. Dwivedi, Dr. M. V. Gangadhara Siva, Shri C. R. Narasimhan, Shri P. Siddananjappa, Shrimati Subhokra Joshi, Shrimati Ila Palchoudhuri, Shri Kanhu Charan Jena,

Shri Bimalaprosad Chaliha. Shri Bhola Raut, Shri N. C. Chatterjee, Sardar Hukam Singh, Shri S. V. L. Narasimham, Shrimati Renu Chakravarty, Shri Anandchand, Shri Shankar Shantaram More, Shri Jaswantraj Mehta, Shri K. S. Raghavachari, Shri Bhawani Singh and the mover".

This is a motion to associate thirty Members of our House with the Joint Committee in respect of the Hindu Minority and Guardianship Bill which was considered in the Rajya Sabha. This is a simple measure and forms part of the old Hindu Code Bill which was brought forward in the Assembly in the year 1947. This relates only to one part, the question of providing for the guardianship of minors so far as the Hindus are concerned. As I said it is a part of the original Hindu Code Bill.

This Bill was first introduced in the Council of States in March 1953. Then, on 24th April, 1953, a motion was passed there that the Bill be circulated for eliciting public opinion by August 1954. After the receipt of those opinions, the Bill again was taken up in that House and the formation of the Joint Committee by both the Houses was decided upon so far as the Rajya Sabha was concerned. For the information of the House, I might state that with respect to this measure, so far as the different States in our country are concerned, 19 States have expressed their opinion in favour of such legislation. Seven have expressed no opinion; that means,