LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)

LOK SABHA

Friday, 26th November, 1954

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(See Part I)

11-48 A.M.

HINDU MARRIAGE AND DIVORCE BILL

The Minister of Commerce (Shri Karmarkar): On behalf of the Minister of Law and Minority Affairs, I beg to lay on the Table a copy of the Report of the Joint Committee in respect of the Bill to amend and codify the law relating to marriage and divorce among Hindus, pending in the Rajya Sabha.

ELECTION TO COMMITTEE

ESTIMATES COMMITTEE

Shri Pataskar (Jalgaon): I beg to move:

"That the Members of this House do proceed to elect in the manner required by sub-rule (4) of rule 239 of the Rules of Procedure and Conduct of Business in the Lok Sabha, one Member from amongst their number to serve on the Committee on Estimates for the unexpired portion of the year 1954-55 *vice* Shri Nityanand Kanungo resigned."

Mr. Speaker: The question is:

"That the Members of this House do proceed to elect in the manner required by sub-rule (4) of Rule 239 of the Rules of Procedure and Conduct of Business in the Lok Sabha, one Member from amongst their number to serve on the Committee on Estimates for the unexpired portion of the year 1954-55 *vice* Shri Nityanand Kanungo resigned."

The motion was adopted.

Mr. Speaker: I have to inform Members that the following dates have been fixed for receiving nominations and withdrawal of candidatures and for holding election, if necessary, in connection with the Estimates Committee, namely:

Date for nomination	Date for withdrawal	Date for election
29-11-1954	30-11-1954	2-12-1954

The nomination to the Committee and the withdrawal of candidature will be received in the Parliamentary Notice Office upto 4 P.M. on the dates mentioned for the purpose.

The election, which will be conducted by means of the single transferable vote, will be held in Committee Room No. 62, First Floor, Parliament House between the hours 11 A.M. to 1-30 P.M.

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

Mr. Speaker: The House will now take up consideration of clause 20 to 24 of the Code of Criminal Procedure (Amendment) Bill, 1954. As Members are aware, five hours have been allotted for this group. Members will hand in at the Table within 15 minutes slips indicating the numbers of amendments to these clauses in their name which they wish to move.

The discussion on these clauses will go on up to 2-30 P.M. when the Private Members' Business will be taken up by the House.

The discussion will be on all these clauses together.

Shri Amjad Ali (Goalpara-Garo Hills): Before we start, I may be permitted to refer to one thing. When we came to the discussion of amendments to clause 2, we were told that as they related to the difference between warrant cases and summons cases, the discussion would be postponed for a future date and for a full-dress debate. But, yesterday, when we came to clause 17, the clause which relates to section 117 of the principal Code, it was put to the vote. It was also pointed out that this clause would also have to be postponed for discussion at a later stage. I asked the hon. Minister and put a question to him for clarification. I said:

> "May I seek a little clarification? I want an answer why in clause 17, the original section 117 is made a summons case and not a warrant case".

Dr. Katju replied:

"I am coming to that. I think, so far as the warrant cases and summons cases were concerned the discussion was postponed."

The Chairman said:

> "So far as the question of procedure was concerned, it was postponed. It will come up subsequently."

But then, later on, I find that clause 17 has formed part of the Bill. I want your guidance whether this question can be reopened in view of the assurance given that the summons case procedure and the warrant case procedure would be discussed later on, and clause 2 had been withheld for discussion at a later stage. Will clause 17 also be taken along with those?

Mr. Speaker: I think, I shall have to look into the proceedings before I can come to any conclusion.

Shri Amjad Ali: The proceedings are here.

Mr. Speaker: They may be here but I am not fully conversant with them.

Pandit Thakur Das Bhargava (Gurgaon): I may tell the House that the position seems to be correct. It was by mistake that clause 17 was put to the vote of the House. I gave an assurance that it would be considered when the procedure for warrant cases and summons cases was considered. But, when the amendments were put to vote, clause 17 was also put by mistake.

Shri Amjad Ali: If it was a mistake, can it be corrected and reopened?

Mr. Speaker: Let me see the proceedings and come to a decision.

Shri Sadhan Gupta (Calcutta—South-East): As with other clauses, this particular group of clauses also is to be viewed from the point of the convenience of defence which should be available to every accused person. Apart from clause 20, which deals with proceedings relating to property, other clauses deal with this question. Particularly, as far as clause 22 is concerned, this amendment has raised the greatest amount of controversy in this House. Clause 22 seeks to amend section 162 of the Criminal Procedure Code. Section 162, as it stands at present, prohibits the use of statements recorded by the police for any purpose other than the contradiction of the prosecution witnesses. Now, that is not a right which we always had. It came to us after a long time in 1923. It is only then that we got this right and I think it is not a mere coincidence that just a little before that the non-co-operation movement was on and the country was fermenting with discontent. It is a very salutary provision, I submit, because our police being what they are, our investigating machinery being what it is, it is absolutely essential that the accused should have protection against being imperilled by indiscriminate use of statements made or supposed to have been made before a police officer. I deliberately say, 'statements made or supposed to have been made'. Courts have remarked again and again, that a statement recorded by a police officer is never to be relied upon.

12 NOON

It is said, in England when the police officer says that the accused made a certain confession to him, it is implicitly accepted because the police there is of a different order. I am not one of those who believe in national characters, who would say that the English national character is infinitely better or in any manner better than Indian national character. I do not really accept any theory of national character at all. But, it is a fact that the executive machine becomes more and more tyrannical, more and more corrupt as it finds it difficult to control the discontent of the people. In England, the executive has a greater hold on the people, the Government in England has a greater support of the people and therefore they can afford to be just to the people. But, here, where the country is seething with discontent where no problems have been solved, naturally the people are restive and therefore the machinery that is set up to keep them in check, to keep them in control, to keep, as it is said in very euphemistic terms, law and order, that machinery is bound to be corrupt and is corrupt. It had been corrupt in British days and now it is no less corrupt. In fact, it is more corrupt than in British days. The reason is the same. In the British days the discontent of the people did not reach to such great heights because the problems of the people had not assumed that amount of complexity as it has assumed today in the Congress States. Therefore, if we had the necessity for protection from the police in those days, if in those days the police were corrupt, if the police were unscrupulous in British days, the police are still more corrupt today and they are still more unscrupulous today and we have to have still more protection against these statements.

Pandit Thakur Das Bhargava stated yesterday that here the police celebrate section 109 weeks that is to say, a week in which they have to get in the maximum cases under section 109. That is not an accident; that is not the only disease either, it is only the symptom of the disease. The police in our country is absolutely callous to the rights of the people, absolutely callous about civil liberties and, therefore, they do not shrink from anything which will enable them to get a conviction. We have seen in many cases how it happened that the police have set about fabricating evidence, that the police have set about extorting statements from witnesses by terror and by all sorts of inducements and other means. In this very city, as pointed out by me the other day, a Sessions Judge made very caustic remarks about the way in which witnesses were procured by them. When the case concerns the people and the executive, then the zeal of the police to fabricate evidence knows no bounds. Therefore, it is in this light that we have to look at this clause—clause 22—by which section 162 is sought to be amended. In the Bill as it was originally introduced, it was provided that police statements could be used for all purposes, the proviso was taken away the result was that the police statements could be used for all purposes, for contradiction as well as corroboration. The hon. Home Minister then stated that there is no difficulty because in any case, when nothing is brought out in cross-examination regarding a contradition of the witnesses by the police statement, the Judge takes it for granted that it is corroborated so that you do not lose anything by having the witness's statement corroborated. That kind of an argument did not cut any ice and that was absolutely absurd. It obviously assumed that every Court was so dishonest that in spite of the bar to using a statement made before the police for the purpose of corroboration the Court would nevertheless use it for some such purpose because it had not been contradicted. No one took that view and, therefore, there was a general feeling against a provision which would enable police statements to be used for corroboration. Therefore, the corroboration

[Shri Sadhan Gupta]

part has been done away with, but it has been done away with not from the idea of increasing the civil liberties of the accused, giving him a right of defence, but just to placate the very reasonable opposition which has naturally arisen from the people against curtailing the right of the accused. What the hon. Home Minister now says is: Why should the accused be chary of the prosecution witnesses being contradicted by the prosecution itself? If the accused has a right of contradiction, he says, it is fair that the prosecution should have the same right. If a prosecution witness is telling a lie, why should not the prosecution contradict it by his own statement? The answer is not too difficult to give because there is the greater chance that the statement is not his own; the statement has been fabricated by the police or extorted by the police in order to support the prosecution case. Under these circumstances.....

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

Mr. Deputy-Speaker: Has not this matter been discussed at length? Every hon. Member referred to this matter in the general discussion. I would only appeal to hon. Members to come forward with any new points that have not been stated so far. This point was discussed threadbare already.

The Minister of Home Affairs and States (Dr. Katju): This was absolutely dead!

Mr. Deputy-Speaker: Either the one side was converted or not converted and so unless hon. Members can find any new points, ...

Shri Nambiar (Mayuram): This is our last chance.

Mr. Deputy-Speaker: The last chance is the voting, but this is only repeating the same matter at every stage.

Shri Sadhan Gupta: The argument is: What do you lose by it? Obviously, what the accused loses is the evidence of the prosecution witness. If the prosecution witness gives a favourable evidence, it has to be considered by the Court. The Court cannot say that he cannot say a contradictory statement to the police and so 'I am not going to accept his statement'. But in the amendment proposed, what is said is this. If he can declare the witness as hostile—and you know what is the effect of hostile witnesses—his evidence will not be accepted by the Court, his evidence will not be accepted for the prosecution—it is true—but it may not be accepted for the accused. Now, the Home Minister says since he is an untruthful witness, why should the accused have the advantage of his testimony? The point is that he is not an untruthful witness; the police is the untruthful machinery and the police has recorded untruths against him. The Home Minister then retorts: Why should the prosecution not take advantage of the untruths recorded to contradict it? The reason is that the police is the agent of the prosecution and there is no doubt about it. The police has recorded the untruth in order to support the prosecution, and if the prosecution now wants to turn round and say "I will take advantage of that", that is a very unfair thing and we cannot be a party to it. I think most of the Members of the House, of course, apart from the whips issued to them, will not be a party to it. Mr. Pataskar at one stage appealed to us to be above party politics in this matter. I fling back that appeal to his party and challenge them to give a free vote on it and see what happens to the fate of this amendment. That is as far as section 162 is concerned and we have given notice of an amendment for omitting the words "with the permission of the Court, by the prosecution".

As regards clause 23, as Pandit Thakur Das Bhargava pointed out, there is no provision for giving the

accused the documents within a reasonable time before the trial begins—it is said that the police officer has to furnish him with the various statements recorded—but it has not been stated how long before the trial the police officer should furnish him. If it is furnished just at the time of the trial, what is the use of it? It is absolutely useless, and therefore we have proposed an amendment that the statement must be furnished at least fifteen days before the trial begins.

Mr. Deputy-Speaker: If it is applied for on the fourteenth day?

Shri Sadhan Gupta: There is no question of applying. It is the obligation of the police officer to furnish it to the accused, without any application.

Shri Raghavachari (Penukonda): That is how it is proposed now.

Shri Sadhan Gupta: Therefore it must be furnished fifteen days before, the trial begins.

There is another provision, which is a legacy of British days, that statements which are supposed to be irrelevant, which are supposed to be not in the interests of justice and not in the public interest to disclose, need not be disclosed. The only difference is that in the British days it was a Magistrate who was empowered to exclude it; today it is the police officer who is empowered to exclude it. A wonderful government I must say who, in spite of the well known fact that the police are always obstructive of the rights of the defence and offer every kind of obstruction to a proper conduct of defence, have entrusted the police with the power of excluding statements! The only safeguard is that the police officer will report it to the Magistrate and then of course, at the time of the commencement of the trial, if the Magistrate finds that the exclusion has not been justified he may order the remaining portion of the statement to be given. We are definitely of the opinion that this power of exclusion is not justified. If there is any statement against the accused, it must be given to him. And the accused should be made the judge as to whether it is relevant for the defence or not.

