permitted to enforce the eviction of people who might be in unauthorised occupation of buildings belonging to the Improvement Trust. That is the point for which I am moving this amendment of the main statute. So far as the number of points that have been raised with regard to the hardships that are being caused to the refugees or to the poor residents, I need hardly assure the hon. Members that the intention of the Government has always been to help the refugees and other residents who might be evicted by any such schemes to the maximum possible extent.

A reference had been made to slum clearance. So far as the general question of slum clearance is concerned, that is not under discussion at the moment. So far as legislation or contemplated legislation for slum clearance is concerned, all these points that are now being raised, that this or that should be the consideration for paying compensation, for re-housing the persons who may be displaced or dislocated, are points which can be taken into consideration.

With these few words I accept the motion made by my hon. friend Pandit Bhargava, with a small addition of three names which I hope he will accept. They appear to have been dropped by accident. They are: Shri Harekrushna Mahtab, Shri A. P. Sinha and Shri Raghuramaiah. I hope that the Mover of the motion for reference of this Bill to the Select Committee will be good enough to accept the inclusion of these three names.

Pandit Thakur Das Bhargava: Certainly, Sir; they are quite acceptable.

Mr. Chairman: I shall put this motion to the House. It has been moved by Pandit Thakur Das Bhargava.

The question is:

"That the Bill be referred to a Select Committee consisting of Shrimati Subhadra Joshi, Shri Radha Raman, Shri C. Krishnan Nair, Sardar Hukam Singh, Shri Choithram Partabrai Gidwani, Lala Achint Ram, Sardar Swaran Singh, Shri Manaklal Maganlal Gandhi, Rajkumari Amrit Kaur, Shri Girraj Saran Singh, Shrimati Renu Chakravartty, Shri K. S. Raghavachari, Shri Rohini Kumar Chaudhuri, Shri K. Ananda Nambiar, Col. B. H. Zaidi, Shri Hari Vinayak Pataskar, Shri Harekrushna Mahtab, Shri Kotha Raghuramaiah, Shri Awadheshwar Prasad Sinha and the Mover with instructions to report by the 5th December, 1954."

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

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

"That the Bill further to amend the Code of Criminal Procedure, 1898, as reported by the Joint Committee, be taken into consideration."

The House has in its possession the Report of the Joint Committee and I do hope that it will not be frightened by the large number of Minutes of Dissent. Many hon. Members have emphasized the same point and many others have expressed general opinions.

This Bill has been the result of very long labours. I emphasize this point because there is a motion for its reference back to the Joint Select Committee—I do not know for what purpose. Hon. Members probably have had circulated to them opinions which have been expressed upon this particular topic during the last three or four years. I say all this to remove any misapprehension that Parliament has been proceeding, or Government

[Dr. Katju]

has been proceeding with reckless speed on this matter. In the year 1951 the Home Ministry thought that there should be some changes in the Code of Criminal Procedure, and the State Governments were consulted. They sent their opinions. Those opinions have been circulated. Next year there was, again, a particular Bill which was referred to the State Governments. Then, last year in August, I prepared a Memorandum which I sent, by name, to all the Chief Justices of the High Courts in India, every single Judge of the Supreme Court, all Advocates-General and all Chief Ministers. And they most kindly responded, co-operated, and sent most valuable opinions. It does not matter whether they agreed or disagreed with the suggestions that were made. And then came the Bill which, under the permission of the Speaker, was published in the Gazette of India before introduction in Parliament. Opinions were invited, and the whole of India which is competent to consider this matter, sent opinions. A large number of District Bar Associations, a large number of District and Sessions Judges, High Courts, State Governments and others have sent opinions. And then before the Joint Select Committee opinions were received. Without any impertinence I may say the House appointed a Select Committee which was extremely representative, which consisted of a large number of lawyers. The Committee itself was bigger than some of the State Legislatures; we were forty-nine. And I think it will be accepted that the Committee devoted itself to its labours in the most careful and cautious manner and produced this result.

I do not know that any purpose will be served—the House will agree with me—by the reference back to the Joint Select Committee of this particular Bill or by delaying this matter. The matter is of great urgency. Somehow or other an impression has gone abroad as if I want to see every man punished. But I say with confidence here that every single provision in this Bill as it was introduced or after its passage through the Joint Select Committee is intended to protect the accused if he has got a case to be protected.

[Pandit Thakur Das Bhargava *in the Chair*]

I decline to assent to the proposition that a guilty man should be allowed to escape. I do not subscribe to that opinion. What I subscribe to is that every guilty man, or every accused person—whether he is guilty or not guilty is to be decided by the courts—but every accused person should have every legitimate occasion to know what he is being tried for, what is the evidence he has to meet, and what should he do in order to put forward his defence.

I take one very small preliminary point. Every lawyer knows, everyone who is interested in the law courts knows, that the statement made by a prosecution witness during the police investigation goes to the root of the matter. The whole case stands or falls upon that. If there is any variation between, what I call, the diarised statement, that is the statement as recorded in the diary, and the statement made by the witness when he comes before a court of law, before a Magistrate or a Sessions Judge, if there is any substantial variation between the two statements the witness is lost; the witness is simply thrown aside. Now, it is of the essential importance that the accused person should have access to these diarised statements.

What is today the practice under the existing procedure? The practice is when the witness comes into the box, when he steps into the box, if the accused asks for it a copy of the statement is handed over to the accused at that time. What does the Bill provide for? Right from the start, and

also of course—the Joint Select Committee have approved of that—before the trial begins, days before the trial begins (one week, two weeks, three weeks, a month), the accused should be furnished with a copy of all the statements made by all prosecution witnesses who are going to be again examined against him; their diarised statements should be handed over to him, as I said, weeks and months in advance. Is not this—I put this question fairly—is not this the greatest concession in favour of the accused, to let him know what he is going to be tried for? What more do you want? He is going to be furnished with a copy of the post-mortem report, every single material document, all the diarised statements before a warrant case commences, or before a sessions case commences. And he is given them, as I said, days before. So when he comes before the court he knows what case he has to meet, what should be his line of cross-examination and defence.

3 P. M.

Please remember this in the interest of the accused as well as in the public interest that the criminal case should be tried and disposed of early. I have been going out on inspection of jails for the last seven or eight years. And I tell you the most melancholy sight that I have seen in jail is the sight of what is called under-trial prisoners. I have made it my practice that the first quarter that I inspect in a jail is the under-trial ward. And there I found from their history sheets that they have been there for three months, four, seven, eight or nine months. What crime have they committed that their trial could not take place? It is due to delay in the proceedings. Commitment proceedings take eight months, seven months, six months. It may be partly due to the fact that the number of Judges is small, but otherwise it is all due to the complexity of the proceedings. The committing Magistrate must examine every single witness, and that takes time. Then he is transferred. Now, one of the objects in this Bill is speed. Speedy trial—for what purpose? Not for the purpose of locking him up in jail or consigning him to the gallows, but in his own interests. So that, if he has done wrong, he should be punished and the sentence should begin, because, please remember that all these long under-trial detentions do not legally count for sentence. A man may be sentenced to one year while he has already served as an under-trial detenu for twelve months. Therefore, it is in the public interest that the trial should be over. Why I say repeatedly in the public interest is because the punishment should be deterrent, the man should be punished if he is guilty while the memory of his offence, of his crime, lasts. A murder takes place. Public conscience is shocked. People want that there should be an investigation and there should be punishment. What happens today is that a murder takes place on the 16th November, 1954—and I say it from personal knowledge over and over again—the Sessions trial will begin on the 16th December, 1955, after a year. Everything is forgotten. Public conscience again sinks into, so to say, dullness, and sympathy is roused not for the purpose of punishment of the guilty, but so that witnesses may be tortured, may be tutored, may be somehow or other to let off the accused. It is not a very healthy state of affairs. The Joint Select Committee have bestowed their labours, I respectfully suggest, to see that the delay factor should be eliminated, that the trial should be quick and expeditious and that in no way the accused should suffer. I claim to say with confidence that every single provision in this Bill is calculated to advance and protect the accused and to secure for him a fair trial.

Shri K. K. Basu (Diamond Harbour): Most tall claim.

Dr. Katju: What is the complaint Sir? There are sections 161, 162, 164. We had a very long discussion, Mr.

[Dr. Katju]

Chairman, at the time of the reference. You contributed, I say without impertinence, a most valuable speech to the debate.

Mr. Chairman: Looks to be ironical, otherwise there is no occasion for prefixing the statement with the words "without impertinence".

Dr. Katju: I say you made a most useful and valuable contribution.

Shri A. M. Thomas (Ernakulam): At that time, the opinion expressed by the Home Minister was the opposite of what he expresses today.

Shri S. S. More (Sholapur): Is it not discriminatory about other Members?

Dr. Katju: Very well, Sir. The difficulty is I can single out the Chairman. I cannot single out five hundred others.

Shri S. S. More: Do not single out anybody.

