CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

The Deputy Minister of Home Affairs (Shri Datar): I beg to move:

> "That the amendments made by the Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

When this matter was considered in the Rajya Sabha, certain amendments were made on the acceptance thereof by Government. Some of them are more or less of a consequential nature. For example, the House will find that the consideration of this Bill was started in 1954, and now we are in 1955. Therefore, certain consequential changes had to be made.

Then there was an inadvertent omission regarding the mention of the expression "by notification in the Official Gazette". That ordinarily occurs, but that was not done.

Then, in addition to these amendments which are more or less of an ordinary nature, there were certain substantial amendments moved in the Rajya Sabha and accepted by Government. The opponents of the Criminal Procedure Code (Amendment) Bill will find that these amendments are more or less of a liberalising nature, and I shall very briefly make a reference to some of these here.

It will be found that so far as clause 22 was concerned, it passed through a number of vicissitudes. The original intention was to drop section 162 altogether. Then, the second intention was that some changes should be made. Then it was considered by this hon. House that if, in respect of the statements taken by the police during investigation, the accused has a right for the purpose of contradiction, a similar right should also be extended to the prosecution because in some cases it is found that when statements are made immediately before the police, they are taken back or retracted for certain reasons which may or may not be satisfactory, and therefore, resiling from such statements is a very serious matter which affects the course of justice as well. In order to meet such cases it was considered that the accused as also the complainant or the prosecution should be put on the same footing. Here, though it is the same footing, still it will be found that under the Indian Evidence Act the prosecution or a party which calls a witness who resiles from the earlier statements has no right of cross-examination as such so far as his own witnesses are concerned, because when he calls a witness it is presumed that he will depose in favour of the party that calls him. But there may be cases where a witness called by a party is tampered with or resiles from his statement. In such a case the Indian Evidence Act provides for a remedy to him. He has to approach the court and request the court to give him the right to cross-examine the witness. The court will go into the evidence in the case. The court will find out the demeanour and the statement of the particular witness and it would come to the conclusion, or may not come to the conclusion, that the particular witness is a witness who has turned hostile. In case the court comes to the conclusion that he is hiding certain truth or going away from certain statements which are *prima facie* correct and that he is adverse or hostile to the party that called him, then the court grants permission. So far as this restriction which has been laid down in the Criminal Procedure Code is concerned, that is maintained, as it is and therefore, to that extent, there is no parity so far as the prosecution and the accused are concerned. It is always open to the accused to cross-examine and to contradict the witness by his previous statements. There no permission of the court is necessary. Here, the permission has been wedged in between the desire of the prosecution to cross-examine him and actual cross-examination.

Now, so far as this is concerned, the matter remains as it is. But there

are cases, where in the interests of justice itself it ought to be open to the prosecution to point out that a particular witness who made a statement once and who is resiling from the statement is an absolute liar and the best way of restraining a witness from going away from his own statement is to have a check on him by way of a contingency of cross-examination, and therefore this particular right has been given to the accused. And it will be found that so far as that right is concerned, it is already conceded by this House. The same thing was accepted, but the question arose in the Rajya Sabha as to whether, when there has been treatment of a prosecution witness as an adverse or hostile witness and if he is put certain questions in cross-examination, the accused will have a right of re-examining him. You will find that under the provisions of the Indian Evidence Act a witness is examined in chief and cross-examined. Ordinarily, the party calling him has the right of re-examination. Here it may be found that the party calling him has actually cross-examined the witness. Under these circumstances, in the interests of equity and fairplay, it was considered by the Rajya Sabha, to which Government also agreed, that the right of re-examination should be open to the accused as also to the prosecution when the cross-examination is by the other side. So, it will be found that this is a liberalising measure, so far as the rights are concerned. This is what has been done in respect of clause 22.

Then, it would be found that in clause 25 also, a right of appeal has been added. It would be found that clause 25 deals with prosecution on behalf of a public servant by Government. That was a very controversial clause. It was considered sub-clause by sub-clause, and ultimately a particular formula was evolved which was satisfactory to a large number of hon. Members of this House as also of the other House. The complaint in this case is filed by the public prosecutor on behalf of Government. In fact in all such cases complaints are filed only after the information regarding its falsity has been taken from the real complainant or the persons defamed, and therefore it was laid down that a summary procedure should be added on to this provision also, according to which if this complaint filed by the Government is found to be false and vexatious, then there ought to be somebody who ought to pay compensation therefor. In this clause, it has been laid down like this. It might be found that this is more or less a punishment against the officer himself, because the officer had stated that he had been defamed, but when the complaint is found to be false and unfounded, that means that there was no defamation but only the exposure of a correct thing, and therefore it was entirely improper to have filed a complaint, so far as this accused was concerned. In this case, the person who brought out all the information has stood the risk of prosecution—there was a prosecution,—and it was ultimately found that the person defamed had not been defamed at all, but the defaming person was right. Under such circumstances, in addition to section 250 which provides for compensation in the case of all complaints, a special provision was introduced in the Code of Criminal Procedure. But through oversight, however, the right of appeal had not been given to the person against whom compensation had been ordered. It was considered out of a sense of fairplay to the person against whom compensation has been ordered, that he also should have a right of appeal. All that has been provided in clause 25 by the additions which have been accepted by the other House.