We know so many questions arise in course as to the admissibility of evidence on the ground that it is relevant or it is irrelevant; so many complicated cases are decided on this point; and in many cases where the trial court decides one way the appellate court decides the other way.

Therefore, is it safe or is it reasonable to provide that the question of relevancy should be judged behind the back of the accused by a Magistrate and, even more, by a police officer? Relevancy can be decided only after ascertaining what kind of defence the accused will put up. It often happens that the question of relevancy assumes a very new aspect in the light of the defence that the accused offers. As such, how can you make the police officer the judge of relevancy?

Therefore, we have given an amendment in which that particular provision is to be omitted. Of course, that is our point of view. But if it is not accepted, we have given an alternative amendment which provides that if anything has to be excluded, if any portion of the statement has to be excluded, the police officer must not exclude it by himself, on his own judgment, but he must previously obtain the permission of a Magistrate before excluding such part from the copy of the statement. I think if the hon. Home Minister has any pretence to justice, any pretence to judicial fairness, he should accept at least this amendment.

Mr. Deputy-Speaker: Why all these remarks, "fairness," this and that? Both sides claim to be very fair. Those observations may not be necessary except when a principle is involved. After all there is a proviso here. The hon. Member wants that before rejecting there should be consultation of the Magistrate. The proviso is that after rejecting, the Magistrate is consulted. It is of course a small point. The hon. Member's point and

[Mr. Deputy-Speaker]

amendment may be accepted or rejected. But it does not involve such a serious principle that the Home Minister's sense of justice need be invoked.

Shri Sadhan Gupta: Sir, it is not a very small point. Just imagaine what could happen. There is no time limit prescribed when the police statement has to be given, and particularly in the matter, I may say, of the appeal against the exclusion. The time limit is when the trial starts, when the first hearing takes place. In these circumstances it may be that the police officer, in order to harass the accused, in order to make it impossible for him to conduct his defence, will exclude all sorts of relevant statements, and then those statements will be coming to him only on the day of the trial. Is it fair? Does it offer reasonable opportunity to the accused for his defence?

Therefore what I have suggested is, if he must exclude he will obtain the previous permission of the Magistrate and then exclude it.

After that, of course, there is my amendment that he must furnish it within fifteen days.

If these two amendments are accepted the position will be that the statement after exclusion of all irrelevant portions, will come to the accused at least fifteen days before the trial begins, and he will have ample time to prepare his defence. I think on all sides of the House opinions have been expressed admitting the fairness, admitting the desirability of such a provision which would enable the accused to obtain the statement within a reasonable time before the trial commences. And also I think—though this aspect has not been touched—the same reasoning that supports the earlier view will also support my view that the exclusion, if at all, should be done by the Magistrate before the statement is furnished, and within a reasonable time before the trial is commenced.

That is all I have to say on these points, and I would once again urge upon the Home Minister to accept these very reasonable amendments.

Shri Dabhi (Kaira North): By my amendment I want to delete the words "and with the permission of the Court, by the prosecution" from the proposed section 162. You will see that the main argument given by those who want to insert these words in section 162 is that while the accused has the right to cross-examine a prosecution witness, why should not the prosecution also be allowed to cross-examine its own witness under certain circumstances?

This argument is misleading. In the first place the difference between the two cases is that under the Evidence Act the very definition of cross-examination is that it is examination of the witness by the adverse party. So the comparison between the two is not proper. To say that because the accused has been given the right to cross-examine the prosecution witness, therefore the prosecution also should be allowed to cross-examine its own witness is not a valid argument.

We know of course in certain cases a prosecution witness might turn round at the time of giving evidence before the court. There are two conceivable reasons why a prosecution witness would go back upon the statements he made to the police In the first place, one conceivable reason is that the police might not have properly and accurately recorded the statements of the witness. And from several concrete instances we know that the police do not properly or faithfully record the statements. Sometimes they record certain statements on slips and then enter them in the diary according as it suits them. Now, if really that statement of the witness is not correct, why should that witness not be allowed to disown that statement?

We know that there are several cases in which the police take statements of witnesses by using pressure or by bringing undue influence. If that be the case, if such statements have been induced by pressure or undue influence, it is fair that that witness should be given an opportunity to say that those statements were taken from him by some undue influence or by pressure being brought upon him. In such cases he must be allowed to say what the truth is. If he was compelled to say some untruth before the Police it is fair that he should be given an opportunity to say what the real truth is. In this connection I would like to read a few lines from the judgment of Chief Justice Beaumont of the Bombay High Court in Emperor *vs.* Sultansha Sidisha (*A.I.R.* 1940, *Bombay*, 385.) There Chief Justice Beaumont stated as follows:

> "If the statement made under section 164 was false, no doubt such a false statement ought not to have been made, but one knows that in the initial stage of proceedings it is possible that influence may be brought to bear on a witness, and if a witness does make a false statement under section 164, it is surely very much to his credit that he retracts that false statement at the trial, and does not by giving false evidence at the trial secure a wrong conviction."

What the learned Chief Justice says is that if he has really said something under undue influence, he must be allowed to tell the truth before the Court.

Then, Sir, I can conceive of another occasion when the witness would prevaricate. Sometimes it does happen that if a witness is a close relative, or friend of the accused he turns round afterwards and says before the Court that he knows nothing about the incident. In such cases where the police know that the witness is a close friend or near relative of the accused, they take the witness to the Magistrate and get his statements recorded under Section 164. They do so, so that the witness may not turn round on a later occasion. So, section 164 of the Criminal Procedure Code is even now being used by the police and there is nothing to prevent them from resorting to it. The hon. Minister says that he wants justice to be done. But if these words are retained in the section, sometimes it would not help the ends of justice.

I will take one concrete instance. Suppose a prosecution witness in his statement before the Magistrate says that he saw A, B, C and D commiting a crime, say, murder, of a particular person. When he appears before the Court he names only three persons, A, B and C. What will happen if the prosecution were to contradict this statement by confronting him with the police statement? It would mean that the witness himself is contradicted, declared hostile and the whole evidence will be discarded, on the ground that the witness is a discreditable witness and that his evidence should not be accepted. I do not want that should be the case. The one person who has not been named by the witness before the Court should not be convicted; that is, the evidence itself should be what is given in the Court.

Of course, we are all anxious to see that no innocent person suffers; but at the same time we do not want that a guilty person should escape. By allowing the prosecution to declare a witness hostile, the evidence of that witness even with regard to those three persons who may have really committed the offence would be lost.

Last, we know that this is the one point on which there is practically unanimity of opinions. Of the opinions that have been received, I do not know of a single one which says that this section 162 should be dropped. Many of the Sessions Judges who have vast experience of these cases

[Shri Dabhi]

have suggested that this section should be retained as it is. They would not have had the slightest idea that after retaining this section, the new words would be inserted. If only we go through the opinions received, we will find that practically everybody wants that section 162 should remain as it is. Under these circumstances I think Government would see to it that these words which they seek to insert in section 162 are dropped.

Shri Amjad Ali: Before I make my remarks on Section 162, I would like to read to the House the opinion expressed by some learned jurists which appear on page 109 of the Summary of Opinions Group D, circulated to us.

I am referring to the opinions quoted from Judges by no less a person than Shri N. C. Chatterjee, an erstwhile Judge of the Calcutta High Court, and now a colleague of ours.

Mr. Deputy-Speaker: Was the opinion given as a colleague or as a Judge?

Shri S. S. More (Sholapur): Opinion given as a Member of this House.

Mr. Deputy-Speaker: What is the good of quoting such opinions? Hon. Members are here in flesh and blood.

Shri S. S. More: He is quoting it as the opinion of an "ex-Judge and/or colleague." He has qualified it.

Shri Amjad Ali: Shri N. C. Chatterjee, Member of Parliament, Barrister-at-law, and a former Judge of the Calcutta High Court, has given his valuable opinion from his experience. He has said:

> "This section (section 162) is very important, as the Legislature wanted to protect the accused both against the overzealous police officers and untruthful witnesses. This section really affords protection to persons from being pinned down to statements recorded by the police during the investigation stage."

He has also said:

> "As has been pointed out by different High Courts, the reason for restriction imposed by section 162 is that such statements are recorded by police officers in the most haphazard manner. As has been pointed out by learned Judges, Officers conducting an investigation not unnaturally record what seems in their opinion material to the case at that stage and omit many matters equally material and which may be of supreme importance as the case develops, and they are not experts of what is or what is not evidence."

Mr. Deputy-Speaker: I would like to consider—I would like to consult the hon. Speaker also and consult the practice hitherto on this matter—how far it will be useful or how far it will be desirable to quote the opinions of Members of Parliament on a matter which is before the House, and the opinions which have been sent to the House. Every Member of Parliament may give a written opinion, and whether he takes the opportunity of speaking in the House or not, another hon. Member might go on reading that opinion. That is the difficulty that is passing in my mind. The opinion of an hon. Member, whether as a Judge or not, is entitled to weight. but what is passing in my mind is this, and I am telling the hon. Members in advance. If, on any issue here, any subject that is referred to or is circulated for public opinion, we quote all the opinions of all hon. Members here—one hon. Member reading the opinion of another hon. Member,—there may be no end. It is open to the hon. Member to get up here and say his points and then

Subject himself to some questions, explanations, and soon. I am not talking of the hon. Member, Shri N. C. Chatterjee. If he wants to speak or intervene at any stage, he will certainly be called upon to speak. But there may be other hon. Members who may not get a chance and they may put into the hands of some other hon. Member his views, and that other hon. Member may go on reading it, opinion after opinion. So, I cannot pick and choose and say whether one hon. Member's opinion is not good and another hon. Member's opinion alone is good.

Shri N. C. Chatterjee (Hoogly): On this point, I was quoting from Justice Collister and Justice Braund of the Allahabad High Court. I was quoting word for word from their judgment in the Allahabad High Court. So, my learned friend is quoting not Shri N. C. Chatterjee but Justices Braund and Collister.

Mr. DeputySpeaker: I would like hon. Members to consider this matter, and tell me or tell the Speaker about their views. What is passing in my mind in this. Whenever any matter is sent up from this House for eliciting public opinion, or is sent to the other House which consists of say, 250 Members, can they, the Members of that House go on quoting what has been said here by the 500 Members of this House?. Or, likewise, when a measure is initiated in the other House and when it is sent here, can all the Members go on quoting what has been said there by those Members? It will result in quoting the opinions of Members once again. So any statement made by a Judge or a like person may be usefully quoted, and not necessarily the opinion of a Member who, as a Member of this House has got an opportunity to speak. So far as the Evidence Act is concerned, hon. Members know that a party cannot use his admission for himself, though against himself, it can be used. Of course, whatever an hon. Member quotes from what has been said by another hon. Member, it can be contradicted or supported. I would like to take time to consider this matter.

Pandit Thakur Das Bhargava: This section 162 gives power to the prosecution as well as defence.

Shri S. S. More: Do you mean to say that our statement shall be used only for the purpose of contradiction and not for corroboration?

Mr. Deputy-Speaker: The hon. Member will read the extract from the Judges' opinion which was referred to by Mr. Chatterjee. The House will accept those extracts.

Shri S. S. More: Mr. Chaterjee has already on the last occasion quoted those extracts.

Shri Amjad Ali: I have not named the Judges from which Shri N. C. Chatterjee has quoted. I was going to name them when the Chair intervened and made observations. It was Justice Braund and Justice Collister of the Allahabad High Court on A.I.R. 1940, All. 291.

Dr. Katju: There are so many Judges of the High Courts and they differ among themselves so violently.

Shri N. C. Chatterjee: On this point, no High Court has differed from the judgment of Justice Braund and Justice Collister.

Shri Amjad Ali: I shall quote another judgment. "In Pakala Narayana Swami *v* Emperor, the Judicial Committee held that statements made to a police officer by an accused person under section 162 Cr. P.C. are not admissible in evidence."

Mr. Deputy-Speaker: What do they say? He need not read it in full. Do they say that the document ought not to be used in favour of the prosecution?

Shri Amjad Ali: "Are not admissible in evidence even when the person making them was not an accused at the time of making the statements but was so at the time the statements were tendered in evidence. As Lord Atkin observed in that case, the intention of the Legislature....