Dr. Katju: I would not have singled out the Chairman if he had not been in the Chair. If he had been sitting there, probably I would not have said so.

Now, Sir, what I was going to say was that in those debates on all sides the whole attack or discussion was concentrated on sections 161, 162 and 164—the editor and the press, I mean the press point about defamation, and lastly about speedy and expeditious punishment of perjurors. So far as clauses 161, 162 and 164 are concerned, it is a matter of satisfaction probably that all the points that were urged during those debates have been fully considered at great length at the instance of my hon. friend Mr. More and others and every single point has been met. (*Interruption*).

Shri S. S. More: No.

Dr. Katju: My hon. friend Kripalani interrupts very often because he was not in the Select Committee and he knows very little of law.

Acharya Kripalani (Bhagalpur cum Purnea): I know a good deal of lawyers.

Dr. Katju: You may know a good deal of lawyers, but very little of law. (*Interruptions*). We are not discussing lawyers but we are making law, you know.

Now, Sir, it was said that the proposal that the statement of important witnesses should be recorded before a magistrate was very unwelcome and unwholesome. Why? Because those statements are recorded under section 164 in the absence of the accused and, well, all sorts of things were said against the poor magistrate, the poor sub-inspector and also the poor witness who was supposed then to be under the thumb of the police. The Select Committee which consisted mostly of defence lawyers—please remember that—were impressed and they said: "Very well, the statement should be recorded. In the interests of the accused it is necessary that there should be a record so that he may know what the material witnesses have said". That is, not the witnesses about the intention, about the motive etc. The material witness is a person who says: "In my presence, before my eyes, the offence was committed":—if it is a case of a murder: "I saw the man being shot"; if it is a case of grievous hurt: "I saw it"; if it is a case of dacoity: "I saw the persons when the thieves came and removed the wealth". Now, the statements of those people should be recorded in the presence of the accused, in the presence of his lawyers in open court before a magistrate. That is the improvement made by the Joint Select Committee in their report. The result is that the grievances which were expressed on the section on the reference motion have all disappeared.

And then, it was said: "Look at it. What have we done in the Bill. You want that the statement made before the magistrate or before the Police

might be used for corroboration. Unheard of. Why should anybody do that?" Well, I ventured to say or attempted to say in my own language that there was no change at all, that if in cross-examination it was not tried to be shown that the witness had in any way made another statement or gone back upon his statement before the police, everybody knows that he has stuck to his own statement. But now it is made quite clear that a statement made before the police by a witness shall not only not be used for the purposes of corroboration, but it shall only be used during cross-examination. Cross-examination, please remember, is by two people—by the defence witness, and also, if the magistrate or the judge is satisfied that the witness has become hostile, that the witness is not telling the truth, then with the permission of the court, the prosecution counsel may also be permitted to cross-examine. That is the report of the Joint Select Committee. Now, I respectfully suggest that the points that were made have been met.

What was the third point? Of course, I do not see Mr. Alva here. There was a great deal of eloquence—and that was the question of the offence of defamation of a public servant being made cognizable by the police. I said at that time when bogeys were being raised that the police would be able to interfere, would be able to march an editor to the police lock-up, make unwarranted searches and so on and so forth, that the only object was to see to it that the prosecution might be launched not only by one method, namely, a complaint by the public servant who has been defamed, but also by the Government. Otherwise, there was no intention whatsoever to make a change in the procedure, and no change is to be made for a different kind of trial in such cases. The only question is this. Who is able to open the door of the law court? Up till now, it is only the public servant defamed. We say—and I stick to that opinion—that more than the public servant defamed, the government, the state and the people are interested in knowing, and in having it thoroughly thrashed out in a judicial enquiry, whether or not the charges made of corruption against a public servant are true or untrue. It is not a question of only the public servant being interested in it. I say, the higher interest is that of the Government. It sounds very strange. I hear, and I read in the newspapers declamation about corruption prevailing throughout everywhere, Government not doing anything to stop corruption, nepotism, favouritism and goodness knows what. When a step is taken which would compel Government to have proper investigation made, then there are some hon. Members who jibe at it. I do not know why, and for what purpose they do so. In fact, someone has said in the minute of dissent that it will act as a deterrent. Is it said, and that too openly,...

Shri M. S. Gurupadaswamy (Mysore): Hold an inquiry.

Dr. Katju: What you said openly is this. We know that for a variety of reasons, public servants who are defamed, including even Ministers do not like to go to a court of law, and institute a private complaint. And knowing that, we encourage the making of these complaints. The result is that it is all left in the air. Please remember one thing more. If a complaint or a charge is made, then today, the public frame of mind is that if an enquiry is made by government through an official agency, and a verdict is brought out saying that the public servant is not guilty, that the charge made is absolutely false, then the public is disposed to say, oh, it is all hush-hush, it is all eyewash. I say that the public will only be satisfied if they find an open judicial trial, no matter at whose instance it is. No matter whether the public servant goes and knocks at the door of the law court, or the Government goes and knocks at the door of the law court, the door is opened. Then, the public servant will have to go into the witness-box. He will be open to cross-examination. Supposing somebody

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makes a charge against me, I go there openly, and I say, try me, cross-examine me. And is the House prepared to say that before an editor of a newspaper publishes a defamatory article in the sense that it makes a charge of corruption against any public servant, he does that with a sense of responsibility or with a sense of irresponsibility? Before he does that, does he or does he not make proper enquiry as to whether the charge is true or untrue? If the charge is true, and he has made that enquiry, and satisfied himself, let him come and put all that material to the public servant in cross-examination. I say this is the amendment that has been proposed, and this change is sought to be made from the highest of motives. Instead of hon. Members applauding it, I am astonished, I tell you, at their criticising it.

Acharya Kripalani: We are astonished at your wisdom.

Shri K. K. Basu: That is our misfortune.

Dr. Katju: Luckily for me, if this Bill had been before the House in the month of February or March, probably, they would have said, look, here is Dr. Katju, a very well-known reactionary occupying the benches of—as I think someone said—Sir Thomas Marshall, or goodness knows what many other people, and therefore, he is always apt to be so. But who comes now? It is the Press Commission. The Press Commission say—and the Press was very much represented before them—do not bring in the police, let there be no cognizability. But the main proposition has been accepted by the Press Commission by a majority. And what is that main proposition? The main proposition is that apart from the public servant defamed, the government is vitally interested in having a proper enquiry made at the earliest possible moment, in a judicial trial, as to whether it is right or wrong, true or false.....

Shri V. G. Deshpande (Guna): Is that the defamation case?

Dr. Katju:...and therefore, that enquiry should be made. Please remember also this. If this Bill is passed, and if this provision is approved by the House, then you realise what happens. (*Interruptions*). Supposing a charge is made against a Minister or a director of a department, and within one month or a fortnight, proceedings are not started for defamation, then people will say, it seems it is true, and then you will have what you want, namely an open enquiry, open to everybody.

Shri V. G. Deshpande: Is defamation and open enquiry the same?

Dr. Katju: Please for God's sake, do not interrupt me. I am going to finish very early. I say, there will be an open enquiry; everybody is free to go there, and the judge is there to listen to them. Now, so far as this vital principal is concerned that apart from the public servant, the government are interested in having this matter investigated, the Press Commission, by a majority vote, have supported the government.

Shri A. K. Gopalan (Cannanore): Do you accept all the recommendations of the Press Commission?

Dr. Katju: I am not dealing with that department. Otherwise, I would have answered you. I am only dealing with this particular matter. There were four persons who did not support the Government in this matter, in the Press Commission, two gentlemen who have committed themselves to this position as if it were a sort of Biblical proposition that no pressman will come, and that even though he had been a pressman in the past, he thinks it would go *infra dig*, if he were to support the proposal made by Government, and two others. Otherwise, you had eleven people who supported us. I say, of course, here is this difference on this basic principle. That is a different matter.

