Mr. Deputy-Speaker: We have reached three o'clock now. I shall put the other clauses to the vote of the House.

The question is:

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 *was added to the Bill.*

Shri T. T. Krishnamachari: I have an amendment to clause 18.

Mr. Deputy-Speaker: Guillotine will not apply to the Government amendment. I will now put clauses 11 to 17 to the House.

The question is:

"That clauses 11 to 17 stand part of the Bill."

The motion was adopted.

Clauses 11 *to* 17 *were added to the Bill.*

Clause 18. (*Amendment of section* 25, *Act XXIV of* 1947)

Amendment made: In pages 5 and 6, *for* lines 44 and 45 and lines 1 to 8 respectively, *substitute*:

"(i) principles regulating the nomination of members of the Board by the Central Government under clause (d) of sub-section (3) of section 4, and the election or nomination of the members referred to in clauses (b) and (c) thereof:

Provided that before making any nomination in the exercise of its powers the Central Government shall call for panels of names from the respective associations recognised by it of the interests referred to in clause (d)."

—[*Shri T. T. Krishnamachari.*]

Mr. Deputy-Speaker: The question is:

"That clause 18, as amended, stand part of the Bill."

The motion was adopted.

Clause 18, *as amended, was added to the Bill.*

Clauses 19 *to* 22 *were added to the Bill.*

Clause 1 *was added to the Bill.*

The Title and the Enacting Formula were added to the Bill.

Shri T. T. Krishnamachari: I beg to move:

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

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

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

Clauses 2 to 15

Mr. Deputy-Speaker: The House will now take up clause by clause consideration of clauses 2 to 15 of the Code of Criminal Procedure (Amendment) Bill, 1954. As the House is aware, three hours have been allotted for the disposal of this group. A Key to the amendments relating to these clauses has already been circulated to Members. The Key will be found useful by Members in moving their amendments at the appropriate time and also for following the disposal of amendments in the House.

As regards the procedure for moving of amendments, the procedure which was adopted with respect to the Special Marriage Bill during the last Session will be followed in the case of this Bill. When a clause or group of clauses is taken up for consideration, Members will please hand in within 15 minutes to the Officer at the Table slips intimating the numbers of the amendments in their name which they wish to move. When sending intimation to the Table, Members may kindly specify in the slip the number

[Mr. Deputy-Speaker]

of the clause to which an amendment relates and use a separate slip for each clause.

Thereafter, the Chair will announce the numbers of the amendments with respect to each clause proposed to be moved by Members. These amendments will be taken as moved.

Now, clauses 2 to 15 are before the House. Hon. Members may start speaking and some hon. Members may prepare the list; or all of them may be engaged in preparing the list.

Shri Dabhi (Kaira North): Sir.....

Mr. Deputy-Speaker: The whole group is under consideration with all the amendments. They will be put to vote separately.

Shri U. M. Trivedi (Chittor): Will all the amendments be put to vote together?

Pandit Thakur Das Bhargava (Gurgaon): Will they not be taken up clause by clause?

Mr. Deputy-Speaker: I would like the House to appreciate what they have already done, with respect to which only further procedure should be adopted. Now, the House has accepted an order and the regulation of time distribution for the several groups. These clauses 2 to 15 have been put into one group and three hours have been allotted to them. It is difficult for the Chair to allot time to one or two of these clauses for the reason that one hon. Member may be interested in one clause and he may go on speaking with respect to that clause. What about other clauses? Is it possible, within these three hours, to refer to all the clauses 2 to 15—about 14 clauses? We have not divided these three hours into so much for this clause and so much for that clause. If I allow such a discussion, it may so happen that we may not reach some of the clauses; we may lay emphasis on the unimportant ones and allow the important ones to be guillotined. Many of the clauses and many of the most important amendments may not be touched at all. For this reason, I suggest that hon. Members who speak may speak on all the clauses 2 to 15 and all the amendments laying emphasis on such portions as are necessary. When I put them to the vote of the House, I will put them separately.

All these clauses together ought not to take more than three hours. If this is not agreed to, then what I will do is to take one clause for discussion, say clause 2 and have the discussion for the three hours and allow the rest of the clauses to be guillotined.

Shri Gadgil (Poona Central): I quite appreciate the difficulty you have pointed out. It may be that the major portion of the time may be spent on one clause and the rest may remain undiscussed. May I know whether, when a Member gets up, he will be given only one opportunity to speak on the whole group of clauses and amendments? In other words, he need not confine himself to any particular amendment or any particular clause but the discussion is upon all the amendments to the clauses in the group.

Mr. Deputy-Speaker: Yes, that is my point. Mr. Dabhi may refer to all these clauses and the amendments tabled with reference to them and say what he has to say.

Shri Dabhi: Sir, I refer to amendment No. 15 which reads:

In page 2, line 10,

for "one year" *substitute* "six months".

We know that the law, as it stands, says that any offence punishable with imprisonment of more than six months has to be tried as a warrant case.

Mr. Deputy-Speaker: We have started at five minutes past three. We are not sitting till six o'clock. Therefore, one more hour will be left for this group tomorrow.

Shri Dabhi: Clause 2 of this Bill changes the definition of a warrant case because the effect of the amendment in clause 2 is that an offence which would be punishable with imprisonment of not more than one year will now be triable as a summons case. I want that the original definition of a warrant case should remain as it is. That is my amendment.