Mr. Deputy-Speaker: That is the interpretation of the law. But the hon. Minister wants to change the law. There is a world of difference between the two. It is not a general principle of jurisprudence. Under the law, as it stands, it can be used only in re-examination, and only to a limited extent, in so far as any accusation has been made in cross-examination, and as a kind of elucidation. Otherwise, under the existing section, it cannot be used. The hon. Member has evidently wanted to get out of the difficulty pointed out by the Privy Council and wants to make a provision in the Statute. He wants to modify the Act itself.

Shri Amjad Ali: "The intention of the Legislature in framing that section was to encourage the free disclosure of information or to protect the person making the statement from a supposed unreliability of police statement."

Mr. Deputy-Speaker: In spite of the section they wanted to use it on general principles, that that kind of evidence ought to be permissible in favour of the prosecution. The hon. Judges of the Privy Council said that it ought not to be used and it is a wholesome provision. That is why the statute has not made any provision now. The Home Minister wants to get the provision made in the statute. But how is it used? I am afraid the hon. Member must rely upon general principles for this purpose.

Shri N. C. Chatterjee: Lord Atkin was pointing out the principle, the ratio, the eternal verities, the unreliability of police recording. That is what the hon. Member was pointing out. That point still persists.

Shri Amjad Ali: The intention of this section was to safeguard the interests of defence against the overzealousness and unreliability of police officers' statements.

More convictions and more promotion are always in their minds. The statements are recorded by the police officers in the most haphazard manner and mostly to suit their purpose. They are not legal experts also. Under the existing section 162, the accused is given the valuable right of contradicting the prosecution witnesses with this statement. It has worked for more than half a century. Even in the days of the British, who were more for suppressing individual liberty, it worked well. It is unfortunate that Dr. Katju, who has worked for individual liberty throughout his whole life, has sought to take away this liberty of the citizens with a stroke of the pen?

Shri S. S. More: Is it a mis-statement?

Shri Frank Anthony (Nominated Anglo-Indian): Whose opinion is this?

Shri Amjad Ali: The Party behind him has fought for individual liberty so long. Has he thrown to the winds the question of individual liberty?

Dr. Katju: What is he reading?

Mr. Deputy-Speaker: He is referring to some notes.

Dr. Katju: I thought he was reading some judgment.

Shri N. C. Chatterjee: No judgment has yet given you that certificate.

Shri Nambiar: That is yet to come.

Shri Amjad Ali: By this amendment, section 145 of the Indian Evidence Act is sought to be amended for criminal trials. If the prosecution is given the same right to contradict the prosecution witnesses with the help of the police diary the unscrupulousness of the police is always at an advantage. The mischief from which the defence was so long saved is sought to be perpetrated by this. The advantage so long enjoyed by the defence is taken away from him. That shows the lighthearted manner in which the liberty of the individual is going to be curtailed.

Mr. Deputy-Speaker: May I announce the amendment before I call

upon Shri Frank Anthony to speak? Does he want amendment No. 425 also to be included?

Shri Frank Anthony: Yes, Sir.

Mr. Deputy-Speaker: The following are the numbers of the amendments indicated by the Members to be moved.

Amendments Nos. 465, 369, 53, 287, 466, 262, 370, 5, 100, 263, 371, 425, 468, 372, 310, 264, 373, 375, 101, 376, 102, 426 same as 377, 103, 427 same as 379, 428, 57 and 380 subject to their being admissible.

Shri R. D. Misra (Bulandshahr Distt.): Amendment No. 53 also.

Mr. Deputy-Speaker: I have read as the third amendment. I find some of these amendments are proposing new clauses; clauses 20A, 21A, 22A, 23A and 24A. The objection to these, as was already referred to by the hon. Speaker at an earlier stage, is that these sections are not touched by the Amending Bill, nor do they flow from any clause of the Amending Bill nor are they ancillary or auxiliary to them. I would hear the hon. Members on this point as to how it will be useful.

Pandit Thakur Das Bhargava: I have given an amendment in List No.....

Mr. Deputy-Speaker: To cut short the time, I would suggest this course. That is my present view. Clauses 20A, 21A, 22A, 23A and 24A are liable to the same objection as pointed out, that they refer to sections which are not the subject-matter of the Bill. Further, I consider at this stage that they do not flow out from or are consequential to the amendments that have been proposed. Nor are they ancillary or auxiliary. This is only a provisional opinion. I shall give an opportunity to the Members who want to see that these amendments are accepted by the House or placed before the House. They will not only speak about their own amendments, but on the other amendments, and on the clauses including the new clauses which they have tabled. I do not want to give two opportunities to them to discuss this point. Each in his turn, if he wants to stand by his amendment, may stand up and he will have an opportunity to discuss all the clauses together.

Clause 20

Shri Bogawat (Ahmednagar South): I beg to move:

In page 5, *after* line 37, *add*:

"(1B) Notwithstanding anything contained in sections 145, 146 and 147, if the parties to the dispute before the Court or Magistrate come to a compromise and present it in writing, the compromise shall be recorded and the Court or Magistrate shall drop the proceedings."

New Clause 21A

Pandit Thakur Das Bhagarva: I beg to move:

In page 5, *after* line 43, *insert*:

"21A. *Amendment of Section* 161, *Act V of* 1898—In section 161 of the principal Act—

(a) in sub-section (1), for the words 'may examine orally any person' the words 'shall examine all persons so far as practicable' shall be substituted; and

(b) for subsection (3) the following sub-section shall be substituted, namely:—

'(3) The police-officer shall reduce into writing the statements of the persons whom he examines preferably in the language of the person examined. The statements of such persons as are supposed to be acquainted with the fact and circumstances relating to the actual commission of the offence shall be taken down in full in their presence and in their

[Pandit Thakur Das Bhargava]

own languages. These statements shall be recorded in the diaries referred to in section 172."

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

(1) In page 5, *after* line 42, *insert*:

"21A. *Amendment of section 161, Act V of 1898.*—In sub-section (2) of section 161 of the principal Act, after the words 'bound to answer all questions' the word 'truly' shall be inserted."

(2) In page 5, *after* line 43, *insert*:

"21A. *Amendment of section 161, Act V of 1898.*—In sub-section (3) of section 161 of the principal Act,—

(i) for the word 'may' the word 'shall' shall be substituted;

(ii) the words 'if he does so' shall be omitted; and

(iii) the following shall be added at the end, namely:—

'and shall give a copy of the statement recorded by him to the person who made the statement and take signatures of such person that he has received such copy'."

Clause 22

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

In page 6, line 6, *after* "under investigation" *insert*:

"nor such person making the statement shall be examined for the prosecution at any trial or inquiry unless a copy of his statement recorded by the police-officer was given to him and a receipt of it was obtained by such police-officer".

Shri Mulchand Dube (Farrukhabad Distt.—North): I beg to move:

In page 6, line 10, *omit* "if duly proved",

Shri Sadhan Gupta: I beg to move:

In page 6, line 10, *after* "may" *insert* "only".

Shri Dabhi: I beg to move:

In page 6, lines 11 and 12, *omit* "and with the permission of the Court, by the prosecution".

Pandit Thakur Das Bhargava: I beg to move:

In page 6, lines 11 and 12, *omit* "and "and with the permission of the Court, by the prosecution".

Shri Mulchand Dube: I beg to move:

In page 6, lines 11 and 12, *omit* "and with the permission of the Court, by the prosecution".

Shri Sinhasan Singh (Gorakhpur Distt.—South): I beg to move:

In page 6, lines 11 and 12, *omit* "and with the permission of the Court, by the prosecution".

Shri Amjad Ali: I beg to move:

In page 6, lines 11 and 12, *omit* "and with the permission of the Court, by the prosecution".

Shri Bogawat: I beg to move:

In page 6, line 11, *omit* "with the permission of the court".

New Clause 22-A

Pandit Thakur Das Bhargava: I beg to move:

In page 6, *after* line 22, *insert*:

"22A. *Amendment of section 172, Act V of 1898.*—In section 172 of the principal Act—

(a) after sub-section (1) the following new sub-sections shall be inserted namely:—

'(1A) The diary shall be a bound book containing consecutive printed pages with arrangement for automatic copies on two sheets, each page being signed by the Inspector-General of Police of the State in which entries in accordance with the provisions of sub-section (1) shall be made. In the second part of the diary to be known as "statement diary" statements will be recorded in accordance with the provisions of section 161.

(1B) At the close of the investigation each day the police-officer shall submit a copy of the diary to the Superintendent of police who shall maintain a register showing when the diary reached his office and when it was alleged to have been sent.'; and

(b) in sub-section (2)—

(i) before the words "any Criminal Court" occuring at the beginning the following shall be added, namely:—

'The statement diary and the counter-part copies and the copy of the register mentioned in sub-sections (1A) and (1B) shall be available to the accused for such use as is allowed by law at the trial.'

(ii) before the word "Neither" the words "Except as hereinafter provided" shall be inserted."

Clause 23

Shri Nageshwar Prasad Sinha (Hazaribagh East): I beg to move:

In page 6, line 24, *after* "the principal Act" *insert*:

"(a) in sub-section (1), after the words 'without unnecessary delay' the words 'that is, within fifteen days from receipt of information under section 154 or an order from the Magistrate under sub-section (3) of section 155 of the Act, or, at the latest, within thirty days if there are rare and extraordinary circumstances' shall be inserted; and (b)"

Shri Mulchand Dube: I beg to move:

In page 6, line 24, *before* "for sub-section (4)" *insert*:

"(a) for clause (b) of sub-section (1), the following shall be substituted, namely:—

'(b) send a copy of the report referred to in clause (a) to the person, if any, by whom the information relating to the commission of the offence is laid,' and (b)"

Shri Sadhan Gupta: I beg to move:

In page 6, line 27, *for* "shall" *substitute* "shall at least fifteen days".

Pandit Thakur Das Bhargava: I beg to move:

(1) In page 6, line 27, *after* "shall" *insert*:

"as soon as possible and in Session cases not less than fifteen days and in other cases not less than ten days,".

(2) In page 6, line 27, *after* "before" *insert* "ten days and in no case less than a week".

Shri U. S. Dube (Basti Distt.—North): I beg to move:

In page 6, line 32, *after* including *insert*:

"the remarks of inspection note, if any, made at the time of the local inspection of the place of occurance and."

Pandit Thakur Das Bhargava: I beg to move:

In page 6, line 34, *after* "section 161" *insert*:

"or recorded in any part of the police diary or otherwise".

Shri Sadhan Gupta: I beg to move:

In page 6, *omit* lines 37 to 51.

Shri Sinhasan Singh: I beg to move:

In page 6, *omit* lines 37 to 51.

Pandit Thakur Das Bhargava: I beg to move:

In page 6, *omit* lines 37 to 45.

Shri Amjad Ali: I beg to move:

In page 6, lines 39 to 41, *omit*—"is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interest of justice and"

Shri H. G. Vaishnav (Ambad): I beg to move:

In page 6, lines 39 to 41, *omit*—"is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interest of justice and"

Shri Sadhan Gupta: I beg to move:

In page 6, (i) line 40, *for* "or that its disclosure to"; and

(ii) *for* lines 41 to 51, *substitute*:

"he may, after obtaining the previous permission of a Magistrate, exclude such part from the copy of the statement furnished to the accused."

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

In page 6, *after* line 51, *add*:

"(6) In cases where the previous sanction of the Central Government, State Government or any other authority is necessary for taking cognizance of an offence by the court, the police officer shall not forward his report to the court without obtaining the required sanction in writing of the authority concerned."

New Clause 24-A

Shri Bogawat: I beg to move:

In page 7, *after* line 4, *insert*:

"24A. *Omission of section 197A in Act V of 1898.*—Section 197A of the principal Act shall be omitted."

Shri Frank Anthony: I have not yet abandoned hope in the hon. Home Minister. As I listened to him with great attention, he has made it clear that his approach was not militant nor rigid, that he is having an open mind on the subject and that he would be open to conviction.

