COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

PRESENTATION OF FOURTEENTH REPORT

Shri Gidwani (Thana): I beg to present the Fourteenth Report of the Committee on Private Members' Bills and Resolutions.

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

Mr. Speaker: The House will now proceed with the further consideration of the following motion moved by Dr. Katju on the 16th November, 1954, namely:—

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

and also further consideration of the amendments for circulation etc., moved by Shri Vallatharas, Shri Gopalan and Shri Syamnandan Sahaya.

I understand Shri Telkikar wanted to move an amendment. Is he here in the House?

He is not: so that need not be taken into consideration.

Shri Pataskar (Jalgaon): Sir, as I said yesterday the whole Bill has to be looked at from the point of view of the broad principles of jurisprudence which have been in operation in this country for the last one century or so and whether we are going to achieve either speed or cheapness in the matter of administration of justice in this country. From that point of view I want to lay emphasis on three or four aspects of this Bill.

The first is the new clause about which there has been so much of controversy, namely, clause 25. Clause 25 is an improvement on the original clause which wanted to make defamation of the President, Vice-President, Ministers and others a cognizable offence. To that extent it must be conceded to be an improvement. To those of my critics who asked as to why a provision for the safeguarding of the Ministers from defamation is necessary I wish to say this. As I started by saying, clause 25 covers three categories of persons. The President, the Vice-President, the Governors and the Rajpramukhs stand on a special footing. So far as the former Code was concerned there were no such dignitaries and I have no doubt that everyone will admit that for the proper functioning of constitutional democracy, respect ought to be attached to these officers. Supposing they are defamed: somebody publishes something against them. Should they go before a magistrate or a court of law to get their position vindicated? It is but natural.

The next category is that of Ministers. Ministers also, to my mind, in the present context, occupy a special position. Whether they are Ministers representing the Congress or in future there are perhaps Ministers representing the other parties....

Dr. Lanka Sundaram (Visakhapatnam): What is the difference?

Shri Pataskar: The difference is that when the original Act was in operation, from 1878, there were no Ministers as we know of them now. Even at the time of the passing of the Act of 1923 the Ministers were more or less bodies for whom the public did not care much. They were not entirely responsible to the people. If we look to the way in which the present democracy or parliamentary type of Government works, Ministers are chosen by a leader who is elected by the majority party in the House. He is the representative of the particular public opinion which has elected him. Ministers are more or less the representatives of the public. What is the Opposition? I grant that parliamentary democracy works also by opposition, that is, those people who had not been successful in getting a majority try to criticise the present administration naturally. There is

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no harm in such criticism whatsoever. In the stage in which our democracy stands it is imaginable that people might stoop to criticisms which may not be justifiable because the party motives are day by day getting stronger as we find them here. Therefore, I submit that so far as the Ministers are concerned, I am entirely in agreement. But merely because there is a criticism of a Minister, to say that action should be taken is not correct. Nor is any such right tried to be given under this section. A Minister is merely defamed. Yesterday a case was pointed out that such and such Minister is a corrupt man. It is imaginable that it may be so or it may not be so and the party motives might have had a very large share in making such an allegation. It is desirable that it must be decided. We do not want that as soon as a charge is made, a Minister should go before a Magistrate's Court and stand there. Even if he does so, we know what the result will be. Now a complaint will be filed before a Magistrate etc. within six months and all that. I find that this provision will do some good. They were saying that there is a tendency that whatever is written about a Minister, nobody takes care. That was the charge which one hon. Member made. He mentioned the case of some Minister of some State. He did not mention the name and we are not concerned with names. If such a provision is there and in spite of an allegation of that nature being made the Minister takes no action, then, naturally there will be ground for any inference. After the incorporation of this provision, it will be the duty of every Minister, if he is a responsible Minister in any House, to see that he asks the Secretary to file a complaint. At the present moment, granting for the sake of argument that there are some who might have committed some offence, then too they might escape, saying 'Well, you do not expect a Minister to go to the Court of a Magistrate and get himself vindicated. After making such a provision, if there is a complaint and a Minister does not care to take advantage of what is provided for in this section, I think the public can draw its own inference. But the Minister will be responsible to the public ultimately and he will not choose to do so. Good, bad and indifferent—all manner of people can take shelter under the Act that none of them need do this. It is better that there should be a provision of this kind so that, within six months from the day on which a serious charge of corruption or some thing like that is made against a Minister, a prosecution or a complaint could be launched before a Court. Therefore, I do not think that there is anything wrong if you look to the present context of things. Let us not look at it as if it will be used for harassing the people.

But I think there is absolutely no justification for including in this clause a third category which is very dangerous to my mind. The third category is 'any other public servant employed in connection with the affairs of the Union or State'. It covers a *talati*, *patel* or an ordinary village *mukhya*—as somebody said, *chaprasis*—from the lowest downwards to the highest man in the Secretariat. Why is it so? I cannot understand. I find no justification whatsoever why this provision which is made in the interest of Rajpramukhs, Ministers, etc., should be extended to all government employees. What is the idea?

[SHRIMATI KHONGMEN *in the Chair*]

In the former times, things were different. Public servants and the police were entirely a different category. Now things are different. You include all these sorts of employees in this. Even a petty official in a village can take steps under this law because you will find that there is a law under which probably the whole of the Government machinery might try to

put down a person who has said something against that village petty official. I think that is not proper. To my mind, therefore, so far as clause 25 is concerned there is some justification so far as Ministers and others are concerned. Why include 'any other public servant employed in connection with the affairs of the Union or the State'? I would like to know from some of those who took part in the Select Committee proceedings as to how they came to include in this section a very wide power like this. They want to make a special provision in respect of persons down from a village headman or a *mukhya* to the Secretary-General of the Government of India. (*Interruptions*) That is my grievance and I would not like to blame the Government only. This is due to the fact that there is in the House generally, even as I said yesterday, a section of Members speaking with scant regard for law and the legal matters. I am not prepared to blame the hon. Home Minister. He has himself been an eminent lawyer and jurist and it is in spite of him such things are there. Naturally the fault lies somewhere deeper.....

Dr. Lanka Sundaram: He does not like to part with his baby.

Shri Pataskar: Then, there are certain other matters. For instance, there is clause 22 which, I find, is laying down a very dangerous precedent or principle—section 162. It says: "No statement made by any person to a police officer in the course of an investigation.....was made." Then, there is a provision "Provided that when any witness is called for the prosecution.....with the permission of the Court....." This is a very dangerous thing. I can say so from my experience at the bar for the last thirty years. We all know how the police statements are recorded. I would appeal to the hon. Home Minister to consider this. In other countries it may be different. So far as India is concerned, we know how it is done, the way in which that machinery works. This should not be allowed and it would not be proper. It may be argued that in certain other countries such things are allowed but as I said yesterday conditions are different there. I do not want to blame any particular individual or group. As I said yesterday, the institution of police cannot be changed in a day. Attempts are no doubt being made to improve it but they have not yet attained that same status of respectability and efficiency which is obtaining in certain other countries. Till that time, at any rate, it is dangerous to allow this thing to be done. This statement is hardly recorded. Somebody examines somebody. When the man is threatened with being imprisoned, he is brought there and some *munshi* takes down the statement of that man. Therefore, it is not desirable that at this stage we should allow such a statement being used against the same man. After all, it is a statement recorded by the police and therefore, with the improvement of the police we may think of it. A state of affairs might arise when the police investigations are not actuated merely by securing conviction but securing justice and at that stage, it may be possible to do it. Even today we find from the way in which the statements are recorded by the police and the efficiency of the police department and the way in which they are working that it is likely to do more harm to the cause of justice rather than to help it. Therefore I for one do not like it in any event. It may be said that the words "with the permission of the Court" are there. We have to look at things in a broad perspective, the Courts, the police and all those as they are. We are trying to improve them and we are trying to separate the judiciary from the executive. It has not yet been completed in the whole of the country. Under the circumstances I believe this is a matter which deserves consideration,

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Then I find that the institution of Honorary Magistrates, which I expected would be scrapped, is now sought to be kept alive with some additions, because there is that section 14. I would have liked section 14 scrapped altogether. We have got experience of the working of the system of Honorary Magistrates. It has its past. It is not as if the whole system would improve if we appoint retired people. I would like to point out one case from the district from which my friend Mr. Bogawat comes. There was one Kazi who was an Honorary Magistrate for his life. Poor man, he did not know and thought that the job was hereditary. So one morning he went to the District Magistrate of the place and said: I have become old, you will have to do something for me.

साहब, हमारी जगह हमारे लड़के को बिठा दीजिये।

Shri K. K. Basu: (Diamond Harbour): That is done everywhere!

Shri Pataskar: That is the history of the institution of Honorary Magistrates. They were meant only for doing things as the then Government wanted them to do.

Shri K. K. Basu: That is why Dr. Katju wants to keep it.

Shri Pataskar: I have before me the Report of the Members of the Joint Select Committee produced as a result of their collective wisdom. I do not therefore like to call it as Dr. Katju's Bill or a Bill brought by the Congress Parliamentary Party.

Mr. Chairman: May I request hon. Members not to use the personal names? The Minister may be called the Home Minister.

The Minister of Home Affairs and States (Dr. Katju): I have no objection, Madam, to be called anything, because I am becoming accustomed to it; it is an expression of affection.

Shri Sadhan Gupta (Calcutta—South-East): You don't want to be called names!

Shri Pataskar: In the very beginning I said yesterday that I am looking at these problems from a different angle of view. Hon. Members who look at it from a different angle may not agree with me. (*Interruption*) Please do not interrupt me because I lose the trend of my argument. The system of Honorary Magistrates, even if we lay down that only those who have experience of the working of Courts, etc. should be appointed, is not likely to improve. Therefore it is much better that we do not expect honorary work to be done in such matters by any people. After all those people retired because they are too old on the Bench. Why then bring them back again?

Dr. Katju: May I take it that my hon. friend's objection is that no honorary work can be expected?

Shri Pataskar: Yes, quite right. Of course the hon. Minister may differ from me.

Dr. Katju: I thought we were all doing honorary work here.

Shri Pataskar: I would say that honorary work here in Parliament is different from the honorary work which is normally done in judicial Courts.

Dr. Katju: In municipalities.

Shri Pataskar: That is again different. Because here it is not a work for which some payment is expected or must be paid. Why do we want that there should be Judges and all manner of people doing work gratis? We have the necessary funds, to collect the money. Justice should not be made to depend upon the patronage or the free service of somebody. We can have free service rendered for construction of canals etc., voluntary labour. This is not a matter where we want voluntary labour so far as Courts and Magistrates are concerned.

Shri N. C. Chatterjee (Hooghly): This is also irrigation, legal irrigation.

Shri Pataskar: Voluntary labour you can have. But why do you want honorary or free work to be done on the Bench itself? That would lead to so many anomalies. I do not want to dilate on that question. But so far as my personal view is concerned I can tell the hon. the Home Minister that on this matter I hold very strong views. In the year 1928 or so I had a discussion with Mr. Hodson, the then Home Member in the Bombay Council, on this and he did not agree.

Dr. Lanka Sundaram: Nor will Dr. Katju agree with you.

Shri Pataskar: Of course there has been an improvement. I must say to the credit of the Government that they have made this that anybody will not be a Magistrate. So, this should be gone into.

There are also certain other matters. For instance take the amendment to Section 107. Sub-section (2) of section 107 is proposed to be amended like this:

> "Proceedings under this section may be taken before any Magistrate empowered to proceed under sub-section (1) when either the place where the breach of the peace or disturbance is apprehended is within the local limits of such Magistrate's jurisdiction or there is within such limits a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such limits."

Section 107(2) as it stands today provides:

> ".....unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction"

That means that if a Magistrate at Agra wants to issue a notice under section 107 because he apprehends that somebody from Travancore is going to come to Agra and his presence is likely to disturb the peace, he can do so, because the words are not "unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction". Now, the place is out of the jurisdiction of the Magistrate at Agra. But he apprehends that somebody from Travancore is coming to Agra and his presence is likely to cause a breach of the peace. Granting for the sake of argument that the position has to be remedied, because it may be argued or it is conceivable that it is much better to prevent that man from coming to Agra and creating trouble and therefore certain proceedings should be instituted, is that object being achieved by the way it is done here? Section 107(1) is kept which says that the Magistrate may "require such person to show cause why he should not be ordered to execute a bond, with or without sureties etc." So, the so-called notice will be issued, will have to be issued to the man in Travancore to show cause why such an order should not be passed in Agra. Then the man will insist on his right to come to Agra and argue his case. Naturally that would be the result. Probably he might not have otherwise come to Agra and the apprehended breach might not be taking place.

Dr. Katju: Are you sure that the notice will have to be issued by the Magistrate of Agra?

Shri Pataskar: Yes, because so far as I can see it says "require such person to show cause etc."

An Hon. Member: Show cause by post.

Shri Pataskar: So far as I see that is the position, unless we want to dispense with the notice to show cause. That is the position as I find from sub-sections (1) and (2) of section 107.

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And it is not only my opinion, but another very eminent Dean of the Faculty of Law of a very good University with whom I had discussion on this was also of the same opinion. If the sections are allowed to stand as they are, instead of preventing the occurrence of a thing which probably is tried to be prevented, it might lead exactly to the contrary result. That is what is apprehended so far as section 107 is concerned. And therefore it would be much better to keep the provision as it was than the one which is now finding a place here.

Then, 146 is a very simple section. Sections 145 and 146 find a place in Chapter XII entitled "Disputes as to immovable property". Section 145 deals with procedure where dispute concerning land, etc., is likely to cause breach of peace. This provision is made for avoiding breach of the peace which is likely to occur on account of such disputes.

Section 146, as it has emerged from the Select Committee (clause 19, Amendment of section 146)—it has nothing to do with the original Bill as it stands—has taken a very curious form. The present provisions of section 146, as I said, were simple—I would say even from the layman's point of view. The provision is that if a breach of the peace were apprehended, without reference to any of the civil rights which may be fought out in a Civil Court, such and such an order might be issued. Very simple. Now, the Select Committee has tried, curiously enough, to make a combination of civil and criminal matters.

Mr. Chairman: Let there be no talk in the House.

Shri Pataskar: I am sorry I am dilating and speaking on a subject which the ordinary people do not find of much interest, but I cannot make it more interesting.

Amendment of 146 is therefore a curious mixture of civil and criminal matters, because they want to amend the section like this. Supposing some enquiry is made by a Magistrate, then there is also power for him to appoint a Receiver and all that there is in the present section. What is tried to be done is that the Civil Court is going to be brought in into this matter by the provision:

> "Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time, if he is satisfied that there is no longer likelihood of a breach of the peace in regard to the subject of dispute.
>
> (1A) On receipt of any such reference..."

He has to refer the matter to the Civil Court.

> "...the Civil Court shall peruse the evidence or record and take such further evidence as may be produced by the parties respectively..."

So that at that stage what is contemplated is that when the matter has gone to the Civil Court, he will again record evidence; and there is a further section which says that this shall not bar the right of any party to file a civil suit. That means the same Civil Court will hear evidence when the matter is referred to it under this. The same Civil Court, if somebody else files a suit for the necessary relief, will try again the same man. I do not know why there should be this curious mixture.

It may be argued this was done because they wanted the matter to be decided quickly by the Civil Court, and therefore they say:

> "The Civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding..."

As we know, the Civil Court is governed by the Code of Civil Procedure. Supposing a man dies, his heirs ought to get the right. So many other things are there. Therefore, I do not understand for what purpose this mixture of civil and criminal procedures is being effected by the amendment of section 146.

And, on principle it is bad, because, supposing the matter is referred to a Civil Court and on the evidence the Civil Court has come to a certain finding. Is it desirable and proper and just that the same Court should again try in a subsequent suit the same man being accused by another party? Considered from every point of view, I do not know what is the utility of the present amendment which now the Select Committee has made so far as this section is concerned. At the most, if the matter was so complicated and he wanted to ascertain the opinion of the Judge on the record which he had before him with respect to a particular complicated question of law, then you might have given him the power to send it to the Civil Court and get the opinion on that record. But, this goes further. This says: "No, he shall also take evidence and he shall decide within three months and he shall do so many things" for which I do not know what is the procedure. There is no provision as to what procedure—civil procedure, criminal procedure or any other—should be followed in such a case. I think that that amendment, instead of improving matters as they stand with respect to that limited object which is contained in Chapter XII which contains these sections 145 and 146, is a curious mixture of civil and criminal proceedings—partly before the Criminal Court and partly before the Civil Court, and again the Civil Court because there is a provision which says:

> "Provided that nothing in this section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof."

I cannot imagine of anything having been construed in such a light manner as this.

I have already said something about 162. In clause 23—this is about police investigation—amending section 173, I find the proposed sub-section (5) is worth nothing. It reads:

> "Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any statement recorded under sub-section (3) of section 161 is not relevant to the subject-matter of the enquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall exclude such part..."

Who is given the power to exclude such part?—the police authorities. Should the police be allowed to decide that it is not relevant to the subject-matter of the enquiry? Is the relevancy to be decided by the police themselves who are to prosecute the person? Relevancy must be decided either by somebody on behalf of the accused or at the most by the Magistrate. I can understand that the Magistrate may not give them copies of irrelevant matters, but the police should not be allowed at that stage to decide that it is not a relevant matter and that its disclosure is not essential in the interests of justice. The interests of justice are to be decided not by the accused but by the police. They might exclude those statements. This is hardly consistent with our notions of criminal jurisprudence and probably this has been inadvertently inserted.

Shri Frank Anthony (Nominated—Anglo-Indians): Deliberately they have done it.

Shri Pataskar: I can understand it if it is necessary to do it in the public interest. That is all right. Supposing there is a man whose statement is recorded and he makes certain statements which are neither relevant nor

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in the interests of justice but are against the public interest, the police may, at the most, be given the power to exclude such statements. I cannot entirely agree with those who said that everything should be disclosed. I can understand that if there is anything said which is against the public interest, it is the police at that stage who have to decide, but they cannot take upon themselves the right to decide what is relevant or what is not relevant, nor to decide what is in the interests of justice as a whole, because the justice is meted out to the unfortunate accused and not to the prosecution. Therefore, I think, these two, somehow or other deserve to be eliminated so far as clause 23 is concerned from a purely judicial point of view. As I said yesterday, let everybody look at it not from any other point of view, but from the general interests of the principles which have been in operation in the country for the act so many years.

Then, the committal proceedings is again a thing on which I would like to offer a few remarks. I can understand it and no doubt there has been a cry in the country. For those appearing on behalf of the accused, probably this commitment proceedings were a God-send for getting the accused out of the clutches of the law, but at the same time, it is true that a person was subjected to an examination by the police first, then before a Magistrate his statement was recorded under 164, then there is the third statement, and then the unfortunate man has to go to the Court for the fourth time and is subjected to cross-examination by eminent lawyers, and naturally he is bewildered. One of the statement is taken by the police in circumstances which always do not lead to accuracy, then again by the committing Court where they are not thorough. Therefore, there is the suggestion that the committal proceedings ought altogether to be dropped. I am here to say that I do not want that the committal proceedings should be there. But now what is being tried to be done is that there is a distinction between committal proceedings intiated at the instance of the police, and that initiated at the instance of private individuals. I do not know why we should have gone into all this. I do not know why the Joint Select Committee should have thought it worthwhile to make all this distinction between proceedings initiated by the police, and proceedings initiated by somebody else. More and more complications have been unnecessarily introduced in this Bill. If it were said that there will be no committal proceedings at all, then one could have understood that. I could have understood if the police, instead of going and filing a case before the Magistrate, go and file a suit in the Sessions Court itself. There will be no harm in that, and nobody can reasonably and rationally complain that committal proceedings are being dropped. But I cannot understand the distinction that is sought to be made in this matter.

There is one other difficulty which I envisage in this connection. Supposing a private individual goes before a Magistrate and charges another with an offence triable in the Court of Sessions, then in that case, who is to decide whether normally it should have gone to the Sessions Court or not? I am told that in England, there is a Director of Public Prosecution. Probably, in India, we have no such institution. I realise that. But in India it may not be possible to have one Director of Public Prosecution for the whole of the country; it may also be not expedient to appoint one Director of Public Prosecution even for one State, because some of the States are very large.

Dr. Katju: On a point of order. Will it not be more desirable if the discussion on these small points should be reserved to the clause by clause consideration?

Shri Frank Anthony: Here, we agree with the hon. Home Minister.

Dr. Katju: Otherwise, he can go on. My hon. friend will have all his time, and likewise everyone will have his time.

Shri N. C. Chatterjee: On this point, we agree with the hon. Home Minister that this could be deferred till the clause by clause consideration.

Shri Pataskar: I was not going to refer to all the details, but only to some of the principal facts. However, in deference to the wishes of the hon. Home Minister and other Members, I with not attempt to do that, and when the amendments come up, I shall talk about them.

But I would certainly like the hon. Home Minister to know that I would agree with him to drop all committal proceedings, rather than have all this discrimination.

Dr. Katju: I hope my hon. friend would speak when the clauses come up for discussion, and I would be very happy to have his views then.

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): What about the defamation clause?

Shri Pataskar: I had already spoken on it. Probably, the hon. Member was not here at that time.

There is one other point on which I would like to say a word, and that is about the jury and assessor system. Now, the system of assessors is being abolished. So far as the jury system is concerned, however in some modified form, it is tried to be kept. I would not like to enter into the detailed nature of the provisions made in that behalf, but I will say that if at all we do not want the jury system, we can straightaway abolish it, because, after all, the jury system in England was based on something entirely different. There, a man was supposed to be tried by his own fellowmen, and therefore, all matters of fact were decided by his fellowmen. But our conception of jury system being different, I do not think there was any harm in dropping it altogether.

Dr. Lanka Sundaram: Here, it is by supermen.

Shri Pataskar: Here, if you want to keep the jury system, then keep it not with any shackles by which even if they are autonomous, something else happens and the jury is deprived of its right, but in its proper form. Otherwise, I would say that it may entirely go.

Without going into any further details, I would summarise what I think of this product which is produced not by Government, but by the Select Committee as a collaborative effort. If I can say so, what I find, after carefully reading this Report, is that in this Bill, the procedure, instead of being simplified is made more complicated. Secondly, as I said earlier, there are so many amendments which are a curious mixture of the civil and criminal procedures. Then, unfortunately, the institution of Honorary Magistrate is being kept in some form or the other. I think, considering the matters as a whole, they might in some cases lead to the benefit of the accused, and in some cases to the benefit of the prosecution. But as a whole, it will neither achieve its purpose of speed, nor of justice being cheap. These are my submissions on this Bill.

As for recommitting this Bill to the Select Committee, I do not think it will be good to recommit it to the Select Committee, because, if once it is sent to the Select Committee, the same result may still follow, and there is no guarantee that a different result will follow. I want the whole matter, therefore, to be approached from a different point of view; and unless that approach is there, I for one believe that no improvement is possible. This Bill should not be looked at from the point of view of party, or from the point of view of the interests of this section or that section, but from the point of view—as I said yesterday—of the principles of jurisprudence which have been in operation for the last so many years, and which, as I said, do require a

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change, but a change which must be gradual, evolutionary and consistent with what is happening. I think that is what we all here in this House feel, apart from the question of referring it to the Select Committee again. Probably, there may have been chances of success, and this Bill may have been put in a better form.

Shri N. C. Chatterjee: I agree with Shri Pataskar that this Bill should not be looked upon as a party Bill, and it should not be discussed in a party spirit. I hope there will be no whip issued and there will be no regimentation, but there will be free voting in this House.

An Hon. Member: Completely democracy.

Shri N. C. Chatterjee: Yes. It will affect the lives and wellbeing of millions of people, and to a large extent, civil liberties will be in jeopardy, unless and until we have a proper Criminal Procedure Code on the statute-book. India will be judged by the whole democratic world by her capacity to fashion a proper and civilised system of criminal jurisprudence, which should operate in independent India. I am afraid Macaulay and Fitz James Stephen will be turning in their graves today, when they would realise that after seven years of independence, the Parliament of India is solemnly today merely engaged in the task of tinkering and tampering with their handiwork, and there is no real architect's mind to refashion the entire system. I am not at all deprecating the work which the great British lawyers did, like Lord Macaulay, Sir Fitz James Stephen or Sir Barnes Peacock. They did great work, but they did it with a purpose. They wanted to build up a police state, and they wanted to subserve the interests of a colonial set-up, really of an imperial set-up. From that point of view, the Criminal Procedure Code was quite good. I must admit, now that the British rule has ended, that it was also their objective to give certain essential safeguards to the defence, so that the accused might be given a proper hearing and adequate facilities of defence. But I am sorry that the hon. Home Minister did not listen to our advice which was offered in a spirit of co-operation and constructive approach to this difficult measure.

We pleaded for the appointment of a Commission to go round the country, to consult the different Bars, lawyers and Judges, as well as other interests, and to fashion a proper Bill and present it to the House. I still maintain that it would have been a far better and more desirable course. We are very much interested to know that a suggestion has been made by fifty Members of Parliament that there should be a Law Commission appointed, and I wholeheartedly endorse that suggestion. But I also wonder whether it would be desirable, if you are really going to have a Law Commission to expedite a Bill like this, which is not a comprehensive piece of legislation. After all, it is inextricably interwoven with the Indian Penal Code, the Indian Evidence Act, the Oaths Act, and with various other cognate statutes. Will it not be better to have a comprehensive survey, a comprehensive reorientation of the different cognate measures, and perhaps to have before us the report of a trained body of experts like the Law Commission? I do not know what would be terms of reference of that Law Commission, but I hope it will be an independent body of legal experts, and there will be no question of any party operating there, or any other extraneous consideration, but it will be really bent upon bringing our old statutes in conformity with modern ideals of sociological jurisprudence. We cannot really build up a first class country in the twentieth century with an eighteenth century law or a nineteenth century Code. You cannot have a really proper system of justice with old notions

and with mid-Victorian ideas. I am afraid the framers of this Bill were, to a large extent, oppressed with the old notions. There is really no indication of their appreciation of the modern pattern of Society. We all talk of planning. We are planning all the time. But, I plead with the Home Minister and I plead with all the Members of this House that there should be planning also in law. But our legal system seems to be unplanned; and our effort for legal reform is also unplanned. There is no comprehensive effort to put everything in order.