You will see that the Bill, as it has emerged from the Joint Select Committee, keeps the right of the accused including the right of cross-examination intact, in private complaints. I will take some examples of sections 323 and 417 of the Indian Penal Code.

Mr. Deputy-Speaker: I am sure the hon. Member was here during the discussion on the general consideration. All that I am saying is, to the extent I was able to hear when I was in the Chair, this matter was sufficiently discussed and the argument that is now being placed before the House was already placed during the general discussion. I suggest that hon. Members need not state to the House all those reasons which have already been set out on the one side or the other. Any new thing which has not already been placed before the House may be placed now.

Pandit Thakur Das Bhargava: May I suggest one thing? We have taken up this clause and my friend is arguing about summons cases and warrant cases. As regards the procedure in summons cases and warrant cases, we will have other sections. Without discussing those clauses, to discuss here what should be a summons case and what should be a warrant case is not justifiable. I would respectfully ask you to kindly postpone the consideration of this clause till we have discussed the procedure relating to warrant cases and summons cases. Unless we come to any conclusion about the procedure to be observed in warrant cases and summons cases, what is the use of defining a summons case and a warrant case?

Mr. Deputy-Speaker: This is a definition section.

Shri S. S. More (Sholapur): Summons cases have now been changed from six months to one year. If we oppose this change, our discussion on this section would be rather meaningless and futile.

Shri Raghavachari (Penukonda): There has been a revision proposed in the procedure applicable to warrant cases.

Mr. Deputy-Speaker: I am able to follow. There are certain things defined in section 4 of the Criminal Procedure Code. There are matters which pertain in detail to the procedure relating to warrant cases and summons cases in the later chapters. Pandit Thakur Dasji said that when we substantially modify them, then ultimately the definition also will be modified. At this stage it may be convenient to refer to them. Either I allow discussion and do not put clause 2 to the vote of the House and I defer consideration, or we decide on clause 2, or once for all when we come to the later sections, we might refer to the definitions also and if we agree, we can put the definitions and the concerned sections to vote.

The Minister of Home Affairs and States (Dr. Katju): Section 4 of the Criminal Procedure Code deals with these matters, that is, warrant cases and summons cases. I suggest that you might put clause 2, as open to discussion minus that bit relating to definition, and when we come to warrant and summons cases, then we might discuss and change the definitions at that time.

Shri Raghavachari: The amendment is only to sub-clause (w) of section 4 and the only matter is that this may be considered along with the discussion on the procedure proposed in warrant cases.

Shri S. S. More: My hon. friend is not positively correct, because section 4 is open for the purpose of the amending Bill and we have also

[Shri S. S. More]

tabled certain other amendments to other clauses; for instance....

Mr. Deputy-Speaker: I shall consider whether it is relevant. As the hon. Speaker said already, regarding amendments arising out of the matters which have been touched under the Bill, ancillary or consequential, certainly those amendments will be allowed. If, though not technically, nothing in substance, which has been referred to in the Bill, is affected by any of those amendments, then those amendments will not be allowed to be moved. I will consider every one of them. Now discussion may go, but I would not put to the vote of the House those matters which relate to warrant and summons cases. I will defer the decision of the House till after they discuss the other sections related to this matter.

Shri Dabhi: I was saying that in the Bill as it has emerged from the Select Committee, the rights of the accused, including the right of cross-examination for more than once, have been kept intact in the case of private complaints. If the definition of warrant case' is changed now, then it will happen that in certain private complaints also the rights of the accused will be taken away and then these cases will be tried as summons cases instead of warrant cases. Therefore, I am giving one or two instances. A private complaint can be lodged against offences under sections 323 and 417. If these offences are to be tried in a summons case, then all the rights of the accused with regard to cross-examination would be lost. It may be argued that section 323 is with regard to an offence of simple hurt, but you must remember that in such cases of simple hurt, the man may say or complain that he was hurt by a blunt substance. In those cases such charges are very easy to make, and where they are very difficult to rebut such charges, the man may say that he was hurt by somebody, that he was given a beating, and another witness would say that he was seeing that, and that he was an eye witness to the beating of that person. In such criminal cases, it is very difficult to rebut such charges and, therefore, it is absolutely necessary that the accused must be given the right of further cross-examination after all the prosecution witnesses have been examined. This is very important. In the same way, in regard to section 417 of the Criminal Procedure Code dealing with cheating, such allegations are very easy to make, and it is very difficult to rebut them unless the accused is given the rights which he enjoys at present.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

With regard to two of the sections which are cognizable, I would now take up section 342—wrongful confinement—and section 448—House Trespass of the Indian Penal Code. You will see that the offences under these two sections are also very serious, and if these offences are to be tried as mere summons cases, then the accused would not get, as the Bill stands at present, even the benefit of all the documents which are to be given under section 173 of the Criminal Procedure Code as proposed to be amended by this Bill. Under these circumstances, it is, in my opinion, absolutely necessary that the original definition of 'warrant case' should not be changed and should be kept as it is. I think this is not a very serious matter, and you will see that we have already provided in the Bill that there will be no delay and even in warrant cases the Bill, as it stands, does not give the right of a second examination. We have also provided that when once the case has begun, all the witnesses would be examined day after day and so there is not the slightest excuse for saying that there will be delay if we do not change the definition of 'warrant case'.

Under these circumstances, I think Government will accept this amendment of mine.

Shri Tek Chand (Ambala—Simla): There are two amendments standing in my name,—No. 173 to clause 3 and No. 178 to clause 4—both of which you will find in List 7. Clause 3 purports to amend section 9 of the Code of Criminal Procedure and the relevant changes that the Court of Session is enabled.