As I have listened to this debate, I find that there is a consensus of opinion, not only from this side, but also from the Congress Benches, that has registered an emphatic and unqualified protest to this proposed amendment to section 162. My amendment seeks to restore section 162 to its original position. When the Home Minister was arguing the

brief of the Government and that of the majority of the Select Committee, he seemed to approach the matter, particularly this section, in this way. He said, why should we not hold the balance evenly between the defence and the prosecution in this matter? After all, the investigating officer records the case diary. It is admitted that the statement of a particular witness does not represent the *ipsissima verba* of that particular person. It is not his statement; it is not read over to him and he is not required to sign it. Why, then, in these circumstances, should the prosecution not be given the same right as has been accorded to the defence? My respectful submission is that this is a misconception. In this matter, the defence and the prosecution do not stand on the same or on an equal basis. The investigating officer and the prosecution witnesses represent a sort of a common pattern. It is natural that when the investigating officer and his prosecution witnesses are here, the lee is in supporting the prosecution pattern. Normally, there is no conflict of interest between the investigating officer and his prosecution witnesses. That is precisely why section 162 was, I believe, originally put in. If we now let in the new amendment, the whole purpose and the original intention of section 162 is not only going to be completely stultified, not only will the original benefit which was categorically intended for the accused be effacted, but on the other hand, it will be converting a benefit into a distinct liability for the defence. That is precisely what is going to happen. Quite frankly I am unconvinced by the arguments of the Home Minister. The prosecution never has the scales weighed against it in respect of the case diary. The approach of a Court is always conditioned by an appreciation of this fact that it is not a verbatim statement. We know the Courts refuse to consider minor discrepancies as between the statement in the case diary and the statement on oath. Many High Courts have refused even to consider omissions as representing a contradiction unless it is an omission of a very vital character. So, to this plea of the Home Minister that when this is not a verbatim record why should the prosecution witness who has not seen it, who has not heard it, be placed in a position of disadvantage, I say he is not placed in a position of disadvantage. As I have said, the Court's approach is not that he is confronted with every word or every syllable or every combination of syllables in the case diary. The court rejects that kind of contradiction. But the principle underlying this provision and which will now be completely, as I say, not only stultified but perverted, is this. It was intended categorically as a benefit for the accused person. What was the intention? The intention was that section 162 should operate as some kind of brake on the capacity for fabrication, and we know that this capacity varies from State to State and from investigating officer to investigating officer. It is intended to operate as a brake on the capacity for fabrication of an investigating officer. He always knew that section 162 gave him notice of this fact, that if he deliberately fabricated his case diary, unless he was able then to enlist also the intention of the prosecution witness to commit perjury, that record in the case diary would probably indict him and probably vitiate the whole prosecution case. That is the whole purpose. It was meant as a brake on this capacity of an investigating officer, since he is preparing, to fabricate statement, to put into the mouths of witnesses what he would like to hear them or see them say. That is what it was intended for.

Now, what is going to be done. A witness comes. He is an absolutely truthful witness. The Sub-Inspector had perhaps hoped that he would come into line with this particular part of the fabricated pattern. The witness does not want to. That is precisely the whole principle be-

[Shri Frank Anthony]

hind it, that an investigating officer would not be placed in this position, that not only would he be able to fabricate the case diary but he would be able to pin down his own witness. That is precisely what the Home Minister's amendment is going to do. It is going to give the Sub-Inspector two powers. First and foremost, he alone has the discretion to write up the case diary in any manner he pleases. But now, what is he going to be able to do?. He is going to pin down a truthful witness to his false fabricated case diary statement. That is where the utter perversion comes in.

Sir, at present what happens. A respectful witness comes to the Court. He refuses to lend himself to any police pressure. He comes there and he says: "Well, I did not see the accused". The prosecution's case is that the accused did a particular act. This witness says: "No. I was there. He might have done something which was comparatively minor in character, but he did not do this." That evidence was there. It was unassailed evidence. The accused, on the basis of that prosecution witness's evidence would certainly have been acquitted, but now what is sought to be done? We are preventing the accused from getting the benefit of the evidence of a truthful evidence. That is precisely what is going to be done. The Sub-Inspector is going to be able to confront a truthful witness with this false prosecution pattern. The accused is going to be deprived of the evidence on oath of that truthful witness. That is the whole effect.

Here are two parts of the prosecution pattern, the investigating officer and the prosecution witness, *viz.*, the combination. I was given the distinct benefit of being able in spite of the combination to elicit contradiction. Now, what are we going to do? Apart from that question of contradiction, a witness may not say that he did not see but he may mitigate the heinousness of my offence. Now, the Home Minister is going to say: "You are not going to get the benefit of this evidence on oath. That person is going to be contradicted by the fabricated case diary". I am pleading with the Minister that this was never the intention of section 162. It was a right given distinctly to an accused person, providing him a certain benefit. It enabled the accused to probe the prosecution. In spite of the fact that both these people collaborated in producing a certain pattern, the eliciting of a material contradiction would benefit the accused. Now, the Home Minister's amendment is not an innocuous one. It is not an amendment that seeks to establish some kind of equitable balance between the prosecution and the accused. It is going to give the prosecution an advantage which was never intended. It will stultify section 162. and I would say this that if the Home Minister wants this, rather than give this tremendous advantage to the prosecution, I say, why not delete the whole of section 162? Because, if you do not want to give the accused this benefit, then I do not want to give the prosecution this much of greater benefit that this proposed amendment will put into their hands.

Shri S. S. More: I very strongly oppose this clause 22 which effects certain changes and modifications in the original section 162 as it stood according to the Code of 1898 and according to the subsequent amendments thereof.

This clause involves a very great principle. According to the normal procedure and rules of evidence, a statement made by a witness can either be used for collaboration or be used for contradiction.

An Hon. Member: Why not?

Shri S. S. More: That is the normal rule of law. But in this case, a departure is being made from this normal procedure or normal provision of law. And what is the departure? That statement of a witness shall not be used against the accused, shall not be used for the purpose of corroboration of the witness and shall only be permitted to be used for contradicting the witness if he appears to have deviated from the statement made by him in the witness box.

Now, this particular provision has a very interesting history. If we go to the Code of 1882 we find that this section 162 ran thus:

> "No statement other than a dying declaration made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it or be used...."

—this is very relevant—

> "....as evidence against the accused".

This was the provision under the Code of 1882. Then, this section was scrapped and another of 1898 was placed in its place. This section of 1898 gives certain rights to the accused. This provision of 1882 was wiped out and what did the accused get? He got this. He might request the Magistrate to look into that statement and the Magistrate may allow some part if he is convinced that there is a genuine contradiction: he might allow a copy of that part.

1 P.M.

Against that provision of 1898, in the old Legislative Assembly—I do not know whether you were a Member in 1923—a doughty battle was raised, and Sir Hari Singh Gour, Shri Seshagiri Iyer and others were ranged on the side of the accused. The learned Home Minister, who has unfortunately changed the role from a defender of the accused to the prosecutor, is now twitting us and ridiculing us and laying at our door the charge that we are all champions of the accused.

An Hon. Member: Days are changed.

Shri S. S. More: Days are changed. and views are also changed, when convenient. My submission is that we are being twitted and ridiculed that we are the friends and defenders of the accused. We are not criminal in our tendency. But all the same, I need not assure you that we are not criminals. We were criminals, we were breakers of law when we were with the Congress, but since we left the Congress, we have become most peaceful.

Shri Bogawat: Discovery.

An Hon. Member: True in your case.

Shri S. S. More: If my hon. friend, and particularly, those who belong to the Treasury Benches care to read the proceedings of the old Legislative Assembly, they will find they are a mine of information, they are a rich mine of benevolent principles of criminal justice and civil justice; and those big principles, or noble principles, were voiced by those who stood by the Congress, by those who swore by the Congress, and by those who were trying to break the shackles of the bureaucratic notions of administration of criminal law, that were practised on the unfortunate people of this country, who were fighting for their liberation. Now, I have cared to read these proceedings, and when I read these proceedings, I was elevated to a high pedestal. But unfortunately when we read the speeches made now by my hon. friend the Home Minister and his other colleagues, we are taken to the hell of depression, to the lowermost region of frustration and disappointment. How we have changed completely, because power has come to us! How those noble principles have become useless, even as the memories of our great patriots who have suffered for us! In 1923, Sir, Hari Singh Gour and others—I need not

[Shri S. S. More]

mention their names—were fighting to get one right to the accused. What was that right? They were saying, "it is not enough that the Magistrate should look into the statement recorded", because they were complaining that the Magistrates had not been trustworthy. One Mr. Pyare Lal criticised the Honorary Magistrates, and using Hindi expression, he said, they *Anaari* Magistrates (ignorant Magistrates), and that they were tools of the prosecution; and it was quite possible that if we asked them to look into the statements, they might be favourably disposed towards the prosecution.

Mr. Deputy-Speaker: I think under this amending Bill, he must have some judicial qualifications or such qualifications as are prescribed.

Shri S. S. More: I am not criticising that part. I am only referring to that part of their argument which was in support of that particular claim namely that a copy of all the statements should be given to the accused.

In 1923, when Sir Hari Singh Gour and others agitated for that, one Mr. Tockinson,—not talking son, but Tockinson—an English gentleman was in charge of this Bill. I have read his speech, and I find he was more considerate to the Opposition than the hon. Minister sitting in his place at present. He was trying to meet their point. He said, Dr. Gour wants this, I am prepared to go so far, but I cannot go further. Look at his speech; read his speech. He was in a very considerate mood, because all along he belived that he was a foreigner here, doing something against the fundamental notions of democratic conception prevailing in his country, and that he was acting in an autocratic manner. But I believe 'autocratism' comes to us more naturally than it came to the Britisher. He said, I am prepared to say that if the Magistrate is convinced that there is some material in the police statement, which can be used by the accused for his own benefit, he might permit a copy of that being given to him. That is what was said by him. But he never challenged the proposition that these statements should only be used for the purpose of contradiction, and not for corroboration.

Then, I shall refer you to the Report of the Select Committee on the amending Bill of 1923, which was headed by Sir Tej Bahadur Sapru. Referring to clause 33 of that Bill, which covered an amendment to seition 162, this is what the Select Committee said:

> "We discussed the provisions of the proposed new section 162 at length and considered in detail the opinions received in connection with it. We recognise the force of some of the criticisms directed against the section, but we do not think that power should be given to contradict by means of police diaries a prosecution witness who has turned hostile, and still less should power be given in respect of a defence witness. We have, therefore, left the clause unaltered."

Here, one point is perfectly relevant. According to the amendment suggested by the Select Committee of this House if a witness turns hostile, then with the permission of the Magistrate, he will be permitted to be cross-examinated by the prosecution. The Select Committee had said that in that case the statement made might be used for the purpose of contradicting that witness, i.e. the prosecution witness who has turned hostile, and therefore, the statement recorded by the police can be used for contradicting him. That is a new innovation that has been suggested by the Select Committee. We have got a direct reply to this particular suggestion in what I have just quoted. Even before the Sapru Select Commitee, it was demanded by some of the witnesses, who usually pleaded for the prosecution, and who usually

stood by Government. They did say that when a prosecution witness turned hostile, he should be permitted to be confronted with this particular statement recorded by the police. But the Select Committee said, no, we cannot accept it; and so, it was rejected. So, in 1923, Sapru and others in the Select Committee were unanimous on this point. And who were the Members of the Select Committee? The Members were Tej Bahadur Sapru, W. H. Vincent, M. B. Dadabhoy, S. Raza Ali, J. Chaudhuri C. S. Subramanyam, H. Moncrieff Smith, B. C. Mitter and Zulfiqar Ali Khan. All these persons—at least most of them—look like henchmen of the British imperialists, but they turned down this proposal. But unfortunately, in the year 1954, something like 30 years or 31 years after the Sapru team rejected this proposal, it is going to be accepted, and that by a Government which belongs to a party which consistently stood by those principles which were recommended by the Sapru Committee, and which were not even acceptable *in toto* to the members of the Congress, though those proposals were so progressive as compared with the present recommendation that has been made.