Leaving that aside, the joint Select Committee have gone the whole way to satisfy the Press. The Press said

in that—I am sure hon. Members have seen it—as follows. The representatives of the Journalists' Federation were examined. They said this in so many words. A very distinguished journalist who came forward to speak on their behalf said, we do not want to have anything to do with the police, we do not want to have anything to do with magistrates. I said, what do you want. He said, we refer you to section 194 of the Criminal Procedure Code, which provides that proceedings may commence at the instance of the Advocate-General, before the High Court. I read it, and the Select Committee read it, and they said, very good. But then, to take all these cases before the High Court will be a very lengthy, tedious and expensive affair. So, we thought of another thing. They did not want to have anything to do with the police or with the magistrate. They were much too low for them. So, we said, very well, here is the public prosecutor, a distinguished vakil in his own district; he will go and file a complaint—after satisfying himself that everything was fair and in good order—before the Sessions Judge, and the Sessions Judge will take cognizance of the case and will try the case as a warrant case. All sorts of wild things have been said and are being said sometimes against magistrates, that they are not independent, they are dependent and so on and so forth. No one, not a single individual has ever said anything against a Sessions Judge. The Sessions Judge represents the highest form of judicial integrity, of judicial independence in our judicial system, below the High Court. So, the Public Prosecutor files a complaint. The police are completely out of the picture. The Sessions Judge takes it up; he is independent, he is free from executive bias; he is not a subordinate of the District Magistrate; he is not subordinate to any Minister. He tries the case and then, the big thing, in the case of an appeal it goes straight to the High Court. If there is a conviction, the High Court goes into the whole matter, not as a mere matter of revision, but as on appeal. If there is an acquittal, the Government can file an appeal against acquittal if they so think fit. I submit that I cannot conceive of a more fair and a more genuine effort to meet the wishes of the Press in India. There is no one—I say again with confidence—there is no one more anxious in India for the independence of the Press than myself, because all our talk about democratic institutions and parliamentary democracy will be a shameif there was no independence of the Press. But then, we want a Press which works with a sense of responsibility. And, it is a matter for congratulation that 95 per cent of our senior papers here work with that sense. But you know what is happening every day. This, that and the other and mud being thrown on all and sundry. All and sundry do not include poor patwaris or poor clerks. But, all and sundry includes mostly Ministers and heads of departments and all sorts of wild charges are made against them because there is a sense of security that these poor people will not attack by way of defence. What more do you want? When I read the minutes of dissent and when I read newspapers, I said what more is wanted, unless you say, 'we are a privileged people, do not touch us; we should only be touched by the old and hallowed methods, namely, the public servants themselves should go and institute the proceedings'.

An Hon. Member: Why don't you do it?

Dr. Katju: There is no provision that the public servant should not give evidence. He should be the first person to give evidence. Why should there be an insistence on the part of the Press that the door of the magistrate should be opened only by the public servant defamed? I have not been able to realise why, unless there is some sinister thing behind it. Why should they insist

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on this over and over again? Because, they know that there will be delay. The public servant may be somewhere. In one case, he was a poor fellow in the Philippines and the charge was made here—gross and abominable, a sort of horse-whipping matter. It could not be done; the man was there in the Philippines. Similarly, a charge may be made in Delhi and the public servant might have been transferred and functioning in the railway department, somewhere in Coimbatore. The procedure says that the private complainant would be in attendance at every single hearing. They know all these loopholes and they say, 'well, we want the public servant defamed to be the complainant'. But, if it was a reasonable charge of corruption against the public servant, I say, the Press should be only too happy to have the earliest opportunity for a judicial investigation.

Shri Sadhan Gupta (Calcutta—South-East): You give them the money.

Dr. Katju: My hon. friend will have his chance, I hope. It was not on a question of money that do not go. The objection does not proceed on the ground of money; it proceeds on other grounds. Supposing we say to a public servant, 'you start it', and he starts it. The charges about defending would be the same. My hon. friend has only provoked me. When a prosecution is started by the Government through the Public Prosecutor, it does not mean any additional expense to the Press. The expense remains the same. As a matter of fact, this procedure reduces the expenditure. I respectfully suggest that the House will consider this and will approve of the amendment that is made.

Then there is another important matter to which I may refer in my short remarks, namely that relating to perjury. Having practised in the law courts for the last forty years, and realising as I do the enormity of the problem of perjury. I feel something must be done.

Acharya Kripalani: Rather too late.

Dr. Katju: And, I thought to myself that we might give the magistrates power to punish a man who has clearly and openly perjured himself. The Joint Select Committee considered this matter and they thought that immediate punishment may not be very tactful, and it may interfere with the course of the administration of justice and may deter even honest witnesses from coming and so on and so forth. I am satisfied with the check they have introduced because if the trials are speedy, then the perjuring witnesses will know that the court means business. It would be open to the trying magistrate or trying Judge, when he delivers the judgment, to say in his judgment that he is satisfied that A, B, C and D, four witnesses on this side or that side, have definitely perjured themselves. They definitely told stories which are all wrong. He will specify the statements, which in his opinion are false. And, it is open to him by his judgment or by another paper to file a complaint about this perjury to another magistrate's court and thereupon proceedings will start. There would be no question of anybody filing a revision against that order or an appeal against that order or giving an opportunity to these lying witnesses to go and try and seek for mercy and all that. Whatever they want to do, let them go before the trying magistrate. This will, to some extent, meet the evil of perjury.

These are the four important matters which occupied the attention of the House when the motion for reference to Select Committee was

under discussion. But the House would notice that the Select Committee have now gone through the whole Bill, clause by clause, almost, comma by comma and they have introduced many other changes, great and small. For instance, there is one notable change in the procedure under section 145 of the Criminal Procedure Code. The House knows that section 145 relates to disputes about the possession of immovable property. Today, I tell you the position is almost scandalous. A party complains that his possession is being disturbed and the magistrate issues notice or the police complain or sends a report and the magistrate asks all the parties concerned to come and put in their statements. That matter goes for months, eighteen months, 20 months, and enormous expenditure is incurred, and a large number of witnesses are called. The magistrate does not take very great interest in it because it is really outside his function. This was an intolerable state of affairs. What the Bill proposes is that if the magistrate is satisfied that there is a genuine dispute about possession, he should attach the property and take over possession himself and refer the parties to a decision by the civil court. Against this procedure, it was pointed out that it may do some injury to the original owner, that his opponents may, in order to harass him, make false complaints about the property and so on and so forth. The present procedure, I submit, is calculated to obviate all delays. The magistrate should ask the parties to produce documents, to produce statements, to produce affidavits of any witnesses on whom they want to rely and, when he has got all the written material before him, he should see whether there is a genuine dispute and, if he can come to a clear conclusion, he does so. And the matter is finished within six weeks or probably in four weeks. If he thinks that on this material there is something left for dispute, it is a questionable matter and two opinions can be formed. Then, it is said that he will frame an issue and refer it to the nearest civil judge and ask that judge to let him have an answer on that issue within three months. The answer will come and the magistrate will dispose of the proceedings before him in the sense of the pronouncement of the civil court. The result will be that the whole thing is bound to come to an end and decision reached within four months or so. This is a procedure which I strongly recommend to the House to accept

Then, there have been changes about fines and imprisonments. About fines the limit was fixed about hundred years ago when 'rupee' was a 'rupee' and not some three or four annas as it is now. It becomes ridiculous now to sentence a man with Rs. 50 as fine. Therefore, the Select Committee has thought that the powers of magistrates may be increased—I think it is double. Similar is the case with imprisonment.

There is one matter to which I should like to draw the attention of the House and that is, what is called, appointment of honorary magistrates or special magistrates. It is a long standing problem. We have not yet recovered from our days of slavery and people have very unhappy memories of honorary magistrates of olden days. Now, I hold, personally, rather strong views on the subject because I wish that nothing should be done to discourage honest people from rendering service to the community if they can do so. I am as strongly opposed as anybody can be, to dishonest people and people who may be suspected of yielding to casteism and to classes of any kind, being appointed as magistrates. But, if you can find proper people, then I say, they should be encouraged to become honorary magistrates. In England, the Governor General of India after retirement thinks it a point of honour and duty to become an honorary magistrate in his own home town and in his own country.

[Dr. Katju]

Here, I wish that Ministers of the Central Government, Local Government etc., if, after they retire, they have time, they should consider it proper to function as honorary magistrates. You have got retired judicial officers, retired High Court Judges, retired magistrates and all such people. If you were to impose that no one should be appointed as honorary magistrates and that this institution should be abolished....

Dr. Lanka Sundaram (Visakhapatnam): How do you avoid nepotism?

Dr. Katju: I am very glad that my hon. friend put that question. I was going to say 'a sensible question', but I will not say that. The question put is: 'how to avoid nepotism?' In our own way we tried to do that in U.P. when we had this very problem in 1937. What we did was, in every district we appointed a small committee for selection. That Committee consisted of the District Magistrate, District and Sessions Judge, District Pleader, what you may call the Public Prosecutor, two members of the bar and I think, one or two members of the local legislature. They made their selections and made recommendations to Government. The Government selected those people, and you take it from me—I am only telling you my experience because I was there for more than two years—the system worked very well. Uptill now the grievance has been that the District Magistrate appointed flatterers and people who pleased him, but if you put it in the hands of a committee, then much of the evils will disappear. It is very likely that my hon. friend may have suggested it, but we had suggested that you cannot appoint people who may know nothing as honorary magistrates. Now, the Government is to prescribe rules so that they may be able to function well and the Select Committee has proposed that in framing those rules the High Court should be consulted. If the hon. Members say that State Governments should adopt every single measure to root out favouritism and nepotism in the appointment of honorary magistrates, I am entirely at one with them. But, if it is said that you cannot even get an honorary magistrate, then I beg to differ from them.