Then, naturally other consequential provisions follow, namely that the fine is not to be recovered until the appeal has been decided, if any. So far as the last sub-clause is concerned, it is only a verbal change that has been made, and there are no substantial changes at all.

On onother point also, the Rajya Sabha has made a very important

[Shri Datar]

change. The original idea was that inasmuch as all the accused were not in such a state of helplessness as they once were, some change should be made so far as the nature of the examination of the accused was concerned. As you will find from the history of the Criminal Procedure Code, it was considered that when an accused was to be examined or when the examination of an accused was to be recorded, he was never to be examined as a witness at all. An optional change has been made in the law by this House and the other House. But here in this case when an examination is made by the court of the accused, certain safeguuards were laid down; and those safeguards were that questions of a general nature, questions of a fishing nature or even questions of a hostile nature like cross-examination should not be put to him. So, the original Criminal Procedure Code, as it stands, had introduced these words in three or four sections for the purpose of enabling him, i.e. the accused, to explain any circumstance appearing in the evidence against him. It was considered by this House, it was considered also by Government, that so far as this safeguard was concerned, the time has come when this safeguard may not be necessary at all. But the other House came to the conclusion that this safeguard ought to be retained. Therefore, all that has been done is that we have restored the original position. In all cases, whenever an accused is examined by the court, that examination or the nature of that examination has to be circumscribed by the safeguarding clause, namely that general questions cannot be put to the accused, but only such questions can be put as are necessary for the purpose of enabling the accused to explain the circumstances against him.

Therefore, so far as this matter is concerned, what has been done is to restore the position to what it was in the original Criminal Procedure Code: and naturally, clause 31 has altogether been deleted.

Then a consequential change was made when in the course of a sessions trial, the sessions judge dictates to the stenographer the points of a charge to the jury. After it has been transcribed, it forms part of the record. Through oversight, the word 'signed by the Judge' had not been put in. They have been put in now in clause 52.

So far as clause 63 is concerned, it follows on the footing that was there formerly. When the original Bill came from the Joint Committee, the proposal was that in respect of commitment proceedings, there ought to be an examination of witnesses without cross-examination invariably in every case. That was the position that had been accepted by the Joint Committee, but this House considered that even in respect of commitment proceedings, it ought to be a judicial trial in the fullest sense of the term, especially so far as the right of cross-examination is concerned. Therefore, it will be found that now the extent of the commitment proceedings has been brought down or has been reduced, but it still remains a case where the accused has a right of cross-examining such witnesses as are placed before the committing magistrate by the prosecution. Formerly, when this matter went there, we had put the expression 'recording the statement of witnesses'. The expression 'recording the statement of witnesses' meant examination without cross-examination generally. If there is a cross-examination, then it ceases to be a case of recording the statement, but it becomes a case of ordinarily examining the witnesses or taking the statements on oath. Therefore, in view of this very important change that had been made by this House, the other House had suggested that these three expressions, which were in consonance with the original view but which are entirely wrong in view of the very clear position that even an inquiry before a committing magistrate would give to the accused:

a right of cross-examination whenever witnesses are placed before him and the depositions of the witnesses are taken by the committing magistrate, should be deleted. Therefore, these three expressions, 'recording of their statements' as they occur in certain sections have been altogether removed.

So far as clause 111 was concerned, instead of the word 'substituted', the word 'inserted' has been put in. 'Substituted' means something was already there and something else has been put in. 'Inserted' shows that a new thing has been added. So, you will find that this is a consequential change.

In regard to clause 112, the words 'with the previous sanction of the State Government' had been put in formerly; but it was considered appropriate and perhaps in consonance with decorum that instead of putting the word 'sanction' we might better put the words 'previous approval'. So, that has been accepted; and that is more dignified so far as the status of the High Court is concerned. In place of the word 'sanction', which gives the initative to the Government under certain circumstances, the word put in is 'approval'.

Therefore, you will find that so far as all these changes that have been made by the Rajya Sabha are concerned, they are in the line of making the law up to date, so far as the consequential changes are concerned, and in the line of making the law more liberal so far as the three or four points on which the other House has given its attention are concerned.