Now, if a witness turns hostile, what are the reasons? Actually, it is not the witness who turns hostile, but it is the prosecution, that has tutored him to say one thing. After saying that, the conscience of the witness starts pricking him, and then he starts speaking something true. In such a case, why should a statement of his be permitted to be used? Not only that; I have read to you the relevant provision of section 162 in the Code of Criminal Procedure, 1882, under which no such statement could be used as evidence against the accused. Now, seeking permission to use it in re-examination of a witness, to whom a part of the statement has been shown for the purpose of contradiction, amounts to using this statement by way of evidence for the purpose of prosecution. It might very well be argued, well, we are not using it against the accused, we are using it against the witness. But that it is not correct, because whatever a witness says, and whatever goes on record as coming from his mouth is eventually used for the purpose of holding the man guilty or....

Mr. Deputy-Speaker: The hon. Member says it will be indirectly evidence.

Some Hon. Members: It will be corroboration.

Shri S. S. More: I will read with your permission, Sir, a very remarkable statement which has come to be ridiculed now. Rao Bahadur T. Rangachari—you know him perfectly well....

Mr. Deputy-Speaker: He was also a Deputy-Speaker.

Shri S. S. More: I won't say anything by way of comparison between Rao Bahadur Rangachari and the present Deputy-Speaker....

Mr. Deputy-Speaker: I admit that the present incumbent is far inferior to him.

Pandit Thakur Das Bhargava: No comparison between him and our Deputy-Speaker.

Shri S. S. More: Fortunately, I know you, Sir, and unfortunately I did not know him. So, I am not qualified to make a comparison. But, I accept what you say.

Sir, Rao Bahadur Rangachari was speaking on this particular clause and what did he say?

> "The courts do not exist merely to secure conviction. The courts exist to promote justice."

Shri N. C. Chatterjee: Where is Dr. Katju?

Shri S. S. More: I am sorry really, Dr. Katju is not here.

An Hon. Member: His representative is here.

Shri S. S. More: When we say something about acquittals, they say, you are out for acquittals. I accept, for the sake of argument, that the courts are supposed to be independent courts; they hold very nice, delicate and sensitive scales and weigh the evidence and if the prosecution case is found wanting, the Judges come to an independent judgment and say the accused has not committed any offence or 'we give him the benefit of the doubt'. The hon. Minister has a grouse and complaint against such a system of acquittal. But the real trouble is not with the Procedure Code. The real trouble is not with the judicial apparatus which is there to weigh the evidence, but the real trouble is with the prosecution who carry on the investigation. That is the real trouble. The foot is in some difficulty; there is some little ulcer on the foot and the medicine is being applied to the forehead. That is the sort of proctor who is in charge of the Home Ministry, (*Interruptions*). My submission is, that is not correct. He ought to be very frank, he ought to be fearless; he must stand by the great principles of the Congress. If Congress has come into power, I hope, that the Congress principles have come into power and not only Congress personalities have come into power.

An Hon. Member: It is not Dr. Katju alone but it is the Select Committee.

Pandit K. C. Sharma (Meerut Distt. —South): Here there is nothing like Congress Justice and R.S.S. justice.

Shri S. S. More: Some hon. Members here are becoming very uneasy. Naturally, Sir, the prick of their conscience is stronger than the prick of my tongue. It is the prick of their conscience that makes them tremble in their shoes when I quote the old principles of the Congress, the principles by which the Congress stood, which were fascinating the imagination of the young people of this country and attracting many of them to take part in the struggle and sacrifice their lives as well. I am one of the humble sufferers and I have every right to quote Congress principles.

Shri V. G. Deshpande (Guna): And, who was disillusioned.

Shri S. S. More: But what about this criminal justice? My submission is that the innovation that is being proposed is derogatory to the fundamental principles of criminal law and criminal justice as it prevails in western and other civilised countries. This particular amendment of the Joint Select Committee should not be accepted.

With your permission, I will make a few observations about the police and their statements. Under section 172 of the Criminal Procedure Code they keep a diary. Then, under section 161, they are commissioned to record the statement of a witness separately, and away from the diary. Why so? Because, the process of fabrication should be facilitated. That was the object of the Britisher. I would rather say, if I have to cut short my remarks and be reasonable and not exploit your indulgence, I would say, let a book be given to every police officer, every investigating police officer by a Sessions Judge, numbered and signed. Let every statement, for whatever it is worth, be recorded by the police officer in that particular book. I am quite prepared to accept it in a very frank manner that the witnesses may change.

Pandit Thakur Das Bhargava: It is exactly the amendment that I have proposed (*Interruption*).

Shri S. S. More: It is the judiciary that will be sitting in judgment over the creditability, weight or importance that has to be attached to these statements and let all these books come from the armoury of the Sessions Judge, from the record of the Sessions Judges duly signed and numbered, so that they will be convinced that when

a statement of a particular witness is recorded in this book and if there is any change in its version, then they can say that the change or deviation was due to a subsequent change of mind. These precautions ought to be observed.

I would further request the Congress Party Members to do away with the secrecy of the diary. This was the argument which was advanced by Tockinson. What did he say. We are all for criminal detection. If we expose everything, if we expose our own informers and the men who carry information to us, the quality of criminal investigation will suffer. These are his words. 'You will be crippling the process of criminal investigation, the process of detection of crime'.

My submission is, I have quoted the words of.....

An Hon. Member: Rangachari.

Shri S. S. More: I am not so well up in pronouncing other names. I may do some damage to that.

Mr. Deputy-Speaker: I am sure the hon. Member must make at least one exception.

Shri S. S. More: Unfortunately, Sir, this country is so vast and the names are so strange that a man from one province cannot pronounce the name of another from another province without some damage to that. I will really be out of breath if I tried to pronounce your name in full. I am so short of breath.

So, my submission is that the courts are the temples of justice. Courts are not the feeding agency for jails. Courts are there to do justice. Let any man, even the worst of criminals come before the court, the court will not be prejudiced by his past; it will look to his glorious future, if he has any, and then dispense justice. I shall not be doing any harm if I quote from an incident in Christ's life. He said let those who want to pelt stones at an erring woman pelt them if they are convinced that they are innocent, that they have not committed any crime. Whenever Dr. Katju makes a speech he makes it from the Treasury Benches. He says, 'if I have committed this offence, if I have committed that offence, then such and such a thing can be done'. He speaks all this because he is backed up by the Government, he is backed up by the Treasury Benches and does not run any risk of prosecution. But surely he has committed the gravest crime against the fundamental principles of criminal justice. If he is to be prosecuted, he will be prosecuted at the bar of public opinion but I need not say anything about it.

Shri Nambiar: Clause 25 is coming.

Shri S. S. More: I think I have voiced my strongest opposition to clause 20. The accused, the weaker party, when he comes to the court comes possibly without any friends and sits in a lonely manner in the prisoner's dock and the prosecution is there arrayed in a formidable manner.....

Mr. Deputy-Speaker: Whatever may be the experience of the hon. Member, I have always felt personally that the Criminal Procedure Code is intended for the accused and not for the prosecution.

Shri S. S. More: I entirely agree with you, Sir. I am very happy that you agree with me in this.

Mr. Deputy-Speaker: But certainly the accused can escape with the intelligence of the lawyer.

Shri S. S. More: It may not be correct to say that the accused escapes when acquitted, because the moment he goes out, the moment gets acquitted, and in particular where the accused has drawn the wrath of the police or the displeasure of the police on his head, he is hunted like a wild animal and some other opportunity is got hold of to send him immediately to prison.

I would like next to come to clause 23. After voicing my severe condemnation of clause 20, I would say that

[Shri S. S. More]

this clause 23 is something which we can appreciate and we can wholeheartedly support. All these relevant documents which were screened from him before, are being supplied to him and they are now trying to place him in a position sufficiently to enable him to do justice to himself and to give proper instructions to the lawyers. I, therefore, accord my support to the clause. It might be lacking in some of the good things, but I cannot expect to have all the good things at one stretch. I must have some patience. Like the responsible government from the Britishers, all these good things will be coming to us by instalments—progressive realisation of our ideas.

Pandit Thakur Das Bhargava: As if everything in the British period was exalted and everything now is bad.

Shri S. S. More: My friend, Dr. Katju, was just muttering and I heard him say some such words as "whatever was good in olden times have become bad now".

Shri N. C. Chatterjee: It was Shri Bhargava who said that, not Dr. Katju.

Shri S. S. More: I am extremely sorry if my tongue has committed that slip. I should not accuse the Home Minister with such good things. I will say it is my friend Mr. Bhargava who said that all these good old things for which we have stood have become scrappy since we attained Independence. I accept the verdict from a very experienced Congressman.

Pandit Thakur Das Bhargava: On the contrary, I accused him of exalting everything in the British period and condemning everything now.

Shri S. S. More: Then, I am withdrawing whatever good things I have said about him.

With these words, I again very stoutly—as stoutly as I can—condemn the provision in clause 20. Unfortunately the accused, who will be here, is already held to be guilty. This is just like the procedure, when a man is going to be hanged, of trying him to see whether he is guilty or not. That procedure should not prevail in the twentieth century, and particularly when the Congress is in power.

Pandit Munishwar Datt Upadhyay (Pratapgarh Distt.—East): I was very glad to see this proviso to clause 21 dealing with section 160. Section 160 has been amended to read now—

> "Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides."

Really there used to be certain excuses for these police officers to enable them to examine certain women and there used to be very indecent things. This provision is a very good one and I welcome it.

After welcoming this provision, I am very sorry that the other amendments that have been suggested here are, more or less, all of them such that I cannot support. The most important of these amendments is the amendment to section 162. I know a number of hon. Members have already spoken and all of them have very stoutly opposed that provision. I do not think that there is any new thing that I shall be submitting. Still, I feel it very keenly that this amendment that has been introduced in section 162 of the Criminal Procedure Code, is highly objectionable and it is detrimental to the interests of the defence. As I was submitting the other day, there is a deliberate attempt to withdraw the facilities that were intended to be offered to the accused in his defence. I think this is one of the most significant examples of that. As we find from the provision, the statements that are recorded by the police of persons who are likely to know something about the subject matter of the case, are not recorded at that time,

and if they are recorded at all they are recorded by the police officer after he comes back to his place, because he sees that the statement of a particular person, if recorded in a particular manner, would suit the prosecution case and he makes the record of the statement in that manner. It does not at all have any connection to what that particular person said or what he really knew about the subject matter of the case. If the position is that the statement recorded by the police officer during his investigation is such that it is neither the statement of that particular person nor a statement of facts which that particular person could ever know, it is really the statements of facts by the police officer, to suit the prosecution case in the manner in which he wants to prosecute it. We find a provision in section 161 that such statements are not necessarily to be part of the diaries. These statements are noted on small slips and separate papers and then the prosecution witness, that is the witness of the police or the investigating officer, comes into the witness box and when he finds that that person does not suit—because that person has made certain statements in the cross-examination or examination-in-chief which damages the prosecution case—he comes forward with a particular statement attributing something to that witness and tries to contradict the witness with that statement, of which the witness has no knowledge at all, or which he never made. That will be very much prejudicial to the interests of the accused if the prosecution is allowed to use such means to damage the defence. As I was reading section 162, the provision that was made orginally in the Bill has been taken off and now there has been a little improvement, no doubt. To try to cancel the whole section altogether is very much prejudicial to the interests of the defence, but then the manner in which this provision has been brought in the report by the Select Committee, that is, by the introduction of one sentence only, takes away a good and valuable advantage that the defence might have had up till now from the wording of section 162. As I find that a number of hon. Members have already opposed this provision. I shall not very much dilate upon this point, but I submit that under the Criminal Procedure Code, before a particular party is allowed to cross-examine its own witness, it is necessary that that witness must be declared hostile by the Magistrate or any other Court. It is only in that case that the prosecution or the defence could cross-examine the witness and could confront the witness with a particular document or a statement or his previous statement for the purpose of contradicting that point. It appears to be a general rule now according to this provision that whenever a particular witness is not helpful to the prosecution, the prosecution comes forward with a slip of paper with something written over it and confronts that witness with that statement and says "This is the statement that the witness made previously before he came to the Court". My submission therefore is that this should not be allowed. Otherwise it would be highly prejudicial to the interests of the defence.