Confining myself for the present to my first amendment, it substitutes in sub-section (2) of section 9 of the Code of Criminal Procedure in so far as it enables the Court of Session for the sake of general convenience of the parties and the witnesses to hold its sitting at any other place within the territorial limits of the sessions division. So far this is unobjectionable. It may even be very desirable that where it may be very necessary, in certain cases, the Sessions Judge should be able to view the spot and hear the witnesses there. But the words "with the consent of the prosecution and the accused" to my mind are open to serious objection. The trial of the case rests with the Sessions Judge. The parties are partisans. They are apt to pull unduly in one direction. The dignity of the Court will be undermined to a very considerable extent if the Sessions Judge is placed in a predicament that for purposes of dispensing justice, he considers not only that it is desirable, but even imperative, that he should hold his Court at a particular place other than his headquarters. But he cannot do so, unless the Sessions Judge becomes the petitioner and the accused and the Public Prosecutor become the Court. The Sessions Judge will now virtually say: "It is my responsibility that I should go to the spot in order to be sure of the facts, in order to appreciate the evidence, but I cannot do so unless you two grant me permission. Therefore, as a dispenser of justice, I am reduced to the position of a petitioner and you are elevated to the status of judges. Pray, hear my prayer and petition, enable me to dispense justice: will two of you kindly grant me permission to hold my court elsewhere"? If the two of you do not grant me that permission, if any one of you is unwilling, then I am a helpless dispenser of justice and in the dispensation of justice I may commit a mistake".

I submit you are entrusting your Sessions Judge—he is not an ordinary Magistrate, he is not a Magistrate, of the third class—with plenary powers, even to deprive a man of his life, or of his liberty for the rest of his days. But in this clause you do not trust him sufficiently, that he cannot have any discretion. You will not trust his own judgment and you will not let him proceed. He is not going there for the sake of his health; he would much rather be in his headquarters and dispense justice and do several other cases besides. If he is going there in a sessions case, he is going there in order to sift the truth, in order to arrive at a correct conclusion. But an obstacle is being placed in his way. Even if he wants to arrive at a correct conclusion, even if he feels that he cannot otherwise arrive at a correct conclusion, he cannot do so, unless he makes a verbal petition and a prayer to both the parties and unless both the parties concur in granting him that prayer. Therefore, it is not for considerations of convenience, it is not for considerations of difficulties of one party or another. I maintain that this clause where the Sessions Judge is reduced to the status of a petitioner undermines the very digniy of the Court. Why cannot he be the judge? Why cannot he be free to exercise his discretion? You can trust him, you can rely on the soundness of his decision, on his capacity to weigh evidence, on his ability to hold a person innocent or guilty. But in the matter of selecting the venue for purposes of hearing, maybe a part of the hearing, of one particular issue, maybe for recording the evidence of a person, maybe that a crime has to be enacted, you say he cannot do so, without the consent of the parties. Therefore, I suggest

[Shri Tek Chand]

that my amendment should be examined in this light and the words "with the consent of the prosecution and the accused" deserve to be deleted.

My second amendment is No. 178 to section 14 which relates to special Magistrates, commonly styled as "Honorary Magistrates". With the deepest respect for those of my hon. colleagues who do not see eye to eye with me, I maintain that past experience has amply shown that the system of Honorary Magistrates is not conducive to dispensation of justice and there are more than one reason for it. I do not mean to say that an Honorary Magistrate is more corrupt or a stipendary Magistrate is less corrupt. I do not maintain that in all cases an Honorary Magistrate is necessarily inefficient and a stipendary Magistrate is fundamentally efficient. What I contend is that when a person without receipt of any salary says "From 10 to 4 I dedicate six hours for dispensing justice and I will charge nothing," I begin to doubt his credentials. Is the man so public spirited that he is doing all this to serve the public, or is it not that the very office of an Honorary Magistrate carries with it a certain social status to which this particular gentleman is an aspirant, that it is certain places of respectability that is being given to him and as an Honorary Magistrate he weilds certain influence. I think it is an argument which it will be difficult for my colleagues on the opposite to rebut. Please remember that one of the serious defects of this institution is that the Honorary Magistrate belongs to the locality. He is not a Magistrate whom you can transfer after six months, a year or two or three years. One of the necessary conditions, by implication, is that if I am not to get a penny from the State, if I give my services gratis, well, I am not going to be transferred to another district. Here is a man who belongs to the locality, who is not going to be transferred and who has local contacts: he is bound to be influenced by local prejudices. Even though he may not be influenced, none the less, the impression in the minds of the people will be that he is likely to be influenced. Therefore, I submit that this system of Honorary Magistrates should be abolished.

In the alternative, if the suggestion I have made is not acceptable to the House, then I suggest that this clause deserves to be ameliorated in one or two aspects.

In the matter of the appointment my suggestion is that it should be after obtaining the approval of the High Court. The High Court is entitled to know whether the man you are going to appoint as an Honorary Magistrate has got any qualification for the purpose of dispensing justice. Does he know some rudiments of law, something about the law of evidence, some elementary knowledge of the Code of Criminal Procedure, or is he completely innocent of law? More often than not it has been noticed that they have an ignorance of even the elements of law, mostly the Indian Penal Code, the Code of Criminal Procedure and the Evidence Act—the three R's of law. More often than not these otherwise very estimable gentlemen are absolute ignoramuses so far as the rudiments of law are concerned. Therefore, if at all the appointment is going to be made it should be with the approval of the High Court.