The Constitution-makers of India enacted the fundamental rights in Chapter III and, in their wisdom—and I maintain it was a great day for India—that they enacted article 13. In article 13 they said that any existing law which is repugnant to the fundamental rights was declared to be void. They also said, any statute, any existing law, which in any way abridged the fundamental rights was also void. That is a very serious state of affairs. I expected that the Government of India and the Parliament of India would appoint a Law Commission for the purpose of bringing our existing statutes in conformity with the fundamental rights, guaranteed solemnly by the Constitution of India to the citizens of this country. That has not been done. The result has been a very unsatisfactory state of affairs. You know many statutes have been attacked as being unconstitutional and *ultra vires* as being repugnant to the fundamental rights and good many statutes have been struck down as unconstitutional by the Supreme Court of India and by the different High Courts. Rightly they have been condemned, because they had no escape from it. It was not the effort of the Supreme Court, it was not the effort of the High Courts to act as Supreme-Parliaments. They were not doing that. They had taken an oath solemnly enjoined upon them to work out the Constitution and the Constitution enjoined upon them the solemn duty that they shall strike down as unconstitutional any existing law which is in any way inconsistent with the fundamental rights. We have done nothing so far. Therefore, I quite welcome any effort on the part of the hon. Minister to do something to bring our laws in conformity with the fundamental rights. And, I therefore, thought that it may be a good thing to re-orient our laws according to those fundamental rights and also according to the modern concepts of sociological jurisprudence. It will not do simply to fashion our criminal law to accommodate a few criminals. We must also fashion our laws so as to bring about a real welfare State. Therefore, I plead for a radical revision and the early appointment of a Law Commission. And, if there can be a possible mandate given by the Parliament that this Bill along with other cognate Bills should be taken up by the Law Commission and they should expeditiously report to us—in a very short time—then it may be desirable to postpone the consideration of this measure until we have a comprehensive report.

I do recognise that there is a special responsibility of lawyers in this matter, especially of the lawyer Members of this Parliament. There is a general charge levelled against the members of the profession to which I have the honour to belong, that the organised profession has been a stumbling-block to legal reform. This has been not merely in India. I was reading the observation of Prof. Laski in his book on *American Democracy*. Laski is saying that the greatest obstacle was the vested interest of the legal profession. I hope the legal profession in India would respond and would be alive to the new sense of duty in the present set-up and would help the Government and the Parliament in bringing about a proper re-orientation of our legal system. I do not think anybody, any lawyer of any standing, who is cognizant of his responsibility as a citizen of India, will

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do anything to circumvent legal reform simply because of any question of *status quo* or vested interests.

I have been touring a good part of this country and I have come into contact with many members of the legal profession. I have discussed the matter with many members of the different Bars and with also a number of judges who are functioning and with some who have retired from the Bench. I was amazed to find that there is a feeling in this country that this Bill is really a Police Bill meant to tighten the repressive machinery of the State. They thought that some kind of *Kalki Avatar* has come down from the heavens in order to fashion a new instrument of repression. Many times I have been told that Dr. Katju's Bill really wants to do away with the cardinal principle of British jurisprudence on which the whole system of Indian law was enacted, and he wants to introduce the French system. You know the British system means that a man shall be presumed to be innocent unless he is found to be guilty by the Judge or by the Judge and the jury. But, under the French system, immediately the police gets hold of a man, there is something like an interrogation. He has got to prove that he is innocent. I have tried my best to dispel this feeling. I tried to convince people—although I strongly criticised the Bill in the earlier stages and I have got to criticise certain aspects of it very strongly even now—that there is no sinister design on the part of the hon. Home Minister or the Government of India really to introduce a Police Bill or to do something which will be merely tightening the repressive engine of the State.

At the same time, there are certain features of this Bill which are really repugnant to all democratic notions. It will put in peril the working of democracy in this country and I maintain it in spite of the pleading of my hon. friend who has put in more than 30 years' experience in the law courts—Mr. Pataskar. It will smother opposition. It will put in peril the freedom of the Press. What is the good of saying in article 19 of the Constitution that to every citizen of India is guaranteed the freedom of speech and the freedom of expression? What is good of Pandit Nehru saying that he wants a classless and casteless society in India, when you are having a special class of Ministers and a special law for them because some Ministers or some public servants are defamed? I thought it was a cardinal principle that in a country like this, where there is a lot of corruption, bribery, nepotism and jobbery, when even Ministers are not beyond the shadow of suspicion, they should welcome criticism. If the Home Minister or a Minister of any State thinks he is defamed, then a special machinery is provided. Let the hon. Home Minister here declare that he shall not demand any special privilege for Ministers, special immunity and special safeguard, then a good deal of the opposition to this Bill will disappear. (*Interruptions*).

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

The position really is this; to a large extent, the country suspects the *bona fides* of the Government and the *bona fides* of the hon. Home Minister because he has come forward with a Bill whereby he wants to protect the Ministers. Why should the complaint be lodged by the Public Prosecutor? We are not children. Don't we realise that it is not a safeguard? It is an illusory safeguard. It is said that there is improvement. Member after Member said that there is improvement. I recognise there has been some improvement. What is the improvement? Defamation of a Minister is no longer a cognizable offence. That was an absurd plea. No civilised Parliament, no democratic Parliament would possibly accept it unless it declared itself a Parliament of lunatics. But assuming you discard that what are you putting in here? You

are simply categorising different classes and saying that with regard to Ministers great safeguard is imposed. What is the safeguard in clause 25? It says that in the case of a Minister previous sanction of the Secretary to the Council of Ministers will be necessary. Is that a safeguard that in the case of a Minister no prosecution shall be started unless and until his Secretary or the Secretary of the Council of Ministers says: 'I shall give sanction'? Can he possibly be expected to give a fair and independent judgment upon this? It is an absolutely futile process. Can he possibly retain his secretaryship and say: 'The hon. Minister has been defamed; there is this defamatory article; but I will withhold sanction'? After all, what is sanction? Anyone who had to do anything with administration of law or justice knows that sanction is merely lifting the bar. How can he possibly say: 'I will not give you the charter to prosecute'? Therefore, the entire concept is wrong. I would appeal very strongly to the hon. Home Minister; I appeal to his sense of fairness, that he should delete it here and now. That will, to a large extent, bring about a sense of confidence in the Government. The people will feel that this Bill is not really meant as a "Ministers' Protection Bill". Now, what is this? No Court can take cognizance of the offence of defamation unless there is a complaint in writing made by the Public Prosecutor.

Dr. Katju: I beg your pardon, Sir; the private complaint stands and there is nothing to prevent them.

Shri N. C. Chatterjee: I repeat with all sense of responsibility that simply because I say that one particular Minister has taken any bribe, I say that it is an individual offence and he must come forward and vindicate himself. If a Minister says that X as a Member of Parliament has taken bribe, X is to file his complaint and vindicate himself. But, if that Member of Parliament says that Mr. Y or Z has taken bribe as Minister, then that is not the machinery and that is not the method. It is the entire approach that I am contesting. There the whole State is arrayed against him. There the State is the Prosecutor. The State or the organised Government is prosecuting him. Far from welcoming exposure, far from welcoming criticism, far from encouraging the searchlight to be spotted on the dark corners of our public life, it is meant really to discourage this disclosure of the black spots in our Government and in our public life. I maintain that it is against the spirit of our Constitution. I maintain that it makes a conscious discrimination against the spirit of the guaranteed freedom of equality. I maintain that it, to a large extent, throttles the Press in India. I maintain that it will make, to a large extent, fair and free election impossible. We all know that these things are meant really to smother opposition. We know that it is meant really to hit the political parties. What is the good of saying, these may be criticism from a party point of view? If somebody defames a Minister he takes full responsibility. He is not shirking that for a minute; only he says that the State shall not prosecute him simply because he has made a charge against a Minister. This is an amazing state of things when we say that in a democratic government where responsible form of government is functioning, you want special safeguards of this character whereby you put them on a special pedestal. You are giving them special safeguards by saying that a Public Prosecutor must file a complaint. Who is the Public Prosecutor who will have the courage to say: 'I will not file any complaint', when the hon. Home Minister says: 'I have been defamed and I want this prosecution'? Be practical. Let us be realists and let us not be mere idealists. Who is the Secretary or the Secretary of the Council of Ministers who will deny this request? Therefore, I am pointing out that this is the most retrograde feature. This is the quintessence of both reaction and repression. In the name of democracy I

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demand its immediate repeal. It is really an insult to the intelligence of Parliament to discuss such a measure as this. It will seriously affect the independence of the Press. It will seriously affect the opposition parties. It will take away to a large extent the rights of the public and divest them of the democratic right to criticise the Ministers and the Government. It may ruthlessly smash the opposition. My learned friend Mr. Pataskar uttered a sentence which took away my breath: "In democracy Opposition parties may attack Ministers. Show me any democratic country in the world which has got any such protection for Ministers. No civilised country in the world has got such protections; special law of defamation and special safeguards in the case of defamation of Ministers. Do not think that Ministers are only defamed in India and in no other country in the world. Ministers have been here, protagonists of British bureaucrats, special favourites of British Imperialism. From the Montague-Chelmsford Scheme, from the year 1920 up to 1947, the British were ruling and most of the time Congress was not in office. The favourite boys who were Ministers were defamed by Congressmen and defamed by Gandhiji, Deshbandhu Chittaranjan Das and others. They were seriously criticised by people and very serious charges were levelled, but never did the British in the plenitude of their power ever concieve of making any such legislation like this.

I have been told by some Members from the South that Rajaji is opposed to this kind of protection. I do not know whether this is correct, but if that is so, we ought to be told. I am also told that some Chief Ministers of States have opposed this. They are embarrassed by this kind of suggested protection and special favouritism being shown. Bengal and Bombay, I am told, have expressed themselves against any such protection. It embarrasses them; it is unfair to them and they do not want it. If that is so, we ought to know it. What I am submitting is, this kind of provision should not be on the statute book. Now, Madam, there is one other thing....

An Hon. Member: Mr. Deputy-Speaker is in the Chair.

Shri N. C. Chatterjee: Shrimati Renu Chakravartty, when she was in the Chair once remarked that the Chair has no sex.

Mr. Deputy-Speaker: Woman and man are convertible.

Shri N. C. Chatterjee: But, the conversion took place without my knowledge.

Sir, I made my appeal and today I am again making my appeal to the Home Minister. No Criminal Procedure Code, however perfect it may be, will really put India on the democratic map of the world and lead to any desirable results unless you do three things. First it is necessary to reorganise the investigating machinery—we all know it is defective, it is unsatisfactory and often corrupt. Secondly, we want some kind of independent scrutiny by some officer well versed in law. As my friend suggested, a Director of Public Prosecutions or someone like that should be there. Thirdly, I am submitting that there should be immediate separation of the executive from the judiciary. I cannot think of a better argument put forward than what was done by the hon. Dr. Katju when he was Governor of my State. He contributed an article in the *Hindustan Standard* in which he paid a great tribute to the civil judiciary. His Excellancy Dr. Katju said....

An Hon. Member: Then 'His Excellency'.

Dr. N. B. Khare (Gwalior): Now changed into 'malignancy'.

Shri Altekar (North Satara): Sir, I object to the word 'malignancy' being used.

Mr. Deputy-Speaker: It is only an abstract noun.

Dr. Lanka Sundaram: It has no connotation.

Shri N. C. Chatterjee: His Excellency Dr. Katju contributed an article to a leading Calcutta newspaper called the *Hindustan Standard* in December, 1948. The heading is "Separation of Judiciary and Executive." It is a very well-written article, worthy of our perusal. There, he paid a great tribute to the civil judiciary throughout India, but he added this :

> "I think there should be no difficulty in appointing judicial magistrates for trying all criminal cases of every description. Their appointment should be made after an examination and on the recommendations of the Public Service Commission."

Then, Dr. Katju goes on to say :—

> "They should enjoy security of tenure, and they should enjoy absolute freedom from executive control. After all, what is the object that we intend to achieve by separation of the two functions? The object is that the accused person should have the benefit of trial before an independent and impartial Magistrate, who should try and dispose of the case before him according to law without any bias, without interruption, without pressure, without influence of any sort or kind being brought to bear upon him."

I am asking the hon. Dr. Katju, as the Home Minister, to implement what His Excellency Dr. Katju had stated in the *Hindustan Standard* in December, 1948.

So far as we know, every year the Congress met, and year after year it was a hardy annual. You remember from the time of Ferozeshah Mehta and Gopala Krishna Gokhale, the black-spot of British administration has been the fusion of the executive and the judiciary, because the Britishers could not venture to make the judiciary independent at least in this criminal sphere and they wanted a police rule, and because they wanted the enforcement of section 144 and they wanted to have some other sections to be administered by more executive *hukam*. Do you want that in independent India? You call yourselves a sovereign, independent republic, and yet you show the same kind of attitude today. What is the good of saying that we have improved section 30? Kindly see section 30. What is the wonderful improvement they have done to section 30? I do recognise that there has been an improvement in section 30, but if you look at clause 6 of section 30, you will find :

> "The Joint Committee consider that the High Court ought to be consulted by the State Government before investing the Magistrates with power under section 30, to try all offences not punishable with death or imprisonment for life or with imprisonment for a term not exceeding seven years."

You know that this power was available to District Magistrates, Presidency Magistrates, and First Class Magistrates only in some States. They are now giving a charter to every Government in every State to have special Magistrates. I do maintain that this will be illegal, *ultra vires* and repugnant to the Constitution. I am not saying that merely for the sake of scoring a debating point. This section was argued for two days in the Supreme Court of India—yesterday and the day before yesterday,—whether section 30 is legal or not. We have not yet got the judgment. In that particular case, there was an order by the Sessions Judge sending the matter to a Section 30 Magistrate. It may be that the order would be saved because it was made under section 528 of the Code. But it was solemnly being discussed for hours and hours, and the Judges were deeply concerned as to whether section 30 was legal or illegal.

Mr. Deputy-Speaker: *Ultra vires* of the Constitution?

Shri N. C. Chatterjee: Yes. You remember in the case of Anwar Ali

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Sirkar V. The State of West Bengal, the Supreme Court struck down the Special Criminal Courts Act as illegal and *ultra vires*, being repugnant to article 14 of the Constitution. Why? Because they said that there is no reasonable, rational classification, and in order to sustain a reasonable and rational classification, you cannot leave it to the arbitrary will of the executive to say that X shall be triable by the ordinary court and Y shall be triable by the Special Court. If there is a duality of Courts and if it is left to the absolute pleasure—if I may quote the judgment of Justice Das—of the executive to pick and choose a particular person to be sent to the Sessions Court and another person who had committed the same crime to the other Court, then it would not be legal. You know, following the Supreme Court's judgment in America, our Supreme Court has held that it is not necessary to prove actual discrimination in a particular case, because, in such a case, discrimination is writ large on the face of the Statute itself. Therefore, it was hit.

In section 30, what are you doing? Take, for instance, section 473 of the Penal Code, making or counterfeiting seals, etc., with intent to commit forgery, which is met with imprisonment of either description of seven years and triable by a Court of Session. If you kindly look at chapter XVIII, you know there is a Schedule in the Criminal Procedure Code, and if you look at section 473, you will find that the offences are given. In Column 7 the sentence runs thus: "Imprisonment of either description for seven years." Then the heading in the last item is—"Cognizable and triable by whom". Kindly see that it is "cognizable and triable only by the Court of Session." Section 474 is the same. "Imprisonment for seven years, cognizable and triable by the Court of Session." What has the Select Committee done? In Bengal, there was never in operation a section like this—we had never any Section 30 Magistrates. This is only to be found in Oudh, Punjab, Assam and in some other Part C States. But in other States, there is nothing like that: neither in Bengal, nor in Bombay nor in Madras. What they are saying is that we are making an improvement on the Bill, and you were saying that with the sanction of the High Court powers can be given to the First Class Magistrates who have been acting as such for ten years. Then, what happens? There is a Court of Session functioning in a particular area. Ordinarily, and normally, that is the Court and you also invest particular Magistrates with that power of trying such cases. But there is no compulsion under this law that every case under section 473 will go to that special Magistrate. Therefore, it is the police or the executive that comes in. Therefore, I say that section 30 is a very vulnerable section. But I would not put it merely on the ground of technicality —on the technical ground that it is repugnant to the Constitution. What I am pointing out is this. Dr. Katju has said that there should be judicial Magistrates, that there should be a complete separation of the executive from the judiciary, and that it should be done as early as possible. Why don't you declare it here and now that you will do this? You know that this section 30 was really promulgated in those backward areas.

Mr. Deputy-Speaker: In the case of cases triable by Magistrates, do they go to the lowest Court.

Shri N. C. Chatterjee: There is no section in the Criminal Procedure Code like that. There is no section introduced here. In the Civil Procedure Code, there is a section which provides for suits being filed in the court of the lowest grade, that is, if suits could be filed in one, two or three Courts, they shall be filed in the lowest Court. There is no such section here. I am not, however, on the technical aspect. All that I am pointing out is, I am asking my hon.

friend Dr. Katju to consider the constitutionality and the legality and the possible repugnancy of section 30 to the guaranteed fundamental rights enshrined in the Constitution.

Dr. Katju: If I may interrupt just for a minute—if the Supreme Court is going to hold that it is *ultra vires*, we shall follow that decision.

Shri N. C. Chatterjee: It is very kind of Dr. Katju to say. I am sorry I could not make myself clear. In the Supreme Court, that order was made, sending it to a particular First Class Magistrate by the Sessions Judge. The argument was that even then, section 30 would be otherwise illegal. In this particular case, they may not have to discuss the question of legality of section 30 because you know if the High Court or the Sessions Court makes a particular order that a particular Magistrate shall try a particular case then it is a judicial mind which is operating, and not the executive mind. Article 14 of the Constitution only comes in when the State discriminates between man and man.

Dr. Katju: May I again just intervene? If the Supreme Court, in the course of its judgment, indicates an opinion that section 30, by itself, is inconsistent with the Constitution, I shall accept.

1 P.M.

Shri N. C. Chatterjee: The Constitution of India says that he shall have to accept it. It is indeed very kind of him to say that he shall accept it. All that I am pointing out is that it is not a question of technical plea. That is only one aspect of my submission. My main submission, which has been made by many other hon. Members is: why have section 30 at all.

You know, Sir, section 30 was brought in for areas like Punjab, Assam and other—I would say—non-progressive areas, if I may so call them.

Dr. Katju: It is an insulting statement to Punjab, It is not a non-progressive area. No one is non-progressive there. You do not limit progress to Bengal and the United Provinces.

Shri N. C. Chatterjee: I am very much obliged to my hon. friend.

Mr. Deputy-Speaker: The accused there will be able to take care of himself before a Magistrate.

Shri N. C. Chatterjee: That provision was only meant for Assam, Punjab, Oudh, Hyderabad and some other areas.

Dr. Katju: Oudh is one of the most progressive areas in India, especially towns like Lucknow and Barabanki.

Shri N. C. Chatterjee: At any rate the predecessor of Dr. Katju who framed this law thought otherwise.

Dr. Katju: They framed it because Bengal is an old sinner and Punjab a new sinner. So, they wanted cheap justice.

Shri N. C. Chatterjee: If you want swift justice, convenient justice, according to the Home Minister's *hukum* you can always invoke section 30. Section 30 was really meant for that purpose. It was really meant for a situation where you can have quick justice through amenable Magistrates and not through Sessions Judges.

Dr. Katju: Magistrates are not a sort of lepers. I am sorry to say that they are all independent, honest, gentlemen, mostly.

Shri N. C. Chatterjee: They are all independent, they are all honest, they are all estimable gentlemen because they are all appointed by the Government of Dr. Katju!

Dr. Katju: You better have some people living in the Mars to be appointed as Judges.

Shri N. C. Chatterjee: It is the very thing which the Indian National Congress has been proclaiming and demanding for the last sixty years and even Dr. Katju after our attainment of independence assured that this

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would be done immediately. Even if you cannot have complete separation have immediately Judicial Magistrates to try these cases. Why does he not say that today?

Dr. Katju: I am sorry again to interrupt the hon. Member. Judicial Magistrates are being appointed in many States: that reform is under operation already.

Shri N. C. Chatterjee: In that case section 30 would not be necessary at all.

Acharya Kripalani (Bhagalpur *cum* Purnea): Concurrent speeches are going on.

Shri N. C. Chatterjee: Section 30 is really meant when you have fusion of executive and judiciary, when you have a particular type of justice dispensed in some areas, there you have this kind of thing. I submit that this is really a retrograde provision and we should not have anything of this kind.

Mr. Deputy-Speaker: Is the hon. Member willing to have First Class Magistrates to try sessions cases also, if there is a separation of the judiciary from the executive?

Shri N. C. Chatterjee: As a matter of fact, I do not like this section at all. I want this section to be deleted. If you read it you will find that power is being given to District Magistrates and Presidency Magistrates and other Magistrates who have for ten years been working as First Class Magistrates. Just imagine: First Class Magistrates working for ten years as First Class Magistrates and not getting any promotion beyond First Class Magistrates. They must be the most incompetent people. In any civilised State they will go up much higher. But what I am pointing out is that these things are mere tinkering, mere tampering. Boldly have separation of executive from the judiciary and do not try this particular kind of thing.

One of the Minutes of Dissent penned by an ex-Magistrate of standing appended to this report says:

> "This is neither desirable nor necessary. In the first place, so long as the principle of separation of Executive from Judiciary is not carried out in its entirety in any State, it would be manifestly unfair to invest magistrates with such extraordinary powers. Heretofore Magistrates, first class, could impose a sentence up to two years. Now their powers of sentence would go up to 7 years.
>
> There is a distrust and suspicion in the mind of the people against the Magistrates who are working directly under the District Magistrate, supposed to be the Chief Executive authority in the district. There is no such feeling of distrust against the Sessions Judge, Assistant Sessions Judge or any other member of the Judiciary."

When you have a proper judiciary functioning under the High Courts entrust whatever power you like to people appointed by the High Court, nominated by the High Court, approved by the High Court, functioning under the control of the High Court. Do not allow this kind of thing—nominees of District Magistrates to exercise powers under section 30.

I do not propose to go into details, I shall do that at the clause by clause consideration stage. I would, however, like to draw the hon. Home Minister's attention to clause 29 on page 8-9, relating to Section 207 and 207A. The latter deals with Procedure to be adopted in proceedings instituted on police report. We are here having a peculiar amalgam of two kinds of proceedings. Look at sub-clause (4) at page 9. It says:

> "The Magistrate shall then proceed to record the statement of

the persons, if any, who may be produced by the prosecution as witnesses to the actual commission of the offence alleged...."

The eye-witnesses will be taken to the Magistrate and the Magistrate shall record their statement.

Then look at sub-clause (5), which is something unheard of, extraordinary, and opposed to all cardinal principles of jurisprudence.

"The accused shall not be at liberty to put questions to any such witness;"

I will be given notice; I will be standing there; I can take my lawyer. But I will only be a tableau: not one single question can I put, not one question can I even suggest. As a matter of fact, Sir, the accused will be a dumb, mute spectator!

Acharya Kripalani: Silent spectator.

Shri N. C. Chatterjee: Yes, silent spectator.

Mr. Deputy-Speaker: Is it not so now?

Shri Pataskar: No no, now he can cross-examine.

Mr. Deputy-Speaker: For instance, a complaint is lodged before a Magistrate. He can make a kind of enquiry under section 202 before he decides to proceed with the case or drop it. In such cases the accused will merely be present and not take part in the proceedings.

Shri N. C. Chatterjee: But he is not an accused at that stage.

Then again kindly look at sub-section (7). The sub-clause as framed by the Committee reads:

"When, upon such statements being recorded, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged."

Shri Pataskar: This will prevent the accused from showing that he can be discharged.

Shri N. C. Chatterjee: You are giving the accused a chance of being present; also the lawyer to be present; you also make it mandatory on the Magistrate to give him a chance of being heard. How can that opportunity be availed of unless he gets a chance of putting questions. A person is supposed to be in the City of Bombay when a particular occurrence take place. It would prevent the Magistrate from considering the question that the man was actually sitting in Parliament in Delhi at the time of that occurrence. That cannot be put to him even. This opportunity of being heard will be a farce, or a delusion, unless you give the chance to the accused to put questions at that stage. As a matter of fact, very seldom, any cross-examination at this stage is made. Generally, lawyers take the precaution of not cross-examining at this stage. What I am pointing out is that this kind of thing ought not to be there....

Mr. Deputy-Speaker: It is present practice minus cross-examination.

An. Hon. Member: But full opportunity of being heard.

Shri N. C. Chatterjee: What I am pointing out is that once you concede that it is proper to treat the person as an accused, this clause is wholly bad. The old recommendation of Dr. Katju in his original Bill was that the accused shall not be there. The police officers will take the witnesses to the nearest Magistrate and the statements will be recorded and the accused will not be there. That is now being altered. The accused shall be there and he shall be treated as an accused and in the presence of the accused....

Shri S. S. More (Sholapur): It is 164 in the presence of the accused...

Mr. Deputy-Speaker: Does the accused not cross-examine on his own accord in the preliminary enquiry? It is open to him to cross-examine. This will be the same thing as if the accused were there but does not choose to cross-examine...