Then there is a sort of notion abroad about assessment of evidence. Assessment of evidence is a very very difficult matter which can only be judged by specialists, specialists like Dr. Katju, my hon. friend Shri Tek Chand or other people. There is nothing difficult about it. You go to an average man in the street and question him and he will say that he saw the crime being committed. There is no mystery about it. You see how evidence is got, how speedily justice is given and how inexpensive it is. Now, for God's sake do not mystify it. You have found that members of the jury have functioned for hundred years and for all those years they have given correct verdicts. Do you mean to say that a retired judge will not make a good honorary magistrate, I ask Dr. Lanka Sundaram?

Shri K. K. Basu: He will not accept it.

Dr. Katju: Will not a retired High Court Judge or a retired 'Dr. Katju' make a good honorary magistrate? I do not want to touch on this matter because it is a matter of great importance.

There is one other thing which is note-worthy to which I should like to draw the attention of the House. It deals with murder cases. Uptil now it seems that if a man is sentenced to imprisonment—may be life imprisonment—he may also be sentenced to fine and the fine may be recovered from him or from his property. Then you know, there is so much for substantive sentence and so much for non-payment of fine. But, in murder

cases where someone goes and kills 'A' knowing full well that by killing 'A' he has made three minor children fatherless and exposed them to all possible difficulties and miseries, he says that if he is hanged there will be no question of any punishment by way of payment of fine. Please remember that under the civil law, if anyone kills 'A' then it is open to the dependents of 'A', his wife and children, to bring a suit for damages and recover that money from the murderer, or if the murderer has been hanged, from the property of the murderer. Now, the Joint Select Committee has reported—and I submit it has very wisely reported—that in these murder cases if the Sessions Judge and the High Court are satisfied that by reason of the murder, the dependents—wife, children and others—have been exposed to misery they would be entitled to damages. Then a sentence of fine may also be passed with directions that the fine when realised from the property of the murderer may be handed over to the dependents of the deceased. I respectfully submit that, knowing as I do that there are many people in this land who consider their lives a little cheaper than their property, if it comes to be known in the countryside that if you kill 'A' or indiscriminately go about killing people, then not only you may lose your life, but you will also run the danger of losing your property in payment of heavy fines which may be imposed on you, that will lessen the commission of murders itself. I thought it necessary to draw the attention of the House to this matter.

I have practically concluded, Mr. Chairman, but I would like to have one or two minutes more.

There are two other matters which may be of interest. One is the examination of the accused, as witness on his own behalf. When the Code of Criminal Procedure was framed, the British jurisprudence said that an accused is entitled to stand before the court dumb. Even if he offers to give evidence, he cannot be examined. As a matter of fact, the old plea that you cannot examine a wife as a witness on his behalf or his son on his behalf was there. It has now been realised that this is a very erroneous theory, refusing to give a man a chance to give evidence in his own favour. The Bill, therefore, proposes that an accused may be allowed to give evidence if he himself wants to give evidence. Hon. Members of the Joint Select Committee were very cautious and they said: "Well, he might in a huff express his readiness to give evidence without thinking of the consequences. Therefore, this examination should take place only if there is a written application on his behalf signifying his desire to be examined as a witness". That is the change, rather an important change, introduced in the Criminal Procedure Code.

Secondly, speaking for myself, I must confess that I do not share with this desire, this anxiety not to put any question to an accused. I can understand it when you say, well, we will not allow him to be cross-examined by ordinary counsel, because the ordinary counsel may try to catch him up and somehow or other spread a belt around him. But I do not see why the High Court judges, Sessions Judges, Magistrates, who are there to see to it that justice is done to this man should not be permitted, should not have the power to put to the accused any question which they want to be put to him. This sentence, "Oh, they may fill up the gaps that have been left in the prosecution case", I say, quite frankly, I do not appreciate. The magistrate is there, not to give gaps either to the defence or to the accused. He is there to see to it that the man is acquitted if he is innocent and is punished if he is guilty. This undue anxiety to leave gaps only means fear. I have seen it with my own eyes, you have seen it, and we all know that if the fellow is guilty, there is a small gap sometimes and on that

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score he is released. Probably he goes and commits a second murder. That is one point to which, I thought, I might draw your attention.

Lastly, I come to this blessed thing about warrant cases and summons cases. Effort has been made to simplify them. Please remember that in a criminal trial, there are so many parties—the magistrate, the party, the accused, the public prosecutor and the unfortunate witness also. Every one of you knows that there is tendency on the part of the true witness to escape from giving evidence. The man has actually seen a commission of the offence. He was an eye-witness—an honest man—but when the police go to him and ask him, "Do you know anything about it?", he says no. Did you not see it? No. What were you doing then? I was inside my house sleeping. Why, I ask, does the man avoid it. Not out of affection for the accused or for the deceased. Nothing. He says, "why should I get into trouble? I will have to go to the police five times. I will have to go to the magistrate at least thrice. First, on the first day, then on the second day for cross-examination and then after the charge is framed I would be summoned over again." It is unending repetition. The procedure that has been made by the Select Committee is when the case opens—in a warrant case—the magistrate comes and the accused is there. Please remember again—I remind you—that under the present procedure, the accused, when he goes into the court, has had the police papers, all the relevant papers against him and the statements, ten days before he goes there. He knows the thing fully well. The magistrate looks at him, reads the papers and puts some questions if he likes. It is found that there is nothing against the man. The magistrate may say, "Go". Otherwise, the magistrate frames charges against him saying that he has beaten so and so, and then the witnesses come. They are cross-examined, straightaway The witnesses come only once. This is the aim which I have had in my mind right through during the last twelve months—to put the witnesses to the least trouble in so far as it is consistent with the administration of justice to the accused. Otherwise, the present system is scandalous, you may take it from me. It is one of the greatest obstacles to the administration of justice in this country. When I quote figures, some hon. Members think that I am bloodthirsty. But it is a great blot on our administration of justice. For instance, in the Punjab, seventy per cent. of the people involved in murder cases are acquitted by Sessions Judges. Another 50 per cent. are released by the High Court on appeal.

Shri S. S. More: Is it a fault of the procedure?

Dr. Katju: As I have pointed out, once the fault is known, the genuinely true witnesses do not come to give evidence. They say that they are delayed, because your procedure is so prolix, so complicated, so lengthy —all in the name of goodness knows what. I do not want to enter into an argument with my dear, beloved friend Mr. More.

I have taken much time of the House. I have tried to deal with the major points in the case. I will only pray that this attempt to modify and suitably alter the criminal procedure which has become out-dated should succeed with the blessings of every section of the House. The sooner it comes the better. I have not touched upon the jury matter. There I agree that it should go and if necessary, I shall say a few words in the course of my reply.

Mr. Chairman: Motion moved:

> "That the Bill further to amend the Code of Criminal Procedure, 1898 as reported by the Joint Committee, be taken into consideration."

We have got two amendments, to start with, apart from the amendments to clauses. One is by Shri Vallatharas, and the other is by Shri A. K. Gopalan and Shri Sadhan Gupta.

Shri N. S. Jain (Bijnor Distt.-South): Is there any time-limit for this Bill?

Mr. Chairman: So far the Business Advisory Committee has not met, and therefore we do not know what time will be fixed. It will be fixed, I think, today.

Shri Vallatharas (Pudukkottai): I beg to move:

> "That the Bill, as reported by the Joint Committee, be circulated for the purpose of eliciting opinion thereon."

Shri Raghubir Sahai (Etah Distt.-North East *cum* Budaun Distt.-East): I rise to a point of order. You have been pleased to permit Shri Vallatharas to move the motion regarding the circulation of this Bill for eliciting public opinion. I may inform you that Mr. Vallatharas was a member of the Select Committee, and as a member of the Select Committee, he attended more than one meeting. He took part in the deliberation of the Select Committee. He did not append any minute of dissent to the effect that he wants the Bill to be circulated for eliciting public opinion. I just wanted to bring this to your notice and to know whether it is open to him, after having been a member of the Select Committee, having taken active part in the meetings of the Committee, and not having appended any minute of dissent, to move this motion just now.

Mr. Chairman: I do not see that there is any point of order in this. So far as the rules are concerned. they do visualise a motion of this nature and the mere fact that a person has been a member of the Select Committee does not take away his right. I should be disposed to think that if he was a member of the Select Committee and has not accepted the Bill as has been reported by the Select Committee, he knows much better why circulation of it should be made. Therefore I do not think he has no right to make this motion. I allow him to move this motion.

Shri Vallatharas: Sir, I feel that it is highly indispensable that this entire matter should be put before the public of this country, so that, more considered opinion may come in the light of the so many amendments that the Joint Select Committee have been able to suggest. I am not prepared to answer the objection raised by my hon. friend, questioning my right to speak. After the Committee has submitted its report, every Member has got a right to deal with it; and only in that capacity, I consider it proper to bring to the notice of this hon. House the necessity of taking this matter in a more serious manner and to elicit public opinion, so that the entire legislation may be free from the hands of the executive monopoly.