I find one noticeable omission here. Although holders of judicial posts have been, very rightly, considered to be eligible for the post of Honorary Magistrates, there is one important omission. And that is that such persons who have had to their credit at least five years' practice as Advocates of a High Court, if they are willing to dedicate their services to the cause of dispensation of justice and are otherwise deemed desirable and competent, they should be included in the list of such persons who ought to be

raised to the status of an Honorary Magistrate if they are otherwise desirable. Because their experience at the Bar, their knowledge of law and of men will come in good stead. It may very well be stated that the residuary clause says "or any other person". I suggest that your magistracy, whether honorary magistracy or stipendiary magistracy, should be recruited from persons with knowledge of law and such reputable respectable lawyers as have had at least five years of experience should be included among those persons from whom the choice will be made.

This is all that I wish to submit.

Shri Pataskar (Jalgaon): I have given notice of three amendments. The first is the same as by my friend Mr. Dabhi.

Mr. Chairman: What are the numbers of the amendments?

Shri Pataskar: Nos. 16, 17 and 18. They relate to clauses 3, 4 and 6 respectively.

With respect to the amendment of my friend Shri Dabhi—I think he has already explained it—the present definition of a warrant case, which means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months, to my mind is all right. And I do not see why the period of six months has been increased to one year. It may be said that this was done in order that a larger number of cases which are now tried, or are in future likely to be tried, as warrant cases may be tried as summons cases. But now that we are going to make the procedure itself so simple, there is hardly any reason why the criteria of the period of punishment, which have been there since the inception of this Criminal Procedure Code, should now be changed and we should try to rope in, for some purposes, trials as summons cases which are now being tried and which previous to this were tried as warrant cases. I can understand the necessity for simplifying the procedure but can hardly understand why we should do this. I will not take more time on that.

Clause 3 provides that for sub-section (2) of section 9 of the principal Act, the following sub-section shall be substituted etc. I would not very much like to press the amendment that I have tabled, but I will briefly try to explain why I have given it. But in the next place I very strongly oppose the amendment suggested by my learned friend Shri Tek Chand. Under this clause the Sessions Judges are going to be given powers to try cases, not in the headquarters, but in places which they might select with the approval of the prosecution and the accused. And I think this is a very wholesome thing. If at all the amendment proposed by my friend Shri Tek Chand is accepted, I think it will lead to denial of justice to many poor persons, for this reason that the trial may be held in places where, if the accused happens to be a poor person, he may not be able to get any legal help or arrange for defence and put to so many other difficulties. I can understand, in many cases it may be necessary in the interests of justice that the trial should take place, not at the headquarters where the Sessions Court is located. but in some place which may be nearer the scene of offence where the witnesses may be available or where the inspection of the site may be more easy for all concerned, including the prosecutor and the court. But taking all these facts into consideration, it is necessary that such a departure, from the point of view of the place, should be done only with the consent of the accused and the prosecution. Because it is probable that in the case of an unfortunate, poor, illiterate accused they may choose some place where he may not be able to get proper help or get his evidence. Therefore I think the present clause as it stands is the proper one and I do not think that we should accept the amendment of Shri Tek

[Shri Pataskar]

Chand. I strongly oppose that amendment. Of course he says he suggests the same in the interests of the dignity of the court. I think the dignity of the court is there and it is not going to be lost merely because the accused is to be asked for shifting the place from the headquarters to another place. I fail to understand how the dignity of the court, merely because they have to consult the accused, will be lost. On the contrary in many cases the accused himself would suggest that the trial may be held in the particular place. But the very fundamental basis of our criminal jurisprudence is that if such a departure is to be made it should be made with the consent of the accused. Therefore, I think the present clause as it stands is the proper one. I would have liked to say that such a trial, if at all it is to be held anywhere...

Shri U. M. Trivedi: May I enquire of my hon. friend whether leaving it in the hands of the prosecution and the accused will not make it impossible for the court?

Shri Pataskar: It may be that in many cases, either the prosecution will refuse or the accused will refuse. I am not so much worried about what the prosecution decides. But, so far as the accused is concerned, I can envisage a case in which unfortunately there is an illiterate accused, and for various other reasons, it is just possible that the trial may be shifted to a place where he may not be able to defend himself properly. It is not so much for the prosecution or for anybody else or for the convenience of the Judge; it must be primarily and basically to ensure confidence in the judicial administration on the part of the accused that this departure must be made. From that point of view, it is right that it should happen when the accused wants it. I have no reason to suppose that in normal cases, where it is convenient from the point of view of getting witnesses or inspection or for any other reason to the prosecution or the Judge, it will not be convenient to the accused. In a criminal trial, where the accused is facing some serious charge in a Sessions Court, it ought never to happen that the place of trial is shifted without his consent.

Mr. Chairman: So far as inspection is concerned, I think there are other provisions allowing inspection to be made by the Sessions Judge.

Shri Pataskar: There are even now other provisions.

Dr. Katju: Even a High Court Judge can go and inspect.

Shri Pataskar: I am aware that provisions for inspection are there.

Shri Amjad Ali (Goalpara-Garo Hills): After trial; under section 539.

Shri Pataskar: Without entering into all that, the very conception of criminal jurisprudence that we have is that nine guilty persons may escape, but one innocent person should not be punished.

Shri U. M. Trivedi: But, Shri Telkikar does not agree.