Shri N. C. Chatterjee: This is compulsorily gagging him under the law—he shall not be allowed—that is the language. He shall not be at liberty to put *any* question to *any* of the witnesses. At the commitment stage, you know very seldom cross-examination is resorted to and the lawyers generally try to avoid it. But in some cases it is done. I know of a big case when there was a communal riot in the town of Calcutta. Mr. Jalan, a very big man, was hauled up and he was discharged simply because a few questions were put to demonstrate that that gentleman was not there. That was proved and that was put to him and he had to accept it and the whole thing collapsed.

Now with regard to section 162, if you kindly look at clause 22, I must admit that the Joint Committee has made a distinct improvement. One of the most amazing things which was suggested was section 162 must be deleted. Now, that deletion has been deleted and section 162 stands...

Shri S. S. More: In a mutilated form.

Shri N. C. Chatterjee: If you kindly look at the proviso on page 6, you will have an idea. You remember that police statements cannot be used as substantive evidence. Under Dr. Katju's original Bill, a radical departure was made and police statements could be used for any purpose. The whole country got a shock and there was a tremendous agitation against it and the Committee has dropped it.

Shri A. M. Thomas (Ernakulam): For any purpose or for corroboration?

Shri N. C. Chatterjee: Anyone who has got anything to do with the law knows how these are done; they are done in a slipshod manner. Judges have deprecated the way statements are recorded by the police. Judges have pointed out that little weight you should attach to them having regard to the reputation of the police and so on. What has the Committee done to this proviso? Now police statement can be used for the purpose of contradiction both by the defence as well as by the prosecution.

Dr. Katju: If permitted by the Court—your independent High Court and the Sessions Judge...

Shri N. C. Chatterjee: Quite right. With the permission of the Court. It is a very peculiar thing...

Dr. Katju: That is the very essence of it. Why do you say it is very peculiar?

Shri N. C. Chatterjee: Ordinarily, prosecution cannot cross-examine its witnesses, it must take the permission of the Court. Unless you declare a witness hostile, you cannot do it.

Mr. Deputy-Speaker: Under this proviso, how is it to be used for corroboration. Even without the proviso, the previous statement may be used...

Several Hon. Members: No, no.

Mr. Deputy-Speaker: For the purpose of contradiction.

Shri N. C. Chatterjee: My main point is this. I have in my memorandum quoted certain judgments of High Courts. Take for instance Justice Collister and Braund—one ICS Judge and another, a Judge of experience. The ICS Judges have been carrying on the administration of criminal justice. They say that these statements are recorded in a very slipshod manner and not only that but sometimes they take down what suits them at that stage.

It is never read out to the man. It is never signed and it should not be signed. Sometimes as my friend Mr. Pataskar pointed out, it is recorded some days later by a *munshi* or somebody after he goes back from the scene of occurrence. (*Interruptions*) Simply because some thing has been recorded there, of which there is no guarantee of accuracy, would it be right that this should be used for discrediting that man? Supposing I can find a man; he is there for the prosecution as a witness but he tells the truth in cross-examination. Supposing what he states is true, immediately you allow the police statement to be used. Ordinarily, what will happen? A declaration that he is a hostile witness will follow in the majority of cases, if not 99 per cent. of the cases, the Public Prosecutor will show to the Magistrate his statement which was recorded and it will immediately be allowed and that man is finished. That evidence will no longer be beneficial to the defence; it will not be proper really to use it for that purpose from the prosecution point of view. If I may read out to you that portion of the Judgment of Justice Collister and Justice Braund, these Judges said: "The purpose of section 162 is to protect accused persons from being prejudiced by statements made to Police Officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from prejudice at the hands of persons who, in the knowledge that an investigation has already started are prepared to tell untruths." I am pointing out it is a very serious matter and this should not be allowed. You may say that what is good for the defence ought to be good for the prosecution. But knowing the object—why it is being shut out—we should not allow this to be done, because there is no guarantee or accuracy of these statements.

There is one more thing. Punnishment should not be really an end in itself. As you know, modern jurisprudence has said that it is only a means to an end. The Britishers looked at the punitive part of it. The Anglo-Saxon jurisprudence was built upon the idea of wergild. The world knows *Lex talionis*—limb for limb, tooth for tooth, eye for eye. You must punish the man for the wrong he has done to the community. It was community vengeance. Therefore, you must punish the man for what he has done. Rob him of that particular limb which he has broken. That was the attitude of the old British jurists. That has fundamentally altered. Now the personality of the man, his economic condition, his heredity, environments, etc. are taken into account. The reformative theory is much more important. The educative part of it—that aspect should be the real object.

An Hon. Member: You must re-condition.

Shri N. C. Chatterjee: Re-condition humanity, rehabilitate humanity rather than treat him as a leper. My hon. friend is right—Dr. Katju is right—when he said that it is a disgrace that there are so many under-trial prisoners in jail. When I had the privilege of being taken to the Delhi jail last year along with Dr. Syama Prasad Mookerjee, I found about 900 under-trial prisoners there. I was released by the Supreme Court on the 12th April. Thanks to Doctor Katju, I was taken in again on the 15th May. Then I found that the number was more than a thousand. I distinctly remember that the number had gone up. That means that practically half the population of the jail were under-trial prisoners, and God alone knows the period of their stay, how many weeks, months or years.

Pandit K. C. Sharma (Meerut Distt.—South): It is generally the case.

Shri N. C. Chatterjee: And a perfectly disgraceful state of affairs.

Acharya Kripalani: Providing for the unemployed!

Shri S. S. More: You should be sent there again to have the latest figures.

Shri N. C. Chatterjee: Along with Mr. More!

Amendments of Sections 108 and 109 were really meant for Dr. Syama Prasad Mookerjee and me. They will be used against Mr. More also if the need comes.

They are putting in a clause under which a Magistrate of Delhi can order a person in Travancore-Cochin or Bengal asking him to desist from doing something. Previously, as you know, you must have territorial jurisdiction as well as jurisdiction over the person. Now that is being altered. That is really a disgraceful state of things. There should be some kind of machinery for scientific investigation. There should be a Central Institute immediately started. There is no use indulging in mere denunciation of the police force. It is a national police force today. We pay coolies' wages to Police Investigating Officers. In Bengal an Investigating Officer often gets ninety or hundred rupees when he is investigating a crime like murder and so on. You must also pay the police and the Magistrates better and divest them of other extraneous duties like attending on V.I.P's, *Van Mahotsavas*, Ministers, and Deputy Ministers and make them do their real duty properly.

Pandit K. C. Sharma: I am rather painfully surprised to find these changes being introduced just at a time when the first half of the Twentieth Century has passed away. Criminal law, as it is understood, has two essential objectives. One is the security of the State. The other is the safeguarding of the liberty of the individual. In a totalitarian state the security of the state is emphasised for the very simple reason that coercive process is the only sanction to keep the state intact and therefore the law is hard, the procedure is short, the punishment is quickly given and it is harsh and deterrent. When a foreign nation rules a subject race, generally the punishment must needs be deterrent, it must be harsh and the procedure quick, because the people should be terrorized so that they may not have the courage to stand against the state or to dream of what is called liberty, to dream of a life which essentially gives what is the right of a human being, to stand erect to face things which do not appeal to his conscience. Therefore coercion to some extent is generally the feature of a foreign rule. But at the same time the British people, because they were wise by long experience of their administration, devised a means to create a sense of confidence in the people of having impartial, efficient and good justice. Therefore they gave the right to the accused to have the fullest opportunity to safeguard his liberty. Now it is a paradox, rather enigmatic, that a welfare state should come, when one half of the Twentieth Century has passed, to curtail that liberty, to curtail that safeguard for one's liberty.

Shri B. S. Murthy (Eluru): Agonizing indeed.

Pandit K. C. Sharma: It is easy to say there are so many under-trials. It is easy to say that a murder has taken place, that a Judge has acquitted the accused, and another murder takes place. Very good. But that is no reason to curtail the opportunities, which by a long experience of the administration of justice, have served well so far as the accused is concerned.

With regard to this subject I would request you to take into account the circumstances, the environment, the habit of people and the behaviour of the common man with regard to criminal cases. It is an open secret that a crime takes place. I have yet to find any major offence in which the chalan was made when the crime was

concoct false cases. But the people do not come to give evidence. My experience is that decent people dislike to come in the witness box. Why? Not because there is harassment. I do not believe in it. What is the harassment? It is everybody's duty to help in the administration of justice and come as witness. What harassment is there? Is there not harassment in getting a ticket at the railway station or if one goes on business and has to stand in a queue? Then why not in a very important matter for the State the people like coming and giving evidence for helping in the administration of justice? The simple thing is we are not social minded: we have no social consciousness, and that is the root cause of the evil. Why are there so many people in jail while cases are acquitted? Why is false evidence given? What is there to distinguish between truth and falsehood for a people who with their number being forty crores in this land have been ruled by a tiny number of people about whom we said that their civilisation was not very old, their culture was not very great. they have not got a great history behind them? When we submitted to a foreign rule nothing remained to distinguish between truth and falsehood. What is truth and falsehood so far as a slave is concerned?

So my point is to base a change of law because certain things happened in different circumstances is entirely a wrong logic. It has to take a new turn. When you take a new turn you have to create a new life. Otherwise you are a dead person and a petrified administration. If you cannot create a new environment, a new sense of duty, what for are you here? Is it simply writing things like clerks? The modern jurisprudence is functional, a force as against classical jurisprudence which is static. This is my point and I very strongly object to these proposed changes. Who does the case start? I say the case starts...

Mr. Deputy-Speaker: The hon. Member is generally opposed to the changes made in the Select Committee; I take it that is what he means?

Pandit K. C. Sharma: I am coming to the changes against which I stand. I very strongly oppose these changes of curtailment of the right of cross-examination in warrant cases.

Mr. Deputy-Speaker: The House is supposed to have agreed to the principle. We are now on the changes made by the Select Committee.

Pandit K. C. Sharma: Not necessarily.

Mr. Deputy-Speaker: We are not going back to the principle.

Pandit K. C. Sharma: What for are we discussing this? We are discussing whether the changes made by the Select Committee are acceptable to the House or not.

Mr. Deputy-Speaker: Yes.

Pandit K. C. Sharma: So, I am objecting to the changes.

Mr. Deputy-Speaker: Therefore, the hon. Member wants the original Bill as it is.

Pandit K. C. Sharma: No, certainly not. I had no opportunity to oppose the original Bill. Otherwise, I would have stood up and opposed it.

Shri Sadhan Gupta: He wants a better Bill.

Shri N. C. Chatterjee: A much better Bill.

Pandit K. C. Sharma: I say that in minor offences, it is the summons procedure that is adopted. In major offences, either they are warrant cases or they are to be tried by a Sessions Judge. In both these cases the accused has the right to cross-examine as soon as the witnesses appear. In war-

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rant cases under section 252 what a clever lawyer does is he just touches the fringe of the evidence. He finds out whether the witness was present or not, whether he is telling the thing which he actually has not seen. Just a few questions. No intelligent lawyer would go in for a long cross-examination under section 252 before the charge is framed.

Now, Sir, what is the meaning of the charge? That is my point. Framing of the charge means that every condition that is essential to constitute an offence has been fulfilled, is present or has been satisfied. Now, the hon. Home Minister would like a charge to be framed without any evidence whatsoever. This is an impossible position. How is an essential condition to constitute an offence satisfied without any evidence whatsoever? Is police an evidence, or documents an evidence, or is an evidence of witnesses not cross-examined evidence worth reliability? I say in this country the only safeguard for an accused is the right of cross-examination.

When article 21 was passed by the Constituent Assembly, it took into account the fact that in the American Constitution the wording is "due process of law" and in the English law the wording is "the law". "Due process of law" meant that the accused will have a right of defence, and the right of defence includes the right of cross-examination. The right of cross-examination in order to mean anything must needs be effective, and the right of cross-examination is not effective unless an accused had two chances—one chance to know whether the witness speaks a lie or not, whether the witness was present on the spot or not, whether he relates the facts as he observed them or he relates as he did not observe or whether he is made to state facts which he himself does not know. This is the first stage, that is the reliability or credibility of the witness, the veracity of the man who deposes. And then comes the second stage, to build up his own case, *i.e.*, to build up the defence, to explain away facts and circumstances against him. These are the two aspects of cross-examination. Unless these two opportunities are given, cross-examination cannot be effective. My humble submission is that the curtailment of the right of cross-examination both in Sessions cases at the committal stage and in warrant cases before the framing of the charge is a violation of the Constitution and is doing away with the long-established practices of criminal justice. It is a serious wrong to the people. I think no lawyer worth the name would like to accept this law, and I wonder how the lawyer Members in the Select Committee remained sitting there and tolerating all this sort of thing. I cannot understand the head or tail of this.

Mr. Deputy-Speaker: According to procedure established by law.

Pandit K. C. Sharma: "Law" means the law accepted by the civilised conscience of the community. Law does not mean that A who was married to B yesterday will now allow B to go to the bed of C because the law is so framed. Such a law is nothing. Law means it is law based on certain principles, principles accepted by the civilised conscience of the people, not merely the verdict given by the majority of the people sitting here.

Shri N. C. Chatterjee: May I remind my friend that in Gopalan's case this identical argument was advanced. The Supreme Court has rejected it saying that "the law" does not mean *jus naturale* or natural law, but it means codified law.

Pandit K. C. Sharma: That repudiates the rule of Law. So, my humble submission is that the training and habit of our people, the tradition as

we have worked, demand that the accused should have both in warrant cases as well as in Sessions cases two opportunities of cross-examination. That is under the warrant cases under section 252, then under 256 after the framing of the charge, and then under section 257. That is three times cross-examination, but my humble submission is that the practice is very few questions are put before the charge, and full cross-examination always takes place after the charge is framed under section 256 and it is seldom that section 257 comes into play—very seldom, in very few cases. Nobody takes his stand calling the witness thrice. That is not the practice and very few magistrates do it.

Pandit Thakur Das Bhargava (Gurgaon): That is at the discretion of the magistrate.

Pandit K. C. Sharma: Very few magistrates are so generously minded as to yield to lawyers' desire in this respect.

I have already made my submission with regard to the framing of the charge. This procedure that is proposed by the Home Minister is illegal, it is unsound. How can a charge be framed without any evidence? And evidence has a particular significance. Evidence must be evidence that can be relied upon. Any statement cannot be relied upon unless its veracity and reliability are tested by cross-examination. So, charge is impossible. It is an impossible proposition to frame a charge—both in the proposed warrant cases procedure and the proposed Sessions cases procedure, the charges being framed without any evidence whatsoever. The meaning of "charge" has not been changed. The language of section 221 stands as it is. It has not been amended. So, it is an impossible proposition to frame a charge without evidence. This change is unsound, illogical. It does not appeal to reason. It serves no good purpose whatsoever.

Now, I would touch another point. There are two procedures—one is upon a private complaint, another is on a police complaint. Now, the law has to protect the liberty of the accused. "A" is accused by "B", a private citizen. Now, "C" is prosecuted by the police, on a police complaint. In both the cases the charge is that of theft. The punishment is the same, the nature of the crime is the same. The person who is being prosecuted on a private complaint has got three rights of cross-examination under 252, 256 and again if the magistrate is so kind under 257. Now, "C" unfortunately whom a sub-inspector sends for prosecution to take his trial, has no such right. He has only one right. Is it the equal protection of the law as envisaged under article 14? Is it equal protection of law? What is protected under the law?—the liberty of the man. Now, how has the quantum or the quality of the liberty of the man changed simply because the prosecution agency happens in the one case to be a private citizen and in the other case the police department. The objective is the same, the liberty of the man. The offence is the same, the punishment is the same. How is there equal protection of law? Therefore, this change violates both the spirit and the letter of the Constitution, *viz.*, article 14. So, it is against the Constitution, it is against its spirit, it is against what is called the principle of criminal jurisprudence accepted by the civilised conscience of the community. I beg to submit that it is a bad law; rather, it is not a law at all.

Kumari Annie Mascarene (Trivandrum): Expedient law.

Pandit K. C. Sharma: Therefore, my humble submission is, as many of my other hon. friends have pointed out, that there should be a Law Commission, and we should wait until they make their report.

My experience of this Criminal Procedure Code is that whatever the Englishman may have done, he has given ample opportunity to the unfortunate accused to defend himself. That opportunity and that right should not be curtailed.

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As to the question of the increase in the number of crimes committed, and the number of people in jail increasing every day, I beg to submit that no law, however strict, and no machinery, however elaborate, can prevent the commission of crimes, as long as there is unemployment. When there is unemployment, when there is poverty, and when new mouths are added every year, I feel this is a problem which no criminal law can meet. It is an economic and social problem. If the crime is to be eliminated, it can be eliminated simply by producing more wealth, by lessening the number of mouths coming every year, and by doing many things which the conception of a welfare state demands. A sound law must needs be based on economic and social conditions of the community.

Then, it is not so much the law in fault as the personnel, *i.e.*, the judges and Magistrates. I beg to submit—and it is my painful submission—that even though seven years have passed since Independence, still we have not got in the administration, persons from the people, and of the people. When Britain was ruling...

Dr. Lanka Sundaram: Surely, they are from the people. (*Interruption*)

Pandit K. C. Sharma: I say, they are neither from the people, nor of the people. I paid ten visits to the Indian Administrative Service Training College, and I put questions to the fifty people there, but none of them said, "I came here for the service of my people." They said, "we came here leaving aside the university job of professorship, because there was much more remuneration here".

An Hon. Member: Quite honest.

Pandit K. C. Sharma: They may be honest, but they are not true to the people, or to the land they are born in.

Mr. Deputy-Speaker: Do they belong to the Indian Administrative Service?

Pandit K. C. Sharma: Yes, they belong to the Indian Administrative Service. And they would be the Magistrates in the future. Some of them who are correlated with the judicial service might not be doing better. In the Englishman's time, when the British were ruling here, they created two classes; the people, unfortunate as they were, and the ruling class. (*Interruptions*) About Britain, it is said that it has been ruled through centuries by English gentlemen. Now, what is the definition of a gentleman? Harold Laski said, a gentleman is a person who can trace his three generations back to his grandfather as not being related to any businessman, and not doing any trade or engaged in Commerce. So, a gentleman is one who is never required to earn his living; one born with a silver spoon. There is something of a generous, magnanimous, and broader outlook in him. That is the definition of a gentleman. If you ask me, what do you mean by the term of "people", when you say, of the people and from the people, I would say, if he can trace his three generations to the class or sort of occupation which is producing wealth, then he is one from the people. What interest has a man got when seven generations have been there in the city, doing some clerical job, or doing the lawyers' business, or doing something of the sort that is divorced from the people? I say, in every country and in every enterprise, there are two classes of people, one the class of people who build a thing, and the other the class of people who fashion a thing, or rather take benefit from the structures.

Shri M. S. Gurupadaswamy (Mysore): What about those who destroy a thing?

Pandit K. C. Sharma: In this country, we are building a state. Everybody cannot build a state. I as a lawyer do not build a structure. I simply fashion it. I too perform a function which a flower-pot does in a

room. But the flower-pot comes, when the walls have been raised, and when the roof is there; the mason builds it, the worker builds it, and the other people build it.

So, when I say, the administration is not of the people and from the people, I mean that these recruited gentlemen of ours have neither the sympathy with, nor the desire to serve, the people. Their only objective is to rule the people, which is an impossible conception in the present state of affairs. This is a paradox. I asked Dr. Katju at one time, who are the members on the Public Service Commission, what is their link with the people, what are they doing in the name of the people, what sympathy have they got for the people, etc. It is a blind man's job—the People do not come in and do not know what they are doing. You can go to the Indian Administrative Service Training College, and meet everyone there. I have put questions to them, and I am ashamed to say that there were quite a good number of people who could not describe a cow, about which so much humbug is made saying that the cow is the mother and so on; but our to-be administrators in the Training College do not know anything about the cow.

Mr Deputy-Speaker: He knows the cow.

Shri V. G. Deshpande (Guna): He knows that the cow is the mother of calves.

Pandit K. C. Sharma: You just have this experience by going there. He just will not know about it. Out of the fifty that were there, there were only two who could have a horse-ride. What I mean to say is that they have had no experience of life as such. (*Interruptions*). One of the authors, Spengler has said in his *Decline of the West*—it is a very famous book of his—the most deformed creature ever seen in a beautiful form is an Indian Oxford graduate.

Shri Tek Chand (Ambala-Simla): I object.

Pandit K. C. Sharma: I am only quoting him. He said that the most deformed creature in a beautiful form is an Indian Oxford graduate. He has given the reason also for that. It is because he has thrown down in the Ganges whatever is precious and whatever is endurable in the Indian traditions and has taken nothing from the Thames.

Shri Tek Chand: I voice my strong refutation of what is being said.

Mr. Deputy-Speaker: The hon. Member is referring to a beautiful form. When a graduate is in an ugly form, there is no quarrel. How is all this relevant to the Criminal Procedure Code?

Shri Tek Chand: He is an Allahabad graduate.

Pandit K. C. Sharma: My hon. friend should be contented that I am giving him a beautiful form.

Mr. Deputy-Speaker: I think the hon. Member has nothing more to say.

Pandit K. C. Sharma: I am just finishing.

My humble submission is that it is not so much the law or the procedure that is at fault, but the fault is with the whole recruitment system. The system of recruitment is bad, and we do not get the right type of persons. Then, the whole training is also bad. It is there just for one year. What is the use of one year's training? How can a university graduate become fit to do the job, an important job that is entrusted to him, after six months' or one year's training? So, the recruitment should be better. The Public Service Commission should be manned by better people, by more experienced people, who know of the village, and who know of the problems of the village. Further, there should be much better training also. That would be a better way of improving things rather than to indulge in these changes which do not constitute a sound law,

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but which makes the situation rather worse and of very doubtful utility. That is my submission.

Pandit Munishwar Datt Upadhyay (Pratapgarh Distt.—East): After the exciting speech of my hon. friend...

Pandit K. C. Sharma: Not exciting, but sound one.

Dr. Lanka Sundaram: Stimulating.

Shri S. S. More: Provoking.

Pandit Munishwar Datt Upadhyay: .....I would like to make certain observations in respect of the real object of the Bill. I read the Statement of Objects and Reasons in the beginning, and as I expected, the Statement of Objects and Reasons says that the real and the first object of this Bill is to provide facilities to the accused in his defence. In fact, when we are going to amend the Criminal Procedure Code, that should be the main object which we should have in view. The hon. Minister very rightly put that as the main object of the Bill. But, as a number of speakers spoke on the subject, I found that the main object did not remain the same and it gradually changed into speedy, less expensive and less cumbersome administration of justice. When, gradually, the emphasis was being changed from the first to the other one, I thought that that emphasis was only of some hon. Members who were very much concerned with the delay in the disposal of cases. A number of lawyers who had the experience of courts like myself were very much concerned with the delays that were taking place in the administration of justice in the criminal courts, mostly in the Magistrates' courts. But, then, I found that even the Deputy Minister who spoke in the last session said that the main objective should not necessarily be giving facilities to the accused in his defence but there were other considerations also. I shall just quote a few words from his speech.

> "I was wondering whether in this House they were considering the larger interests of the country or they were only thinking of the rights and privileges of the accused."

This appeared to be the main objective, according to the Deputy Minister who spoke on the subject in the last session. He again went on to say:

> "We have to take into account, in the first instance, the larger interest of the community."

Dr. Katju: The Deputy Minister?

Pandit Munishwar Datt Upadhyay: Yes.

Then I thought that although the hon. Minister who was really a very eminent lawyer and who had really the interests of the accused at heart had put that as the objective, that objective remained only on paper and I saw that in the House the hon. Members who spoke have emphasised this aspect of the question, namely the disposal of the case should be speedy and they should be less expensive, they should be less cumbersome and so on. There is no doubt that this aspect of the question is not less important. Still, we should not lose sight of the main object in amending the Criminal Procedure Code at this stage, when we have attained independence—the first objective that has been mentioned in the Bill by the hon. Minister.

There is no doubt that considerable improvement has been made by the Select Committee over the original Bill that was brought by the hon. Minister before the House. There is also no doubt that the intention of the Members of Parliament here that the object in changing the law of Criminal procedure should be that the law that existed up till now was the law that was framed by the foreigner who was ruling here—and as a number of hon. Members have said, it was a Police State of foreigners who wanted to remain in occupation of the country—should

be changed. Then, if that fact is admitted—I think that fact is admitted and nobody can deny it—then the improvement should have been just in the other direction. The improvement should have been that the accused should have more facilities for his defence when he appears before a court of law. But, I am really sorry to see that this Bill which is intended to give more facilities to the accused is really withdrawing facilities from the accused in his defence. It is more a Bill intended to withdraw the facilities, than the one that has been meant by the hon. Minister in the Statement of Objects and Reasons. If I go into the details of it, it may take time and the time at my disposal is limited. Therefore, I would simply mention those provisions of the Bill, after it has been improved by the Select Committee. I would simply draw the attention of this hon. House to these provisions. These provisions are surely in the nature of withdrawing the facilities from the accused in his defence. They do not at all go to provide more facilities to the accused.

There is the curtailment of the right of cross-examination of the prosecution witnesses. We have hardly one time only for cross-examination, while, formerly in the police State, we used to have three occasions as it has been stated by so many Members—and at least two times we had necessarily (*Interruption*). Then, there is the piecemeal examination of prosecution witnesses which has been provided. It has been provided that if a witness is present he must be examined and he should not be allowed to go. In that case, if only one witness is brought by the prosecution on one day, he shall be examined that day and if another witness is brought on another day, he shall be examined on that day. In that case, cross-examination on behalf of the accused of the prosecution witnesses will be absolutely meaningless, if all the witnesses are present on the same day for cross-examination on a question of facts. So, that right of the accused is also being curtailed.