I would like to point out at the outset that the original Bill which was sponsored has been amply modified and substantially too by the Joint Committee. I can as well say that the changes are so substantial and so intense that the shape of the original Bill itself is lost. The identity of the original Bill has been lost, if I may so put it. The changes that have been incorporated by the Joint Committee have been done after much labour and much deliberation and after the exercise of great caution. In spite of these things, I feel that the matter deserves more serious consideration. It is not a question of making one or two amendments here and there in certain sections with a view to seeing that a case which may be finished, say, in six months, can be finished in four or five months. If this is to be the only guide with which we have been prompted to bring a Bill to amend the Criminal Procedure Code, it is highly lamentable. Purification of the courts of justice is the

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most essential thing. It is not the disposal of cases at an earlier period and without delay that alone counts. Of course, it deserves consideration. But behind it lies the great strata of the entire structure wherein we cannot see any one beautiful point to commend. If I begin to refer to what the stages were which necessitated the contemplation of the amendment of the Criminal Procedure Code, I will be able to establish that it is short-sightedness to aim at the disposal as the prominent or fundamental matter in this business.

The Criminal Procedure Code Act has been in existence for nearly a century. The system has been introduced in this country by an alien Government, but the machinery to work it out has been chosen from within the country. And the machinery chosen so far as criminal justice is concerned is only from the executive. The judicial side, except that it acted as a sessions court or a court of revision, never exercised the criminal jurisdiction in the mofussil, so far as the districts are concerned. I am very particular about the administration of criminal justice in the mofussil. In the opinions I have seen in these printed books (A, B, C, D), there are the opinions of Bar Councils, wherein, most of the lawyers, most of the advocates, are practising only in the appellate side or in respect of the original cases arising in cities. We have received the opinions of judges who by their being in the I.C.S. or having practised for long years in the city itself have been able to come as Judges of the High Courts or Supreme Court. I must with great respect say—I speak subject to correction, because this is a matter which fundamentally goes to affect the entire society—that many of those advocates who practise in the cities, or at least in the capital of the presidencies, and provinces, and many of the judges who have risen to the bench in the High Courts and the Supreme Court have not had experience of the mofussil practice. To understand the foundations of criminal justice, so far as the society is concerned in its essence, one should have sufficient experience of the dispensation of justice in the criminal courts in the mofussil.

[SHRIMATI KHONGEM *in the Chair.*]

It may be said that the dispensation of criminal justice in the mofussil was and is being controlled mainly by the executive officers deputed by the Government at their own sweet will and pleasure. This point we should not forget. Now the entire argument put forward by the Government in favour of this Bill has been one-sided. The administration of justice, according to them, has been marred by prolonged trials by reason of certain privileges which the accused have been enjoying: (i) cross-examination in the commital courts; (ii) further cross-examination in warrant cases.

I will take this matter first, because in respect of these I have got grave apprehensions. I do not know whether the hon. Home Minister has got any direct experience of the South, so to say, the Madras State. In that State you have large sections of people who were called 'Criminal Tribes' by the British Indian Government—whatever be the reasons for their characterising them, or scheduling them. These people who constitute nearly 80 per cent. of the residuary of the Madras State were subjected to very serious harassment by the executive authorities through the operation of this criminal law. I am very much interested in them. I am not aware of what is going on in the Punjab, or Bengal or in any other province, or in the Centrally administered areas. But one feature which I am able to see is that in provinces like Punjab or Bengal we have been seeing too many revolutions. Even before the British came there was constant warfare for centuries, along

with invasions from the North-West. All these made the people restless. When the British Government assumed charge of this country they wanted to suppress all these elements which were either national or riotous. They wanted to adopt a strong policy in regard to them.

4 P. M.

In the South, especially in the Madras State, there have not been any serious revolutions; and conditions are quiet and people are calm. So what is taking place in the Punjab cannot be the criterion to judge the state of affairs in the South, especially in the Madras State. In the Punjab violent incidents are too many; murders are too many; revolts are too many; agitation and restlessness are of an intensive type. In the Madras State, however, it is not so. The atmosphere there is peaceful with the result that all the provisions of the Criminal Procedure Code have been able to get themselves operated in full degree. In the Punjab and other places you have had so many special courts and resort to the special Procedure was made very often. So, both the lawyers and clients have been accustomed to special courts and special procedures. The judicial opinion in the Punjab has recommended that the committal proceeding may be dropped; so also has been the opinion from Bombay. It is regrettable to note that the Bar Council and the High Court of Madras have declared themselves in favour of the abolition of the committal proceedings. So far as I know, during these last few weeks, the mofussil opinion is highly against it. The reason why I say public opinion is rendered necessary in this matter is this: When the matter was communicated to the bar council and the High Court, it should automatically have been communicated to district courts and district bar associations wherein this matter might be considered in full and their opinions might have been submitted. Originally, there were 24 districts in the Madras State—both Andhra and Tamil Nad. The opinion of the mofussil Bar Associations and other people who were interested in this law, was not available for the Government. The High Court and the Bar Council have expressed an opinion but I respectfully differ from their approach or even the correctness of that recommendation.

We know as a matter of fact from the various decisions which have been pronounced by several High Courts throughout this country that perjury has become an important, permanent and constant element in the judiciary because witnesses are easily available. What I meant by judiciary was the judicial forum. It need not evoke laughter. There are several component parts in an institution. Ordinarily, witnesses are easily obtained and brought before the court. Any big man can make them speak false facts in the court, whether it be Sessions or Magistrate's court. With great concern to the necessity of the police institution in any country, I must say that the police in this country is an unreliable, disreputable and most suspicious factor. It is not my own view. I can quote great personalities like Gokhale, Mahatma Gandhi and so many other decisions of the High Courts also. There is a section in the Indian Evidence Act which says that statements made to the police should not be transformed into regular evidence in the court. We are being taught in the law college by the professors about the bad reputation of the police as a whole in this country and that such statements made to the police could not be made legal evidence.

In addition to all these aspects, there is one other aspect to this question—the poverty of the people in that particular area as well as throughout the country deserves great attention. By reason of poverty, witnesses are purchased very cheaply. Rich men and men of position and influence can easily purchase the police. A police

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constable is a person who received no education at all. Now-a-days, you have got some students who have passed SSLC or lower classes but some years before, they were recruited from rowdy elements—I can say. They had no education and they learnt to write the initial alphabets after they entered service. Worse still are our present sub-inspectors who are now posted because they had served in war quite recently. You have got in the force novices who have no experience at all of human psychology, who had not studied the social conditions and who do not know any of the implications of the high ideals that we are talking in this hon. House. The exercise of the criminal powers and the disposal of criminal cases had become an infliction on the people, so to say. It is quite easy to say that regarding cases which have to be tried in sessions, especially on a chargesheet put in by the police, the police chargesheets can be taken *prima facie* to be correct documents and that straightway the accused can be committed to the Sessions Court. This is a thing which cannot at all attract any attention. As a lawyer for 20 years, I know that the chargesheets prepared by the police are either exaggerated or falsely cooked or somehow or other, something is thrust in falsely so that it may be big and large. Such cases have come up. I can also draw attention to one or two famous sayings of Gandhiji that nearly in 80 per cent. of the cases in this country, justice had been denied to the accused because those cases were prosecuted by the police and the police had misused their powers. When such has been the reputation of the police in this country, all of a sudden nothing has happened to transform them into angels and to make them as reliable persons so that all their chargesheets might automatically go to the sessions for consideration. In my own place, so far as my community is concerned—numbering 1;5 crores—, and there is also another community which can claim some strength—when we consider the fate of all these communities in the light of their social life and in the light of their career, we find that they had been made to undergo, in the last one century at least, great hardships, and we are at present terribly afraid of what our future would be. I am inclined to think that the Government had been unsympathetic in this matter and have totally forgotten to take into account the police unit by itself and to have it analysed to find out whether it requires any reformation more than anything else for the quick disposal of the cases and for the proper and just dispensation of justice. I must emphasise that it is quite essential to see that the police is reformed, made more efficient and rendered more cooperative with the people so that it is made to enjoy the confidence of the society. The police should be made to feel that it is they who are the bulwark of the entire constitutional welfare in this country. Unless that is done, I do not feel anything good will be done to the society.