Shri Pataskar: That is the point about the whole of criminal jurisprudence. It is a different matter if you want to lay down a different thing.

I think this clause as it has emerged from the Select Committee is a very salutary one and should be adhered to.

With regard to clause 4 which seeks to amend section 14 (1), I have great difference of opinion with those who have tried to improve this section which makes provision for the appointment of Honorary Magistrates. In that respect, I entirely agree with the remarks made by my hon. friend Shri Tek Chand. Apart from that, there are certain matters, in which voluntary help has to be taken with great caution, and this is one of such cases. The only argument that I have

heard so far in favour of this proposition is that if the services of retired Judges, Magistrates, Engineers, and other eminent people were available, why should this not be done. It is a question which requires some consideration.

Shri Tek Chand: Nobody is available.

Shri Pataskar: My own experience is, when a man has put in full service and has retired, there are very few people who, only from the point of view of doing social service, are likely to come forward to offer their services and work as Magistrates.

Shri Lokenath Mishra (Puri): For what else then?

Shri Pataskar: I need not go into that. You are speaking hypothetically. We can very well imagine that there are certain aspects in which this voluntary free service should as far as possible be avoided. In the former times, as I said in my speech at the consideration stage, Honorary Magistrates were appointed from some political considerations. That may not be so now.

An Hon. Member: Why not?

Shri Pataskar: On the basis of precedent, what has been found to be wrong should not be allowed to continue. I was a Member of the Bombay Assembly after the attainment of Independence. There also, the same question was considered in very great detail. Efforts were made in the beginning to appoint as Honorary Magistrates only persons who have had some experience of judicial work. After a good deal of trial, that Government, at any rate, found—I do not know what the conditions in other States are; I think they must be the same elsewhere also—that it did not work well. Therefore, they had to give up the whole thing. We have got in our State now what we call Honorary Magistrates who are only authorised to take affidavits, etc. Judicial powers as such are not given to private individuals. Some persons asked, why not appoint some persons with experience as a lawyer. Though I have myself been a lawyer, I say that that is the last thing which should be done. After all, a lawyer is a person, if at all he has got any experience of work, who has made a living out of his profession. Why should you place this temptation in his way that because he has experience of courts, as a lawyer, he should be appointed an Honorary Magistrate? I do not say that they will not be honest. Taking human nature as it is, why should we place this temptation in their way and make them approach somebody and get themselves appointed as Honorary Magistrates.

Shri S. S. More: No temptation to become Members of Parliament.

Shri Pataskar: I would suggest that this institution of Honorary Magistrates, for the limited purpose of taking affidavits and other things that are obtaining in Bombay, may be continued. As I said, suppose a retired Judge is there, normally, he would not like to work as a Magistrate.

An Hon. Member: Why not?

Shri Pataskar: Even in former days. I have known of Benches of Magistrates where one of them who had some judicial experience was made the chief, and two or three others were appointed as his colleagues. These Benches are still functioning. My experience, at least, of their working in the early stages of my career before some of these Courts, is most unhappy. I do not know what the experience of other people is. I think, that in the matter of administration of justice, it should be the duty of the State to spend for it. Justice must be administered through people who are independent, who have no temptations in their way, whom they can control. What control can you exercise over a retired person who has been appointed as an Honorary Magistrate? He may do anything. He cannot be controlled.

Dr. Katju: What sort of control is my hon. friend referring to?

Shri S. S. More: To hit with a bludgeon.

Shri Gadgil: Quality control?

Shri Pataskar: Suppose such a Magistrate goes wrong and the High Court finds that his work is not satisfactory. He does not stand to lose anything. In the case of a paid Magistrate, he has to do his work honestly and efficiently. Otherwise, he would not get a promotion. He may be demoted; there are so many other things. This is what I mean by control.

Dr. Katju: I am really surprised. I have all along been told that justice should be free and fair and that a Judge should have no expectation from any one. My hon. friend is referring to all sorts of expectations.

Shri Pataskar: I agree that justice should be free. Free to whom? To the accused. Not to the Government. Justice should be free to the accused. He should be given all facilities. I was a Member of the Legal Aid Committee and I still stand for that view. If an accused person is not able to defend himself and requires help, Government should give him all help so that he may have free justice. I do not think anybody has advocated that the administration of justice should become free from the point of view of Government expenditure. I would not go into all the details. I find that the institution of Honorary Magistrates, from its past history, is such that we at any rate are chary to continue it and I do not know what good effects it has. Why should we continue to have an institution which is overdue to be abolished altogether? On the contrary, free justice should be made available to the accused. Government should make it free. Government should provide free advice to the poor litigants. But, the cost of administration of justice must be borne by the Government. It cannot be thrown on the people as an honorary task. Otherwise, I think, since there are so many applicants for these jobs, probably the Government will not be able to decide whom to appoint or not. Therefore, so far as I am concerned, I am firmly convinced that the sooner this system of honorary Magistrates goes away the better. In one State which I claim is very advanced we had tried all these experiments which are now proposed to be tried. They had to do away with this system. Under the law it is not compulsory, but they had to do away with it because their experience was so. I know that in Poona—my friend Mr. Gadgil knows—lawyers were appointed as Honorary Magistrates, retired people were appointed. Neither the work could be done well, nor...

Shri S. S. More: Some of them did well!

Shri Lokenath Mishra: Because they did well, they were stopped!

Shri S. S. More: That was the Government's mistake.