Before I conclude, I would make a very brief reference to an amendment which our hon. friend, Pandit Thakur Das Bhargava, has tabled. Again he has brought in his own idea that the whole matter should be shelved. I am afraid it is too late in the day to shelve this matter after so much time has been spent by this House as also by the other hon. House. So far as the number of hours is concerned—I speak subject to correction—at least 100 hours have been spent over the various provisions of this Bill in this hon. House, and in the other House also at least 35 to 40 hours must have been spent. Therefore, whether the 150 hours spent should completely be neutralised or whether the Bill should be allowed to go out as an Act so far as the present amendments are concerned is the question. And I would promise this House that in case the Law Commission consider that they ought to give their attention to this Bill as well, including the new amendments that we have introduced, it would be perfectly open to them to consider the whole matter. But the point that I am going to stress before this hon. House is that there are a large number of provisions—it has been admitted on both sides of the House—which are indisputably of a progressive character and which will improve the tone of administration in criminal courts and which will, to a certain extent also improve the tone of investigation. Therefore, the question that now arises is whether the whole labour that has been gone through over so many days and during a number of sittings should all be neutralised or wasted or whether the Bill should go out into the country as an amending Act. And let us try and have the experience of the working of the new amendments and by that time the Law Commission might consider to what extent any changes are necessary either in the original body of the Criminal Procedure Code or so far as the present amending Bill is concerned. Therefore, I would appeal to this House not to accept this last attempt made by my hon. friend for shelving the whole matter, because it would be entirely wrong to shelve the matter, especially when on the showing of many of the hon. Members here, who were never very kind or sympathetic to the provisions of the Bill, that there are number of provisions which are entirely of a satisfactory or liberal nature. I, therefore, hope that this hon. House will agree with the various amendments that have been moved and accepted in the Rajya Sabha, and will allow us to have this Bill become law as early as possible.

Mr. Deputy-Speaker: Motion moved:

"That the amendments made by the Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

To this there are certain amendments. Three amendments have been tabled by Pandit Thakur Das Bhargava.

Shri Datar: Three or two?

Mr. Deputy-Speaker: Three. One I did not circulate for the reason that it seeks to amend clause 3. Only such amendments can be moved as touch parts of the Bill which have been touched or amended by the Rajya Sabha. I find that clause 3 is not one of the clauses amended by the Rajya Sabha

Pandit Thakur Das Bhargava (Gurgoan): Sub-clause 3 has been amended. The question of notification is there. The Bill will be applied by a notification in the Gazette.

Shri Datar: That relates to clause 1.

Mr. Deputy-Speaker: Clause 3 has not been amended.

Pandit Thakur Das Bhargava: This is an amendment relating to sub-clause (3) of clause 1.

Mr. Deputy-Speaker: There is no sub-clause (3).

Pandit Thakur Das Bhargava: The question is about the notification. I have submitted that the notification should not be issued unless such and such conditions are fulfilled.

Mr. Deputy-Speaker: The hon. Member will kindly see the Bill at page 1, line 25. That is clause 3.

Pandit Thakur Das Bhargava: The amendment made by the Rajya Sabha was that the Bill should apply by virtue of a notification made in the Gazette, and I submitted that the notification should never be issued unless such and such conditions are fulfilled. This is the substance of the amendment.

Mr. Deputy-Speaker: That may be so.

Pandit Thakur Das Bhargava: My amendment is to that amendment made by the Rajya Sabha.

Mr. Deputy-Speaker: But it has not been put down here. I do not know what was in the original. The amendment is this...

Pandit Thakur Das Bhargava: This was never sent to me. Therefore, I do not know: otherwise, I would have corrected it.

Mr. Deputy-Speaker: That is what has been circulated. I will come to it presently.

Pandit Thakur Das Bhargava: This was never circulated.

Mr. Deputy-Speaker: For this reason, that it refers to clause 3 which has not been touched by the Rajya Sabha. I circulated the other two which are in these terms:

(1) That for the original motion, the following be substituted:

"That further consideration of the amendments made by the Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1898, be postponed till the Law Commission to be appointed by the Government has made its report in respect of the Criminal Procedure Code as passed by the Lok Sabha and amendments made therein by Rajya Sabha and other connected laws like the Indian Penal Code, the Evidence Act and the Police Acts etc. etc."

(2) That at the end of the motion, the following be added:

"after the Law Commission to be appointed by the Government has made its report in respect of this measure and other connected laws."

Apparently, these are two dilatory motions. The Law Commission has not been appointed. It says—to be appointed and then after it has made its

report, to consider it. My difficulty is this. I would like the hon. Member to satisfy me on this point. Under rule 137 when a Bill is passed by this House and referred to the Rajya Sabha and the Rajya Sabha sends it back to us with certain amendments, further amendments are allowed only to those clauses that have been touched by the Rajya Sabha. But a motion that this may stand over or be postponed can be made, according to me, independently of that particular rule. But the hon. Member has to satisfy me as to how this is not a dilatory motion.