The problem touching nearly two crores of people is not a small thing. In the case of committal proceedings—I briefly narrate what will be done—the chargesheet is placed before the committal magistrate. All the witnesses are examined there *in extenso*—Full cross-examination is done. That takes some time, no doubt. After this is done the magistrate sees whether the case deserves committal. Sometimes he discharges the accused; otherwise he commits the accused. The entire matter goes to the sessions court. The committal evidence is on its table for reference. The lawyer who takes up the engagement on behalf of the accused in the sessions courts goes through the evidence, picks up all the contradictions and the useful material for the defence and eschews and omits all other unecessary matter. He takes up 10 to 12 per cent of the evidence, so to say

and then eschews 80 to 90 per cent. This ten per cent. alone is used in the sessions courts. The time is saved. The sessions judge does not allow himself to be reduced to the pitiable position of a sub-magistrate, because, the lawyer when he takes up the case, at the outset, has not got a steady, permanent and more decisive way of cross-examination just as he acquires after a certain stage. In the committal court, he has his own way; subject to the control of the court and decency of advocacy he exercises his full powers of cross-examination even though the time of the sub-magistrate is involved. We are able to see; all the witnesses who come in the docks are thrashed out to the fullest extent; the previous statements, the present statements and all circumstances are being dealt with and the integrity of the witnesses is fully brought out or the witnesses are rendered disreputable or unrealiable. This opportunity has saved several hundred of persons all these years. The sessions court cannot be expected to allow so much latitude for the lawyers' cross-examination *in extenso*. It has got its dignity in the sessions because of the authority and high position and reservation; and dignity of office requires some stringent control and it is always applied to the cross-examination. Considering all this position, I have been able to see that a number of accused persons have been discharged in these committal proceedings and in many of the cases that were committed to sessions, the accused were acquitted because of the benefit of the *extenso* cross-examination in the committal court. The police which was as a matter of fact, employed by the previous Government as an instrument to control the society and its various sections and the administration, have taken to harass these sections and annoy these sections by persecution of a very bad type. That had been the reason for the annihilation of all the communities which I have now referred to in the Madras State. It must have been the case throughout the country.

Even in Punjab and other places this Criminal Procedure Code was simply adopted as a means of repression by the police. During the consideration of the Criminal Law Bill, 1898, Mr. James remarked: "In highly technical Bills as Transfer of Property, etc., one should receive the vakils' comments with much respect, but in regard to a Bill to enable the Government and its officers to keep order and progress and prevent crimes against Baluchistan, Baluchis, Pathans, Rajputs, Sikhs, Jats, Mahrattas, etc., the Calcutta vakils are not precisely the best advisers of Government." This is very important, because when the lawyers felt that the procedure of the law was exercised in such a manner that power was abused, then Government were not prepared to give heed to these advisers. They only had in mind the subjugation of such important sections of people in this country; justice was second, repression and control were the first. That was the order of things.

Afterwards we have not been finding in all these years what can be an improvement in the Criminal Procedure Code. The sections have increased in number. The volume of the book has not been reduced. Case laws have become steady, and a century of experience has established the good and bad things in the operation of the Criminal Procedure Code and the operation of criminal law under the Criminal Procedure Code.

If committal proceedings are now sought to be removed, I should say, with due justice and regard to the people in this country, you must get the opinion of the Madras people at any cost. If without getting the opinion of the Madras people this legislation is to be passed, I must say, you are making the unkindest cut of all so far as these two and a half crores of persons are concerned.

Shri Tek Chand (Ambala-Simla): Why did you not give your opinion before?

Shri Vallatharas: I am not here to explain that, for you. In the last stage of the discussions of the Committee I could not attend owing to ill-health, or else I would have put this before it. But even if by short-sight or due to some other reason one had failed to advance his reasons in the Joint Committee, it does not bar one from bringing them at this stage before the House. And we are not fettered by any traditional or any out-of-the-way procedure by which we should not talk beyond a certain time or that we should talk only at this time or that time. The mind of the House is open always, and one can appeal to it to see what sort of injustice is going to be done to a certain section of the people whose number is sufficiently big and whose interest is essential for this welfare nation.

It is only in this respect that I have the greatest concern about this one particular provision. In respect of other things I am not much worried; because, the delay has to be curtailed; and even in warrant cases, if the discretion of the magistrate is to be exercised for giving the second cross-examination, I am not worried much; because, these warrant cases concern only cases of two years' punishment in a Magisrate's court. But where a person's life is at stake or where the man's entire career is to be blocked by fourteen years or life imprisonment, the interest greatly arises, and it is in that case we have to consider how far the psychology of these changes might operate to the detriment of the national welfare.

So far as the power of the magistrates is concerned the magistrates now, with the consultation of the High Courts, can be given powers to try cases wherein they can give punishment upto seven years. Now in this country we have no separation of judiciary from the executive. The Constitution suggests and provides for the separation of the judiciary from the executive and desires that it must be expedited. Even in Madras State only in certain districts the division has happened.

In the judiciary we have the benefit of the services of lawyers, persons who have got experience as lawyers for several years, to act as magistrates. But in the system now existing we have got an Intermediate man, a man who has passed S.S.L.C. or Matriculation, or even a Graduate who by reason of his having served in the recent wars is promoted to the position of second-class or even first-class magistrate. He does not know law. I can relate to you one funny incident. Once when a lawyer remarked that "this offence can only come under 352, I.P.C.", the magistrate who was a B. A. and who was recruited to that post because of his service in the last war observed, "what is the meaning of I.P.C.?" Because he had read only Ratan Lal's *Law of Crimes*. There the heading is "Law of Crimes" and not Indian Penal Code. That was why his mind went to the Law of Crimes and he wanted to know what I.P.C. was. I felt very sorry that such foolish people, people who never knew the rudiments or the head titles of statutes should have been posted as magistrates.

My people are an easily irritable people. They are being subjected to criminal prosecutions. I know of how much blood we have shed at the hands of these magistrates and sessions judges who have not been able to understand law in its proper sense. I am unable to express my feelings over this matter.

Will this hon. House take into consideration that hereafter no law should prevail in this country which has not got the sanction of the society behind it? The law as it stands is not the law that has been sanctioned by the nation. When the British wanted to make laws it was by their own peculiar form of legislative assemblies and legislative councils where the people were not represented but where only certain

selected groups were given power to vote and certain selected persons sent as members of the council or the assembly. They passed the laws to suit the tastes of those Governors of that particular Government. Now, as I study the law and its implications, I am not able to see any connection between society on the one hand and those who exercise the powers of justice on the other. Judges of course have been trained and they cannot be blamed to any extent.

Many Judges have given their opinion that defects in the Criminal Procedure Code do not account for much of the delays, but the delays are caused by the police and the Magistrates. I am sorry to find that the hon. Minister who has been so eloquent over so many matters now and before has not referred to these matters. If the Judges are responsible, I should say the procedure and conduct of cases must be left to the High Courts themselves and the Government should not interfere with that. Even in England I do not think there is any Procedure Code separately and independently as we have. The Procedure is a matter which is peculiar to the Indian soil. The Englishmen introduced this system of Procedure here. In the Civil Procedure Code there are various ways by which the High Courts are given latitude to frame their own rules in respect of the cases. Expediting trial of cases is an easy affair. It is not difficult. Very recently I heard from one of the High Courts that appeals of 1950 are now begun to be heard at the end of 1954. So when High Courts themselves make delays of four, three or two years we need not be much worried about the delays in the lower courts though they are annoying. They are caused essentially by the police who investigate and charge-sheet and also by the magistrates who do not know how to administer the law in an easy and happy sense. I have a good experience of these magistrates. One magistrate recently fell foul upon me and said "You advocates, you are a nuisance, you write anything and everything in these statements on the excuse of appearing as counsel for the accused". Of course we have to tolerate them and the Government must be proud of them.

Such magistrates are the born aristocracy and they must have natural talents! Or else God would not have ordained them to become your servants! What about the fate of illiterate men who do not know to read and write?—Unfortunately we have got some Members in this House whose literacy is not too good—I am not ashamed of it—those people must come and sit by your side—because common sense is a common thing for one and all and all must join in legislation. I come from the rank of the masses. I have to say that your entire magistracy is a tyrant—dom, and nothing short of that; your entire police is an abominable institution which deserves total eradication, and a new set-up must come. I say this, because all of us have been political workers for the last two decades and have suffered seriously at the hands of the police; and many of those policemen who had shot unnecessarily, who had foisted false cases, who had put many of us into prison and made us lose our life career for a major number of years, they are now promoted as Inspector General of Police or Deputy Inspector-General of Police or given high posts in the Government. This is due to the weakness of those who happen to be in power today. These people think: "After all, we have dominated then, we can dominate now also." That spirit goes to tolerate the abuses of those sub-inspectors and those in the lower ranks in the police even today. When a man is murdered in the police station, you know how much of difficulty we experience in getting at the Deputy Collector, the sub-divisional magistrate or the magistrate and to recover the corpse from the place of burial. I myself know of one such case, but I do not want to take up the time of the House. You may take it for granted that the abuse of the police is so great that a certain

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revolution is necessary from the lower ranks, some agitation is necessary to rectify this state of things. I would have been happy if the Government had thought as to how to rectify the police, as to how to rectify the Magistracy—both these two items which have stated by many judges of eminence as the chief reasons for the delays in the prosecution, in the conduct of the cases. I would have been happy if attention had been devoted to that. I should say that the Government have not cared to point out these two aspects to the Judges of the High Courts, and the Supreme Court Judges, to the Bar Councils and to others whose opinion they sought in this matter. They should have asked them: "These are the prominent factors. What is the solution you suggest. How can we amend the Criminal Procedure Code with a view to rectify these?"