Then, there is discharge by the committing Magistrate. Even in small cases, in most insignificant cases, the magistrates will not discharge anybody. Necessarily, they will commit. So far as the examination of witnesses is concerned, that is curtailed to a certain extent and to that extent cross-examination by the accused is not allowed. That too, is a curtailment of the rights of the accused more than anything else.

Then there is the dispensing with the attendance of the complainant in certain cases. That goes against the accused. Then, formal evidence by affidavits. Evidence can be given by affidavits. If the witnesses are coming before the courts, then it gives the accused to put certain questions to the witnesses. That is curtailed now.

Dr. Katju: Not at all.

Pandit Munishwar Datt Upadhyay: See clauses 98 and 99.

Dr. Katju: The witness can be cross-examined by the accused if he so desires.

Pandit Munishwar Datt Upadhyay: Certain evidence is being tendered. His being recalled and cross-examined is possible only if the witness appears before the Court.

2 P.M.

Then, there is the *de novo* trial at the will of the accused. Formerly it was not possible to deny *de novo* trial if the accused wanted it. Now *de novo* trial will depend on the whim and caprice of the succeeding Magistrate. A Magistrate who has not seen the witnesses, how can he say whether *de novo* trial is necessary; whether witnesses who have already given their statements should or should not be called back? Now, this is left to the whim and caprice of the Magistrate. In case the first Magistrate leaves a case in the middle and a second Magistrate comes, then it is for him to decide whether *de novo* trial should be allowed;

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whether the witnesses who have already made their statements should be recalled or not.

There is provision for the right to apply for special leave to appeal against an acquittal in a complaint case. Up till now in complaint cases and such other cases there was no right to appeal. Now, on a private complaint a complainant shall have the right to apply for special leave to appeal in the High Court and if he gets the leave, he shall be able to file an appeal. This is another curtailment of the right of the accused.

Then I come to defamation against public servants. In such cases the Public Prosecutor can prosecute before a Court of Session. Up till now unless the public servant himself goes to the Court it was not possible for the complaint to be lodged. Now, the Public Prosecutor will go, without at all referring to the person who has been defamed—the complainant—and he shall make a complaint before the Court of Session which shall be a good case.

I have given only a few instances. There are other instances in the provisions that are here by which the rights of the accused have been curtailed. Therefore, as I submitted in the very beginning, the Bill as it has emerged from the Select Committee has curtailed the rights of the accused and the facilities that the hon. Minister wanted to give to the accused in his defence have been very much limited.

Another point that I would like to submit is: if by this amendment we could, of course, bring very good improvement to the community and to the society in the administration of justice, then it was desirable that we should hurry up with this Bill and pass this piecemeal legislation. As Pandit Thakur Das Bhargava said the other day, Heavens will not fall or Heavens will not come to us in case this Bill is not passed or this Bill is passed. Therefore, what is the use of hurrying up with this piecemeal legislation when we find that a fuller legislation is likely to come up within a year according to the Report of the Select Committee? Of course, I can very well agree to this measure if there were such important amendments which would be useful to the society and the community. If it will do good in the twelve months that are coming, let us make use of these very good provisions for these twelve months. As I submitted, these provisions which are here in this Bill are worse than the provisions that we had formerly in respect of the accused. Therefore, in such circumstances I would submit that we should not hurry up with this Bill and we may wait for the fuller and complete legislation on this which might come up within the next twelve months according to the promise that has been made in the Report of the Select Committee itself.

With regard to the delay in justice, if you really want to consider about the reason for this delay, it has been my personal experience and therefore, I would submit that the real reason for this delay is neither the Procedure nor any Law, but it is the persons, the machinery that is working the Law which is responsible. It is the prosecution that is more responsible for it than anybody else. Some hon. Members said yesterday—I think it was Pandit Thakur Das Bhargava—and I completely agree with him, that it is the police that is responsible. My experience has been that, if a police case continues for six months, five and a half months are taken by the police and only 15 days are left for the defence when the defence witnesses come, arguments are submitted and judgment is also given. So, 5½ months are taken by the police. Sometimes some Inspector is absent, sometimes the Prosecuting Inspector is absent, sometimes the witnesses have not turned up and sometimes the paper is not there. So, things linger like

this and the Magistrate becomes almost helpless. What can he do? He has to wait for the prosecution evidence and the Prosecuting Inspector who is to lead the evidence. Therefore, my submission is, if we have to bring any change in the administration of justice, if you want that the cases should be disposed of quickly, then the only way to bring about this is to ask the prosecution to proceed more speedily. If you want to frame any Law, we must frame a Law that within such and such a period if the prosecution witnesses do not come, then the prosecution should lose the case and the defence should be proceeded with; otherwise it is not possible to correct these people. I know attempts have been made by the hon. Minister. In spite of his very good intentions, in spite of the fact that he would like that justice should not be expensive, it should be speedy and all that, he shall not succeed in his attempt. Therefore, I submit that he should try to correct the machinery; he should try to improve the machinery; otherwise it will not be possible for him to do it.

As regards the provision in this Bill with regard to defamation of public servants and others, no doubt, it is an extra-ordinary provision. Even if some sort of enquiry is ordered, the people have no faith in the enquiry for they say that the enquiry has been ordered by Government and the person who has been appointed for making the enquiry is an appointee of the Government and therefore we cannot rely on it. The Government is also placed in a great fix; there is no doubt about that. People are talking a good deal about corruption. They point their fingers at that Minister, this Minister, this President, that Vice President, public servants and so on. The Government are in a fix as to what to do? How to clear the position? To send everyone of these officers to the Court to file their complaints so that cases may be proceeded and their position vindicated, that also is a very cumbersome procedure. It is not only cumbersome but is also difficult because the work of the Government will be held up as these persons shall have to be away from duty. These difficulties are there and I quite realise them. In spite of that I feel that it is not proper that in such cases the Public Prosecutor should file the complaints. At the same time I am very thankful to this Committee for they have considerably improved it. Now it is not in the hands of the police; that would have been worse. There is no doubt that the improvement is considerable. But, as some hon. Member said just now—I do not remember the name—that even the Public Prosecutor has got to obey certain bosses against whom complaints have been made, I think that is not a correct thing. The question of sanction by the Secretary or the prosecution of the complaint by the Public Prosecutor will not create any confidence in the Government and in the intention of the Government that they want really something independent to be done. So, in these circumstances what to do? I would submit that this sort of law, probably, does not exist anywhere so far as I know. Therefore, this is not necessary and let things go on as they are and in one or two cases complaints may be filed by the persons defamed where it is likely that if people are convicted it may be a lesson for others. This is a very difficult position and I myself am not certain what course to adopt.

So, as I submitted in the beginning the provisions that have been made in the Amending Bill are by no means better in respect of offering facilities to the accused for defence. As regards expenses it has been said that the expenses would be less. I submit that expenses might be even more because if the cases were not fully discussed in the court of the Committing Magistrate and cross-examinations were also made, then when the cases go to the Sessions Court quite ready and prepared, the Sessions Court generally takes only

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5 to 6 days and not more than that. It is only in the Sessions Court that people have to pay very heavily. Therefore, if now, in the Sessions Court people have got to proceed with their cases for a fortnight or three weeks, then they will have to incur double or even treble the expenses that they were incurring in the Magistrate's Court, in conducting the case for about 21 days in the Sessions Court. Therefore, so far as expenses are concerned, we are not in any way reducing the expenses. The expenses might be even higher. So, in the case of expenses there is no advantage. So far as you want to give facilities to the accused, there is no advantage to the accused at all. So far as you say it will be speedy,—I do not know. It might be a little more speedy. The machinery of the prosecution, as it is, is such that you cannot expect much speed.

Now, one more point and I shall finish. And that is about warrant cases. Complaint cases are generally all minor offences and the police cases are all of major offences. So far as the major offences go, you are not providing the facility of cross-examining twice or thrice. But so far as these small insignificant offences go, the cases which are based on private complaints generally, which the police do not take cognizance of—they do not chalan them—you are providing cross-examination twice or thrice. This is strange and ridiculous. I could not follow it. The same thing is done with regard to the sessions trial, and warrant trial. So, my submission is that these provisions, as they have come up, have been made up in haste or hurry. Either they have not been fully considered or probably they have escaped notice. I do not know how it has come about. I hope our lawyer Members here who were on the Select Committee must have paid great attention to it, must have considered it very thoroughly, but I feel that very many things have escaped their notice. If those things are allowed to wait for that occasion when the entire code comes up for taking it into consideration, then, I think that would be the best course.

Shri Frank Anthony: I am speaking on this Bill, as it has emerged from the Select Committee, with a heavy heart. With all due respect to the Members who signed the majority report, I can only feel they have approved of this Bill in its present form because in their approach they have not sought to appreciate fundamental issues. I believe that they have approached each provision in a piecemeal, detached kind of way and have sought to put it in terms, let us say, of trying to meet the Home Minister half way and trying to give a sop to their own conscience and a sop to the Minister. I feel that in doing this, they have perhaps unwittingly evaded attention to fundamental issues or fundamental concepts or principles of criminal jurisprudence. I feel—and that is what I am going to address myself to—that fundamentally, the Bill is as objectionable as it was when it was first placed before us.

So far as the fundamental concepts are concerned, they represent a radical and reactionary departure from recognised principles of criminal jurisprudence. I am prepared to concede that some worth-while amendments were made in the Select Committee. But I feel that most of those amendments, however welcome they were, were of rather comparatively inconsequential nature except perhaps for the fact that the Select Committee did, and to my mind they achieved some substantial victory there,—they rejected the proposed amendment to section 435 which intended to curtail the powers of the High Court in revision. Apart from that, my own feeling is, whatever amendments were made in the Select Committee, were inconsequential. The result is that we still have certain radical amendments proposed

here in this Bill which, to my mind, give grist to the executive mill which only strengthens the police machinery and only shackles the accused more effectively. I join issue with the Home Minister on this alleged need for radically changing the basis of our criminal procedure. I think we tend owermuch to slogan-mongering and to cliches in this country, because this system of criminal administration was the creature, in one way, of our foreign regime. We tend to damn it, bell, book and candle. But my own feeling is this: that while it may have been administered by a foreign regime, that, in essence, was based on unacceptable principles of civilised criminal jurisprudence. As our own Chief Justice has remarked, there is nothing radically wrong with our system of criminal jurisprudence, and with our procedure. The defect is to be found in the machinery, in the personnel. That is where I feel that the whole approach to this problem has been wrong. We have—at least the Select Committee—have sought to approach it in a kind of mechanical way. They have thought that by tinkering with the provisions here and some provisions there, you can change the whole basis of this particular administration. My own analysis is this: I believe that most, if not all, of our ills stem from the fact that your system of administration suffers from what I regard as moral nihilism. There is a moral paralysis which benumbs the whole system of criminal administration in this country. What is the reason? That is the reason for all your ills. The fact that there is perjury, the fact that there is fabrication—all these ills are due to this main, fundamental cause which, as I said, is moral nihilism which afflicts and paralyses your criminal administration. What is the cause? That cause is not going to be removed by tinkering with the provisions here or tampering with a provision there. It is a deep moral menace, and we will have to get to the bottom of it. Your system of criminal administration is polluted not at the source, because the source is the legislature, but from the very beginning. What is the beginning? I do not want to offend the Home Minister. He gets very indignant, righteously, Sir, when we talk of his police officers or his Magistrates. But let us accept the realities. What are the realities? I am not doubting the fact that we have many conscientious investigating officers, highly estimable Magistrates. But the fact is that in the investigation stage, by and large, you get investigating officers who are people who are conscienceless. They are utterly unscrupulous. What is their stock-in-trade? What is their repertoire of the average investigating officer? It is only fabrication; fabrication of the case diary. I find in the Punjab and some other States, fabrication is a matter of course. Fabrication of an alleged discovery of a weapon of offence, fabrication of the seizure memos. Their stock-in-trade is fabrication. The current of your administration is polluted from that point at the very beginning and that evil breeds evil. I am not suggesting that there is no evil, but, as I said, the evils derive from the persons who are associated with your administration, not from the procedure and not from the system. In nine cases out of ten, the investigations are tainted. It leads to that evil. That evil breeds further evils. It sets up a process; it becomes a vicious circle. The accused feels that he could meet that evil only by another evil. He feels that to meet the fabrication by the police, he himself must fabricate his defence, and not seldom, some members of the legal profession too, feel that in repelling all the evils of fabricated cases, they shall be justified also by using those instruments which the police use all too readily. You have no check on this evil which enters into the current even from the magistracy. Until, as I said, your judiciary are separated from the executive your Magistrates will in most cases be merely an extension of the evil which is pro-

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jected into the stream at the investigation stage by your police. Your Magistrates are virtually, merely, an extension of your Police system in this country.

Sir, my own feeling is that this whole basic problem has been evaded, because we have sought, as I said, not to look at the problem from which all these evils flow, with the result that certain recommendations have been made which are not only to improve the position. What are they going to do? They are going to strengthen all the evil tendencies in the present position; they are going to strengthen the Police; they are going to strengthen the Magistracy.

Sir, we have been treated—I am not pointing a finger at the Home Minister—to the slogan of "quick justice and cheap justice." As some hon. Member pointed out, it may be quick justice and it may be to some extent cheap, but it won't be justice. The quickness will be at the expense of the unfortunate accused. Whatever quickness is sought to be achieved, whatever speed is sought to be effected is going to be done entirely at the cost of the accused. I believe Members have already underlined the fact that delay does not derive from the defence. Where is your most inordinate and in most cases your most iniquitous delay today? It is in the investigation stage. Only the other day I had occasion to bring such cases to the notice of the hon. Railway Minister. This is not an exception; it is an instance of what almost normally happens. Railway men also are subject to the criminal law of the land, but they have this unfortunate provision that as soon as they are arrested, they are immediately suspended and put on one-third pay and the cases are brought to the notice of the Railway Minister. After being arrested the Police take in these cases between two to three years to present a complete chalan; two to three years to complete an investigation in theft cases, or in cases of abetment of theft. And all this time these unfortunate people are put on one-third their salary, starved and tortured to death. Three years for the presentation of a complete chalan and then another three years for the case for judgment in a magisterial court. If the Home Minister was really interested to achieve speed, then this is where his first attack should have been directed—at the investigation stage. That is way you get these lordly, leisurely gentlemen of the Police,—a law unto themselves and a terror unto their fellow-citizens. That is why you get your most inordinate delays.

But here perhaps I am unfair to the Home Minister. I was reading the report which emerged from the Joint Committee and I think it was his intention to put some kind of a limit on the period of investigation. I do not know, but if that was his intention then I say the blame for the removal of this limit must rest with the members who affixed their signature to the majority report.

Mr. Deputy-Speaker: Even now when the accused is in jail, or has been remanded and the investigation is not over, or the case is not over, within sixty days, he must be enlarged on bail.

Shri Frank Anthony: That is a very anaemic kind of concession. What does it mean? Enlargement on bail is not a mandatory provision; it is a provision within the discretion of the Magistrate. He is not obliged to enlarge the man on bail if the police take more than six months to complete their investigation. He is not bound to enlarge the man because of delay in investigation. He may refuse to enlarge the accused, and that poor chap will languish in jail. It is a discretionary power.

Pandit Thakur Das Bhargava: There is no provision here so far as investigation stage is concerned; it applies only to the trial stage.

Shri Frank Anthony: I thought the Home Minister had intended to limit the period of investigation, but perhaps I was giving a tribute to whim which he does not....My hon. friend says there was no suggestion at any time to limit the period of investigation.

I have dealt with the question of speed. If the Government wanted justice, to be done, I say that the first and the most elementary thing for them to do was to have ensured the separation of the Judiciary from the Executive. But what has happened. In this Bill the position of the Police has been strengthened; the powers of the Magistrates have been enlarged; the scope of the summons procedure has also been enlarged: which means that accused persons will be dealt with to a greater extent in a summary way and that they will have less opportunities for appeal. That, in effect, is the outcome of this Bill.

I say with all respect that the dominant motive in the approach to this Bill has been the executive motive. The Executive seems to be haunted by the fact that there is an unduly high percentage of acquittals. The spectre of his alleged unduly high incidence of acquittals seems to haunt them. "How can we reduce this incidence of acquittal? How, conversely, can we increase the incidence of convictions?" My respectful submission is that is the motive which has inspired the whole approach to the amendments in this Bill.

Sir, as I have said Members seem to have fallen into this error of approaching the provisions piecemeal, of considering each in its own way, detached from any consideration of juristic principles or concepts. Take, for instance, the proposed amendment to section 162. It has already been dealt with at great length. I can only feel that members have accepted the amendment in this spirit. "Well, we are not giving away too much; the accused can contradict with the case diary; why not also give an equal right to the prosecution?" The whole approach has been an uncritical, unscientific and unjurisdic approach. My own feeling is that because of this approach, by trying to come to some make-shift arrangement with the Home Minister we have fallen into a grievous error. To my mind Section 162 in common with the two provisions regarding committal and warrant procedure,—these three provisions represent nothing but legal abortions.

Take Section 162. What is it? What is the fundamental concept or principle behind Section 162? We are accustomed to talking big. After all what are we seeking to do? We are not seeking to build something in a trial and error way, in an empirical way, in a superficial way. We are building some kind of mechanics which will give us justice; we are seeking ostensibly I believe to develop and to broadbase a system of civilised criminal jurisprudence. Now, what was the concept or the principle implicit in Section 162. It was a fundamental principle. It is this: that the accused shall have the right to contradict the witness with the statement which was in the complete control of the investigating officer. Why? The statement in the case diary is completely the creature of the investigating officer. There is absolutely no restriction, no safeguard. I am not going to elaborate the position. We know to what extent these statements in the case diary are mutilated, to what extent they are forged and to what extent they are abrogated. I say that in nine cases out of ten the statement in the case diary never represents the actual statement of a prosecution witness. For that reason Section 162 contained a fundamental principle of criminal jurisprudence. Because the investigating officer could write whatever he liked in the case diary, the accused must have the right, if he so desired, to contradict—only to contradict—the prosecution witness with that statement, because, then, to some extent that would act as a

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controlling inhibition on the investigating officer. Now what is sought to be done? We have prostituted the fundamental principle. I use that word deliberately. We have taken away the fundamental right from an accused person. We have not only given an equal right to the investigating officer but we have given him complete control by this provision. Why? So that he can fabricate statement under 162 and he will because you have now placed, in terms of this new provision, a premium on fabrication. My friend assumed an arch-fabricator and goes and says: 'we will now give you a right and place a premium on the fabrication'. Even if the Home Minister goes into the witness box and affirms 'I never made a statement' it will not be heard. The police officer is a most respectable man! If any accused appearing before the Court says 'I never made that statement' that will be discredited without going into by the fabricated evidence of the investigating officer. It is a travesty of the fundamental concept, of the right given to the accused person. It is not like this: if you have a right, why not the police have the right? It was meant for the benefit of the accused and the accused only. Today you have effaced that benefit; you have given completely that benefit to the police.

I feel that if this provision is passed, it is much more honest for us to say in this House 'look here, we are not concerned with any of the provisions of criminal jurisprudence; we are not concerned with justice and fairplay; we are only concerned to produce a perfect police pattern; we are concerned only to place the seal of police State.' Do that and we will not be deluding ourselves. Do that and we will not be trying to delude the people of this country. I say that I do not believe that the Members of the Select Committee applied themselves to the fundamental concept behind this Bill. Certain rights have been given to the accused person. This was a right given to the accused person and the accused only. You take away that right and you give a much greater right to the police. You give a right in the first place to the police to do what they like with the case and with the facts that are there and then to use them to discredit them. You may well delete section 162 because today it gives an advantage which is intended to be that of the accused to somebody else. You take away that advantage and give that advantage—whether you intend it or not—to the prosecution.

There are many provisions which I could have dealt with. I only dealt with what I regard to be the fundamental principles running through our system of criminal jurisprudence. I now come to the procedure with regard to committal and warrant cases. What have we done here? I understand that the procedure so far as committal stage is concerned is objectionable and the warrant procedure to be infinitely more objectionable. I do not understand why this should be so. We drag a person and make him an accused. We drag him to the Court. We gag him. The thing is not only revolting; to my mind, it is something which is quite fantastic. Evidence is presumably being led in his presence. Why not make it in *camera*? Why should he be dragged to the Court for all the good that his presence may do there? In no system of civilised jurisprudence is an accused person made a party to an enquiry or trial and then say that he shall not be a party to that enquiry or trial. That is what I do not understand. If the prosecuting officer, leads the witness, intimidates him and abuses him and shows all his antics, why have an accused person to stand there and watch it as a silent onlooker. If a Magistrate chooses to improve on the antics of the police officer, there also, I

have to stand gagged. He can be led, tutored, intimidated but I cannot say one word. What is the point of dragging me and making me a silent onlooker, as I said? It is nothing more than a travesty of the principle. When the evidence is recorded in my presence, can I interrupt? No. That is the accepted principle of law and equity but you say 'No.'.....

Pandit Thakur Das Bhargava: Examination-in-chief and not evidence.

Shri Frank Anthony: But what is the fundamental principle of making him present? When I am an accused, whenever I am bound to appear, then I appear but I have got the right to participate in these proceedings. That is the fundamental principle. You can say: 'we will make a concession.' You can be present but you cannot participate in the proceedings. It is a gross and flagrant violation of the very fundamental concept of criminal jurisprudence. I do not understand this. This is one of my grave objections to this procedure. Let us do away with these proceedings altogether. You just record, call it evidence, call it what you like. But you do not record the whole case. That is what happens in the committal proceedings. Only the eye-witnesses are to be examined. Then, the Magistrate may examine me as an accused person. Here again you are perverting the fundamental principle of criminal jurisprudence. You are asking me, as an accused person, to be subjected to an examination, to disclose my defence before the prosecution disclose their defence. Only eye-witnesses need be examined; all the other witnesses will be separated. Yet the Magistrate may examine me at his discretion. The examination-at-large is another thing. Two eye-witnesses are produced. Although I am not allowed to let in substantial evidence, I may have a right to have the discovering instrument as every investigating officer says about this. I am allowed to discover the instrument of offence but no evidence is given on the circumstantial evidence, with regard to relationship, with regard to the motive. All that need not be led. Only two eye-witnesses will be examined and I am examined. The Magistrate may examine me at large. My whole defence is disclosed. I do not know what the prosecution is but you give this opportunity to these people which they will use over and over again for patching up their prosecution cases. I just do not understand. First of all, you do not allow me to cross-examine. This is inalienable right of an accused person that before I make or I can be made to make a statement, I must have the right to cross-examine, cross-examination *vis-a-vis* defence so that I can make a rationable, coherent and full defence. You do not allow me to cross-examine *vis-a-vis* defence. You ask me to make statements. The whole thing is monstrous perversion of the most fundamental concepts of criminal jurisprudence. I may be as innocent as a day at dawn. You are fixing me; the police can fabricate anything in the investigation stage and they will fix them under 164. My defence is at large. Every fundamental concept, as I said, of criminal jurisprudence which we have subscribed to and which were being hallowed all the time, have been negated and travestied in this Bill. I am not worried about 162 or 342; I am worried about this perversion of our whole system of jurisprudence; that is what I am worried about.

There is only one other point to which I want to make a brief reference. It has been elaborated upon already, with regard to the proposed change in respect of defamation of public servants. Here again I sincerely hope that Members of the Congress Party will not be issued a whip. This is not a matter which should be inhabited by party considerations. It is much too fundamental to the country.

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It is not a question of vested interests here. It is a question of giving to the people something which can be tested and which will stand the test of civilised jurisprudence. Here again it is a question of defamation. It has not to be argued; it is self-evident. The proposition, as I say, is utterly untenable. You are seeking to elevate a certain class of persons, you are seeking almost to place them above the pale of law. You are certainly placing them above the ordinary law of the land. It is most objectionable. Whether it is Government's intention to crush the Opposition or to destroy a free press, the fact is that that allegation will be made and the Government will be in no position to refute that allegation.

Once again may I say this that I feel that these provisions—and I am only on the basic provisions—negate all your fundamental concepts of jurisprudence. I do not think Dr. Katju wanted to negate them. But what do we do? First, we do not allow an accused to intervene in an enquiry or trial to which he is ordered to come. Then we do not insist on the police disclosing its case. On the other hand we insist on the accused disclosing his case. We allow the police, the prosecution to patch up its case. All these provisions, as I say, flouts the fundamental principles which it should be the concern of this House to guarantee to the people of this country. And I say this—and I think everyone will agree—that the test of the civilisation of a country is the progressiveness of its criminal jurisprudence. If we accept this Bill, whether the Government or the executive likes it or not, it will be said that today an intolerant or an irresponsible executive is not concerned with tests of civilisation, is not concerned with a civilised code of criminal jurisprudence. It is fundamental. If the House places its seal on this it will place this country outside the pale of civilised countries. By adopting this Code which is a reactionary code it will damn us with the stigma of deliberately entering into some kind of primitive society.

Dr. N. B. Khare: This Criminal Procedure Code is an ancient law, enacted by the British.

Shri M. D. Joshi (Ratnagiri South): What do you mean by ancient?

Dr. N. B. Khare: Patient. Be a patient. Come to me. I will treat your ears.

It is an ancient law enacted by the British. One of the objects of the law was to harass and cow down subject people. Anyone would have expected rationally that within a reasonable time after the establishment of independence the Republican Congress Government would come forward to amend this obnoxious law we have had, in the most comprehensive manner and bring a measure before the House. But eight years have elapsed and this has not been done. Instead of that what do we find here? We find an ill-conceived measure, a mischievous measure, a measure malicious against the opposition party. I cannot understand this. We are minting such laws like minting money. This tendency is deplorable. This tendency of this Government has been deprecated outside the House in one of his pronouncements by no less a person than the Speaker. What would have been lost if the Government had waited for the report of the Law Commission and then brought forward such a measure which would be befitting to its independent status? After all the Criminal Procedure Code and the Indian Penal Code are co-related, inter-related. To improve or amend or vitiate one without the other is farcical.