Shri Pataskar: Whatever it is, without trying to go into those cases, I would appeal to Government to put in a little more imagination, and they can surely find out that it is undesirable that justice should be made more cheap, in the sense of its being cheap for the Government.

Shri U. M. Trivedi: Mr. More said they did well for themselves.

Shri Pataskar: That is for Mr. More to say.

Shri S. S. More: I do not require any commentator.

Shri Pataskar: Then there is the other amendment.

Clause 6 reads:

> "Notwithstanding anything contained in section 28 or 29, the State Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate...."

In this instance, the power to appoint special Magistrates in the original Code was confined only to a

few States which were not regarded as being as advanced as some of the other States in India. Now, we are going to make this applicable to all. It may be that circumstances might require that some people have to be given these special powers. I do not know why it should be extended to First Class Magistrates themselves. But, apart from that, what I mainly object to is that it says it shall be done in consultation with the High Court. It must be done with their approval. Otherwise, why is the High Court there? The High Court is an institution which has been recognised by the Constitution and they are the highest judicial authorities in the land, and they are the persons who are to judge the character and the capacity of the person concerned. It is not merely for Government to decide, because as we know, leaving aside the present times, in future Governments may change. Governments for the time being are naturally actuated by various considerations. Therefore, whether a particular person has to be invested with all the special powers must be left to the highest tribunal to be decided, because it is upon it that the task of administering justice has been thrown by the Constitution and by us. Therefore, I believe mere consultation is not enough. What might well happen is that technically the Government might write to the High Court: "We want to invest such and such a man with these powers" and it might be said that the High Court was consulted, and we would not know even if the High Court had said that that man should not be appointed. Such a man may come to be appointed if the present wording is retained. Probably it was not done deliberately, probably it is a slip of the language or something of that kind, but I am bringing it to the notice of the Government that this thing should not be there, and it should be with the approval of the High Court.

Then, it is likely to create another complication if the wording stands as it is. For instance, now in some States as in the State of Bombay, there is almost complete separation of judicial executive functions, and the judicial Magistrates are, all of them, under the control of the High Court. Their transfers, their promotion, their work are all being judged, and everything is now being done by the High Court. Now, supposing this question is there, then Government might appoint some Magistrate, or invest him with these powers, whose work can only be judged under these conditions by the High Court itself. That such a person should be given these powers merely on consulting the High Court is not proper.

Therefore, I believe, from every point of view it may be, either as I have said, with the approval of the High Court, or it may be with their concurrence or whatever may be the wording. I do not quarrel with words, but what must be done is that it should not be merely a consultation, because consultation may mean anything and will produce no useful results.

These are some of the few suggestions which I have made, and I hope that even at this late stage the Government will try to abolish this institution of Honorary Magistrates.

After all, what is the amount that is likely to be saved? We should create confidence in the public that we are administering justice irrespective of the regard for cost. I think this should be done. Therefore, I will press for the deletion of section 14 of the Criminal Procedure Code.

Shri Bogawat (Ahmednagar—South): May I speak? I have given an amendment on the clause.

Mr. Chairman: Many amendments have been given by many Members.

The following are the Nos. of the amendments which the Members desire to move to this group of clauses:

Clause 2—339, 340, 167, 35, 15, 36, 168, 341.

[Mr. Chairman]

Clause 2A—169, 170.

Clause 3—171, 172, 274, 97, 16, 38, 173, 345, 346.

Clause 3A—174, 175, 176, 177.

Clause 4—17, 178, 348, 349.

Clause 4A—40.

Clause 6—182, 18, 184, 280, 185.

Clause 7—43, 186, 45.

Clause 8—46, 187, 188, 189, 98, 190, 191.

Clause 9—48, 192.

Clause 11—283, 416.

Clause 13—193.

Clause 13A—284.

Clause 2

Shri R. D. Misra (Bulandshahr Distt.): I beg to move:

In page 2, *for* clause 2, *substitute*:

"2. *Amendment of section 4, Act V of 1898.*—In section 4 of the principal Act, clauses (v) and (w) of sub-section (1) shall be omitted."

Pandit Thakur Das Bhargava: I beg to move:

In page 2, *for* clause 2, *substitute*:

"2. *Amendment of section 4, Act V of 1898.*—In section 4 of the principal Act, in clause (w) of sub-section (1), for the words 'six months' the words 'three months' shall be substituted."

Shri S. S. More: I beg to move:

In page 2, line 7, *after* "principal Act" *insert* "in clause (r) of sub-section (1), the words brackets and figure 'and (2) any other person appointed with the permission of the Court to act in such proceeding' shall be omitted and".

Shri M. L. Agrawal (Pilibhit Distt. *cum* Bareilly Distt.—East): I beg to move:

In page 2, line 9, *omit* "imprisonment for life or"

Shri Dabhi: I beg to move:

In page 2, line 10, *for* "one year" *substitute* "six months".

Shri C. R. Chowdary (Narasaraopet): I beg to move:

In page 2, line 10, *for* "one year" *substitute* "six months".

Shri A. K. Gopalan (Cannanore): I beg to move:

In page 2, line 10, *for* "one year" *substitute* "three months".

Shri Sadhan Gupta (Calcutta—South—East): I beg to move:

In page 2, line 10, *for* "one year" *substitute* "three months".