The Minister of Defence (Dr. Katju): Of course, it is a dilatory motion.

Pandit Thakur Das Bhargava: In the first place, whenever any Bill or any measure comes before any House, it is an inherent right of every member of the House to submit to the House that the matter may not be considered further. In this connection, may I respectfully bring to your attention rule 146—previously it was rule 137; now I find it is rule 146—whereby a Member is entitled to say that the further progress of a measure at any stage may be postponed.

Mr. Deputy-Speaker: I am not doubting it. But what are the grounds? The Law Commission has not been appointed.

Pandit Thakur Das Bhargava: Kindly hear me; I will give all the grounds I am capable of.

In the first instance, the Law Commission has now been promised to be appointed, and the Law Commission will go into this matter as well as other connected matters, the Indian Penal Code, the Indian Evidence Act, the Police Act and all other coercive Acts and other Acts which have got a bearing on the question. And when those Acts are gone into, the Criminal Procedure Code is certainly a measure which is connected with all those laws, and it shall have to go through this Code. This Bill has now been in existence before us only for a very short time, but the Code has been in existence for the last 58 years. We know what the law is. So far as the Criminal Procedure Code is concerned, it is a well-balanced, well-poised measure and all the different aspects of trials etc. in respect of all matters have been provided: it is a measure which has stood the test of time, whereas the measure that we are enacting, if you will kindly permit me to say so, we are enacting very wrongly. We have amended the law so wrongly that it is not even half so good as the previous law was. And if I may submit for the consideration of the House, in many matters, the law has been disfigured; the previous law was very much better, and the time that we have spent has not only been mis-spent; but, on the contrary, as the Urdu proverb says:

"अगर सुबह का भूला शाम को घर आजाये
तो उसको भूला हुआ मत समझो"

We will be doing the right thing if we go on with the present law till the Law Commission seeks to change the laws radically.

Dr. Katju: On a point of order. Is the discussion to be confined only to the points on which the Rajya Sabha has made amendments or is the whole policy of the Code open for discussion?

Pandit Thakur Das Bhargava: I will answer that interruption...

Mr. Deputy-Speaker: Order, order. He has raised a point of order. The ruling is—not even on the amendments made by the Rajya Sabha.

Dr. Katju: He is going into poetry.

Mr. Deputy-Speaker: I am only asking him why this motion at this stage is not dilatory. We are not going into the merits. I do not want the hon. Member to go into details about the original amendments or the later amendments made by the Rajya Sabha. What is wanted is a mere statement. If the Commission had been appointed and all these matters had been considered at a particular stage, it is one

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thing. But it has not yet come into being. It may or may not touch upon that, and if it does touch upon it, it modify this Act also.

Dr. Katju: By that time the Bill will lapse.

Mr. Deputy-Speaker: What has the hon. Minister to say?

Shri Datar: So far as this point is concerned, I may humbly submit to you that the attempt at a long speech is itself a delaying process and he cannot go into the earlier questions at all. The only question, as you rightly put it, is relating to the few amendments that have been accepted by the other House.

Shri Gadgil (Poona Central): May I say a word on this? The question now is whether this particular measure is dilatory or not, whatever be the intention of the hon. Member.

Shri S. S. More (Sholapur): Are you doubtful about it?

Shri Gadgil: The effect is that it will be dilatory, though not in intention, yet in action. This House and the other House together have spent 40 days over this Bill and calculating that one day costs about Rs. 15,000, over Rs. 6,00,000 has been wasted. Apart from this, all papers relating to the Bill and the principles of the Bill were circulated, public opinion invited, views of the high court judges and Supreme Court Judges ascertained. There were 21 meetings of the Select Committee of which I had the honour to be Chairman. Every sort of free discussion was allowed, and now at this stage to say that you should not go on with it till the report of the Law Commission, though not in intention at least in effect, will be that it will be postponed, and if it is postponed, according to the rules it will lapse also.

Shri Kamath (Hoshangabad): Is it right for the hon. Member to say that the money spent on parliamentary work is a waste?

Mr. Deputy-Speaker: It will be a waste; he only said that money would have been wasted.

Shri Sadhan Gupta (Calcutta South-East): The question here is whether the measure is a dilatory one or not. I submit that the facts given by Shri Gadgil are beside the point for consideration of this question. Whether we wasted Rs. 6,00,000 or Rs. 6 is entirely irrelevant to the problem.

Mr. Deputy-Speaker: Leave all that alone. What is the hon. Member's suggestion? Is it dilatory or is it not?