An Hon. Member: They are twins.

Dr. N. B. Khare: The declared objects of this Bill are two. They

are very laudable and benevolent. One of the objects is to give facilities to the accused in his defence, more and better facilities. And the other is speedy disposal of justice, in a nutshell. But the Criminal Procedure Code is not responsible for the law's delays. Who is responsible for these things? Inexperienced investigation and inefficient and dilatory Magistracy.

The remedy that the Government finds for this is revival of honorary magistrates, that institution which the Congress condemned in unequivocal terms in the British days. And what else? Extension of section 30 to all the States of India except Jammu and Kashmir. Even the Home Minister said once that it is due to procrastination in police investigation that the law's delays are caused and not due to any other cause.

I am not at all surprised at the Government bringing forward this measure before the House because the real object of the Government is quite different. It is also two-fold. One is safeguarding the interests of the prosecution and not the accused. For this they are seeking to extend section 30. And this is nothing but an instrument of repression. It has been said so by the U.P. and Bengal Governments and they are against this provision. The second real object of this measure is protection of Ministers. I am not at all surprised about this activity of the Government. Because, after all, the Hindi word "कांग्रेज ", if it is sanskritized and then analysed, comes to *Ka* plus *Angrez*. *Avagraha* for ऽ is not written. When the *pratyaya ka* is put before a noun it means a base imitation of that particular thing. For instance *Kapurush* means a base imitation of man. The *pratyaya ka* placed before the word *Angrez* means a base imitation of the English. It means nothing else, and they are doing this, imitating the English.

Mr. Deputy-Speaker: Has it got this meaning after the hon. Member left it?

Dr. N. B. Khare: Yes, yes. Therefore the approach of the Congress Governments towards this law of defamation is now made equivalent to the approach of the British Government to section 124A of the Indian Penal Code. At that time it was section 124 I.P.C., disaffection. This time it is section 500, defamation. Disaffection is made equal to defamation. It is with the same object therefore they have made a provision to get the offence of defamation of a Minister by a person prosecuted by the State. This is a most monstrous provision. You can imagine what will happen in a case, an individual *versus* the State. All the resources of the State could be used against the individual who will be left in the lurch. You cannot also forget the psychological effect it will have on the mind of the Magistrate, of the whole Government being on the side of the prosecution. This is most mischievous and malicious. After all, there is no necessity for giving this safeguard to Ministers, because they are, in the very nature of things controversial figures, and they must put up with and they cannot escape the democratic obligation to defend themselves at every stage for their activities.

Then there is one more lacuna. There is section 197 of the Criminal Procedure Code which has not been touched. Recently in a judgment by the High Court of Judicature, Nagpur, they have held that a Minister is a public servant and therefore he cannot be prosecuted, unless there is the previous sanction of the Governor. And now, if the Governor does not sanction at all, then where is the remedy? There is no remedy at all. And what is the condition that arises? The condition arises that a Minister can commit any offence under the Indian Penal Code and get away scott-free with it. Is it imaginable? Is it tolerable, I ask you. Therefore, by this law Ministers would be created as a privileged class of super-men, as if they descended directly from Heaven.

Shri S. S. More: From *Brahma*.

Dr. N. B. Khare: From *Brahma*. This is really a discrimination and almost against the spirit of the Constitution and should not be tolerated.

Now, let us compare British democracy with Indian democracy. We always glory in copying the British. We always quote *May's Parliamentary Practice* and other things and the British Cabinet system. What is the condition in Britain? If even the breath of a scandal touches a Minister, the Minister voluntarily offers to resign and asks for an enquiry. And here, even if there is persistent propaganda against a Minister about corruption etc., in the Press, on the platform, in the law courts and the legislature, the Minister is there in spite of this. He sticks to his office like a black ant sticks to a sack of jaggery. This is really intolerable. Even the highest organs in the administration fail to institute an enquiry or refuse to do so. It is most deplorable.

Goldsmith once said in one of his poems:

"Laws grind the poor

And rich men rule the law".

I say with equal cogency:

"Laws grind the gentlemen

And Congressmen rule the law".

Some Ministers are so indispensable that they endear themselves to the highest authorities on account of their corruption.

Shri M. S. Gurupadaswamy: Madhya Pradesh?

Dr. N. B. Khare: I don't know. Some are also so superlatively self-possessed of their extreme importance and indispensability that people regard them as *Indra, Chandra, Varuna, Surya, mata, bhrata, suta, pita, vanita, kanta,* and what not. तुम्हारे बिना कैसे काम चलेगा । भाई तुम मत जाओ ।

Therefore, for such Ministers this Bill is provided. The Bill has completely failed in its purpose to expedite justice absolutely. And if it is not opposed, it will lead us to a Police State if we have not already reached that culmination.

Shri N. S. Jain (Bijnor Distt.—South): This Code of Criminal Procedure as it has emerged from the Joint Select Committee is, no doubt, an improvement upon the original Bill.

Pandit Thakur Das Bhargava: In certain respects only.

Shri N. S. Jain: In certain respects only, I agree. But while persuing the Select Committee Report, I was rather intrigued to find that the hon. Members constituting that Committee did not try to define, at least while amending certain sections, in their mind as to what are the fundamentals of criminal law and criminal jurisprudence. As was previously said, it seems that the sections were taken piecemeal and there was a spirit of accommodation between the hon. Home Minister and perhaps some gentleman who wanted certain amendments to be made therein, and in that spirit of accommodation, they forgot all about what the result would be. I quite appreciate the anxiety of the hon. Home Minister to see that this criminal justice is made speedy and also cheap, but that speed and cheapness should not be at the expense of the fundamental principles of criminal jurisprudence as we know as yet. Unless you change, as I said previously in my remarks, the fundamentals of criminal jurisprudence for India, it will not be wise to change only certain sections in the Criminal Procedure Code.

Now, I will try to take these things *seriatim*, if possible.

The first thing I am going to say is about section 14, about the honorary magistrates.

An Hon. Member: Clause 14?

Shri N. S. Jain: It is a section of the Criminal Procedure Code, and clause 4 of the Bill. I may at once say that I totally disagree with it. I know that when our friend the hon. Home Minister was there in the United Provinces as a Minister, when pressed about this system of honorary Magistrates, although he agreed that there were certain difficulties and there were certain bad things about it, took the cue from the English system that there were already Magistrates there, and so we can take this honorary service from the people and there is nothing wrong about it. And when the hon. Home Minister was speaking this time in the House yesterday, he said that in Uttar Pradesh there are certain committees which recommend the names of these honorary Magistrates. I know—I know of my district also—but I may submit with due respect to him that those committees and the names which are recommended by these committees are perhaps sometimes worse than what the District Magistrates of the old times used to be or used to recommend. After all, when you want to give the power to imprison a man, you want to create a judicial court and you give the selection of that judicial Court in the hands of those persons who are perhaps entangled in some political field or are absolutely ignorant of law, naturally mistakes are bound to occur. In America they have got elected Judges and elected judicial officers, but not so in India. We have got to see the level at which we are working here, that the elected officers in the judiciary will not at all be liked by the people as such.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

3 P.M.

I may not give instances, but I can without fear of contradiction say that if you talk to the people as such, and I know very well as a legal practitioner there, everybody comes and says: "Well, Sir, we want our case to be transferred from the Court of the honorary Magistrate; we want our case to be transferred from the Court of the Magistrate who is a local man there, who has got such and such relations with so and so, and we do not want our case to be tried by him." Naturally, when we know that a person who is sitting as a judicial officer is a local man and has got local prejudices and the man against whom the case is there perhaps may not be in the good books of that person, though it is very difficult to prove it before a Court of law or before a superior Magistrate so as to get the case transferred on that ground, but the thing is there. I know of Magistrates in my own district, who are absolutely handicapped in the discharge of their duties, but they are there because of certain patronage. All these things naturally do not inspire confidence in the justice which people get from certain Courts. So, I do not know why our hon. Minister should be so much concerned about keeping these Honorary Magistrates. Of course, he has tried to make it a little more welcome to the people, by saying that their recruitment will be under the rules. Well, the rules about that could have been made even without this amendment. Even now, without this amendment, any State Government could make these rules, and say, under such and such rules, these Magistrates would be selected, and they should have such and such qualification, and so on. There will be no difficulty in doing that, even if this amendment were not there. Although the rules may be there, under which they may be appointed, the fact remains that they are local people with local bias, and in most cases, they are selected, I may say, from the groups who hold positions of influence there, and above all, from groups, which are not, as my hon. friend said a little earlier, from the people, *i.e.* from the ordinary run of the people. They are either ex-rajahs, ex-Maharajahs, or ex-zamindars. Though they have lost their power as zamindars, still they want to hold their prestige through these offices. So, I

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think the sooner this system is finished, the better it is both for these Honorary Magistrates and for the public there.

The second point I wanted to draw the attention of the hon. Home Minister to was about section 30. Much has been said about it already, and I would not take much time in dealing with that. I would only say this, that when the hon. Home Minister was saying that there are Judicial Magistrates in Uttar Pradesh, and that they are trying to separate the judiciary from the executive, I was rather rubbing my eyes in wonder. I live in Uttar Pradesh, and I have seen also how the judiciary is being separated from the executive there. I think it is worse now than what it was before.

So, now, they have got Judicial Magistrates. If you just see what these Judicial Magistrates are, I think you will pity them. I had a talk with most of them, and they have come to me. They are all temporary people just drawn from the Bar. And only such persons enter it as have got no practice at the Bar, because they are being paid only Rs. 250 or Rs. 300, with no prospects for future, with no increments, with no time-scale and so on. At the same time, they are temporary also. Their promotion etc. depends upon the reports which they receive from the District Magistrate of the district to which they are attached. You can well understand how a judicial officer would function, who depends for his promotion or for his being retained in service, on reports from the District Magistrate. Can you call such a Judicial Magistrate as a person not under the influence of the District Magistrate? In fact, we do not want such eyewashes. We must be honest and clear about things. Either we have got to separate the judiciary from the executive, or we have not got to do it. If we have got to do it, we must do it honestly. When these Judicial Magistrates have talked to me, they have said, what can we do, you expect honesty from us, you expect that we should remain above everything, you have got cases even against the executive, where there is the police etc., and you want justice even against the executive, but you know our lot well, our lot is that if the District Magistrate writes one note against us, we are gone.

An Hon. Member: Why do they come to you?

Shri N. S. Jain: Because they are friends. They come and talk, they meet and mix in the club, and so on.

If you look to section 30, what do you find? And that is exactly what I was going to draw the attention of the hon. Home Minister to. If he really wants that these powers should not be bestowed upon those Magistrates who are in the executive side, then perhaps, there would have been some sense in it. If he wants to confer these powers only on the Judicial Magistrates, even then it would have been something. But, no; section 30 says that even the District Magistrate who is in charge of the whole executive in the district may be invested with these powers. Here, there is not even that show of the separation of the judiciary from the executive. If they had said that they should be Judicial Magistrates, then it could have had some sense, at least a show of the separation of judiciary from the executive. But here, they say that the District Magistrate may be invested with these powers. If you can invest the District Magistrate with section 30 powers, I do not know how the things would stand, so far as the separation of the judiciary from the executive is concerned. So, I would respectfully request Government to see that this section 30 is not brought in in the way it is being brought in now. I also think that this section 30 might be an *ultra vires* provision. In one of the opinions which we received, attention was drawn to this fact saying that this

matter is pending before the Supreme Court. I think one of our colleagues here has said already that it is being argued in the Supreme Court, and we should await the result of that. This is my second point.

The third point which I wanted to deal with is the amendment which has been suggested regarding the procedure in committal proceedings. As I said earlier, I am for the abolition of these committal proceedings. But I do not understand how these provisions have been accepted, by the hon. Home Minister, under which these committal proceedings have been allowed to remain practically in the same form, but with truncated right to the accused regarding some of the provisions in it. Either there must be committal proceedings, or there should be none. If there is to be committal proceedings, then it should be in a proper way. I can well understand if the accused is straightaway brought before the Sessions Court, as he is brought before a Magistrate, and since the papers have already been provided to him, he can make up his case, and the prosecution and defence will go on as such. But in this case, what is sought to be done? As it appears, it looks more or less like a sort of compromise.

What does sub-section (4) of the proposed section 207A say? It says:

> "The Magistrate shall then proceed to record the statements of the persons, if any, who may be produced by the prosecution as witnesses to the actual commission of the offence alleged; ....."

That means that it depends upon the police or the prosecution to produce any man they like, and to withhold anyone they like. Further, the accused shall have no right to put any questions to them. That has already been said in this House. What I am submitting is that not all the witnesses would be put before the committing Magistrate, but only such witnesses as the police may like to put. Why should it be so? If you read sub-section (17) of section 207A proposed, you will see that it reads:

> "Notwithstanding anything contained in this Code, an inquiry under this section shall not be postponed or adjourned merely by reason of the fact that any witness whose statement is to be recorded under sub-section (4) is absent or that anyone or more of the accused is or are absent. ...."

Why? If it is a question of speeding up, I quite agree. Then why should time be taken at all in these shadow committal proceedings? What is the use? The police can put in only one witness and then say the others are not coming. Even if all the accused are not there, the proceedings continue. That is just an eye-wash. So, without insisting on committal proceedings, let us understand what we want. What privilege or what rights do we want to give to the accused—they may be in the form of committal proceedings or they may be in the form of trial as such? What I understand is that the most coveted rights of the accused are: (1) to know the case fully, which he has got to answer, (2) opportunities to cross-examine the prosecution witnesses and (3) opportunities to produce defence witnesses. These are the three fundamental rights which are to be given to the accused. What do we find here? We find, in the committal proceedings as envisaged in this amended Bill, no such right is allowed to the accused; he is not allowed to cross-examine. The only thing you can say is, he would thereby understand his case. He will understand it by the copies which he would have received and which had already been provided in the Bill as such. What I also said in my earlier speech on this Bill was, let us first make up our mind as to what privilege we want to give to the accused regarding cross-examination. That is the most fundamental thing. Do we want to give only one opportunity to the accused to cross-examine the witnesses or do we want to give two opportunities? That is the thing we have to decide. As yet, in Sessions cases—not only in Sessions

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cases but even in warrant cases—two opportunities clearly—and three opportunities at the will of the Court— were allowed to the accused person. In summons cases, only one opportunity was allowed. That was a difference because of the seriousness of the case and the seriousness of the offence involved. So, if the hon. Home Minister feels that even in most serious cases like murder and dacoity, only one opportunity to cross-examine should be sufficient, I have nothing more to say. In that case, I would say kindly scrap these committal proceedings for they are only a waste of the time of the Court and of the prosecution and of the defence; it only involves more expenditure for the defence without an equivalent advantage and only gives the accused one opportunity to cross-examine the witnesses in the Sessions Court. What everyone of us here, who has been practising in criminal courts, had been emphasising is that we want two opportunities of cross-examination. Perhaps, it may be asked why two opportunities. Because, in cross-examination, when first the witness comes, it is not necessary that he should tell the same story as is there in section 161 statements. There will be so many variations, and, as you know, these 161 statements are written so perfunctorily that there are so many additions and subtractions both in the Sessions and magistrates' court cases. Practically the 161 statements are absolutely disfigured. Only some points here and there in the 161 statements will be found and not the whole of it. What the accused wants is that he should have an opportunity of first hearing the witnesses, put him some questions and then to find out what evidence or further papers he has got to procure to cross-examine that very witness again, when he is brought before the court next time. It is very difficult to procure all the papers and all the material for the cross-examination of witnesses by an accused person if he is allowed only one opportunity to cross-examine them. Two opportunities of cross-examination is the most essential part of a criminal trial for the accused. I would respectfully beg of the hon. Home Minister to look at this question and this side of the thing that the accused is arrayed against the whole paraphernalia of the police and the State. He is brought into the dock. The police has taken so much time—generally three to six months in investigating the case and procuring witnesses. How can you expect that an accused person, with very limited resources, will be able, all of a sudden, to procure all the material to cross-examine those witnesses without actually knowing what those witnesses are likely to say in any material particulars?

Dr. Katju: Is it not a fact that the eye-witnesses are examined by the police during investigation within the first 48 hours in a vast majority of the cases?

Shri N. S. Jain: Generally, so. With due respect, I may submit, circumstantial evidence is used to buttress these eye-witnesses, most of whom are generally not very true. Circumstantial evidence plays a very great part in buttressing these people. I quite agree that the eye-witnesses are put within 48 hours, but the accused does not know it. The accused only knows of it when these 161 statements are given to him. So, what I was driving at is this. Do what you like; keep the committal proceedings or do not keep the committal proceedings, but give two opportunities to the accused to cross-examine the witnesses and there should be some gap between these two opportunities so that he should be able to procure the necessary material to cross-examine such witnesses.

Dr. Katju: That is entirely a matter for the House. You may do what you like.

Shri N. S. Jain: After all, if the hon. Home Minister does not want it, it shall not be done. I am at one

with the hon. Home Minister when he says that there should be speed. I think, if these committal proceedings are taken away and two opportunities are given before the Sessions court to cross-examine the witnesses, there will be no trouble about it. That is my submission about 207 proceedings.

The hon. Home Minister is quite right when he says that there should not be too many frequent adjournments. But, where is the provision here that adjournments shall not be allowed and the accused shall not be prejudiced? If there is any provision in this law by which no trial or enquiry should start unless all the witnesses are present, if there is any provision here that the prosecution shall not start its case in a court of law unless it is sure to put in all the witnesses before the court, just as in Sessions courts, that will be all right. In Sessions courts, there is no trouble. there are no adjournments and every witness is there. But, in committal proceedings before the Magistrate, it is not being done. The police, knowingly sometimes, trickles witnesses one by one, so that the coming witnesses may have the advantage of knowing what the other witnesses have said in cross-examination. So, what I submit is that we should only be anxious to see that there are no adjournments. The Law should be tighter for the prosecution for I can assure the hon. Home Minister that no adjournments are given for the defence. In my whole career as a criminal law practitioner I have not had a case where the defence could get more than two adjournments. Naturally, the Magistrate would say: "Already 42 days are over. How can I give an adjournment now?" He will cajole the Vakil and all that but he will not adjourn again. What about prosecution? Prosecution is not so cajoled, nor the prosecution has any fear of the Court. In that case the Magistrate will say: "Well, the witnesses have not come; what can I do?" Therefore, what I submit is: if there is a provision made in this Law whereby the prosecution shall not be started unless the Court has been given an undertaking or an understanding that all the witnesses are present, much of the evil would be avoided.

Then there is one thing more about this Bill which I would request the hon. Home Minister to take into consideration. Very great improvement in this Criminal Procedure Code would be made if proper instructions or proper rules, or, if necessary, proper Law is enacted to see that the diaries are properly maintained. Our greatest difficulty—every criminal practitioner knows that—is that these case diaries are never written as such, Loose bits of papers are collected and thrown away and the case diary is written at the house of the Sub-Inspector according to what he wants to put in there. Then again, nobody can be sure whether those case diaries are being submitted immediately, without any delay, for, though there is the rule that there should be a date stamp on the case diary of the police office, that stamp is not properly made because the person who stamps it is again a Sub-Inspector of Police who is of the same grade and rank as the Investigating Officer.

Dr. Lanka Sundaram: Why not the stamp of a more superior officer be put?

Shri N. S. Jain: That is what I am going to say, I had sent certain amendments to my learned friend and in that I had put in an amendment to section 172 saying that these case diaries should pass through a Magistrate and that the Magistrate should sign them. I had also said that any person can have a right to look at the register and see when a case diary was received and when it was despatched to the Superintendent of Police. But, I understand it was said that these amendments could not be taken into consideration because they were not pertinent to the sections which are now being amended.

Mr. Chairman: The House, on the contrary, said that all these amendments will be taken into consideration and the hon. Home Minister was agreeable to this. With these instructions the Bill was sent to the Joint Committee but the Joint Committee in their wisdom said that public opinion should be elicited on these matters and therefore they did not consider them. That is the position.

Shri N. S. Jain: Anyway, they are not there now. But, what I submit is: if the hon. Home Minister does feel that there is some sense in it, then something should be done, if not by an amendment of the Law, at least by amendment of certain rules pertaining to case diaries.

Dr. Katju: It is a matter of executive instructions.

Mr. Chairman: Or the hon. Member can settle this matter by virtue of an amendment to the Code. That amendment will be considered here, because the hon. Minister stated during the course of the debate when the Bill was sent to the Joint Committee that every amendment to this Code will be relevant, and therefore, it will be quite relevant even here.

Shri N. S. Jain: Will it be relevant here?

Dr. Katju: Yes.

Shri N. S. Jain: All right then.

Now, I come to the much-debated and much-maligned section 198B, that is regarding defamation. Rightly or wrongly, I agree with the hon. Home Minister that this provision is necessary. I have gone through it and I have discussed it with friends. The only objectionable part of it was that the police was to interfere. There should be no police investigation about it, so that the police may not be able to force things, they may not be able to arrest people and they may not be able to search people. That is an objectionable thing. I think we must look to things as they are. If one were to look at the yellow Press, if one were to look at the loose talk which we generally hear among the people criticising everything which has got anything to do with the Government, whether it be a Minister or a public servant.....

Babu Ramnarayan Singh (Hazaribagh West): Which the Government deserves.

Shri N. S. Jain: Having regard to these facts we have to find out some way of putting an end to it. I, in fact, discussed this with some of the Ministers of the State and asked them: "Why do you not go in for defamation when these people are talking rot?" In my own district one paper—a wretched paper, no doubt—in so many words wrote that such and such a Minister accepted Rs. 2,000 as bribe.

डा० राम सुभग सिंह (शाहाबाद दक्षिण) : कौन पेपर है वह ?

Shri N. S. Jain: It is no use naming the paper. I am a local man and I know about it. I asked: "What is this nonsense? Are you sure about this? I know the man about whom you are saying this." They told me very frankly that it was not very correct but there was at least a rumour and so let the man concerned feel something. Anyway we know very well that it was not a fact. I told the Minister concerned: "Why do you not go in for defamation?" He said: "Well, if we go in for defamation against these petty papers, I think our whole time would be wasted in these."

Shri B. S. Murthy: What is the moral now?

Shri N. S. Jain: That is what I am coming to; have patience. The moral is that we are so much demoralised that we cannot sift the grain from the chaff; that is the whole thing. We say everything wicked about others, but nothing wicked about our ownselves.

That has got to be stopped somewhere. There are only two alternatives. Either the Minister or the public servant must go to a Court of Law and vindicate his position or if the person concerned does not want to go before a Court of Law,—because I know many Government servants would not like to go before a Court of Law, because they know they are not so honest as they profess—we must force him to go to the Court. So, what I am submitting in this case is that the provision made by the Joint Select Committee is very helpful in this matter. They have kept the police away. They have provided the forum of the Sessions Court in whom all of us have confidence. Whatever we may say about the Magistrates, in the Sessions Court we have all confidence. I know that the Sessions Court sometimes takes delight in giving justice against the Government. They feel it their duty; they feel elated when they feel "we have done something to protect a man against the vagaries of the executive". Moreover they are seasoned people.

Dr. Lanka Sundaram: You only say 'sometimes'.

Shri N. S. Jain: After all, world is what it is and we have got exceptions. But, there is one lacuna in the provisions made which I had also pointed out earlier in my speech. I will again put that question to the hon. Home Minister. Will the man who has been defamed be a necessary witness in this case or not? That is the whole thing.

An Hon. Member: No, no.

Shri N. S. Jain: That is the crux of the whole thing.

Dr. Katju: I cannot conceive of any prosecution in such a case without the public servant concerned being the first witness in this case.

Shri N. S. Jain: Of course, I am much junior, as far as law is concerned, to my hon. friend there. But with due respect I submit that there can be this possibility also. For instance, something is written: that a Minister has got Rs. 2,000 as bribe. The case is there. The Public Prosecutor puts in the complaint. It is proved that this was printed by such and such a man, and that this was edited by such and such a man. This is *per se* defamatory. Taking a bribe is *per se* defamatory. No proof is required under the law, unless a man wants necessary to come in the witness box. Then, it is for the defence to show on what grounds that amount was taken. They have got to prove it, without the man complained against or the man who is defamed coming to the witness box. If the defence cannot prove that he had got reasonable grounds to believe that this money had passed between the Minister and somebody else, then that man shall be punished. But the Minister or the officer concerned need not come to the witness-box. So, my submission is this: that if this provision under this sub-section—section 198B—is added, namely, that in all such prosecutions, the person defamed shall be a necessary prosecution witness, I think much of the criticism that has been levelled will disappear. Much has been said about it—that the accused shall not have the opporunity of questioning the person's character and so on. That will all go. It will be as good as if he has himself put in a defamation complaint except to the extent that he has not got to be present on every occasion, that he has not got to engage a private lawyer and he has got the State's resources at his command to prosecute the case.

Shri Nambiar (Mayuram): What is the difference? He gets all the resources of the State, and the Public Prosecutor will support him. The only thing is, he wants to go to the witness-box.

Shri N. S. Jain: There is no such thing as what you call the resources of the State to be afraid of in a case. The resources of the State, we have already seen. There are so many acquittals in spite of the resources of the State. So, the resources of the State do not frighten me at all. What

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frightens me is this. The man defamed may not escape the opportunity of being cross-examined by the accused person. After all, when we say that the Minister has done this or a public servant has done this, the best forum to decide this matter, once for all, is the court, and if the man who complaints dares not come in, naturally the Government comes in and the Government says, "All right; here is the case; you say that this man has taken Rs. 2,000. Prove it, to the Sessions Court." If you prove it, that man is hanged; if you do not prove it, you are hanged. There is nothing wrong.