Then there are one or two provisions that have been made under clause 23. It has been left to the police now, with regard to the statements mentioned in his diary, to decide whether a particular part of the statement is relevant to the subject matter of the case or not. You, Sir, are an experience lawyer and you are aware that in a court of law the parties, very competent and very eminent lawyers argue on the point of relevancy, and it is after long, long evidence that it is possible for the Magistrate to come to a particular conclusion whether a particular statement is relevant or not relevant. The question of relevancy is so complicated. But here now the police officer has been given that power, and he can exclude certain portion of the record if he finds that it is not rele-

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vant to the subject matter of the case. It is stated here: "Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any statement recorded under sub-section (3) of section 161 is not relevant to the subject-matter of the inquiry or trial"—and the other portion is—"or that its disclosure to the accused is not essential in the interests of justice etc". So this is an independent provision by itself. If a particular police officer who is conducting the prosecution or the investigating officer finds that a particular statement is not relevant to the subject-matter of the case, he can withhold that statement from the accused.

Of course there is a provision that afterwards it shall be produced before a Magistrate and he will finally decide whether the judgment of the police officer is correct or not in the matter. But the Magistrate comes only later on. When once it has been withheld, Magistrates also sometimes do not go very deep into the matter, and if a certain reasoning is given they will say "yes, it has been rightly excluded". Even if it is allowed that that statement should be furnished to the accused, the accused will get that copy only a few minutes—maybe a minute or two—before the statement of the witness starts. And then the defence cannot be prepared with the statement. The defence has not studied the whole case in the light of the statement that is there and which was withheld from him. So it is not possible for the defence to carry on the defence efficiently if the accused gets the statement just at the spur of the moment when the statement of the witness starts.

I would submit that this provision is, again, a provision which takes away a good deal from the advantages that the accused has in his defence according to the existing law.

The other portion also damages the accused. Under clause 23 it has been said that the papers that are to be furnished to the accused are "the first information report recorded under section 154 and of all other documents"—so the documents are to be provided; and then—"or relevant extracts thereof". There are certain documents and it is for the police officer to see what particular extracts are relevant to the case. So as regards the relevancy of particular statements or as to the particular material that he has to supply to the accused under section 173, now it would be for the police officer to decide what particular extract he should supply and what he should not. There is a big diary containing long statements and out of that the particular portion has to be supplied to him which refers to the particular case. And it is provided here that it is for the police officer to decide what extract is relevant and what is not. So the question of relevancy is, again, left to the police officer. It might be the prosecuting inspector, the investigating officer who might decide. This is highly unjustified. As I submitted in the beginning, it is not very easy for the police officer to decide. The matter of relevancy and irrelevancy is a very complicated question. Again, the prosecution is always interested in supplying material which is worthless for the accused. The police officer might think that he should give certain portions saying that they were relevant and withhold certain other portions, which were very relevant, so that the accused might not get the advantage which he could otherwise get if the correct and the most relevant portions were supplied to him, for his defence.

So this provision also, I submit, is a provision which takes away a good deal from the advantage that the accused used to get in his defence from the provisions under the existing sections.

As the intention of this amendment is that we should help the accused in his defence, I think the amendments that we are now bringing in are likely

to take away the advantages that the accused has even at present under the existing law and they will not at all be helpful to him.

With these remarks I would submit that with the exception of the amendment of section 160, the other amendments proposed are against the interests of the accused and should be dropped.

The Deputy Minister of Home Affairs (Shri Datar): There has been considerable misunderstanding so far as the new amendment suggested by the Joint Select Committee is concerned. Before I deal with this aspect of misunderstanding with a view to removing it, I should like to point out to this House that whenever there was a previous statement by a witness, under the provisions of the Indian Evidence Act it could be used either for the purpose of corroboration by the party who called the witness, or for the purpose of contradiction by the other party, or, again, for the purpose of contradiction by the same party, provided he invoked the provisions of section 154 of the Indian Evidence Act. And that provision of section 154 reads thus:

> "The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."

In such a case, before such a permission is granted, the Court has to satisfy itself that the contention of the other party that his witness was hostile is proved. It is only then, when the Court comes to the conclusion that *prima facie* the particular witness was hostile to the party calling him, that the party will be entitled to the right of cross-examination. My hon. friend who just now spoke...

Pandit Thakur Das Bhargava: The hon. Minister will kindly forgive me for the interruption. This might have been the practice before. But I want to know from him, where it has been down that the Court must declare a witness to be hostile before it gives its permission. Discretion does not mean that in every case the Court should say "this man is unreliable".

Shri Datar: May I point out to my hon. friend who is far senior to most of us, that this has been the practice which has been followed by the various High Courts?

Pandit Thakur Das Bhargava: This practice has been turned down by the recent rulings.

Pandit K. C. Sharma: There is no such word as "hostile" in any of the enactments.

Shri Datar: But the substance of the expression "hostile" is there so far as the orders to be passed by the Court are concerned. And no Court will allow the party which has called a witness to cross-examine him because the party desires it. It will be against commonsense to believe that our own witness will be allowed to be cross-examined by us only because we so desire.

An Hon. Member: Commonsense is ruled out by the provisions.

Shri Datar: Commonsense is not ruled out under any circumstances, I would like to point out to my hon. friend.

Now, these are the ordinary or normal course, so far as the previous statement of a witness is concerned. Some hon. Members are under the belief that some special right was given by section 162 to the accused. No such right has been granted at all. What was done was that the same matter has been more or less reaffirmed. The right is given already under section 145 of the Indian Evidence Act. The Indian Evidence Act, section 145, gives the right to a cross-examining party to contradict him by bringing to his attention, provided the object is to contradict, the particular passage in his previous statement. So, that right of an accused was already there-was inherent in the Indian Evidence

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Act. When the question arose as to whether any use should be made by the parties, either the prosecution or the accused, it was considered that the prosecution should not have a right under section 157 of getting the previous statement of a witness corroborated. All that section 162 did was not to confer any special right on the accused, but merely to reaffirm his ordinary right that was already given to him under section 145 of the Evidence Act, to take away from the prosecution the right of corroboration and also the right of cross-examining him whenever there were occasions under which according to him the witness has wrongly gone away from the previous statement. So, this is the real position which we have to understand.

Now, I am not prepared to accept the general statement which has been made in very unrestrained terms by a number of hon. Members that all statements taken by the police are entirely wrong. In fact, I am confirmed in this particular case by what has been stated in *Supplement D* at page 109. Lord Atkin says:

> "The intention of the Legislature in framing that section, namely, 162, was to encourage free disclosures of information and/or to protect the person making that statement from a supposed unreliability of the police statement."

The House will kindly note these two expressions which have been used by no less a person than Lord Atkin of the Privy Council. The first object was that all such statements should be as free as possible; the second object was that the person should be protected from a supposed unreliability of the police statements. Even Their Lordships of the Privy Council did not say as some of the hon. Members have now stated that all the statements taken by the police are entirely false.

An Hon. Member: Who said that?

Shri Datar: That was the statement just now made by the hon. Member Shri Anthony. He proceeded on the assumption that those statements were wrong and that the statement made before the Court or a Magistrate was always correct or true. We should not have any such assumptions at all. It might be that in certain cases statements taken under sections 161 and 162 might be wrong, false even. But we cannot have any such general presumptions, or even assumptions. So, what was there under Section 162 was merely to take away the right of corroboration.

According to the original Bill that Government had placed before the House, section 162 was sought to be deleted, with the object that the normal provision under the Indian Evidence Act should be retained or should be restored as they were. But it was objected to: it was stated that so far as corroboration is concerned, the Government or the prosecution should have no right of corroboration at all. That is the reason why the Joint Select Committee considered this question. They had two issues before them. One was whether the prosecution should have the right of corroboration. Now that right they stated should be taken away from the prosecution, namely the right given to parties under section 157 of the Indian Evidence Act. Then the question that remained was whether the right of contradiction under certain circumstances, not normally—mind the words—but under certain special circumstances, should be allowed to them at all. In this connection the House will understand that there has been no parity of treatment so far as the accused and the prosecution are concerned. The prosecution have their own rights; the accused also have their own rights, but they are not on the same footing.

Shri S. S. More: Which is on a better footing?

Shri Datar: Under section 145 it is always open to the cross-examining counsel for the defence to put any questions, so far as the earlier statement was concerned. It was open to him to contradict and therefore that provision was already there. That right is not in these absolute terms open to the prosecution at all. The prosecution has in all cases to invoke section 154 before they would be entitled to have the right of cross-examination. Now this is the right which has been conceded by the Joint Select Committee for certain reasons.

The House will also understand the implications of such a step that a prosecution in an exceptional case would try to invoke. Ordinarily when the prosecution place their witnesses before the Court, naturally they believe that those witnesses would normally stick to what they have stated in their statements before the police. Only one side has been presented before the House that that statement is initially wrong, that that statement is not taken properly, or that that statement is even a fabrication. That is the extent of the condemnation of this statement by one party. In all humility I would like to point out to this House to consider the question, as a matter of fact, from a realistic approach. After a statement of the witness for the prosecution has been recorded by the police does or does not—I am purposely making that statement—the defence approach such witness to the extent that such witness is tampered with? That is what we have to take into account. It is not that all statements before a court are true; it is not that all the statements before the police are absolutely false.

Shri B. N. Misra (Bilaspur-Durg-Raipur): Do the police not tamper with the defence witnesses?

Shri Datar: I have already pointed out the first aspect of the case. I have never stated that all that the police say is sacrosanct. The first side was fully explained by some hon. Members. I am putting the other side also. The other side is that in certain cases, I am not prepared to give the percentage, in certain cases at least the accused do approah such witnesses and they tamper with the evidence. In such cases—I am not prepared to say all—the question that arises is whether in the interests of justice, not for the purpose of securing conviction, it could be done. My hon. friend, Shri More, grew poetic at the conclusion of his speech and said that the Courts ought to be temples of justice. I do agree that they ought to be temples of justice and I also agree that all such temples should not be desecrated at all.

The Minister of Defence Organisation (Shri Tyagi): They are *poojaries* —the lawyers.

Shri S. S. More: I am willing to go as a *poojari*.

Shri Datar: In such a case, what ought to be the attitude of the Judge? The expression that he quoted was the one used with regard to the attitude that a Government pleader or a public prosecutor has to adopt towards leading evidence. The Public Prosecutor was there not for the purpose of securing conviction but for the purpose of seeing to the ends of justice. Now, the ends of justice might, in a large number of cases, consist in doing justice also to the complainant. That is a point which we have to take into account. It is not that all complaints are false; it is not that all accusations are necessarily manipulated. Therefore, in a temple of justice, you ought to have a free and impartial justice to all the parties concerned. Therefore, you have to understand that the prosecution represents the Government. The public interests are represented by the Prosecutor. It is your Government. Therefore, in such cases, and if, for example, the prosecution feels that in a particular case, a particular witness has been tampered with to the extent that he goes on contradicting,

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or receding from the statement which he has made before the police, then should or should he not have, in the interests of ascertaining of truth, the right to point out to the Court that he had stated something which was entirely different from what he has now given as the real version before the Court? It is only in the interests of justice that the prosecution should have a right to contradict him. But, as I have pointed out, when such a right is invoked, when the prosecution applies to the Court under section 154, then you have to understand that the prosecution takes certain risks also, of practically getting that witness almost completely discredited. In such a case, when it is found that a particular witness has retracted from some previous statements or gone back by the previous statements and if the prosecution desire to cross-examine him, then the prosecution must have counted the cost before the Court of law takes into account the application for his being treated as a hostile witness. Therefore, I would point out that whenever there are minor statements, the prosecution will not have such a right at all, but when the prosecution feels that his earlier statement was absolutely true, that subsequently he has been approached and that he is deliberately going back upon his previous statements, then, in the interests of truth, the prosecution comes in, the Government Public Prosecutor is there, and he can be trusted to deal with this, not for the purpose of securing conviction but for the purpose of carrying out the ends of justice. Ultimately, in all such cases, it is the Court that has to grant permission. So far as the accused is concerned, he does not require any permission at all; his right is eternal. So far as the prosecution is concerned, inasmuch as there is a desire to cross-examine his witness, then, straightaway, the Public Prosecutor has no right to cross-examine, unless the previous stage has been gone through, namely, the application has been filed under section 154, and then that application is granted. What my hon. friend said in the course of his argument has pained me. I would point out that the Magistrates do take all these things into account in a judicial manner.