Nothing like that has been done. It is an imperfect task which you have taken up.

I have read very carefully the two speeches made by the hon. Home Minister previously and also on another occasion. Therein he had stated all nice things, but when it comes to a question of action, nothing is there. This is practically verbatim: He "felt in his day-to-day practice the difficulties and complexities that arose in the administration of law, particularly in procedural matters. First feature—courts in this country had become places where perjury flourished. This was really a matter for the moralist and the public conscience. Second feature—for a variety of reasons the procedure was from day to day becoming more and more complex, dilatory and expensive. People had lost faith in law courts because of long delays in diposal. This was the state of affairs one had to tackle." Then, if you go on further, these are the two things: how to restore purity of administration and justice and avoid delays? Not essentially that even. I will allow a margin for that. Once you enter into the atmosphere of the judicial forum, you must feel that you are in a good atmosphere. I know a number of district courts, a number of magistrates' courts. Once you enter there your feeling is benumbed. You have no hope that you will get justice. Therefore, I suggest that you appoint a Law Commission, so that evidence may be taken from all quarters as to how far the procedural law that has been in existence for the last one century has worked satisfactorily, how the police who had been the human blitzkroig of the British Indian Government have continued to grow prosperous under you and to the detriment of the entire national interest, and how the courts of magistrates which had been a forum of repression under the British Indian rule, though sanctioned by statute, still continue to be of the same character and nature, and how these two can be rectified. Supposing a High Court Judge comes and gives evidence, questions can be put to him by the Commission whereby he will give the benefit of his experience. Because, since enormous delays had occurred in the disposal of cases, the one aim that was expressed in the circular to those people was speedy justice. There was nothing else in the Government circular. Those people read it and suggest: "This can be done by cutting this limb or cutting that limb; that can be done by trimming this limb or that limb." They know how the institutions work. I have heard Judges say: "What are we to do? The atmosphere is such. The atmosphere at the investigation level is so foul that we cannot approach it. What comes to us comes in writing and we have to decide this way or that." The courts have begun to feel this way.

So how would the Central Government, the Government Ministers or this House be able to know the existing state of things in the mofussil or at least at the district level. Nothing is to be heard about that. If there is the Commission, lawyers may be able to come and give evidence in respect of these matters. Many a lawyer has

his chance shut out so far as this is concerned.

So, under these circumstances, I feel that the Bill as it has emanated from the Joint Committee has introduced so many new things and has put aside the old Bill, because many of the phases of the old Bill have been modified or altered in some way or other. This Bill presents a new appearance. But the object has not been achieved because there has been a one-sided conception of the entire matter, *viz.*, that the delays are caused only by having the existing committal proceedings or by having the existing warrant case procedure. By curtailing one or two of these limbs we are not going to attain the object which we want to achieve. We must tell the country and the people straightforwardly and also those Judges and others who are interested in the judiciary whether a Law Commission is necessary, and till then this legislation can be postponed. Or, if this legislation can come up irrespective of the Law Commission, all these matters have to be thrashed out. And particularly so far as my area is concerned where three or four major communities are to be taken into consideration, the committal proceedings are very important. Public opinion must be taken from the mofussil people who are either lawyers or magistrates or who are people interested in the public life, and only after receiving their opinion the decisions will have to be arrived at.

So, under these circumstances, I commend that this Bill may be submitted for circulation.

Mr. Chairman: Amendment moved:

> "That the Bill, as reported by the Joint Committee, be circulated for the purpose of eliciting opinion thereon".

Shri Dabhi (Kaira North): In my opinion.....

Mr. Chairman: Are you speaking on the amendment?

Shri Dabhi: Both on the amendment and generally.

In my opinion, this Bill has emerged from the Select Committee much improved in certain matters, but at the same time, in my opinion, certain changes which have been made in the Bill by the Joint Committee have been definitely retrograde from the point of view of the accused persons. As an instance of the improvement, I shall take the amendment proposed to clauses 145 and 146. In the original Bill section 145 was proposed to be substituted for original sections 145 and 146. But then as the hon. Home Minister himself has said, if section 145 was retained as in the original Bill, then it would have led to consequences very detrimental to the parties concerned. Under that proposed amendment, the Magistrate had only power to attach the property, but for the determination of the rights of the parties, they had to go to the Civil Court. And we know that under these circumstances, the Civil Courts might have taken years to decide the question, and even the rightful owners would have been deprived of the enjoyment of the property for years together. So, it is a good improvement that has been made.

I am glad that the Joint Committee have not dropped section 162 of the Criminal Procedure Code. But I do not understand why one particular provision has been newly introduced in the proposed section 162. At present, we know, the only use which has been allowed to be made of the statements made before the police by a witness is when the accused is allowed to make use of them to contradict the witness. That position has been retained in the proposed section also. But I do not understand why there was the necessity for allowing the prosecution to contradict the witnesses. Under the present Act, it is the right of the accused, after the witnesses have been called and examined by the prosecution, to contradict them by confronting them with the statements made by him before the Police, in order to show that they are not reliable witnesses. But it is not at all necessary to give an opportunity to

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the prosecution, or even discretion to the Magistrate to allow the prosecution, to contradict those witnesses. It is true that under the Indian Evidence Act, when a witness turns round, the party that calls him also, may, with the permission of the Court, be allowed to put such questions as can be put in the cross-examination. But we know that a witness can be cross-examined, only when he goes back on his own statement made previously. But here, this provision has been inserted, taking it for granted that the statements which have been made before the police are the statements of the witnesses themselves. But the fact of the matter is that in most cases, it is not so. We know what happens in these matters very well. The police take down only certain things from the statement made by the witness. Afterwards, they make changes in that statement, as it suits them with regard to a particular case; and they insert those things in their case diary. So, these statements are not really the statements of the witnesses themselves. The whole basis for including this new provision in this Bill is that all these statements which have been made by the witnesses before the police are really the statements of the witnesses, and therefore, it is argued: Why should not the prosecution be allowed to cross-examine a witness, when he turns round and goes back on his statement? But we know that in most cases these statements are not statements really made by the witnesses. In a recent case at Aligarh, which has been reported in the *Hindustan Times* dated 3rd November, 1954, some interesting things are revealed in regard to this matter. It is interesting to know what the Sessions Judge has stated in that case with regard to the police investigation and how these statements are taken, and how suitable changes are made in them later on in the case diary. This is what that Sessions Judge says:

> "They have deliberately tried to perjure evidence so as to implicate accused in some form or the other."

There is one other observation which will go to show how delay is caused by the police themselves, on account of their inefficiency. This is what the Sessions Judge has stated:

> "A large number of witnesses had been examined to impress upon the higher authorities that the case had been very thoroughly investigated by the police officers who were in charge of investigations and they had left no stone unturned to bring guilt to accused. They collected evidence which did not bring success nearer to the prosecution in any way. Their failure to reject irrelevant and useless evidence resulted in the waste of considerable time of this court as well as that of the committing magistrate and waste of considerable public money."

So, this will clearly show who causes the delay. As regards the police statements, I shall read out a few lines from his judgment.

> "There was a stumbling block against the success of the prosecution case. The two police officers, Mr.....and Mr..... were mainly responsible for it. Mr.....deposed that the statements of witnesses were not recorded by Mr. Punetha, at the time of investigation, in the case diary, that he had taken rough notes on a separate piece of paper, and that these were recorded afterwards in the case diary which was subsequently written. This fact indicated that evidence was concocted later on. If the statements were not actually written in the case diary by Mr. Punetha and if the S. P. took rough notes, both S. P. and the D. S. P. failed to discharge their duties in this respect."

So, I do not understand the necessity for inserting this provision to

allow the prosecution to contradict their own witnesses. What will happen in the light of this provision is this. If a witness turns round and says something which he had not said in his original statement, against the prosecution, then the prosecution will be allowed to cross-examine him. Even if the prosecution were allowed to contradict him, it would merely amount to this that that witness was an unreliable witness. I do not know in what way this will help the prosecution. So, in my opinion, it is not at all necessary to insert this new provision in section 162. The hon. Minister has not given us any reasons as to why this provision has been inserted therein.

Then, the hon. Home Minister stated that there will be a great advantage now for the accused, because he would be supplied copies of the statements under section 162 also, some days before the actual trial begins, whereas at present, he would be allowed to have those copies only when the witness enters the witness-box. But the hon. Minister forgets that under the law as it stands, even though the accused would be supplied those statements only when the witness enters the witness-box, still he would have two chances left when he could cross-examine the witnesses. So, the fact that the accused was supplied copies of the statements only at the time when the witness entered the witness-box did not make any difference.

Dr. Katju: It does, because the cross-examination comes ten days after the supply of the copy, and now the same thing happens.