New Clause 2A

Shri S. S. More: I beg to move:

(1) In page 2, *after* line 10, *insert*:

"2A. *Substitution of new section for section 6 in Act V of 1898.*—For section 6 of the principal Act, the following section shall be substituted, namely:

'6. The Criminal Courts in India shall be of the following categories, namely:—

I. The High Courts

II. Courts of Sessions.

III. Courts of District Magistrates

IV. Magistrates of the Senior Division

V. Magistrates of the Junior Division'."

(2) In page 2, *after* line 10, *insert*:

"*Omission of sub-heading C of Chapter II of Act V of 1898.*—Sub-heading C of Chapter II of the principal Act shall be omitted."

Clause 3

Shri S. S. More: I beg to move:

(1) In page 2, line 11, *before* the words "For sub-section" *insert*:

"(a) In section 9 of the principal Act, for the words "State Government" wherever they occur the words 'High Court' shall be substituted; and (b)."

(2) In page 2, line 14, *for* "State Government" *substitute* "High Court".

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

In page 2, lines 16 to 22, *for* "if in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein," *substitute* "until such order is made, the Court of Session shall hold its sittings as heretofore."

Pandit Thakur Das Bhargava: I beg to move:

In page 2, line 18, *after* "witnesses" *insert*:

"or for any other reason".

Shri Pataskar: I beg to move:

In page 2, line 19, *for* "place" *substitute* "Taluka or Tehsil".

Shri M. L. Agrawal: I beg to move:

In page 2, lines 19 and 20, *omit* "with the consent of the prosecution and the accused".

Shri Tek Chand: I beg to move:

In page 2, lines 19 and 20, *omit* "with the consent of the prosecution and the accused".

Shri Sadhan Gupta: I beg to move:

In page 2, lines 19 and 20, *for* "with the consent of the prosecution and the accused" *substitute* "with the consent of the accused".

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

In page 2, line 22, *add* at the end:

"But until such order is made, the Court of Sessions shall hold its sittings as heretofore."

New Clause 3A

Shri S. S. More: I beg to move:

(1) In page 2, *after* line 22, *insert*:

3A. *Amendment of section 10, Act V of 1898.*—In section 10 of the principal Act, for the words 'State Government' wherever they occur the words 'High Court' shall be substituted."

(2) In page 2, *after* line 22, *insert*:

"3A. *Amendment of section 11, Act V of 1898.*—In section 11 of the principal Act, for the words 'State Governments' the words 'High Court' shall be substituted".

(3) In page 2, *after* line 22, *insert*:

"3A. *Amendment of section 12, Act V of 1898.*—In section 12 of the principal Act, for the words 'State Government' wherever they occur the words 'High Court' shall be substituted."

(4) In page 2, *after* line 22, *insert*:

"3A. *Amendment of section 13, Act V of 1898.*—In section 13 of the principal Act, for the words 'State Government' wherever they occur the words 'High Court' shall be substituted".

[Shri S. S. More]

Clause 4

Shri Pataskar: I beg to move:

In page 2, *for* clause 4 *substitute*:

"4. *Omission of section* 14, *Act V of* 1898.—Section 14 of the principal Act shall be omitted."

Shri Tek Chand: I beg to move:

In page 2, *for* clause 4 *substitute*:

"4. *Amendment of section* 14, *Act V of* 1898.—For sub-section (1) of section 14 of the principal Act, the following sub-section shall be substituted:—

'(1) The State Government, after obtaining the approval of the High Court, may confer upon any person, who holds or has held any judicial post under the Union or a State, or has for at least five years been an advocate of a High Court specified in the First Schedule of the Constitution of India, all or any of the powers conferred or conferable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally or in any local area outside the presidency—towns'."

Shri Amjad Ali: I beg to move:

In page 2, line 24, *after* the words "principal Act", *insert*:

"(a) after the words 'State Government' the words 'after consulting the High Court' shall be inserted; and (b)."

Shri Sadhan Gupta: I beg to move:

In page 2, lines 26 and 27, *for* "in consultation with the High Court" *substitute* "in accordance with the opinion of the High Court".

New Clause 4A

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

In page 2, *after* line 28, *insert*:

"4A. *Omission of sections* 18, 19, 20 *and* 21, *Act V of* 1898.—Sections 18, 19, 20 and 21 of the principal Act shall be omitted."

Clause 6

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

In page 2, *for* clause 6, *substitute*:

"6. *Omission of section* 30 *in Act V of* 1898.—Section 30 of the principal Act shall be omitted."

Shri Pataskar: I beg to move:

In page 2, lines 37 and 38, *for* "in consultation with" *substitute*: "with the approval of".

Shri N. C. Chatterjee (Hooghly): I beg to move:

In page 2,

(i) lines 39 to 41. *omit*:

"who has, for not less than ten years exercised as a Magistrate powers not inferior to those of a Magistrate of the first class"; and

(ii) *after* line 44, *add*:

"Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class."

Shri Amjad Ali: I beg to move:

In page 2,

(i) lines 39 to 41, *omit*:

"who has, for not less than ten years exercised as a Magistrate powers not inferior to those of a Magistrate of the first class"; and

(ii) *after* line 44, *add*:

"Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class."

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

In age 2, line 44, *for* "seven years" *substitute* "five years".

Clause 7

Shri M. L. Agrawal: I beg to move:

In page 2, line 48, *omit* "of imprisonment for life or".

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

In page 2, lines 48 and 49, for "of imprisonment for life or of imprisonment for a term exceeding ten years" *substitute* "imprisonment for term exceeding seven years".