Shri S. S. More: They are supposed to do.

Shri Datar: They actually do it in almost a large number of cases. Therefore, I would submit to this House that the power of the Court is there, and as a condition precedent. It is only in very exceptional cases that this power would be invoked, because, as I have already pointed out—and I shall repeat it—whenever such an application is filed by the prosecution, the prosecution has to take the risk of all his evidence being almost completely discredited.

Shri S. S. More: That is a wrong statement of law.

Shri Datar: He has to take the chance: that is what I said. It might be, as pointed out by some Members, that in the light of recent rulings, a witness might say one thing which may be found to be true and a witness might say certain things which may be found to be wrong, but you will find in all such cases we deal with the admissibility of evidence. The question is whether he should have a right of cross-examination in a proper way or not. We are only at this stage, the stage of admissibility of evidence, and after all the evidence is before the Court, the Court will consider the question and then the Court will find out whether he is reliable at all, whether he is reliable so far as the previous statement is concerned, or whether he is reliable so far as the subsequent statement is concerned, and secondly, whether he is reliable in some respects and whether he is unreliable in other respects. I would point out to the House, in all humility, that ultimately —though some High Courts might,

have stated like this—the appreciation of the evidence has to be taken as a whole. So far as the credibility of a witness is concerned, you cannot have such compartment of falsity so far as a certain portion is concerned and of truth so far as other portions are concerned. Therefore, it is only for such exceptional cases, where the prosecution feels that the earlier version is true and what has been obtained in cross-examination by the defence or what has been stated by him even in the examination-in-chief by going back upon the previous statement is not true—that, for the purpose of placing before the Court the real circumstances, that the prosecution or the Public Prosecutor will have to resort to an exceptional measure under which he is to count the cost before such an application is filed. It is only for such cases that we are seeking this right. We are not thereby stating that all that has been done previously is correct, but circumstances might arise where the witness might be approached by the other party for various reasons. It is not only the ground of relationship, or friendship, but there might be other considerations more substantial, more solid, then even the considerations of relationship or friendship. It is only under such circumstances that, as an exceptional measure, such a right is to be allowed, not the right of corroboration at all. Therefore, so far as section 162 is concerned, all that the Joint Select Committee has done is that they have given to us only the right of cross-examination in an exceptional circumstance after the attitude of the witness is considered by the Court as hostile to us. Therefore, the prosecution is not put on the same footing. The defence has all the rights which remain unimpaired. Only in exceptional cases can such a right be invoked and be at all used by the prosecution.

2 P.M.

I would next refer very briefly to section 173. So far as this section is concerned, there is a very positive advantage which has been acknowledged by my learned friend, Shri More, namely, that all the copies of the statements as also all the other documents which the police collected or prepared in the course of the evidence are to be given to the accused. I am very happy that he has acknowledged that this is a very progressive measure so far as this particular procedure is concerned. But you will also understand the implications of this act which has been called over-generous by certain quarters. In certain quarters it is stated that it is absolutely over-generous and that we ought not to have gone to the extent of giving copies of these documents long before the prosecution commences. In such cases, in the course of the evidence, either oral statements are taken or there are some documents where, as it has been stated, certain portions may not be relevant, certain portions may not be necessary or in respect of certain portions, breach of privilege also will have to be called for. Under the Indian Evidence Act, it is open to the Government and to other persons also to claim privilege. In such circumstances you have to consider what the particular investigating officer has to do. Is it the intention of this House that all the copies of all documents and statements should be absolutely promiscuously given to the accused, regardless of the considerations that arise before the investigating officer? Therefore, there ought to be some screening. But, it should be entirely of a provisional character. You will kindly understand that in the course of investigation, he thinks that certain statements are not relevant. He thinks that they are not necessary in the interests of justice or that they ought to be excluded from the evidence, not only from investigation but also from the court. In such cases, he is allowed what you call a provisional discretion for the time being. You will find that the moment the case starts, as it has been stated there, clearly, at the com-

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mencement of the enquiry or trial, before anything further happens, he will point out to the court that certain extracts, etc., have not been given, and then, the court will consider the matter in a judicial way and the court will pass final orders either upholding what the investigating officer has done or giving copies so far as such excluded portions are concerned. So, you will see that the discretion that has been allowed to the investigating officer is only of a temporary or a passing or a provisional character and that is absolutely essential. Otherwise, the danger will be that certain State secrets might be inadvertently or unguardedly given out which would be highly detrimental to the interests of the State. It is for such reasons that this passing discretion has been allowed to him and the moment the matter comes to the Court, at the commencement, before anything happens, this question will be considered judicially by the Magistrate.

Pandit Thakur Das Bhargava: In the presence of the accused?

Shri Datar: Yes. It will be considered in the presence of the accused.

Pandit Thakur Das Bhargava: And he will be heard?

Shri Datar: The accused will be heard.

Shri S. S. More: How can the accused make his own submission without knowing the particular part, whether it is relevant or not?

Shri Datar: This question itself involves something which it will not be possible for him to see and ultimately, in such cases, as the Evidence Act points out, we have to trust the judicial discretion of the Court. The Court might in exceptional cases be shown what the particular portion excluded is.

Shri S. S. More: The Magistrate might look into that portion excluded from the accused on the ground that it was irrelevant as stipulated by the police. You know, Sir, that the question of relevancy is a very tricky and intricate one. The prosecution will say that they have rightly excluded it, because they feel that it is irrelevant. The accused, on the other side, will be absolutely ignorant of that particular portion and the contents of that portion. How can he make an effective argument to convince the Magistrate to use his discretion in his favour. One side knows all the facts; the other side is absolutely ignorant. My hon. friend says that the Magistrate will give a hearing to the ignorant accused.

Shri Datar: My hon. friend has not understood the real position at all. There are three grounds on which a portion of a statement can be excluded. One is relevancy; another is justice of the case.

Shri S. S. More: I am talking about relevancy.

Shri Datar: So far as relevancy is concerned, when there is no other danger or reason involved, that statement will naturally be shown to the Magistrate and might in conceivable cases, with the permission of the court, shown to the defence also. So far as other cases are concerned, so far as confidential or secret documents are concerned ...

Pandit Thakur Das Bhargava: The hon. Minister said that it might conceivably be shown to the accused.

Shri Datar: Only about relevancy.

Pandit Thakur Das Bhargava: I am submitting, so far as statements are concerned, if they are to be excluded, at the commencement of the enquiry, I understand that this means that in the presence of the accused, this question will be decided in a judicial way, that the accused shall see what is being excluded and then he shall raise his objections. If the accused is not shown these portions, how can he ob-

ject and how can it be judicially decided?

Shri S. S. More: How can he argue?

Shri Datar: He can have the right to have such excluded documents to the extent that it would be considered necessary by the court. Beyond that, it would not be.

So far as the last clause is concerned, as my hon. friend Shri S. S. More has accepted, in respect of secret documents or where the contents should not be disclosed in the interests of the nation, they cannot be shown. So far as other cases are concerned, here exclusion is either on the ground of relevancy or justice of the case, naturally, I presume that the Magistrate will show it to the accused, he will be heard and final orders would be passed. You will, therefore, see that the discretion that has been given is only of a temporary character subject to be corrected at the commencement of the hearing.

Mr. Deputy-Speaker: Shri Raghavachari. I shall then call other hon Members.

Shri Mulchand Dube: I am trying to catch the ear of the Chair as it has been almost impossible for me to catch the eye.

Mr. Deputy-Speaker: I will call the hon. Member next.

Shri S. S. More: The hon. Member says that he has been trying to catch the ear of the Chair. That is absolutely inappropriate.

Shri Raghavachari: Of the clauses under consideration, clause 21 is one for which some credit must be given for the amendment proposed. It is a healthy amendment. Dispute or controversy relates only with regard to sections 162 and 173—clauses 22 and 23. I have been listening to the entire discussion on this Bill from the earlier stages and I have always found, I regret to say, there is a feeling on this side, that the Government which is sponsoring the Bill, has taken it as a business to oppose any amendment or criticism which the Opposition or anybody offers against these proposed new provisions. That is an incorrect attitude. I am anxious to say that those of us who place certain difficulties and observations we have gathered in our experience, do not do so out of a mere prejudice against the police or anybody. It is done as a result of a strong, continuous, inborn conviction in our minds. We have seen the procedure. We have seen how the police and section 162 are working, in our experience not of one or two years—I have my experience of 34 years. Unfortunately, the Members in charge of this Bill, possibly look at these things from the heavenly point of view of a High Court or Supreme Court. We are concerned with how the provisions work from the bottom. You know, Sir, in your experience that section 162 is the concern of the investigating officer. Who is the investigating officer in that hierarchy? Ultimately, in 90 per cent. of the cases, it is the Head Constable of a police station. In fact a report comes to him, the Sub-Inspector is somewhere, another Inspector is somewhere else or he will note down that he is on duty elsewhere and will send the Head Constable. He goes and prepares something. Later on, the officer or other officers come; but what the earliest person gathers is the foundation generally. Therefore, I am anxious to submit that the criticisms that we make are not born out of a prejudice against the Government. It is born out of a conviction that we have formed that it is dangerous to agree to the amendment proposed in this Bill. I am now coming to the question of the prosecution being allowed to use any part of it for cross-examination. I am concerned more with that portion. No part of this section 162 comes under the kind of documents contemplated under section 145 of the Evidence Act. Section 145 of the Evidence Act says:

> "....cross-examined at to previous statements made by him in writing...."

[Shri Raghavachari]

... ...ns any piece of document which he has voluntarily written previously in his own writing.

"...or reduced into writing..."

The depositions that he has made is taken down by some authority with proper safeguard that what he has said is correctly written down. He reads it, or it is read out, he corrects it and has a chance to do all that. That is the kind of previous statement that is referred to in section 145. That forms the basis for cross-examination.

Shri Raghubir Sahai (Etah Distt.—North East *cum* Budaun Distt.—East): Does it exclude the statement taken down by the police?

Shri Raghavachari: It does. I shall tell you. See the next sentence. Therefore, if you wish to expand the words "reduced into writing" to cover statements under section 162, it would not be possible. And if you have seen the trend of decisions and the procedure that we follow in a Court, you will know that we invariably call the police investigating officer who took down the statement to go into the box and then state on oath that such and such a statement was made before him. As it is already in writing, all this elaborate procedure would be unnecessary. In fact, the law permits cross-examination based upon portions of this section 162 statement because the language used in this connection is "if proved".

Pandit Thakur Das Bhargava: "If duly proved."

Shri Raghavachari: "If duly proved". It means that the thing in writing is not the basis. The thing must be proved again and then only it can be used to contradict. Therefore, the entire foundation for the cross-examination based on portions of this statement was that there must be clear proof that such a statement was made. We have seen investigating officers going into the box and saying: "I perfectly remember, so-and-so made the statement". I was shocked many a time in a Court to hear an investigating officer saying this. If he is asked: "you have not recorded it there?", he says "I did not think it worthwhile".

Mr. Deputy-Speaker: Can such a statement be used, such an oral statement not recorded under section 162?

Shri Raghavachari: Oh, yes.

Mr. Deputy-Speaker: But it does not apply to this.

Pandit Thakur Das Bhargava: An oral statement, if not recorded, cannot be contradicted.

Shri Raghavachari: What I have been urging is that the contents of section 162 statement is not the basis for cross-examination by itself. It is the statement orally made by the witness to the investigating officer, which the latter records under section 162, which record he uses to refresh his memory; and if he proves thus that a statement was made before him orally, that statement can be used for the purposes of contradiction.

Mr. Deputy-Speaker: It must find a place in the statement.

Shri Raghavachari: It need not necessarily find a place in the statement. I am saying this to show that the basis for cross-examination is a statement which is orally made by the witness earlier, not because it is recorded. There are many statements, which can be used to contradict, of course, if duly proved that it was made before the officer. There is no doubt about that matter. That is only a matter of academical discussion. I am not very much worried about it.

But the point is that the procedure now provided is that an opportunity is given to the prosecution to use a portion of this for cross-examination of this amendment have fairly connate that though the people in charge of their own witnesses. It is unfortuceded a greater part of the old

section 162 to get again into this Act, they try to....