Mr. Chairman: In the first instance, the allegation must be proved and the man defamed must appear in the box to deny that he received the money.

Shri N. S. Jain: What I submit is this. There should be a provision made in the law that he should be a necessary prosecution witness. If that is put in—from what I heard from the hon. Home Minister, he said he (the man defamed) will be there to cross-examine—I do not think there will be much difficulty.

Dr. Katju: I repeat that so far as I can possibly think of, every single lawyer shall proceed with the particular trial by putting the public servant concerned there, who will come and deny that this charge is false, malicious and without foundation.

Shri N. S. Jain: If he does not put him.....

Dr. Katju: Then the accused will have every opportunity of cross-examination.

Shri N. S. Jain: This is what I am submitting for your consideration. Suppose it is correct and necessary, why not put it here, so that it may be clear?

Dr. Katju: That is a matter for the House to consider. But to my mind, the matter is quite clear. Otherwise, I have no objection. Let the hon. Member make an amendment if he chooses.

Shri N. S. Jain: Yes. I do not want to take any more time of the House. What I am submitting is that if the hon. Home Minister would look into those two points, namely, that two opportunities for cross-examination be given to the accused, and under section 198B, the defamed person be allowed to be put in the witness-box, I think much of the criticism that has been levelled in this House will disappear.

श्री आर० डी० मिश्र (जिला बुलन्दशहर): सभापति महोदय, पहली मर्त्तबा जब पार्लियामेंट में यह बिल पेश हुआ उस वक्त मैं ने एक तरमीम हाउस के सामने रक्खी थी कि यह क्रिमिनल प्रोसीजर कोड अच्छा नहीं है, इस को बदल कर एक नया कोड बनाया जाय। इस कानून पर अच्छी तरह से गौर कर के आजाद हिन्दुस्तान के लिये एक न्याय का अच्छा कानून बने। मैं ने गुस्से में आ कर उस वक्त यह भी कहा था कि इस कानून की खराबियों को दंखते हुए बहैसियत वकील, बहैसियत मुलजिम या बहैसियत एक पब्लिकमैन में इस को कानून की शक्ल में नहीं देख सकता हूं। इस को फाड़ कर फेंक दिया जाय। उस वक्त डा० काटजू साहब ने वादा किया था कि भाई मैं नहीं चाहता कि किसी को इस के मुताल्लिक शिकायत करने का मौका मिले। मेरे बुलन्दशहर के दोस्त ने यह कहा है कि स्वतंत्र भारत में नया कानून बनना चाहिये इस लिये सन् १९४४ में नया कानून बनाया जाय और उन्होंने इत्मीनान दिलाया कि इस में जो बातें हैं सिर्फ उन्हीं बातों पर गौर नहीं किया जायेगा बल्कि तमाम कोड पर गौर किया जायेगा। उस के बाद मेरे भाई सिंहासन सिंह साहब का एक एमेन्डमेन्ट था जिस में कमेटी को यह हिदायत दी गई थी कि वह सारे कानून पर गौर करें। इस एश्योरेन्स के बाद मैं ने अपना एमेन्डमेन्ट

वापस लिया। उन का वह एमेन्डमेन्ट मंजूर हुआ और उसी एमेन्डमेन्ड के मुताबिक वह बिल ज्वाइंट सेलेक्ट कमेटी को गया।

अब ज्वाइंट सेलेक्ट कमेटी की रिपोर्ट हमारे सामने आई। ज्वाइंट सेलेक्ट कमेटी ने जितनी बैठकें कीं, उन के जितने घंटे हुए उन का मैं ने टोटल लगाया। कुल मिला कर उस की बैठकें ६२ घंटे १५ मिनट हुईं। इतने थोड़े समय बैठ कर कमेटी ने क्रिमिनल प्रोसीजर कोड की, जिस के मुताबिक फांसी लगाई जायेगी, लोगों को कैद किया जायेगा, ट्रान्सपोर्टेशन किया जायेगा, तकदीर का फैसला कर दिया।

डा० काटजू : आप की राय में कितना समय लगना चाहिये, ५६२ घंटे ?

श्री आर० डी० मिश्र : उस में तो ५६५ दफायें हैं। अगर तमाम मेम्बरान हमारे सामने उस को पढ़ने बैठें तो शायद ६२ घंटों में पढ़ भी नहीं सकेंगे। अगर डाक्टर साहब खुद पढ़ने बैठें तो ६२ घंटों में उस की ५६५ दफाओं को पढ़ नहीं पायेंगे।

डा० काटजू : मुझे बहुत पुराना याद हैं।

श्री आर० डी० मिश्र : मैं आप को बताता हूं। आप को याद हैं हाई कोर्ट की प्रैक्टिस। लेकिन यहां पर तो नीचे की अदालतों में अमल होना हैं, आप नहीं जानते कि वहां क्या होगा।

डा० काटजू : मुझे नीचे से ऊपर तक खूब तजुर्बा हैं।

श्री आर० डी० मिश्र : अभी आप के सामने आया जाता हैं। मैं अपनी २८ वर्ष की प्रैक्टिस का तजुर्बा आप के सामने रखता हूं। इस कमेटी ने ६२ घंटे काम किया हैं। डाक्टर साहब ने वादा किया था कि इस कानून पर पूरी तरह गौर किया जायेगा। इस कानून पर गौर करने के लिये जो पहली मीटिंग हुई, उस में कमेटी ने कुछ नहीं किया। १५ जुलाई से यह कमेटी बैठी थी। कमेटी में जो रिप्रेजेनटेशन आये उन पर गौर नहीं किया ७ अगस्त को दिन के ६ बजे कमेटी बैठी और १० बज कर ४० मिनट पर इस कमेटी की कार्रवाई खत्म हो गई। उस दिन इस कमेटी ने क्या किया ? उस दिन कमेटी के सामने सीविंग क्लाज रक्खा गया और उस में तरमीम की गई कि इसे गवर्नमेन्ट जब चाहे, जिस साल में और जिस तारीख को चाहे उस में इस को नाफिज करे चाहे १९५५ में चाहे, १९५६ या १९५८ में। क्योंकि उस में कुछ दिक्कतें थीं। वारेन्ट केस के अन्दर डबल प्रोसीजर हो गया, कमिटमेन्ट का डबल प्रोसीजर हो गया। रिवीजन में कुछ गड़बड़ी हो गई, तमाम देश का जो जुडिशल प्रोसीजर हैं उस में गड़बड़ी हो जाने वाली हैं, इस लिये उन्होंने यह किया कि इतने महीनों में यू० पी० में लागू करेंगे, फलां तारीख को बम्बई में लागू करेंगे और फलां तारीख को मद्रास में लागू करेंगे ताकि आहिस्ता-आहिस्ता सब पुराने केस खत्म हो जायें तब यह प्रोसीजर लागू हो। जब आपको इस कानून को नाफिज करने की जल्दी नहीं हैं तो इसके पास करने की क्या जल्दी हैं ?

उसके बाद कमेटी के सामने यह सवाल पैदा हुआ कि जो बहुत सारे रिप्रेजेंटेशन आये हैं उनपर विचार करना हैं। डाक्टर साहब ने इस हाउस में यकीन दिलाया था कि जो मेम्बरान अपनी राय भेजेंगे उस पर गौर किया जायगा। यह १२ मोटी मोटी किताबें हमारे पास भेज दी गयीं। इनको अगर कोई आदमी ६२ घंटे और १५ मिनट में पढ़कर बतला दे तो मैं उसको आप जो इनाम बतलावें, देने को तैयार हूं। मैं समझता हूं कि इन को न इनकी मिनिस्ट्री ने, न होम मिनिस्ट्री ने, न इनके सेक्रेटरी ने और न इनके दफ्तर के किसी बाबू ने पढ़ा।

डा० राम सुभग सिंह : तो यह छपीं कैसे ?

श्री आर० डी० मिश्र : प्रेसमैनों को दे दी गयी। वहां दफ्तर में स्टेनोटाइपिस्ट रहते हैं उन्होंने इनको छाप दिया और सरकारी प्रेस में छपने को दे दिया प्रेस सरकार का है, कागज सरकार का है, घर से तो कुछ लगता नहीं। इसलिए इसको छाप दिया गया। हम समझते थे कि गवर्नमेंट कुछ अच्छे ढंग से काम करती है। मैं ने डाक्टर साहब को चिट्ठी टाइप करवाकर भेजी। उसको टाइप करवाने में बड़ी मुश्किल हुई। पार्टी आफिस में उसको छपवाया तो उसका १६ रुपये का बिल हुआ। अभी तक मैं ने उसको दिया नहीं है। मैं यह कहता हूं कि क्रिमिनल प्रोसीड्योर अमेंडमेंट बिल पर मैं ने जो रिप्रेजेंटेशन दिया उसको छपाने का १६ रुपये का बिल आया। मैं ने अपने मेमोरेंडम को छपवाकर इस नीयत से भेजा था कि गवर्नमेंट इस पर गौर करेगी। वह मेमोरेंडम ५५ सफे प्रिंटेड मैटर है जो सपलीमेंट डी में छपा है अब आप अन्दाजा लगाइये कि ५५ सफे प्रिंटेड मेमोरेंडम को ड्राफ्ट करने में पार्लियामेंट के एक मेम्बर को कितनी मेहनत पड़ी होगी क्योंकि उसके पास मदद के लिए कोई क्लर्क नहीं है, कोई स्टेनोटाइपिस्ट नहीं है। तो जो मैं ने लिख कर दिया उस पर गौर तो कर लिया जाता। डिमाक्रेसी में हर एक को अपनी अलग अलग राय रखने का हक है, डिमाक्रेसी का यह उसूल है कि आप अपनी बात कहें और दूसरे की सुनें और फिर निश्चय करें।

बाबू राम नारायण सिंह : यहां डिमाक्रेसी नहीं है।

श्री आर० डी० मिश्र : और उसके बाद अगर विचारों का एडजस्टमेंट हो जाय तो कानून अच्छा बन जाता है। लेकिन ऐसा नहीं हुआ। हमारा ५५ सफे का जो मेमोरेंडम था उसको किसी ने नहीं पढ़ा। लेकिन इन किताबों में कई पार्लियामेंट के मेम्बरों के मेमोरेंडम हैं। अगर होते सिर्फ जजों के, वकीलों के या बार एसोसियेशन्स के तो उनको टाला जा सकता था। इसलिए क्या इनायत उन्होंने हमारे ऊपर की उसे देखिये। उन्होंने जब देखा कि पार्लियामेंट के मेम्बरों के मेमोरेंडम आ गये हैं, उनका क्या इलाज किया जाय। तो उन्होंने जो इलाज किया वह पेज ५५ में लिखा है और मिनेट्स में छपा है। उन्होंने लिखा है :

> "The Joint Committee desire to state in this connection that many amendments and suggestions relating to certain sections of the principal Act not covered by the Amending Bill were submitted to the Committee. As some of these raise 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 them for public opinion. They therefore 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".

तो उन्होंने इस बात को माना है कि यह इम्पारटेंट है और इन पर गौर होना चाहिए। ये जो मेमोरेन्डम हमारे पास भेजे गये हैं इनमें कोई ऐसी बात नहीं है जिस पर राय न दी गयी हो। इसमें सुप्रीम कोर्ट के जजों की राय छपी हुई है। इसमें न सिर्फ जस्टिस पातंजील की राय है बल्कि इसमें जस्टिस महाजन और जस्टिस वीवियन बोस आदि की भी रायें हैं। कई स्टेट्स के हाई कोर्ट के जजों की रायें हैं। इसमें बाम्बे हाई कोर्ट के जजों की राय है, बंगाल हाईकोर्ट के जजों की राय है, मद्रास हाई कोर्ट के जजों की राय है। कोई स्टेट ऐसी नहीं है जिसकी राय न

हो। गवर्नमेंट ने जो पहले अपनी राय कायम की थी और जिसकी एक किताब मेरे पास हैं, उस पर सबने अपनी अपनी राय भेजी। कोई छोटी से छोटी स्टेट ऐसी नहीं बची कि जिसकी उस पर राय न आयी हो। लेकिन इसमें लिखा गया हैं कि नहीं अभी राय नहीं आयी हैं। किसकी राय आप मंगाते हैं। हाई कोर्ट के जजेज की राय आपके पास मौजूद हैं, मेम्बरों की रायें आपके पास मौजूद हैं। हम लोगों ने इसलिए अपनी रायें भेजी थीं कि उनको पढ़ा जाता। आपने उनको क्यों नहीं पढ़ा ? उनको पढ़ने के बाद आप अपनी राय कायम करते और यह कहते कि यह रायें ठीक नहीं हैं, दंश इस बात को नहीं चाहता, तो हम समझ सकते थे। मैं ने अपने मेमोरेंडम में जो बात लिखी हैं वह सुप्रीम कोर्ट के जजेज की राय से मिलती हैं। वह हाई कोर्ट के जजेज की राय से मिलती हैं, डिस्ट्रिक्ट जजेज और बार एसोसियेशन्स की राय से मिलती हैं। तो मैं पूछता हूं कि आप और किसकी राय चाहते हैं। और कौन राय देने वाला बाकी हैं। लेकिन आपने एक हरफ नहीं पढ़ा और हमारी मेहनत बेकार गयी। मुझे इस बात की शिकायत हैं। इस तरह से डिमाक्रेसी नहीं चल सकती। और न इस तरह से काम हो सकता हैं। क्यों नहीं पढ़ा आपने, बतलाइये ? इसमें लिखा हैं कि एक फेडरेशन आया प्रेस वालों का। उन्होंने अखबार में छाप दिया था। आप अखबार वालों से डरते हैं, इस लिए आपने उनको बुला लिया। हमको आपने क्यों नहीं बुलाया। आप हमसे भी बात चीत कर लेते। हमने अखबारों में कुछ नहीं छापा था और न हम छापना चाहते हैं, क्योंकि हम पार्लियामेंट के मेम्बर हैं और हम जानते हैं कि पार्लियामेंट में रहकर हम अपना काम कर सकते हैं। तो मेरी पहली शिकायत यह हैं कि जाइंट सिलेक्ट कमेटी को जो काम सुपुर्द किया गया था उसने उसको पूरा नहीं किया। इस हाउस ने जो प्रस्ताव पास किया उसके मुताबिक उसने काम नहीं किया। इसलिए पंडित ठाकुर दास ने जो तजवीज की हैं मैं उसको सपोर्ट करता हूं कि दूसरी कमेटी बनायी जाय या इसी कमेटी से कहा जाय कि आपने अपना काम पूरा नहीं किया हैं, आप कुल मामलात पर गौर करके और सारे कोड पर गौर करके अपनी राय दीजिये। कोई जल्दी नहीं हैं। मुल्क पर कोई आफत आने वाली नहीं हैं। यह क्रिमिनल प्रोसीड्योर थोड़ी बहुत तबदीली के साथ सन् ८२ से चला आ रहा हैं। अब भी कोई ऐसी बात नहीं होने वाली हैं। क्या चीज हैं कि जिसकी वजह से जल्दी हो रही हैं। इसमें जल्दी का एक खास कारण हैं। वारंट केस के बारे में पहले ही कुछ मेम्बरों ने कह दिया कि अब तक मुलीजम को जिरह करने का जो हक था वह अब मुलजिम का हक नहीं हैं। उस पर हमारे बहुत से दोस्तों ने कहा कि मुलजिम के हुकूक को काटा जा रहा हैं। मैं भी समझता हूं कि दो राइट के बगैर फौजदारी मुकदमे में कोई वकील ठीक जिरह नहीं कर सकता। शुरू में मुलजिम घर से आता हैं तो नहीं जानता कि कौन गवाह आने वाले हैं, उनकी क्या शक्ल हैं। इसलिए उन पर ठीक से जिरह नहीं की जा सकती। इस दिक्कत को तो जो रूरल वकील हैं वही समझ सकते हैं। जो टाप के वकील होते हैं वह न जिरह कर सकते हैं और न वह केस को बनाते हैं। वह तो रूलिंग्स दिखला सकते हैं या कोई टैकनिकल डिफैक्ट हो तो उसको बतला सकते हैं, कि साहब दफा ३४२ में बयान नहीं लिया गया, उस पर दस्तखत नहीं हैं। असली केस को तो रूरल वकील लड़ाता हैं जिसके सामने सारे वाकियात आते हैं और गवाह आते हैं। वह सेशन में केस को लड़ाता हैं। कह दिया जाता हैं कि वकील लोग झूठ बोलते हैं और झूठ बुलवाते हैं। लेकिन मैं बतलाता हूं कि बाज वक्त झूठ बोलना भी लाजिमी हो जाता हैं। आप कहेंगे कैसे ? मैं आपको अपना एक तजुर्बा बतलाता हूं। एक डिक्री होल्डर ने एक काश्तकार को बेदखल कर दिया। उस पर क्रिमिनल ट्रेसपास का केस चलाया

[श्री आर० डी० मिश्र]

गया । क्रिमिनल अब ट्रंसपास दो तरह से होता हैं, एक तो जुर्म की नीयत से जिसकी जमीन हैं उस पर जाने से या उसको परेशान करने की नीयत से । तो इस नीयत से अगर कोई किसी के मकान में या जमीन पर जाता हैं तो कहा जाता हैं कि उसने क्रिमिनल ट्रंसपास किया । वैसे तो हम एक दूसरे के मकान पर या जमीन पर आते जाते रहते हैं लेकिन जुर्म उस वक्त होता हैं जब कि कोई जुर्म की नीयत से या जमीन के मालिक को परेशान करने की गरज से जाता हैं । हाई कोर्ट ने तै किया कि जब तक मालिक जमीन का अनायेंस करना साबित न हो, दफा ४०० साबित नहीं होता । इसलिये यू० पी० एक्ट में तरमीम हुई कि अगर कोई बेदखल हो जाय और अगर बेदखल होने वाला काश्तकार जमीन जोते तो यह समझा जायगा कि उसकी नीयत अनाय करने की थी । जमींदारों का जब वहां पर वक्त आया था तब कानून में ऐसी तरमीम की कि अगर कोई काश्तकार बेदखल कर दिया जाय और फिर वह उस जमीन पर जोतने जाय तो यह समझा जायगा कि उसको एंट्री एनायेंस के लिये हैं, लिहाजा प्रिजम्पशन उसके खिलाफ जायगा और उस हालत में मुलजिम को सजा होना लाजिमी हैं । अगर उसने मुंह से कह दिया कि हां जमीन से बेदखल हो चुका था और फिर वहां पर आया । इस मामले का एक मुलजिम मेरे पास आया और उसने कहा कि साहब मेरे ऊपर लाला ने मुकदमा कर दिया, मुकदमा उसे मालूम नहीं था उसने कहा कि समन ४४७ का था, जमीन का मुकदमा चला दिया । लाला से मुकदमा लड़ रहा था उसने चला दिया । मैंने कहा कि भाई यह तो बेदखली का मामला हैं जो जमीन तुमसे छीनी जा चुकी हैं और जिस पर तुम वापस आये हो उससे वह तुमको बेदखल करना चाहता हैं । उसने मुकदमा चलाया कि तुमने उसकी जमीन दखल के बाद जोती । उसने कहा जमीन पर मेरा कब्जा हैं, मैं जमीन नहीं छोड़ूंगा अब आप ही बतलाइये कि ऐसे केस को कैसे वकील लड़ें । मैंने उसको सलाह दी कि अगर तुम जमीन से बेदखल हो गये हो और बेदखल होने के बाद जमीन जोती हो तो फिर मुकदमा किस बात का लड़ाते हो तुम्हें सजा हो जायगी । उसने कहा कि मुझे दखल होने का पता नहीं हैं अब बताइये अगर शुरू में ही वकील यह प्ली ले ले कि साहब दखल का पता नहीं हैं और वह काश्तकार जाकर कह दे कि जमीन पर मेरा कब्जा हैं तो सजा हो जायगी । इसलिये ऐसे मामलों में जहां मुद्दई फरजी कार्यवाही करते हों और झूठे गवाह सिखा कर तैयार किये जाते हों घर से उनको पढ़ा सिखा कर कचहरी में पेश कर दिया जाता हो, इन से बचाने के लिये किया जाये । बड़ी होशियारी से काम किया जाय तब कहीं मुकदमा कामयाब होता हैं ।

डा० लंका सुन्दरम् : जजमेंट भी पहले तैयार हो चुकता हैं ।

श्री आर० डी० मिश्र : जजमेंट से कोई मतलब नहीं हैं । मैं आपको केस समझाने की कोशिश कर रहा हूं, आप इसको समझने की कोशिश कीजिये । मैंने उसको राय दी कि प्ली यह लेना हैं कि दखल का मुझे पता नहीं हैं इसलिये मैंने जमीन नहीं छोड़ी, मैंने उसको समझाया कि यह जमीन का किस्सा हैं अगर इसमें यह साबत होगया कि दखल के बाद तुम ने जमीन जोती तो तुम्हें वह जमीन छोड़नी पड़ेगी और कानून जबरदस्ती छुड़वायेगा लेकिन अगर यह साबित कर दिया जाता हैं कि दखल ठीक नहीं हुआ हैं तो तुम्हें मिल जायगी । काफी वह इस बात पर अड़ा रहा कि मैं जमीन नहीं छोड़ूंगा चाहे जान चली जाय । लेकिन जब मैंने उससे कहा कि मुकदमा जीतने के वास्ते तुमको इतना कहना

ही पड़ेगा कि तुम्हें दखल का पता नहीं है तो वह यह कहने के लिये राजी हुआ लेकिन यह कहता ही रहा कि मैं जमीन नहीं छोड़ूंगा। किस्सा मुख्तसिर, वह यह कहने के लिये राजी होगया, और उसने कहा कि मोको साहब दखल का पता नहीं है और जैसे मैंने कहा था सिखाया था, कह दिया। उसके बाद मैंने मुस्तगीस से जिरह में पूछा कि मुलीजम के खेत पर कुआं नहीं है, नहर से भी सिंचाई नहीं होती है उसने कहा नहीं। मैं ने पूछा कि इस साल बारिश तो शुरू आसाढ़ में हुई थी मुस्तगीस ने जवाब दिया हां। मैं ने पूछा कि मुलजिम ने शुरू आसाढ़ में ही खेत जोता था उसने कहा 'हां', फिर मैंने कहा कि तुम उस के बाद डंडा लेकर उसके खेत पर पहुंचे थे और झगड़ा हुआ था, उसने जवाब दिया 'हां'। फिर उसके बाद तो तुम खेत पर नहीं गये, उसने कहा कि हम नहीं गये। मुझे कागजों से पता लग गया था कि दखल आखिर आसाढ़ में लिया गया था और जमीन पर कोई झगड़ा नहीं हुआ। बारिश दरअसल शुरू आसाढ़ में हुई थी, उसी समय खेत बोया गया था---यह सच्ची बात जिरह में मुस्तगीस से निकाल ली उसके दावे के मुताबिक दखल खेत पर उसने आखिरी आसाढ़ में लिया था और बयान में कह गया झगड़ा शुरू आसाढ़ में हुआ। इसके बाद जितने मुस्तगीस की तरफ के गवाह आये, मैंने किसी से जिरह नहीं की क्योंकि सिर्फ मुस्तगीस से जिरह करके मैंने उसके केस को खत्म कर दिया था। मैंने अदालत से कहा कि अभी मुस्तगीस ने इकबाल किया है कि मुलजिम शुरू आसाढ़ में जमीन जोत रहा था और वह डंडा लेकर वहां पहुंचा था और झगड़ा किया था। उसकी तरफ के वकील साहब का मुंह लटक गया-बोले कि भूल से शुरू आसाढ़ कह गया, उसको आखिरी आसाढ़ कहना चाहिये था। मैंने कहा जनाब अब क्या होता है, मारिये चांटा कि वह ऐसा क्यों कह गया। मैंने जब उससे जिरह के वक्त पूछा कि शुरू आसाढ़ में तो कहता रहा हां जी, हां जी। मेरे यह सब बतलाने का मतलब यह है कि अदालत में किसी बात को शुरू में खोल देने से मामला बिगड़ जाता है, अगर मुद्दई को इस जिरह का पता लग जाता तो वह शुरू आसाढ़ की बात न कहता और एक बेगुनाह को सजा हो जाती। डिफेंस के वकील इस मामले में बड़ी एहतियात बरतते हैं और डिफेंस वाले अपना केस खोलना नहीं चाहते और चुप रहते हैं और यह देखते हैं कि मुस्तगीस की तरफ से क्या सबूत आता है और केस पेश किया जाता है और उसके मुताबिक अपना डिफेंस पेश करते हैं। और जो मास्टर वकील होते हैं वह जिरह करते हैं और जिरह में ही मुकदमा खतम कर देते हैं। जिरह दो तरह की होती है। मुस्तगीस के गवाहों से कुछ रिश्ते होते हैं, ताल्लुकात होते हैं और वकील पहले हिस्से की जिरह में यह पता लगाना चाहता है कि किस किस बात को मुद्दई और गवाह मान लेगा और किसको नहीं मानेगा। पहली मर्तबा तो वकील जिरह करता है--रिश्ते और ताल्लुकात के मुताल्लिक और अगर गवाह उसको मान लेता है तो अगर किसी जगह वह बात लिखी होती है जिस को गवाह मान लेता है तो नकल लेने की जरूरत नहीं वरना नकल लेनी पड़ती है और डिफेंस तैयार करना पड़ता है। और दूसरी मर्तबा फैक्ट्स पर जिरह होती है और एक साथ जिरह होती है जिस से एक दूसरे गवाह को जिरह न मालूम हो। जिरह में एक गवाह कुछ कहता है और दूसरा कुछ। मैं समझता हूं कि इंसाफ दिलाने के वास्ते दो मर्तबा जिरह करने का राइट जरूरी है। मेरा कहना यह है कि आपके इस प्रोसीजर में बड़ी खराबियां हैं और जितनी खराबियां पहले थीं और जिनकी मुझे शिकायत थी वह खराबियां पहले से भी ज्यादा आगयी हैं। मैंने ही इसको कंडेम किया था। हमारे देशपांडे साहब कहते हैं कि अंग्रेजी की न्याय-पद्धति अच्छी है और चटर्जी साहब भी उसको सपोर्ट करते हैं। ब्रिटिश जूरिसप्रूडेंस के कानून के हमारे डा० काटजू भी बड़े सपोर्टर हैं और हामी हैं, लेकिन मैंने क्रिमिनल प्रोसीजर में जो खराबी