Shri Sadhan Gupta: It is not dilatory. The question is: Is there any valid ground for waiting for the Law Commission? The Law Commission is not such a distant thing. We have heard from reports that the Law Commission is about to be appointed and we can be quite sure that the Law Commission would go into all the laws of our country, civil, criminal and everything, and would decide what is the best way of amending our laws. Now, the question is whether at this stage we should bring into being far-reaching changes in the criminal procedure when a Law Commission would be about to consider them. Why should we? As Pandit Thakur Das Bhargava has pointed out, the existing Criminal Procedure Code has been in force for 56 years, and as a matter of fact, it has been in operation in one form or another, for I think, over 80 years, because the Code of 1898 was only a re-enactment of the old code with certain minor improvements. Therefore, we are amending an old established law, which has proved its merits, in a very drastic way, and in a way regarding which many Members of the House, comprising different sections of the House, have raised their objections and pointed out defects.

Secondly, it is not a fact that we had obtained the country's opinion on the point. The High Court Judges and Supreme Court Judges have given their opinions; it is quite true, but it

is also a fact that there are other relevant opinions which were not forthcoming. For a measure of this kind, we want the opinion of the bar. The bar's opinion was not very much forthcoming; they had not the opportunity to give it, and besides the bar, there is the question of other organisations who are directly affected by the law of criminal procedure; for example, the trade unions, the organisation of peasants—they are all concerned.

Mr. Deputy-Speaker: We are not on a motion for circulation.

Shri Sadhan Gupta: No, Sir. The question is that we had proceeded to the enactment of this particular code on a very inadequate appreciation of the opinions.

Mr. Deputy-Speaker: I have heard enough about this matter.

Pandit Thakur Das Bhargava: The objection was raised by the hon Minister, supplemented by our revered friend, Shri Gadgil. I have not been heard on the question, but other hon. Members are being heard. I should be heard on the question whether it is dilatory or not.

Mr. Deputy-Speaker: I heard the hon. Member.

Pandit Thakur Das Bhargava: I had not even advanced a single argument....

Mr. Deputy-Speaker: I only want to hear one or two things—whether the Commission has been appointed or when it is going to be appointed. whether it will go into this matter of modification and whether it will take all this into consideration. These are the things that I want, but the whole thing now is nebulous.

Pandit Thakur Das Bhargava: I am not allowed to speak at all.

Mr. Deputy-Speaker: The hon. Member will merely state his points; one, two and so on.

Pandit Thakur Das Bhargava: The whole House knows that Government have agreed that they will appoint the Commission very soon and there is no doubt about it. That Commission will go into these matters. There are two amendments that I have given. In respect of one, the Chair has been pleased to ask me: Why is it not a dilatory motion? In respect of the other, the Chair has not asked me anything at all.

Mr. Deputy-Speaker: I asked for both.

Pandit Thakur Das Bhargava: My humble opinion is that my motion is not dilatory. My motion, even if it were dilatory, is a good one. What is the use of telling me that Rs. 6,00,000 has been spent? Rs. 12,00,000 has to be spent in undoing this. When the Commission goes into these matters, it will also ask the Supreme Court Judges. We know what Mr. Justice Mahajan said about the Bill, but his opinion was flouted. We know the real intention of Dr. Katju when he sent this Bill to the Select Committee; we all applauded him. I still have to say that his intentions were good, but when it went to the Chairman of the Select Committee, they turned down these intentions and made proposals which uprooted the original Bill. How am I to condemn Dr. Katju? I praised him when I spoke last time and I still do so, but he is too sweet and soft a man for he changed his original intention subsequently (*Interruptions*). I do not know why these gentlemen are interrupting me. I want to place some arguments before the House so that as a matter of fact we will be well advised in postponing this measure.

Dr. Katju: How can that be?

Pandit Thakur Das Bhargava: If we allow this measure to go on, the Law Commission will have to undo it in this way because the Commission is sure to be influenced by the arguments of Dr. Katju, to the effect that there are 85 per cent. acquittals in sessions cases and commitment must go.

Dr. Katju: What has that got to do with the Bill today?

Pandit Thakur Das Bhargava: Evidently there is, because the money that has been spent has been regarded as well spent. The difficulty is that we have disfigured the Criminal Procedure Code; I do not want the Criminal Procedure Code which has been disfigured to be enforced. This will introduce much uncertainty in law. For the last 80 years or so there is a certain kind of procedure and everybody knows that it should not be disturbed in this manner. What about Section 162? The result is this that so far as the law is concerned, the charge will be framed on the basis of statements under Section 162 which is both preposterous and inconsistant with other parts of the Code.

I beg to move:

(1) That for the original motion, the following be substituted:

"That further consideration of the amendments made by the Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1898 be postponed till the Law Commission to be appointed by the Government has made its Report in respect of the Criminal Procedure Code as passed by Lok Sabha and amendments made therein by Rajya Sabha and other connected laws like the Indian Penal Code, the Evidence Act and the Police Acts etc. etc."

(2) That at the end of the motion the following be added:

"after the Law Commission to be appointed by the Government has made its report in respect of this measure and other connected laws."

I may explain....