Mr. Deputy-Speaker: Whatever it might be, clause 22 refers only to statements which have been recorded. It reads:

> "No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it;"

Shri Raghavachari: You see, Sir, there the words are "if reduced into writing".

Mr. Deputy-Speaker:

> "...signed by the person making it...."

We are not worried about signing.

> "nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose...in respect of any offence under investigation..."

Shri Raghavachari: You will note the words "or otherwise".

Mr. Deputy-Speaker: That means not necessarily in a police diary, but some other writing.

Pandit Thakur Das Bhargava: Or, it may not be contained in the statement under section 161(3), but it may exist in another part of the diary.

Mr. Deputy-Speaker: It must be on some paper or record.

Shri Raghavachari: I would submit I am perfectly clear in my mind that the basis of the statement used for cross-examination is the oral statement that was made to the investigating officer, and that statement must be duly proved, and generally, even if it is recorded in the police diary, he refreshes his memory and then says that the witness made such a statement to him. Otherwise, there is no point in calling the investigating officer.

Mr. Deputy-Speaker: There is no doubt that the statement as recorded must be proved to have been made, but any other statement which is not recorded is not relevant for the purpose of section 162.

Pandit Thakur Das Bhargava: In some cases it becomes relevant if an omission is proved, as important omissions have been held to amount to contradicting.

Mr. Deputy-Speaker: To show that the statement is not to be relied upon.

Pandit Thakur Das Bhargava: Of course, it is for that purpose.

Mr. Deputy-Speaker: And not as a substantive portion for purposes of cross-examination. Very well.

Shri Raghavachari: Pandit Thakur Das Bhargava is right that the omission is used to contradict a witness. It is in such circumstances that the investigating officer says: "He made that statement to me".

I was submitting that this new provision contains the words:

> "...and with the permission of the Court, by the prosecution, to contradict such a witness in the manner provided by section 145 of the Indian Evidence Act."

If you see section 145 of the Evidence Act, it does not permit this kind of thing being done. I am only trying to submit this phrase "with the permission of the Court, by the prosecution" is somehow thrust in. For, if you actually read the whole thing, it says:

> "...statement if duly proved, may be used by the accused,.....to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (I of 1872), and when any part of such statement is so used by the accused, any part thereof may

[Shri Raghavachari]

also be used in the re-examination. . ."

That is how it goes, and that is the language of the old section 162. The words "and with the permission of the Court, by the prosecution" have now been added there. Now, let us see what are the circumstances under which the prosecution can cross-examine its own witness. Section 145 does not refer to that. Section 145 of the Indian Evidence Act simply says:

"A witness may be cross-examined as to previous statements made by him. . ."

And cross-examination under section 137 of the Evidence Act has been defined thus:

"The examination of a witness by the adverse party shall be called his cross-examination."

And therefore, by cross-examination is meant examination by the adverse party, and the adverse party would be the defence under section 145 which says:

"A witness may be cross-examined as to previous statements made by him in writing or reduced into writing. . ."

And really the section that should be applicable when the prosecution is to cross-examine would be 154 and not 145. Section 154 says:

"The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."

Therefore, the question of hostility and putting questions by way of cross-examination will not come under section 145. It must come under section 154, and then the procedure similar to section 145 may possibly be adopted. But when you say here "with the permission of the Court, by the prosecution"...

Mr. Deputy-Speaker: Instead of section 145, the hon. Member suggests it should be 154.

Shri Raghavachari: You cannot take away section 145 because it applies to the accused; but in the case of prosecution section 154 of the Evidence Act is to be mentioned.

Mr. Deputy-Speaker: Section 145 must apply to the accused, and 154 to the prosecution?

Shri Raghavachari: Yes. Otherwise, it will lead to some confusion.

Pandit Thakur Das Bhargava: Section 145 applies to both.

Shri Raghavachari: The phrase is somehow put in there.

Mr. Deputy-Speaker: Under section 145 or 154 as the case may be.

Pandit Thakur Das Bhargava: Section 154 applies to both. It is a mode of contradiction. It applies to both the prosecution and the accused.

Shri Raghavachari: It is a more.

Mr. Deputy-Speaker: It is section 145 or section 154 as the case may be. That means, it may apply to both.

Shri Raghavachari: Later on, as proposed, you will see that when any part of such statement is used in cross-examination by the accused, then something can come by way of re-examination. It is not possible when any part of it is used by the prosecution.

Pandit Thakur Das Bhargava: It is already there under section 162.

Shri Raghavachari: Supposing the prosecution cross-examines, and puts some portions of it, what happens?

Mr. Deputy-Speaker: Then, does he become a witness of the accused, for purposes of re-examination?

Shri Raghavachari: He does not become. There is no chance for him—the accused—to put any other portion.

Mr. Deputy-Speaker: Therefore, it is not provided for.

Shri Raghavachari: The point simply is that the Evidence Act makes the statements under section 162, or the statements or records of the police somewhat less acceptable than other statements recorded under other circumstances. I do not wish to read the whole thing; but we know that even confessions or statements made in the presence of the police, or under their influence, have been excluded very often. So, the fundamental point of the Evidence Act in regard to cross-examination and procedure is all based upon the fact that police investigation is a thing which cannot always be accepted at its face value. But what we find here is that the hon. Minister in charge has always taken the police record as tantamount to nothing but truth. You will see that that is the fundamental basis on which this amendment is based; because we want to make a change in the whole procedure, the thing has to be started with the credibility of the police, and it is something which stands on a higher pedestal—that is how the whole thing has started. I have had very intimate contact with the prosecution staff and others for nearly six years, and I have seen their diaries and everything else. The point is that at the stage of investigation, the police officer often is a person who is assisted only by those interested in the prosecution, and therefore, his judgment is not always a correct judgment. That is why fundamentally his statement is not accepted as quite correct. I would urge that the new right which the prosecution wants to have, namely, to use this to contradict their own witness, is a thing which ultimately resolves itself into a serious inconvenience and full of risk to the accused.

As regards clause 23, other hon. Members have already urged their grounds. But I would only argue on one particular point. In the old section 162, the right to exclude portions of the statements given to the accused was given to the Court, but now the Court is equated with the police officer or the investigating officer. I should think that our experience does not permit this right being given entirely to the investigating officer. The discretion might as well have been left to the Court rather than to the investigating officer. Another point I wish to urge is that even when the Court excluded any portion, under the old section 162, it had to make a record to that effect. But now you will see that the matter is entirely in the discretion of the police officer. No doubt, they have provided:

> "Provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the police officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused."

In answer to a question put by my hon. friend Pandit Thakur Das Bhargava, the hon. Deputy Minister of Home Affairs stated that certainly the accused would be heard. But there is nothing to that effect in this proviso; the proviso only says that the Court, after looking into the report of the police officer, and the excluded portion, will pass such orders as it thinks fit. It does not say that the Court should hear the accused or anybody else. So, I have given an amendment to the effect that the power of deciding its non-relevancy or its being not essential in the interests of justice must certainly be taken away from the judgment of the investigating officer. The proviso to clause 22 must be altered in the light of the criticisms that have been made, and the thing must be made clear with reference to section 154 of the Evidence Act also.

Shri Mulchand Dube: Sir,...

Mr. Deputy-Speaker: The hon. Member has caught my eye all right. He may go on.

Shri Mulchand Dube: First of all, I would deal with the changes that have been made in section 173. I welcome the changes that have been made, and I am of the opinion that they are calculated to give very great facilities to the accused.

As the law stands at present, the documents and statements that are provided to the accused were available to the accused in rare cases and at considerable expense. So, on one point at least, corruption is to a very great extent reduced, if not eliminated.

As regards the objection that the police officers have been given some power in respect of withholding whole or portions of the statements, I would only say that the powers do not rest finally with the police officers, but they are left to be decided by the Court as to whether any particular document was relevant or not. In case the police officer withholds a document or statement as being irrelevant, the Judge will be entitled and enabled to show it to the accused, so that his contention may be heard on the point of relevancy, and the question is finally decided by the Judge. In regard to cases where a privilege is claimed, on the ground of its being a state secret, or on some other ground, the ordinary rule that prevails at present is that the Judge or the Magistrate examines the documents and then decides on the question of privilege. Therefore, I submit that the objection that has been raised in regard to the powers given to the police does not hold good. On the other hand, section 173, as it has been amended, gives very great facilities to the accused, and should be a welcome provision.

Now, I come to the changes that are sought to be made in section 162. I have tabled an amendment to the effect that the words 'if duly proved' be omitted from line 10 on page 6 of the Bill. My submission in regard to this is that the procedure that prevails at present is that the diaries are sent to the Magistrates or the Judge concerned, and on the application of the accused, the Judge or the Magistrate supplies copies of the statements of the witnesses recorded in the diary to an accused for cross-examination. That copy is not an authenticated copy. There is no note in that, that the officer in charge of the copy has compared it with the original and found it to be correct. No note being here, these words were necessary in that provision. But now, they are not necessary. The present procedure is that the accused person should prove that the statement had actually been recorded. Now, the procedure is entirely changed. The prosecution supplies the copies and should vouch for their authenticity and correctness. It is, in fact, a document produced by one party and it is open to the other party to make such use of it as it may think fit. Therefore, the words 'if duly proved' which were necessary in the existing state of the law, are no longer necessary. It is an ordinary rule of procedure that the documents filed by one party may be used by the other without formal proof. Therefore, in the existing procedure it was necessary that the document should be proved. The copies here will be supplied by the prosecution, that is, a party to the case and, therefore, the words seem to be superfluous.

The next point that I wish to place before the House is about the right of contradiction that has been given to the prosecution in regard to the statement recorded in the diary. I will not take up the time of the House in recapitulating the various arguments that have been advanced against it. I want the House only to consider what sanctity or value they propose to give to the statement recorded by the investigating officer during the investigation of the case. The question therefore turns upon this whether these statements are to be treated

as sacrosanct or not. I submit that there is no ground for treating them as sacrosanct because the statements are not recorded by the investigating officer in the words of the witness and they are not read over to him and he is not required to sign them. In fact, the police officer or the investigating officer is merely required to record a substance of the statement of the witness. This he does according to his own impression of the statement. It has been said, times without number, by Judges and by hon. Members who have spoken before me also that the statements are not always correctly recorded. And, they are not recorded also in the manner in which they should be recorded. There are grave irregularities in the recording of such statements.

Mr. Deputy-Speaker: The hon. Member may stop at this stage. It is 2-30 and he may continue his speech next day when this matter comes up.

The House will now take up Private Members' Business.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS.

THIRTEENTH REPORT

Shri Altekar (North Satara): I beg to move:

> "That this House agrees with the Thirteenth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 30th September, 1954."

Now, that report is in connection with a Bill to amend the Constitution proposed to be introduced by my friend Shri Sodhia. That is in connection with article 45 of the Constitution which says that within ten years of the commencement of the Constitution, there should be compulsory education brought about in this country in the case of all children until they complete the age of 14.

Now, my hon. friend wants to add to that—

> "and the initial steps in this direction should be taken by the Central Government within five years from the commencement of the Constitution."

The Committee considered his views as also the views of the representative of the Ministry of Education, who placed all the facts and circumstances before us.

The first point for consideration in this respect is that the matter in connection with which he wants to amend the Constitution is regarding education, which is a State subject. And, my hon. friend wants that the initial step should be taken by the Central Government. That means, the Union Government should take in its hands a subject which belongs to the States. That is not desirable, and it is not proper and constitutional.

Another point is that it is in connection with a chapter which is in the nature of Directive Principles. The principles are laid down there and they are not to be enforced irrespective of the circumstances and conditions that obtain. We have to take into consideration the financial condition. When the facts were placed before the Committee by the representative of the Education Ministry, it was brought to our notice that in order to enforce this particular compulsory education it would require an expenditure of Rs. 400 crores every year for 16 years. It is not a thing which is possible under the circumstances. We are laying down plans for five years. We have said that more important subjects like agriculture, irrigation, communications and others deserve priority. Education also is given consideration, of course, but according to the moneys at our disposal. Therefore, taking all these facts into consideration it is not possible to spread free and compulsory education in the country within that period. Of course, the States and the Central