[श्री आर० डी० मिश्र]

और नुक्स थे उनको कंडेम किया। खैर अच्छा या बुरा जो कुछ वह था उसमें जो अच्छी बात थी वह भी इस तरमीमी बिल से खत्म हो गयी और अब वह अच्छाई बाकी नहीं रहेगी। हमसे यह कहा गया कि हम मौजूदा जाब्ता फौजदारी कानून में से कम्पलीकेशंस निकालने के लिये यह मौजूदा तरमीमी कानून लाये हैं लेकिन मैं पूछना चाहता हूं कि आपने उसमें से कौन सी कम्पलीकेशन निकाली हैं। कमिटल प्रोसीडिंग्स अबतक एक किस्म की थी अब दो तरह की इससे हो जायेंगी। एक पुलिस कमिटल और एक प्राइवेट कम्पलेनेन्ट कमिटल। प्राइवेट कमिटल वाले मामलों में मुलजिम को तीन जिरहों का हक होगा, प्राइवेट कमिटल प्रोसीडिंग्स में एक एक हरूफ साबित करना पड़ेगा लेकिन पुलिस कमिटल प्रोसीडिंग्स के दौरान कुछ भी साबित नहीं करना पड़ेगा मुलजिम को जिरह करने का हक नहीं होगा। बिल्कुल एक पुलिस का राज हो जायगा। "ही शैल हैव नो राइट"। जो राइट उसको मौजूदा क्रिमिनल प्रोसीजर ने दिया था पुलिस के चालान करते ही उसका वह राइट क्रास एग्जामिनेशन का जाता रहेगा भला यह क्या इंसाफ आप दे रहे हैं और हम वकील लोग जब अदालतों में जायेंगे तो हमसे पूछा जायगा कि क्यों साहब यही कानून बना कर पार्लियामेंट से आप हमारे सामने लाये हैं, आखिर हम लोग भी तो डिफेंस कौंसिल रह चुके हैं बढ़िया डिफेंस कौंसिल एंक्यूज्ड के ही होते हैं वकील पूछेंगे कि एंक्यूज्ड के वास्ते आपने क्या किया उनके राइट्स बढ़ाने की जगह उसमें कमी कर दी हैं तो हमारे पास कोई जवाब नहीं होगा। पुलिस कमिटल केस में डिफेंस का वकील और मुलजिम दोनों चुप खड़े रहेंगे और उन्हें मुस्तगीस और उसके गवाहों से जिरह करने का कोई हक नहीं होगा। वे हमसे कहेंगे कि आप यह क्या कानून बना कर वहां से लाये हैं तो मैं कोई जवाब नहीं दे पाऊंगा। मेरा तो तजुर्बा ऐसा नहीं हैं और न ही मैं समझता हूं डाक्टर काटजू साहब का होगा कि चुप रह कर और बिना जिरह किये किसी वकील ने किसी एंक्यूज्ड को छुड़ा लिया हो। मैं समझता हूं उन्होंने अपनी लाइफ में एक केस भी ऐसा न छुड़ाया होगा। मुलजिम को छुड़ाने की बात तो दूर रही भीख मांगने या दूसरे की जेब से पैसा लेने के लिये काफी दिक्कत उठानी पड़ती हैं। किसी से चंदे में पैसा लेने के लिये बड़ी मेहनत करनी पड़ती हैं, तब कहीं दूसरे के पास से पैसा निकाल पाते हैं। इसी तरह से दूसरे मुखालिफ आदमी से अपने हक में कोई बात कहलवाने के लिये हमें बहुत माथापच्ची और मेहनत करनी पड़ती हैं तब कहीं जाकर काम बनता हैं और डिफेंस का वकील अपने मुलजिम को छुड़ाने में कामयाब होता हैं। यह कोई आसान चीज नहीं हैं. यह कोई मामूली बात नहीं हैं।

मैं कमिटल प्रोसीडिंग्स के बिल्कुल खिलाफ हूं। मैं चाहता हूं कि सीधे जज साहब के यहां मुकदमा जाये। मैं इस प्रोसीजर के खिलाफ हूं। डाक्टर काटजू साहब ने अंग्रेजी न्याय पद्धति की बहुत तारीफ की और कहा कि अंगरेज के जमाने में बड़ा न्याय होता था चूंकि अंगरेज जज बैठते थे, तो मैं कहता हूं कि अब क्या बात होगयी? अब उन जगहों पर हिन्दुस्तानी बैठ गये तो क्या वे बेईमान हैं, काम नहीं करते हैं?

4 P.M.

वाह वा, क्या बात हैं। क्या तारीफ की हैं आप ने जजों की? जब अंगरेज जज बैठता था तो वह ईमान्दार होता था, लेकिन अब हिन्दुस्तानी जज बैठता हैं, इस लिये वह बेईमान हैं।

डा० काटजू : यह कहां कहा गया हैं, जरा पढ़ कर दीखिये।

श्री आर० डी० मिश्र : मैं ने पढ़ा हैं, कहिये तो कोट कर के दिखा दूं।

डा० काटजू : आप मजाक में इस तरह से कह रहे हैं, लेकिन यह गलत है ।

श्री आर० डी० मिश्र : डाक्टर साहब, यह मजाक नहीं है It is in your *Mahabharat*. It is on page 25 of the Memorandum, Group C, circulated by the Government of India—under "Dilatoriness".

> "I must say that all these years during the British regime the Code has served its purpose well. The State was not a Welfare State; it was a mere police State. Law and order was maintained not only because people were on the whole law-abiding and peace-loving, but also because of fear and terror of the police. The result was that the number of cases brought before the courts was not large, and every single provision in the Code meant to protect the interests of the accused, was taken full advantage of by his Counsel and served the end of justice. Cases not being very large in number and the proceedings also, particularly before the European Magistrates and even before Indian Magistrates, not being unduly lengthy, disposals were fairly speedy."

बताइये, क्या मतलब निकला इस का ?

डा० काटजू : आप ने यह फरमाया था . . .

श्री आर० डी० मिश्र : आगे और पढ़िये, पराई भाषा है, समझने की कोशिश कर रहा हूं ।

> "In the U.P. a Magistrate was expected to decide every case before him within six to eight weeks; otherwise he was called upon to give a personal explanation of the delay in disposal. I need not say that in a criminal case various difficulties which beset the civil proceedings do not occur. There is no such thing as substitution of heirs on deaths; if the accused dies the case dies. So far as the sessions trials were concerned, normally a case was heard by the Sessions Judge within a month or two of its commitment, and there again the Judges being mostly, Europeans, proceedings were speedy, and as for the High Courts appeals against death sentences were disposed of within a matter of a month or two and so also other criminal work. No one then complained of the cumbersomeness of the criminal procedure. Every Sessions Judge was supposed to be aided by assessors."

क्या मतलब है इस का ? हर जगह है ब्रिटिश जज ।

Mr. Chairman: Order, order. The hon. Member said that the Home Minister had given an opinion in this book that when the Englishmen were ruling they were more just and Indians were not competent, they were not just. This has not been brought out from the matter which the hon. Member has read. The hon. Member should not make statements which he cannot substantiate. I will request him either to withdraw those remarks or produce something from this book wherein the particular allegation may be proved to be true.

Shri R. D. Misra: I could not follow.

Mr. Chairman: The hon. the Home Minister took exception to certain allegations which the hon. Member made.

Shri R. D. Misra: I withdraw it if there is any allegation and if something had gone wrong. I have not said any such thing; but if there is anything which has been misunderstood by you or here by our Home Minister which I have not expressed, I am ready to withdraw it. What is that thing? And without even knowing it, I withdraw it. (*Laughter*).

Mr. Chairman: There is no occasion for laughter. This is a most serious thing. If an hon. Member says things about the Home Minister that he said

[Mr. Chairman]

this and said that, the House is likely to believe that whatever the hon. Member has said must be true and there might be some expressions in the book which he has not been able to find out. But it is not right to impute to any Minister or Member things which he takes exception to and which cannot be substantiated from record. It is therefore not a matter for laughter. It may be that to any hon. Member things may be attributed which may not be right. I would therefore request all hon. Members not to make any allegations which they are unable to substantiate, and not to impute anything to any Member in the House which they cannot substantiate later by reference to the record.

Shri B. S. Murthy: The laughter is because he is withdrawing without knowing it.

Mr. Chairman: The hon. Member may go on.

श्री आर० डी० मिश्र : मैं ने कोई बात डाक्टर साहब के मुताल्लिक ऐसी नहीं कही न यह कहा कि डाक्टर साहब ने कोई बात की हैं । लेकिन अंग्रेजी में जो यहां पर लिखा हैं वह जैसा मेरी समझ में आया उस को ही मैं ने एक्सप्रैस करने की कोशिश की । हो सकता हैं कि मेरी अंग्रेजी की इतनी लियाकत न हो, तो मैं अपनी इस लियाकत का ढिंढोरा क्यों पीटूं । मैं यहां पर भी अंग्रेजी में बोलने की कोशिश नहीं करता क्योंकि पराई भाषा हैं, न जाने किस तरह से मुंह से निकल जाये । लेकिन अगर मेरी देशी भाषा के समझने में भी गलती हो जाय तो मेरे पास इस का कोई इलाज नहीं हैं । अंग्रेजी समय के न्याय की बातें मेरे बहुत से दोस्तों से कही हैं—हमारे देशपांडे साहब ने भी इस बारे में कहा । पुराने जमाने में जब अंग्रेजी ज्यूरिसप्रूडेन्स के सिद्धान्त अनुसार यहां न्याय किया जाता था उस समय यहां अंग्रेज जज काम करते थे इस लिये यहां पर न्याय होता था । अब चूंकि हिन्दुस्तानी हैं इस लिये मेरे ख्याल में यह आया कि शायद अब न्याय नहीं किया जाता । बेईमानी होने लगी हैं । लेकिन मैं कहता हूं ऐसा नहीं हैं ।

मैं यह कह रहा हूं कि अब तक कमिटमेन्ट का एक ही प्रोसीजर था परन्तु अब डबल कमिटमेन्ट प्रोसीडिंग्स कर दी गई हैं । लेकिन वजह यह नहीं हैं । खराबी यह हैं कि आप ने सेशन्स केसेज के दो मुख्तलिफ प्रोसीजर कर दिये । एक तो कम्प्लेनेन्ट केस का और दूसरा पुलिस केस का जैसे ज्योतिष के अन्दर किसी के पीछे सनीचर का ग्रह लग जाय तो समझ लो कि मुश्किल आ गई, उसी तरीके से पुलिस केस हो तो समझ लो कि सनीचर, राहु, केतु, सब चिपट जाते हैं । कम्प्लेनेन्ट के केस तो मैजिस्ट्रेट रियायत कर के छोड़ भी दिया करते हैं, लेकिन पुलिस केस का छुड़ना बड़ा मुश्किल होता हैं । उस केस में मुलजिम के हक को पहले से भी घटा दिया गया हैं । अगर कम्प्लेनेन्ट केस में मुलजिम का हक घटा दिया जाता तो माना जा सकता था कि गवाह झूठा हैं, मुलजिम झूठा हैं, झूठे आदमी निर्दोषों को परेशान करते हैं, लेकिन बहस यह की गई कि कम्प्लेनेन्ट केस के अन्दर पुलिस डायरी नहीं होती हैं, विटनेसेज के बयान नहीं होते हैं, इस लिये कम्प्लेनेन्ट केस में यह प्रोसीजर होना चाहिये । लेकिन पुलिस केस में तो पुलिस डायरी मौजूद होती हैं । आप को पुलिस डायरी की हैसियत मालूम हो गई हैं । मेम्बरान की तकरीरों में आया कि पुलिस जो बयान लिखेगी उस से कोई फायदा नहीं न उन को प्रोसीक्यूशन की तरफ से साबित ही किया जा सकता हैं । प्रोसिक्यूशन उस से कोई फायदा नहीं उठा सकता हैं । फिर इस की क्या गारन्टी कि वह सही ही होगा । पुलिस डायरी और उसके स्टेटमेन्ट प्रोसिक्यूशन के किस काम का ? प्रोसिक्यूशन उसे

कारोबोरेशन के लिये इस्तेमाल नहीं कर सकता कंट्राडिक्शन में, झूठा साबित करने के लिये मुलजिम ही इस्तेमाल कर सकता हैं। पुलिस डायरी की यह कीमत हैं। मैजिस्ट्रेट के सामने दफा २०२ की जांच में जो सबूत मजिस्ट्रेट लेता हैं क्या उस की इतनी भी कीमत नहीं हैं। मैजिस्ट्रेट क्या इतना बेवकूफ हैं कि चाहे मुस्तगीस किसी को झूठा फंसा दे और वह उस को ठीक समझ ले। पहले वह देखता हैं कि मुस्तगीस का कम्पलेन्ट यकीन करने के काबिल हैं या नहीं। जैसे पुलिस तहकीकात करती हैं वैसे मजिस्ट्रेट उस की खुद तहकीकात कर के जब वह इस नतीजे पर पहुंच जाता हैं कि मुलजिम ने जुर्म किया तब वह मानता हैं और मुलजिम को तलब करता हैं।

लेकिन नहीं, यहां इस नये बिल में यह बात नहीं देखी गयी, यह ख्याल नहीं किया गया। होम मिनिस्ट्री को कम्पलेंट केसेज पसन्द नहीं हैं इसलिए उनको निकाल दिया गया। इस नये बिल में सेशन ट्राइल में से एसेसर्स को निकाल दिया गया। यह तो एक तरह से ठीक भी किया गया क्योंकि इस बारे में सबकी राय थी कि एसेसरों को निकाल दिया जाय। एसेसर तो पहले इसलिए रखे गये थे कि जो अंग्रेज जज आते थे उनको यहां के रस्मो रिवाज नहीं मालूम होते थे, उनको इन असेसरों से मदद मिलती थी। पर अब तो हमारे अपने मुल्क के जज हैं। वे सब बातें जानते हैं उनको इस तरह की मदद की जरूरत नहीं हैं। एसेसरों की राय भी अक्सर जज नहीं मानते इसलिए उनको तो हटा दिया यह ठीक किया। लेकिन सेशन केस में एक जूरी की ट्राइल का सिस्टम भी हैं। हिन्दुस्तान में जूरी ट्रायल में जितनी दिक्कत आई हैं उतनी किसी और कानून में नहीं आयी होगी। जूरी ट्रायल में जज की कोई कीमत नहीं रहती। वह तो सिर्फ जूरर्स का क्लर्क रह जाता हैं। वह केस को उनके सामने पेश करता हैं। इस पर वकील लोग यह आबजेक्शन बाद में लेते हैं कि इस मुकदमे में नान डाइरेक्शन या मिस डाइरेक्शन हुआ इसलिए जूरी का फैसला गलत हुआ और सजा हुई नहीं तो केस छूट जाता। अगर हाई कोर्ट में यह साबित कर दिया जाता हैं कि किसी केस में नान डाइरेक्शन या मिस डाइरेक्शन हुआ हैं तो केस छूट जाता हैं। पहले की प्रीवी काउंसिल की रूलिंग्स हैं जिनमें कहा गया हैं कि अगर जूरी की राय से अगर अदालत अपील की राय खिलाफ हो तो जूरी की ही राय ठीक हैं। जूरी लोगों के सामने सब फैक्ट्स पेश होते हैं इसलिए फैक्ट्स पर उनकी राय ही आखिरी मानी गयी। जूरी ट्राइल में बहुत सी दिक्कतें होती हैं। एक केस मैं ने पढ़ा हैं जिसमें जज जूरी के साथ एग्री कर जाता हैं वहां पर हाई कोर्ट भी कुछ नहीं कर सकती। वह यही कहती हैं कि अगर कोई मिस-डाइरेक्शन या नान डाइरेक्शन हो तो बतलाओ वरना हम कुछ नहीं कर सकते। जिस केस का मैं जिक्र कर रहा हूं वह मद्रास का केस हैं। उसका नाम इस वक्त मुझे याद नहीं हैं। उस में जज जूरी से एग्री कर गया था। वह केस बड़ा पिटीएबल था। हाई कोर्ट के जज की राय थी कि उसको छोड़ देना चाहिए। प्रासीक्यूशन का काउंसिल भी एग्री कर गया कि जूरी के फैसले में कुछ गड़बड़ हुई हैं इसको छोड़ दिया जाय लेकिन उसमें कुछ नहीं किया जा सका क्योंकि जज जूरी से एग्री कर गया था और कोई मिस डाइरेक्शन या नान डाइरेक्शन का पाइंट मिला नहीं। हाईकोर्ट के जज ने कहा कि हम इसमें क्या कर सकते हैं। लिहाजा उसमें कुछ नहीं किया जा सका और सात साल की मैक्सिमम सजा उस में रही। जिस आदमी को एक हाई कोर्ट का जज इन्नोसेंट समझता हैं उसको वह नहीं छोड़ सका। उस मुकदमें में सरकार से रहम करने की सिफारिश की गई थी। तो मेरे कहने का मतलब यह हैं कि इस तरह के कम्पलीकेशन्स इस जूरी ट्राइल में होते हैं। यू० पी० में जो पांच कमेटी बैठी थी उसने इसको हटाने के लिए सिफारिश की थी और यू० पी० ने जूरी ट्रायल को बंद कर

[श्री आर० डी० मिश्र]

दिया बहुत सी स्टेट्स में तो यह ट्राइल कभी हुई ही नहीं। राजस्थान में यह नहीं है। इसके हक में कहा यह जाता है कि यहां डिमाक्रेसी है, अगर दस आदमियों की राय से काम हो तो अच्छा है। हो सकता है कि अगर दस अच्छे अच्छे आदमी इस काम को करें तो वह ज्यादा अच्छा हो। लेकिन होगा क्या ? इस जूरी ट्रायल में जूरर्स को एक तरह से कैद कर दिया जायेगा जितने दिन केस चलेगा उतने दिनों के लिये उनको कैद सी हो जायगी। इसलिए अच्छे आदमी इसमें आना पसन्द नहीं करेंगे और थर्ड रेट आदमी आयेंगे जो तरह तरह से पैसा बनाने की कोशिश करेंगे। इस पर जरा सीरियसली गौर करना चाहिए था। लेकिन इस मामले पर गौर नहीं किया। मुझे थोड़ा वक्त और दिया जाय।

सभापति महोदय : अभी आनरेबल मेम्बर को बोलते हुए सिर्फ २५ मिनट हुए हैं। मैं चाहता हूं कि आनरेबिल मेम्बर को अगर कोई जरूरी बातें कहनी हों तो वह उनको चार पांच मिनट में कह दें वर्ना अगर वह इस तरह से केसेज के किस्से सुनायेंगे तब तो घंटों लग जायेंगे।

श्री आर० डी० मिश्र : मैं जल्दी ही खत्म करता हूं। तो मैं यह कहना चाहता हूं कि इस कानून के अन्दर कोई जल्दी की चीज नहीं है। अगर ट्रांस्पोर्टेशन की जगह पर प्रिजन आफ लाइफ हो जाय तो कोई फर्क नहीं पड़ता है। अगर कानून में ट्रांस्पोर्टेशन बना भी रहे तो कोई बात नहीं। अगर सुप्रीम कोर्ट भी चाहे तो आजकल ट्रांस्पोर्टेशन नहीं कर सकती क्योंकि ट्रांस्पोर्टेशन की कोई जगह नहीं है उसका अर्थ तो जन्म कैद होता है तो इसकी कोई जल्दी नहीं है। असेसर्स से कोई असर नहीं पड़ता। न मुल्क में कोई बलवा होने जा रहा है कि जिसके लिए इस कानून बनाने की जल्दी हो। फिर क्या जल्दी है इस कानून को बनाने की ? हां दफा ११८ में डिफेमेशन के बारे में कुछ लिखा हुआ है। उस पर गौर कीजिये। इसमें किसी ने होशियारी से मिनिस्टरों को शामिल कर दिया है। इससे यह जाहिर होने लगा है कि यह कानून मिनिस्टरों को बचाने के लिये लाया गया है लेकिन असल बात यह है कि सरकारी मुलाजिम इस तरह से अपने को बचाना चाहते हैं जिन्होंने कि तमाम गवर्नमेंट को बदनाम कर रखा है, जिनमें बहुतों पर ब्राइबरी और करप्शन के केसेज चले हैं और बहुतों को सजायें हुई हैं और कुछ के केसेज अभी पेंडिंग हैं। हम लोग इनके करप्शन और ब्राइबरी की वजह से परेशान हैं। ये लोग इस तरह से अपने लिए प्रोटेक्शन चाहते हैं। पहली मर्तबा दफा ११७ का जिक्र करते हुए मैं ने इस हाउस के सामने कुछ कहा था। अगर किसी सरकारी काम करने में किसी सरकारी मुलाजिम से गलती हो जाय तो बगैर गवर्नमेंट की मंजूरी के उस पर मुकदमा दफा ११७ के कारण सरकार की मंजूरी के बिना नहीं चल सकता बड़ी अच्छी बात अगर कोई थानेदार किसी बलवे को रोकने में डंडे मार रहा है और फोर्स इस्तेमाल कर रहा है, उस वक्त अगर कोई शरीफ आदमी उधर आ जाता है और उसके डंडा लग जाता है तो मामूली तौर पर दफा ३२३ का जुर्म हो जाता है। लेकिन चूंकि थानेदार ने किसी बुरी नीयत से ऐसा नहीं किया इसलिए उस पर जुर्म आयद नहीं होता। लेकिन दफा ११७ की इस रियायत को इस्तेमाल करके सरकारी मुलाजिमों ने बहुत गड़बड़ की। उन्होंने न सिर्फ सैकड़ों की तादाद में नहीं बल्कि हजारों की तादाद में रिश्वत लेना शुरू कर दिया। वे लोग ६० बरस पुरानी शराब रिश्वत में लेने लगे, यानी अपनी जिन्दगी से पहले की शराब की उनको जरूरत होने लगी। जब उनको बहुत पैसा मिलने लगा तो उनको आजकल की शराब से नशा नहीं आता और उनको ६० बरस की पुरानी शराब की जरूरत महसूस हुई। इस पर इनमें से कुछ पर मुकदमे

चले और सजायें हुईं और कुछ पर चल रहे हैं और कुछ पर चलेंगे। जब बहुत रिश्वत बढ़ गई तो सन् ७४ में एक एक्ट बना जिसके मुताबिक इस जुर्म को कोगनिजेबिल कर दिया गया कि पुलिस वाले मुजरिमों को पकड़ेंगे और बन्द कर देंगे। यह लोग जो खुदाई कर रहे हैं इनको इस खुदाई से उतार दिया जाय। यह एक्ट सन् ४७ में बना। लेकिन उस कानून में बड़ी होशियारी से एक दफा आगे बढ़ा दी गई कि आयन्दा दफा १६१ और १६५ के मुकदमे गवर्नमेंट की मंजूरी के बगैर नहीं चल सकते। अगर वह सेंट्रल गवर्नमेंट का मुलाजिम हैं तो सेंट्रल गवर्नमेंट की मंजूरी चाहिए, अगर वह स्टेट गवर्नमेंट का मुलाजिम हैं तो उसकी मंजूरी चाहिए और अगर किसी और डिपार्टमेंट का हैं तो उस डिपार्टमेंट के हैड की मंजूरी चाहिए। ऐसा क्यों किया गया यह इसलिये कि रिश्वत लेना कोई डिस्चार्ज आफ पबलिक ड्यूटी नहीं हैं। हाईकोर्टस ने फैसला दिया था कि रिश्वत लेना पार्ट आफ ड्यूटी नहीं हैं और इसके लिए १९७ के मुताबिक सरकार की सेंक्शन की जरूरत नहीं हैं। अब चूंकि अफसरों ने देखा कि कांग्रेस वाले रिश्वत रोकने के लिये एक कानून चाहते हैं तो उन्होंने उस कानून में यह दफा बढ़ा दी। और उसमें यह दफा रख दी। अब इससे कानून का असर दूसरा ही हो गया कि रिशवत का मुकदमा चलाने की भी मंजूरी सरकार से लो। और यह मंजूरी कौन देगा ? कोई सेक्रेटरी साहब। यह अपने आदमियों को कब पकड़ा जाने देंगे क्योंकि वे तो उनकी मार्फत ही रिश्वत लेते हैं उनके साथ तो उनका हिस्सा बंटा हुआ हैं ऐसे कानूनों से कोई फायदा नहीं मैं कहता हूं कि डिमाक्रेसी अच्छी हैं, डिक्टेटरशिप भी अच्छी हैं और राजा भी अच्छे हैं बशर्तेकि उनका एडमिनिस्ट्रेशन का सिस्टम ठीक हो। अगर गवर्नमेंट खराब हैं तो कोई भी सिस्टम खराब हो सकता हैं। मैं आपको एक मोटी सी बात बतलाता हूं। आजादी के बाद हमने खद्दर पर जोर दिया। लेकिन अफसर लोग टाई कालर में ही आते रहे। हमने यह चीज अखबारों में छापी, राष्ट्रपति ने सरकुलर निकाले, जवाहर लाल जी ने सरकुलर निकाले। हमने परसनली लोगों से कहा कि अब जब राष्ट्रपति और प्रधान मंत्री ने अपील निकाली हैं और ड्रेस तै कर दी हैं तब टाई क्यों पहनते हो क्या जवाहर लाल जी जब घर घर जाकर आपसे कहेंगे तब आप खद्दर पहनेंगे। लेकिन हम देखते हैं कि आज भी गवर्नमेंट के मुलाजिम न राष्ट्रपति की परवाह करते हैं, न जवाहर लाल जी की परवाह करते हैं, न मेंजारिटी की परवाह करते हैं और न माइनारिटी की परवाह करते हैं। इसी पार्लियामेंट में हम देखते हैं कि आज भी सरकारी अफसर आफिसर्स गैलरी में कालर टाई लगाकर आते हैं। कहां हैं राष्ट्रपति का आर्डर ? ये लोग कैसे घुस आते हैं सेक्रेटेरियट में टाई कालर लगाकर ? ये लोग किसी की परवाह नहीं करते।

Mr. Chairman: I take it that the hon. Member has concluded.