Mr. Deputy-Speaker: We are not going into details.

Pandit Thakur Das Bhargava: I am not going into details myself but I am submitting four or five salient points for your consideration.

Mr. Deputy-Speaker: He has sufficiently said that there are a number of controversial points here and the overall picture should be evolved by a Law Commission after going into all these matters—not only this matter but various other relevant matters which should be looked into and then only a final picture should be evolved in the light of its findings, and it will then be proper to have an amendment of this enactment which has been there since 1898. That is in short the pith or substance of the motion. But what does the Government say?

Shri Datar: I oppose the amendments on technical grounds and also on substantial grounds.

Mr. Deputy-Speaker: That is all right.

Pandit Thakur Das Bhargava: May I bring one more point to your notice? This House ordered the Select Committee to go into the entire matter and to consider not only clauses which were being amended but to consider amendments to other sections also. They considered the matter and said that the Law Commission would go into the entire Code having the full picture before them and then would decide what would be best for us. I do maintain that the Law Commission will do many other things also which will be in keeping with the genius of the people. For 200 years, the British governed us and they promulgated laws which were not suited to our genius. The Law Commission should go into all those matters, see everything afresh and remove the disfigurement that we have made already in this Bill. If you allow me I can suggest three or four points in regard to this disfigurement which had put uncertainty in the present measure and which had really made the law of the country which was in vogue for the last 80 years into a very different one. The Commission would go again into it and they will do the same thing again. What is the use of all these?

Why should you lose another Rs. 12 lakhs to undo the wrong which this Bill has done to us? The Commission will either radically change the Code or not change it at all. There will be no tinkering with it. My submission, therefore, is this. When the original Bill was there, it was submitted for the consideration of the House that the Law Commission was coming. When it went to the Select Committee, I went to the Select Committee and said that the Commission is going to be appointed. Many High Court Judges said and the Supreme Court Judges also said so. I said the same thing at the third reading. I say the same thing again. Why should my friend take objection to it? A Law Commission should go into it and decide. The Criminal Procedure Code is one of the most important pieces of legislation and it is not right to go on with this measure in this slip shod fashion and piecemeal. This House and the other House had amended it but they had not been able to do full justice. The House itself wanted that the Code should be wholly amended; yet it was not gone into and the Select Committee did not obey the behest of the House It came up before us in a transacted form. There will be another Bill—a third Bill—in two years. (*Interruptions*).

Mr. Deputy-Speaker: The hon. Member is expatiating. With all respect to the hon. Member, I have heard the point. He referred to rule 146. It is open to an hon. Member to move that the debate on a Bill may be adjourned in any stage of the Bill with the consent of the Speaker. Under rule 323, if the Speaker is of opinion that a motion for the adjournment of a debate is an abuse of the rules of the House, he may either forthwith put the question thereon from the Chair or decline to propose the question. In view of the fact that the hon. Member who has tabled these two motions is an eminent lawyer, I do not want to take the responsibility to decline to propose this question I will immediately, without any ado, put this question to the vote of the House. He has been making a suggestion even at the third reading stage and at other stages also that a Law Commission should decide all these matters. Unfortunately the House decided otherwise. It could have thrown away the Bill and accepted his suggestion even at the third reading stage; that course was open to the House; it has not been done. In those circumstances, in view of what has occurred regarding the opinion of the House, I do not think that this is a motion to be allowed by me. But I do not take the responsibility and I will put it to the vote of the House.

The question is:

That for the original motion, the following be substituted:

"That further consideration of the amendments made by the Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1898, be postponed till the Law Commission to be appointed by the Government has made its report in respect of the Criminal Procedure Code as passed by Lok Sabha and amendments made therein by Rajya Sabha and other connected laws like the Indian Penal Code, the Evidence Act and the Police Acts etc. etc."

The amendment is negatived.

Some Hon. Members: No.

Mr. Deputy-Speaker: Those who are in favour of this amendment may stand in their seats.

There are sixteen.

Those who are against will please rise in their seats.

By an overwhelming majority the amendment is lost.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

That at the end of the motion the following be added:

"after the Law Commission to be appointed by the Government

[Mr. Deputy-Speaker]

has made its report in respect of this measure and other connected laws."

The motion was negatived.

Mr. Deputy-Speaker: There are now two courses open. We can immediately go into the amendments one after the other or allow an opportunity to hon. Members to say what they have to say regarding these amendments. I will then put the motion—the motion for taking the amendments into consideration—to the vote of the House.

Shri U. M. Trivedi (Chittor): How many hours have been allotted for this?

Mr. Deputy-Speaker: I think one hour.