Shri Dabhi: Quite right. But it has no advantage. Since he had a chance afterwards also, the fact that he was supplied the copies only at the time the witness entered the witness-box, did not make much difference.

Then, I do not understand why certain provisions which were salutary from the point of view of the accused have bene dropped in this. In the Bill, as it has emerged from the Select Committee, the right of cross-examination is given only once. At present, there are three chances for the accused to cross-examine the witnesses. Nobody wants that there should be three chances. In the old Bill, it was stated that if the magistrate thought it proper that he should give a chance of further cross-examination of the witnesses to the accused, then, the magistrate, at his discretion, was allowed to cross-examine the witnesses. But that salutary provision is sought to be taken away now, both with regard to cases triable by Sessions Courts and to cases triable by the magistrates courts. I do not know why the second chance, and that too at the discretion of the judge or the magistrate, has been taken away. With regard to cases conducted in the magistrates' courts, even if all the material witnesses have been examined and cross-examined it ordinarily happens that.....

Shri K. K. Basu: There is no quorum.

Mr. Chairman: There is no quorum in the House; let the bell be rung. Now, there is quorum; let the hon. Member proceed.

Shri Dabhi: You will see that by clause 39 of the original Bill section 286 of the principal Act was sought to be amended and a proviso that was sought to be added was as follows :

> "Provided that if after the examination of prosecution witnesses, the Court is of opinion that further cross-examination of any of the prosecution witnesses is necessary in the interests of justice, it may allow further cross-examination of such witness and the witness shall be recalled and after such further cross-examination, and re-examination, if any, they shall be discharged."

I do not understand why—and the hon. Home Minister has not given any reason—this provision which allow-

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ed discretion to the court to allow further cross-examination has been dropped.

The same is the case with regard to warrant cases also. There also, it was provided in the original Bill that the magistrate could allow at his discretion further cross-examination of any particular witnesses if he thought it proper. Not only that. The magistrate was empowered, at the request of the accused, to examine the prosecution witnesses in any particular order and, if he thinks it necessary, to change the order of the examination of the witnesses. I do not know why these two provisions, which he himself introduced in the original Bill, have been dropped.

Every now and then the hon. Home Minister speaks of speedy disposal of cases. I agree with him fully. He has made people understand that all this delay is due to the defence. That is not the case. Anybody who has some experience of criminal cases knows that ordinarily, in criminal cases, except in certain special cases, defence witnesses are not examined and the accused depends on the cross-examination of the prosecution witnesses. So, delay is not caused by the defence. It may be so in civil cases. In warrant cases, the pleaders are paid a lump sum fee and so it is not at all in the interests of the pleaders also to prolong the cases. It is the experience of every lawyer who has practised in the criminal courts that it is only the police who delays these matters in several cases, it is not the defence that is not ready, it is only the prosecution witnesses that do not turn up. In one case, when I had gone to the court, the prosecuting police Jemadar had forgotten to bring his papers and the case had to be postponed. In several cases prosecution witnesses do not turn up. I would ask even the hon. Home Minister to show me cases when the accused causes delay. In my State—I do not know about other States—if the accused wants an adjournment he is asked to pay costs. But the police go on asking for adjournments. Once I wrote to the High Court that they should also be asked to pay costs if they want an adjournment. It is a wrong notion that the accused causes delay. It is not in his interest to cause delay. We have sought to do away with the causes of delay. So, there is no reason the accused should not be given a few more hours for further cross-examination.

A salutary provision has been introduced by clause 53 of the Bill. It definitely says:

> "In every inquiry or trial, the proceedings shall be held as expeditiously as possible and, in particular, when the examination of witnesses or the recording of their statements has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined or, as the case may be, their statements have been recorded unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded."

Then again, with regard to session cases also, under clause 94, all those cases generally would be finished within 60 days. So, it would be in the interest of police officials not to cause delay, because if they do so, the accused will be released on bail. I do not understand how with these provisions and other amendments there can be any delay. I do not understand why a few hours should not be given to the accused for further cross-examination, and that too, not by right, but only at the discretion of the magistrate or the judge himself. I request the Home Minister to tell me, why even this further cross-examination, at the discretion of the court, is not to be allowed under the Bill as it has emerged from the Joint Select Committee?

There are certain other matters to which I would like to refer but I shall do this when I move my amendments. There is one point to which

I would like to refer now. I am against the new definition of the summons case. Now, under the present law, as it is, any offence which is punishable with more than six months has to be tried as a warrant case. I do not understand why that right should be taken away. Certain cases, for example, cheating under section 417 and simple hurt under section 322 would be non-cognizable offences. This means that all these cases would be treated as private complaints and we know that under the amendments proposed by this Bill all the rights of the accused in the case of private complaints have been kept intact. I do not know why we should make a difference between two sorts of accused. We know even in cognizable cases, a private individual is entitled to make a complaint. In certain cases the police do not move and therefore, the private man makes a complaint. A private individual is entitled to file a case under any section of the Penal Code. If the private man files a complaint the accused is given the right of cross-examination three times and if the police files a case even the second cross-examination is not to be allowed and that too at the discretion of the magistrate or the judge. I do not understand why this difference should be made. If it is necessary in the interest of justice and speedy disposal of justice that no right of further cross-examination is to be given, then why not do away with all further cross-examination, whether it is a private or police case. In the same way, as I said, under sections 417 and 323, all will be private complaints and so it would not be proper to try these cases as summons cases. Then cases under sections 342 and 448 of the Penal Code are now going to be tried as summons cases. All these cases are serious enough and I do not understand where is the question of delay if you leave that as at present to be tried as warrant cases. I do not think there will be much difference, at least after so many changes have been made with regard to the provisions of warrant cases also. Therefore, I suggest to the Home Minister not to change this definition and leave it as it is.

Then, Sir, while hearing the hon. Minister during the first reading as well as during the debate and at this stage of the Bill, I have heard him express that innocent persons should not suffer and that real offenders should be punished. In the statement of objects also he has mentioned this. That is alright and there is no difference of opinion about it. But, my impression, is that out of the two, he has always remembered that the offenders should be punished and he has forgotten that innocent persons should not suffer. That is not the intention but my impression is that he has forgotten that and every time he has in his mind the words "real offender should be punished". I agree that the real offender should be punished, but at the same time we should see that innocent persons should not suffer for want of proper facilities, enabling him to make a proper defence.

Dr. Katju: Has the hon. Member seen any innocent man punished during the last so many years? How many people have come in your experience, 80 per cent. of whom.....

Shri Dabhi: I have not counted all these figures. Even he would not be able to say how many innocent persons were tried and how many were really guilty.

The Minister of Agriculture (Dr. P. S. Deshmukh): The hon. Minister's reputation is based on getting the guilty acquitted.

Shri Dabhi: In his reply I would like him to give the numbers of innocent persons tried.

Mr. Chairman: I do not like to encourage the debate to be reduced to mere conversation.

Shri Dabhi: I have nothing more to say and I hope the hon. Home Minister will take into consideration the suggestions that I have made.

Shri A. K. Gopalan: I beg to move:

"That the Bill, as reported by the Joint Committee, be recommitted to the Joint Committee with instructions to report by the last day of the first week of the next Session."

First I will speak as to why I want that this should be recommitted to the Joint Committee and then give my criticisms about the Bill as a whole. In para 2 of the report of the Joint Committee they have said:—

"During the course of their deliberations the Committee have also considered the question of recommending amendments to the sections of the Code not covered by the Bill as well as the provisions contained in the Code of Criminal Procedure (Amendment) Bill, 1952....The decisions of the Committee on these matters have been incorporated in paragraphs 55 and 22 respectively of this Report."

In paragraph 55 it has been said that they were not able to consider the Bill as a whole, whatever the reasons might be. It is stated in that para :—

"The Joint Committee desire to state in this connection that many amendments and suggestions relating to the certain sections of the Principal Act not covered by the amending Bill were submitted to the Committee. As some of these raised important issues, and opportunities for eliciting public opinion thereon had not yet been given, the Committee are of the view that these should be taken up for consideration after circulating for public opinion. They there recommend that all such amendments may be referred to the Government, who will obtain the opinion of the public thereon and if necessary bring before the House another suitable amending Bill to the Code of Criminal Procedure, 1898 as far as possible within one year."

The first point that I have to bring forward is that though there was a motion on May, 1954, that the Joint Committee should consider not only the clauses in this Bill, but also the Code of Criminal Procedure as a whole, it has not been done. What are the reasons that have been given for not going into the question? The first thing is that there will be delay. Then it is said that there will be another examination of the whole thing after some time and that the Government is thinking about it. What I want to point out is that we are amending this Bill which had been enacted years ago. We have a Constitution today. The old Constitution was framed by the foreigners for their own purpose. Now, not only the Constitution has been changed, but we have a new Constitution under which there are the fundamental rights.

5 P. M.

Mr. Chairman: The hon. Member may continue tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 17th November, 1954