Shri R. D. Misra: Five more minutes please. हां तो मैं यह कह रहा था.....

Mr. Chairman: Order, order. The hon. Member was talking rather irrelevantly. I did not stand in his way then, as I thought that he was finishing. I would request him to kindly conclude now, because there are many more Members who are anxious to speak.

Shri R. D. Misra: All right. Thank you for the five minutes.

Mr. Chairman: The hon. Member will kindly conclude now. I take it that he has concluded.

Shri R. D. Misra: No.

Mr. Chairman: I shall give two more minutes, and let the hon. Member conclude.

श्री० आर० डी० मिश्र : मैं यह कह रहा था कि सिस्टम की खराबी है। जब हम लोग पार्लियामेंट में रह कर यहां के अफसरों से अपनी बात नहीं मनवा सकते तो जजों और मजिस्ट्रेटों से अपनी ख्वाहिश और बात कैसे मनवा सकते हैं। इस तरमीमी बिल को पास करने के लिये जो जल्दी की जा रही है कि बड़े बड़े अफसर लोगों पर सरकार की ओर से डिफेमेशन के मुकदमे चलाकर जनता का रिश्वत और करपशन के बारे में मुंह बन्द करदें। पिछले छः महीनों में जिस किसी ने कोई बात कही हो सरकार उसकी तहकीकात न करने पाये। मिनिस्टर की आड़ में यह अफसरान का तबका चाहता है कि यह कानून जल्दी पास हो जाय और उनको डिफेमेशन के मुकदमें चलाने का अख्तयार मिल जाये मेरा कहना यह है कि इस क्रिमिनल प्रोसीज्योर कोड में यह जो मिनिस्ट्रों और अफसरों को प्रोटेक्शन दिया जा रहा है यह जायज नहीं है। यह क्रिमिनल प्रोसीज्योर बिल सेल्फ कंटेम्ड है इसको किसी पार्टी ने पसन्द नहीं किया है, कोई बात इसमें अच्छी नहीं है। मैं डाक्टर काटजू साहब से अपील करूंगा कि हमारे ठाकुर दास भार्गव जी ने जो तरमीम रक्खी है उसको मान कर इस बिल को कमेटी में वापिस गौर के लिये भेज दें या इस पर गौर करने के लिये कमीशन बना दें वह गौर करें और उसके बाद इसको माकूल शकल में लाये तब मैं आपको यकीन दिलाता हूं कि इसको सब तरफ से सपोर्ट मिलेगा और जो आपकी ख्वाहिश और मंशा है जिसको इस बिल के एम्स और ऑब्जेक्ट में आप ने जाहिर किया है वह पूरी हो सकेगी, मौजूदा शकल में पास करने से अपना मकसद नहीं हासिल कर सकेंगे।

The Deputy Minister of Home Affairs (Shri Datar): For the last three days, we have heard opinions from different quarters, which, in my opinion, can be classified under two heads. One school of thought is naturally giving expression to views which are opposed to Government, because they are opposed to Government. There is also another school of thought....

Dr. Lanka Sundaram: Columbus has discovered.

Shri Datar: ...on both sides of the House, which is also opposing this Bill, so far as it considers that this Bill is against the interests of the accused.

Shri Sadhan Gupta: Here, the two schools agree.

Shri Datar: I would like to point out here, in all humility, that so far as the criminal administration of justice is concerned, it concerns all the thirty-six crores of the Indian population, and therefore it is that the criminal administration of justice should be such that as a result of it there ought to be a confidence amongst the public about the criminal administration. Certain defects have been pointed out by the High Courts, and certain other defects also have come out. Therefore, about four years ago, even before the present Parliament was established, Government undertook the question of finding out what the views were, and to what extent, there would be a common measure of agreement. When such an inquiry was set on foot, Government wanted to know whether there ought to be a completely radical change, so that the Code of Criminal Procedure should be recast entirely in a drastic measure, or whether in view of the fact that the present Code of Criminal Procedure has been in vogue for the last ninety years at least with some modifications here and there, in the present set-up we should have certain important modifications, without necessarily touching the foundations of the Criminal Procedure Code. On this point, Government had the views not only of the State Governments, but it might be noted that when we sent to the

State Governments certain questions in this respect and the points for consideration, they were circulated very widely, and Government have received views from all quarters.

It was contended by an hon. Member of the Opposition that we have got the views only from a certain section and not from all the sections. I would point out to this House that from 1953 onwards (during the last year and three-quarters of this year), we are having a discussion from time to time in the columns of the Press, and from this, it would be found that on the whole, the provisions of the present Bill have been welcomed by the public. That is a point which has to be understood very clearly.

I would invite the attention of the House to the fact that whenever our measures were before the public, they received a very large measure of support from not only the English Press, but the Indian language Press as well. Therefore, when this Bill was first published in the Gazette last year, it was open to one and all, not only to the Bar, not only to the Bench, but to all others also. And we have received certain opinions from quarters which are neither the Bench nor the Judge. In the light of all this opinion, Government prepared a Bill. In this respect, as I have pointed out to you, Government have followed a policy which is entirely consonant with what they desire as the dire need for reforms, without touching the foundations, because in the opinion of Government, they are fairly strong and valid. So, Government have made certain changes, and they placed them before the public, before the whole of India. Thereafter, a large body of opinion was received. Government made certain changes, and during the Budget Session of this year, the Bill was introduced. Thereafter, we had a debate for days together both in this House and in the other House, and certain points of criticism were levelled very strongly against a few of the provisions of the Government Bill. Then, the Home Minister stated very clearly that this was to be treated as a non-party Bill, and it was to be approached from that point of view. Then, a Joint Select Committee was set up. I would invite the attention of every hon. Member of the House to the fact that whenever these questions were considered, when it was found that there was a fair measure of public opinion, more or less an agreed opinion on a certain provision of the Bill, Government fully accommodated themselves to this view, and they placed what can be called virtually an agreed formula; and that agreed formula was accepted by the Joint Select Committee. So, we have before us a Bill which has been considered fully by the Joint Select Committee. I would like to point out also that Government have accepted all the suggestions, or at least most of the suggestions that were made in the Joint Select Committee. Therefore, we have now got the background, not of a Government Bill, but of a Bill which has received the largest measure of support from a Joint Select Committee of the two Houses of Parliament. It is against this background that we have to consider whether the Joint Select Committee's Report is good, or it requires further amendments.

I would point out in this connection that when we had a debate during the last Budget session of Parliament, after this Bill was introduced, there was a specific suggestion that this should be referred to the public for eliciting public opinion. That was defeated. Then, it may also be pointed out that there is the suggestion that has been made by you and by a number of other Members that the whole question should be held up until the Law Commission was duly appointed and the Law Commission was not meant to be confined only to the criminal law of procedure but was to deal with all the laws of the land. It is our opinion that so far as the first question is concerned, that is more or less barred because this House defeated that particular motion and decided that there was no need for eliciting

[Shri Datar]

public opinion thereon for the simple reason that all public opinion, to the extent that it was vocal, has been fully before the House.

So far as the Law Commission was concerned, I would point out to the House in all humility, that it is more or less a delaying suggestion. Now, the Law Commission that is sought to be appointed or that is placed before the Government for consideration, is a general measure which is to deal with all laws. Even if a special Commission was to be appointed, the House will kindly see that the labours of such a Commission would take at least two years; and Government were not, at present, inclined to accept such a delay of even two or three years because they were of the view that, from the trend of public opinion that has been before them, there are certain matters on which we can immediately have an amending Bill. And, our views have now been accepted by the Joint Select Committee. Therefore, I would like to point out that there is no need either for sending the Bill to the public for eliciting public opinion or for holding up the progress of the Bill for the purpose of having the opinion of the Law Commission which has still to be appointed.

Before I deal with certain controversial points on which considerable attention was focussed by the public, I would point out to this House that this Bill has been aimed at improving the tone of the administration of criminal justice in this country. You, Sir, said yesterday that this Bill would not bring in heaven on earth. I fully agree with you; but this is an attempt at improving the present conditions. There are various other directions as well. We have to improve the police to the extent that such an improvement is absolutely essential.

We need not take into account general criticism of a very unrestrained nature. Even my friend Mr. Chatterjee, this morning, stated that unrestrained criticism against the police was entirely wrong because, after all, it is our own police, the national police. It is from this point of view that the Government is approaching this question.

Shri Sadhan Gupta: Our criminals are also national criminals.

Shri Datar: It is for this purpose, Sir, Government have a programme of their own (*Interruptions*) and one of the improvements is to amend the Code of Criminal Procedure. We are taking steps in other directions also. We agree with the critics that the tone of investigation has to be improved. That question is also receiving the attention of this Government as also the attention of the State Governments. We are trying to introduce scientific methods of investigation as well. I would, therefore, assure the House that Government would not be satisfied only with the passage of this Bill. This is one of the numerous phases of improvement that Government have in their view.

Then I would deal with certain specific points which were very strongly urged before this House and in respect of which Government have accepted certain modifications at the more or less unanimous desire of the Joint Select Committee. You will find that when there was the first debate in this House when the Bill was introduced, attention was centred more or less on certain provisions. For example, those relating to sections 145 to 148, 162, commitment proceedings, the law of defamation and then special provisions about punishment for perjury and a few others. These were some of the matters which were found to be highly controversial by this House. I would point out to the House that in respect of each of them, Government have accepted the views of the Joint Select Committee of both Houses of Parliament. Therefore, it would be entirely wrong merely to go

on condemning or criticising the Government. We have now before us not the views of Government but the views of 49 hon. Members of the two Houses of Parliament.

Shri S. S. More: The majority of them, not all.

Shri Datar: They have spent a considerable time and they have considered all the aspects of this question. Therefore, we have before us the views the Joint Select Committee which, in my opinion, are entitled to, at least, a respectful consideration.

Mr. Chairman: Is it not axiomatically true that the whole is bigger than the part and the opinion of the entire House is the last word on the subject?

Shri Datar: That is why, Sir I stated the most respectful consideration and not acceptance. They are entitled to respectful consideration. That is the expression I used.

I will not deal with certain provisions in respect of which there was a lot of controversy and in respect of which Government have accepted a certain compromise. Take, for example, section 145. In respect of section 145, there is a common feeling that it causes a lot of delay and it is more or less of a civil nature, though it has been introduced in the Code of Criminal Procedure because the question of possession has to be taken into account in relation to either the disturbance of the peace or the possibility of a disturbance of the peace. Therefore, it should be understood very clearly that so far as these provisions are concerned, they are more or less of a civil nature but they have been introduced in the Code of Criminal Procedure for certain reasons of law and order. What we had first proposed was that there should be no judicial enquiry as such. Immediately the application has been filed, the property should be attached and the parties referred to a civil court. This was considered as a very harsh provision. It was also pointed out to us by High Court Judges and by hon. Members of this House that this is likely to be abused by a person who is not in possession for dispossessing the other man. The Joint Select Committee, therefore, suggested that in ordinary cases, where the question of possession was not a complicate one at all, even the Magistrate should go into the question and give a summary finding so far as the question of possession is concerned. Then, it was also pointed out that it would be more expensive for the party who has been defeated before a Magistrate to go to a court of law even on the question of possession. A compromise formula has been evolved according to which the matter would be stayed and the Civil court would be requested to give a finding on the question of possession within three months. Now, that has been introduced for the purpose of effecting economy of time as well as economy of money. There is no payment of court-fee at all. The matter will be gone into by the Judge and in three months we shall have a positive position on the question of possession in respect of which the Magistrate feels that it is more or less complicated. Therefore it is more or less as a compromise formula that it has been used. It is not expensive and it will be very useful to the parties. Then the question of title would be investigated into or agitated upon by the parties as they please. It is for this reason that in sections 145 to 147 a new clause has been introduced and in ordinary cases it would be open to a Magistrate to go into the matter judicially and come to the conclusion as to whether a particular person was or was not in possession.

Then I come to section 162. So far as section 162 is concerned I would point out to the House that in this case section 162 has been retained. Our original desire was that 162 should not be there at all and it ought to be deleted. If it was deleted then

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it would be open to the prosecution as also to others to treat his previous Statements as admissions and then to put them before the Court in the course of the hearing either for the purpose of corroboration or for the purpose of contradiction. What was specially laid down was that it should not be open to the prosecution to use this statement at all. The compromise amendment that has been suggested by the Joint Committee is that in such cases the right of the defence has not been affected at all. So far as the prosecution are concerned, they are allowed to approach the Court—remember, they cannot start cross-examination all of a sudden—and ask for permission on the footing that the particular prosecution witness has turned hostile. Then according to the provisions of the Evidence Act if the Court comes to the conclusion that he is hostile, then in that case it is open to the prosecution to ask questions to him only for the purpose of contradiction and if there is a previous statement—we need not suppose that what he stated first is necessarily false and what he states before the Magistrate is necessarily true—and if that previous statement is allowed to be used, it ought to be allowed to be used by both the parties. Then, it has been clearly stated that it will not be used for the purpose of corroboration at all. In case it is found that he is going back upon his former statement then he will be contradicted by the former statement. You will also see that now, long before the particular case starts, all the papers, records, statements and other documents are before the accused. Formerly you will find that statements under 162 were to be allowed to the accused only after a certain stage of procedure was reached. All that has been done away with and you find that in the interest of the accused he is allowed all the documents quite free long before the case starts. You will find that this is a great advancement in the interests of the accused. Therefore, I was submitting to the House that Government have accepted very important changes suggested by the Joint Committee.

Then I come to the Committal proceedings. So far as Committal proceedings are concerned there was almost a universal body of public opinion that the Commitment proceedings should be dropped altogether. You also said, Sir, yesterday, that the Commitment proceedings should not be there. But, we have to understand that the Commitment proceedings as they have been conceived of under the Code of Criminal Procedure require a certain previous stage to be gone into. They are serious cases and there ought to be some evidence collected either through investigation or otherwise and according to the proposal that the Government had before them in the original Bill, what the Magistrate was to do was to see whether the provisions regarding the furnishing of documents was properly done. He was then to pass on the paper to the Magistrate concerned or to the Sessions Court concerned. It was pointed out to the Joint Committee that in such a case, if for example, the matter is absolutely frivolous, then it ought to be open to the Magistrate before whom these proceedings are lodged to have a judicial side also of his work. Then he can discharge the accused if he finds that the material is not strong enough or that the evidence is frivolous. My hon. friend Shri Pataskar yesterday contended that in such cases the right of cross-examination is not given at all. My answer to that is, that it is not in the sense of a full preliminary enquiry as was originally thought of by the Code of Criminal Procedure. Now such cases in respect of serious offences would be very rare and therefore the right of cross-examination as such was taken away. You will find that my friend did not read the next proviso just below it. It has been stated therein that this does not mean that the Magistrate will have no right to ask any question that he pleases.

Shri Pataskar: Does it amount to cross-examination?

Shri Datar: That would show, that if in such a case the question of cross-examination is necessary, then it will be open to the accused to seek the permission of the Court and the Court will put that question. We only desire that there should be no lengthening of the proceedings.

Shri S. S. More: Do you call it a substitution to cross-examination?

Shri Datar: It is a substantial substitute for cross-examination.

Shri S. S. More: It is a shadowy substitute.

Shri Datar: Then I may point out to this House that such cases are very rare. Even now it may be noted against the present background, in the Commitment proceedings that only on very rare and unusual occasions do the lawyers for the accused have recourse to cross-examination. So, in the light of all these facts Government thought, at that particular stage, cross-examination as a matter of right need not be given. But, still it would be open to the Magistrate, if he finds that a particular question is highly relevant or is highly vital, to put that question at the suggestion of the accused.

Then my hon. friend Shri Pataskar further contended yesterday that there ought to be no difference between Commitment proceedings in respect of a private complaint and the proceedings started at the instance of the prosecution. I would point out to the House that in the case of Commitment proceedings started by prosecution—as I pointed out to you just now,—there is certain material which is ready on which it will be open to the Sessions Court to proceed further In respect of a private complaint it will be understood very clearly that a private complaint is a case which is immediately started by the complainant and it would be inconvenient to the accused, it might be unfair to the complainant himself, unless there is some material which has to be collected as a preliminary measure. The complainant in such a case will not be in a position to place all the facts properly before the Sessions Judge. It was for this purpose, Sir, that the Joint Committee agreed that in respect of private complaints, in cases which are triable by Sessions Courts—such cases are very few—it would be better if the present procedure is fully followed.

Shri Pataskar: I also suggested the appointment of a Director of Public Prosecutions.

Shri Datar: Then, it was contended that most of the criticism is naturally again directed against defamation of Ministers and public servants. Yesterday my hon. friend was kind enough to the Ministers, but he said that it should not be extended to the public servants at all. So far as this is concerned, when the Bill was originally introduced and there was debate during the Budget Session then the Government policy was before the House, before the public and naturally before the Press Commission.

One of the provisions to which a strong objection was taken was that the offence should not be made cognizable. The Press Commission considered this particular question and I would like to read to you one or two passages where the Press Commission,—the majority of the members of the Press Commission—have come to the conclusion that in the case of defamation of a public servant or a Minister, etc., so far as his public actions are concerned, it ought to be open to Government to launch a prosecution even though the particular person defamed is not inclined to file a complaint. I invite the attention of the House to pages 431 onwards. In particular, I would like to read to this House two passages:

> "We think if at all such cases of defamation are to be made cognizable offences, they should be restricted to defamatory allegations in respect of public servants in the discharge of their public duties, as

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is proposed to be done in the Bill. Even then, we consider that it would not be a defensible procedure."

Further down, I would like to invite the attention of the House to these views:

"On the other hand, we realise that there would be some cases where serious allegations are made which would require police investigation. There may also be public servants, perhaps with guilty conscience, who would not be willing to bring the cases into courts, and to clear themselves of the defamatory allegations. The police cannot take any action because the offence is a non-cognizable one, and under Section 188 of the Criminal Procedure Code, no court can take cognizance of the offence of defamation except upon a complaint made by some person aggrieved by such offence. A procedure has, therefore, to be devised which will strike a balance between these two considerations, namely, frivolous action by the police and the consequent harassment of the offender and the desirability of a police investigation or a magisterial enquiry in some cases where it is necessary, that the public servant should clear himself of the defamatory allegation."

Then, Sir,

"The first result is achieved by not making the defamation of a public servant, in the discharge of his public office, a cognizable offence. To achieve the second result, some amendment of the law is necessary."

That amendment has been suggested by them in these words, at page 454;

"With regard to defamation of public servants in the discharge of their public duties, our colleagues do not desire any change in the law."

That is, some members.—

"The only change that we suggest is that without making it a cognizable offence, it should be possible to set the law in motion on a complaint, were necessary, from an officer to whom the public servant is subordinate and a provision should be made by which there shall be a magisterial enquiry or a police investigation to decide whether there is any truth in the allegation before a process is issued in pursuance of the complaint."

I would point out to the House that the Joint Select Committee took these views into account, and they went a step further for safeguarding the rights of the press so far as this particular matter was concerned. As you are already aware, we had the representatives of the press before us and they stated that their confidence would be fully restored provided all such cases were heard only by Sessions Judges.

Dr. Krishnaswami (Kancheepuram): That is not so. Today they have issued a contradiction in the Press.

Shri Datar: In the course of their evidence, they suggested that they would be satisfied if the case is heard by a Sessions Judge.

Shri S. S. More: I was a member of the Select Committee and I say that that statement is not correct.

Shri Datar: I would request the hon. Members to hear me fully. They stated that their original objection remained, but without any prejudice to their original objection, if the case is heard by a Sessions Judge, then, their interests would be more or less safeguarded. I hope my hon. friend will agree.

Shri A. K. Gopalan (Cannanore): There was a report yesterday. It is wrong.

Mr. Chairman: This is not contrary to what is stated there.

Shri A. K. Gopalan: It is contrary.

Shri Datar: I would point out that they suggested that either there should be a police investigation which was strongly objected to, or there should be a magisterial enquiry, I believe, under section 202 of the Criminal Procedure Code. Both these courses were considered satisfactory enough in the interests of the Press by the Joint Select Committee. They suggested that in such cases, in order to avoid all harassment to the parties concerned, the best course would be that the Public Prosecutor should file a complaint in the District Court and his counterpart in the Presidency town. It is only the Sessions Court that should hear these cases. You will also agree that the offence is no longer a cognizable one. So, if these circumstances are taken into account, there is no objection. There is especially one more circumstance which I would point out to the House, namely that so far as private character of a public servant or a Minister is concerned, it is entirely irrelevant, but so far as their public doings are concerned, they are a matter of vital interest to the purity of the administration. Therefore, it is quite likely, as the Press Commission has stated, that there might be certain public servants who might have a guilty conscience and when certain exposures are made, they may not like to file a complaint at all, because they will have to be subjected to a very searching cross-examination. What the Government desire is that their officers should be pure and above reproach, and if certain allegations of such a nature are made, then, either those allegations should be proved or the person who made those allegations should be punished by law. It is for this purpose, in the interest of the purity of administration which is in the heart of every hon. Member of this House, that Government have taken recourse to this course. The House will kindly understand that there are no safeguards given to the public servants or to the Ministers. They have a right, under the present Code of Criminal Procedure, to file a complaint in respect of their private or their public acts, whenever there is defamation, but if there is defamation so far as their public acts are concerned, then naturally, the Government is a party which is more vitally interested either in condemning him altogether and throwing him out of the office or in condemning the man who has been guilty of blackmail. It is only in such ways that public confidence would be fully restored so far as such scurrilous writtings are concerned.

I would not like to go further into the matter, because the question has been fully considered from various points of view and an independent body like the Press Commission has come to the conclusion that Government ought to have a right in the interests of public administration from this public point of view. It is for this purpose that we have evolved a formula according to which their interests would be satisfied, the interests of the public would be satisfied, and in the interests of the public, there lies, naturally, the interests of the administration.

I would finish in two minutes. Something was said about Honorary Magistrates. So far as Honorary Magistrates are concerned, the opinion is rather both ways. But still, two safeguards have been laid down. In all cases of the abuse of this power, what had happened was Honorary Magistrates had been appointed especially during the British administration, without any consideration of their qualifications for the judicial posts or offices which they were called upon to hold. In the Bill, it has been laid down that they must have had judicial experience.

Shri Pataskar: Was not this experiment tried in Bombay and abandoned?

Shri Datar: There are different States. So far as Bombay is concerned, to some extent, my hon. friend is right, but there are also other States, which possibly he does not know, where this experiment has been successful.

Sardar A. S. Saigal (Bilaspur): For your information, I may say that Madhya Pradesh has been successful in this respect.

5 P.M.

Shri Datar: I am extremely happy to hear this. I would point out to this House that there are two factors in the administration of criminal justice which would bring the people in direct association with the administration of criminal justice. One would be by the system of jurors and the other by entrusting qualified public men of repute with the task of administering justice. Now, you will find that so far as this provision was concerned, a further safeguard has been laid down by the Joint Select Committee. They suggested that the Honorary Magistrates should be appointed in consultation with the High Courts and therefore, there cannot be any case of the alleged abuse of this Bill by the executive.....

Shri S. S. More: May I correct, Sir? The provision is that such qualifications should be prescribed by the State Governments in consultation with the High Courts. The appointment is not in consultation with the High Court; the qualifications are to be prescribed in consultation with the High Courts.

Shri Datar: Therefore, if this safeguard has been introduced, then it is the State Governments to appoint Honorary Magistrates and if they find that the experiment will fail or has failed it is open to them not to appoint. After all, unless you have faith in our people, you cannot have a full form of democracy.

Lastly, so far as section 30 Magistrates are concerned, first class Magistrates with ten years' has been laid down. These Magistrates should be considered as equally competent, if not more, than the newly appointed Assistant Judge. I want to point out to this House that all First Class Magistrates cannot be appointed as Assistant Judges. Therefore, what hon. Shri Chatterjee said was not quite correct. Ten years experience is more than a sufficient guarantee for the purpose of having the best men and section 30 has been working very well. I would point out to my hon. friend that there are certain Part A States where this experiment has proved successful. In Oudh, I am told, this experiment is quite successful and in Punjab also, it is so. I submit that there is nothing wrong if you maintain section 30 Magistrates. Thereby, there would be greater disposal of cases as early as possible by equally competent and experienced Magistrates.

BUSINESS OF THE HOUSE

Mr. Chairman: Before we disperse, I want to make one announcement. Tomorrow, the House will take up the resolution regarding Andhra from 12 NOON to 4 P.M., and at 4 P.M. Private Members' business will be taken up. This has been agreed to by all the parties in the House.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, the 19th November, 1954.