Shri Sadhan Gupta: Regarding these amendments there are very few principles which are common to all because some of them are objectionable, some of them necessary and some of them are unnecessary. Regarding the amendment to Clause 22, it is very difficult to understand what the idea behind this amendment is. Now, the words 'by the accused' are sought to be deleted. It is clear that in this context the words 'by the accused' are quite appropriate because after all what we had enacted in that particular clause is that the witness if he is called by the prosecution can be contradicted by the accused and what we have added is he can be contradicted with the permission of the Court by the party calling him—that is to say, the prosecution. Now, where does re-examination come in in this context? I can understand if the accused contradicts him, prosecution re-examines him with the help of the statement recorded. But I do not see how after the prosecution contradicts, the accused can re-examine him. The Deputy Home Minister has himself read out that the witness can be re-examined by the party calling him. After he has been declared hostile, if the prosecution in the course of contradicting him creates a sort of ambiguity which can be resolved by the statements made before the police, then the duty or the right of the accused is not to re-examine him but to cross-examine him and clear up the ambiguity by cross-examination. The accused can never re-examine him and, therefore, as it is only the prosecution witness that is liable to be contradicted by the statements recorded before the police, it is only the prosecution that can re-examine him. And, the most sensible provision is that, if he is cross-examined by the accused, if he is contradicted by the accused, the statements can be used in re-examination. There is no sense in re-examination by the accused.

Now, regarding the amendments to Clause 25 by which sub-clause (9A) and sub-clause (9B) have been introduced, I have no objection regarding sub-clause (9A), but I do have an objection regarding sub-clause (9B). Sub-clause (9A) gives the right of appeal. That is a fair thing as far as it goes because once compensation has been awarded against a person, he ought to have a right to appeal. But, I do not see why sub-clause (9B) comes in. If he has the right of appeal and there is a case of staying the compensation awarded against him, then the proper thing for him to do is to file an appeal and obtain a stay order. That is the usual rule everywhere, in civil as well as in criminal cases. If you have a sentence of fine awarded against yourself, you file an appeal or you file a petition for revision and you get a stay order. If you have a decree against yourself, you file an appeal or a petition and obtain a stay order of the execution. That is the rule. If you make a departure in this case and if you allow the appellant *ipso facto* the right of having a stay till the appeal is decided or till the time for appeal lapses, then it will be doing a great injustice to the person who has been falsely prosecuted. The injustice will result

in this way. Sir, you have considerable experience at the bar and even on the criminal bar and you know that there is a great time lag between the filing of an appeal and the actual disposal of it. If the appellant is interested in getting the order of compensation stayed then he hurries up, files the appeal, has it brought on the list and has it heard expeditiously and gets the stay order. Otherwise the appeal is summarily rejected and there is no question of any stay. But, if the right given to him is that he could have the order indefinitely stayed till the appeal is disposed of, there are many ways in which the appeal can be delayed after filing and all those tactics would be resorted to for the purpose of defeating the rights of the accused. Therefore, I am entirely opposed to sub-clause (9B) which gives the appellant the right to have the order stayed till the decision of the court or the expiry of the time. It must be the appellant who must take all steps expeditiously to file the appeal and get the order stayed.

Now, regarding other matters I have not much to say and a few of the provisions I do welcome. We fought very strenuously for them—for instance, the change in Clause 29 and the deletion of Clause 31 by which surreptitiously it was sought to introduce a provision which would enable magistrates to question and cross-question an accused person and make him confess to his guilt out of his own mouth. At the time we were opposing, I remember, Dr. Katju was of the opinion that there was nothing wrong in it. He said there was nothing wrong in trying to extract confession of the guilt out of the mouth of the accused. But, we thought it was very wrong. We tried in vain and we find that by the time it went to Rajya Sabha, perhaps this particular clause became fatherless due to the transfer of Dr. Katju and so, after all, justice has been done.

As for the other amendments they are mostly consequential and so I have no objection. But, regarding these two amendments—sub-clause (9B) of Clause 25 and the amendments proposed to Clause 22—we have our objections and I think the first is not sensible and the second is positively pernicious.

Pandit Thakur Das Bhargava: Sir, in regard to the new amendments that have come before us, I support most of them. At the same time I have to offer some remarks in respect of Clause 22, Clause 25 and Clause 31.

In respect of Clause 31, I am very glad that, after all, wisdom has dawned upon the Government in accepting this amendment in the Rajya Sabha. Here also we made a similar amendment and pressed the point upon the Government. But, the Government could not agree. Even in third reading, objection was taken to this aspect of the matter that out of the accused mouth you cannot extort a confession and ask him to make statements about it. I am very glad that after all the Government have agreed to this because in this House we laid great emphasis on it.

In regard to Clause 22, I am sorry I cannot agree with my friend Shri Sadhan Gupta. As a matter of fact the law of re-examination is this. When a matter is brought out in cross-examination which is damnatory to the opposite side, and that document, which is a document under Section 162 in this case, provides an answer to it—that is in the very body of the document you find an answer to the statement which has been made in cross-examination, you ought not to be debarred from using that statement. It is nothing but unjust. It is quite just that the accused also should have a right of re-examination. Supposing a person makes a statement in cross-examination under Section 162 which is not favourable to the accused and from the very document prepared by the police officer there are certain statements given there which are favourable to him and inconsistent with the evidence which is given in cross-examination by the prosecution, in that case, it is but fair, as the prosecution have the power of getting

[Pandit Thakur Das Bhargava]

those statements made by the witness re-examined under the original Section 162, similarly the accused should be allowed to have re-examination of those statements made by the witness.

Shri Sadhan Gupta: Can the accused re-examine a witness?

Pandit Thakur Das Bhargava: I quite see that so far as the question in Evidence Act is concerned, re-examination can only be made by the party calling the witness. It is perfectly right. But at the same time if you see the principle of the rule, the principle is that if a person makes statements which are not favourable to the other party and in the document its reply is given, why shut out that documentary evidence which is in favour of the accused?

Shri Sadhan Gupta: He should be cross-examined in that case.

Pandit Thakur Das Bhargava: That right is already there. As it is, the witness comes in. The prosecution wants permission to cross-examine that man. The accused does not cross-examine or permission is asked after he has been cross-examined the accused. What happens? He has made a statement there which can be contradicted by the documentary evidence under Section 162 and yet, if the law is there as it is, he would be debarred from using that statement. This would be unjust. Therefore, my submission is that the amendment made in the Rajya Sabha is very just and should have been made. I was under the impression that even if the statement was not made and the accused brought it to the notice of the court that in re-examination he should be allowed, the court would have allowed him. But, now it is a statutory rule and the accused is armed with this power and I welcome this amendment.

But in regard to Clause 25, sub-clause (9A) I am very sorry that I cannot support this amendment. As you remember, Sir, Clause 25 is a clause by virtue of which, if a person made a defamatory statement against public servants or against Ministers etc. then that person was to be prosecuted in a court of session and there the case was to be treated as if it was a warrant case and the person who is complaining may or may not be called according to the discretion of the court. Now, in so far as that section is concerned, as I had occasion to point out at the time when this clause was there, it is an unusually topsy-turvy procedure. Ordinarily when I go to an officer and complain against a person.....

Shri K. K. Basu: (Diamond Harbour): The time is up.

Mr. Deputy-Speaker: I have no objection. If the hon. Member wants to finish he may continue for a few minutes. If he wants to speak at length then he may continue tomorrow.

Pandit Thakur Das Bhargava: I will finish in two minutes.

5 P.M.

The right rule is this: when a person makes a complaint, say, of bribery, etc., against a public servant or subordinate, the statement is taken for what the man's word is worth and an enquiry is made into it, and if the servant or subordinate is guilty, or is found to have behaved in a bad or some other way, he is brought to book. Now, the whole thing is made topsy-turvy by Clause 25. You will remember the discussion at that time. Now, it is not that an enquiry will be made into the conduct of the person against whom the complaint is made. On the contrary, the person complained against will become the complainant under Clause 25, and efforts will be made to find whether the allegations made by this man were justified or not. So, the whole thing becomes topsy-turvy.

Then again, this is not all. There will be a Secretary, either of the Department or of the Cabinet, or somebody else who will go into that matter and sift that question through

and through and after that, a complaint will be brought up. Even after these two things are done, and if the person in respect of whom the accusation was made was not just or was not fair, what would happen? The complainant would be asked to pay some compensation. The public servant will be asked to pay some compensation. The provision of appeal in such a case is a concession to the public servant which is unjustified. The framers of the law, as it originally stood, were perfectly right, in this context, in seeing that no appeal was provided. Appeal is the creation of statute and is not an inherent right. Now they are giving another concession which is unheard of. After passing two or three scenes, it is proved that the person who made the complaint was right and the person who was complained against was wrong, even then, if compensation is allowed, there is another appeal. This is an interminable proceeding. The proceedings which are originally taken against the public servant are not allowed to have their normal cause as they are usually taken in all cases. This is new kind of law—*Droit Administratif*—which they had in France. It is a departure from the accepted principles of criminal jurisprudence.

Then again, there is an appeal, a second appeal and a third appeal. I should think that the law was this: that under these circumstances, when a complaint is brought, no appeal should be allowed. Now, they are allowing an appeal. My humble submission is that this is entirely wrong and the right intentions of Dr. Katju are again being flouted for reasons which are not just and which are not fair. Therefore, I oppose this proposal.

Mr. Deputy-Speaker: I shall now put the question to the vote of the House. Tomorrow, we will come to clause-by-clause consideration.

The question is:

"That the amendments made by the Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

The motion was adopted.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, the 26th July, 1955.

GIPD—US—165 LS—4-7-56—830