Shri M. L. Agrawal: I beg to move:

In page 2,

(i) line 46, *after* "principal Act", *insert* "(a)"; and

(ii) *after* line 49, *add*:

"(b) to sub-section (3) the following proviso shall be added, namely:

'Provided that no Assistant Sessions Judge who has not worked as an Assistant Sessions Judge for four years shall pass a sentence of imprisonment exceeding seven years'."

Clause 8

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

In page 3, *for* lines 3 to 8, *substitute*:-

"(i) in clause (a) for the words 'two years' the words 'three years' and for the words 'one thousand' the words 'two thousand' shall be substituted;

(ii) in clause (b) for the words 'six months' the words 'one year' and for the words 'two hundred' the words 'five hundred' shall be substituted;

(iii) in clause (c) for the words 'one month' the words 'three months' and for the word 'fifty' the words 'one hundred' shall be substituted."

Shri M. L. Agrawal: I beg to move:

In page 3, *for* lines 3 to 6, *substitute*:

"(i) in clause (a),—

(a) the words 'including such solitary confinement as is authorised by law' shall be omitted;

(b) after the words 'one thousand' the words 'and five hundred' shall be inserted; and

(c) the word 'Whipping' shall be omitted;

(ii) in clause (b),—

(a) the words 'including such solitary confinement as is authorised by law' shall be omitted; and

(b) for the words 'two hundred the words 'four hundred' shall be substituted."

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

(1) In page 3, line 4, *for* "two thousand" *substitute* "one thousand two hundred".

(2) In page 3, line 4, *add* at the end:

"and the word 'Whipping' shall be omitted."

Pandit Thakur Das Bhargava: I beg to move:

In page 3, line 6, *for* "five hundred" *substitute* "four hundred".

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

(1) In page 3, line 6, *for* "five hundred" *substitute* "two hundred and fifty".

(2) In page 3, lines 7 and 8, *for* "one hundred" *substitute* "seventy-five".

Clause 9

Shri M. L. Agrawal: I beg to move:

In page 3, *for* clause 9 *substitute*:

"9. *Amendment of section 34, Act V of 1898.*—In section 34 of the principal Act, the words 'or of transportation for a term exceeding seven years' shall be omitted."

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

In page 3, *for* clause 9 *substitute*:

"9. *Amendment of section 34, Act V of 1898.*—In section 34 of the principal Act, for the words 'seven years' the words 'three years' shall be substituted."

Clause 11

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

In page 3, *for* clause 11, *substitute*:

"11. *Amendment of section 45, Act V of 1898.*—In sub-section (1) of section 45 of the principal Act, clause (e) shall be omitted."

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

In page 3, line 18, *after* "panchayat" occurring for the first time *insert* "other than a judicial panchayat".

Clause 13

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

In page 3, *for* clause 13, *substitute*:

"13. *Amendment of section 47, Act V of 1898.*—In section 47 of the principal Act, for the words 'the person residing in, or being in charge of' the words 'the person residing and being in charge of' shall be substituted."

New Clause 13A

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

In page 3, *after* line 25, *insert*:

"13A. *Amendment of section 55, Act V of 1898.*—In sub-section (1) of section 55 of the principal Act, clause (b) shall be omitted."

Mr. Chairman: All these amendments are before the House.

In regard to these new clauses, for instance, clause 2A etc., my view is that these cannot be allowed to be moved. I may just state here that I have gone through all the new clauses. My view is that they cannot be allowed to be moved. So I would ask the hon. Members concerned to argue if they have got anything to say regarding them.

4 P.M.

श्री आर० डी० मिश्र : मेरा अमेंडमेंट प्रेसीडेंसी मजिस्ट्रेट की कोर्ट को रिफर करता है ।

सभापति महोदय : आप किस क्लाज के बारे में फरमा रहे हैं ?

श्री आर० डी० मिश्र : ४ ए* एमेंडमेंट नम्बर ४० ।

Mr. Chairman: This relates to Presidency Magistrate's court. How does come in?

Shri R. D. Misra: Clause 81 of the Bill relates to section 406 of the principal Act and seeks to omit the first proviso thereof. Under that section appeals from the court of the Presidency Magistrate lie to the High Court.

Mr. Chairman: Is the hon. Member referring to clause 81 of the Bill as reported by the Joint Committee?

Shri R. D. Misra: Yes. It is at page 23.

Mr. Chairman: It reads like this:

> "In section 406 of the principal Act, the first proviso shall be omitted."

Shri R. D. Misra: If you read section 406, you will find that it refers to Presidency Magistrates. In that section, it is laid down that appeals from the court of the Presidency Magistrate lies to the High Court. Then there is a proviso attached to it, proviso No. 1, which is also related to Presidency Magistrates. Now that proviso is being omitted by this amendment. Because there is connection with the court of the Presidency Magistrate, so those sections are also relevant. So we may decide here whether we are going to have such kinds of court in our country whose orders will be appealed against to the High Court. These sections are inter-connected.

Mr. Chairman: I understand from the hon. Member that since there is a reference in section 406 of the Criminal Procedure Code to the orders of Presidency Magistrates and that proviso is going to be omitted therefore the abolition of the court of the Presidency Magistrate is justified.

Shri R. D. Misra: Yes.

Mr. Chairman: This is too much. The only point that the hon. Speaker stated in the House was that if a particular amendment was much interconnected with the amendments sought to be made by the Bill, then only it could be allowed. The mere fact that appeals from a particular court goes to another court or the right of appeal is abolished, does not mean that the court should be abolished.

Shri R. D. Misra: This is your decision. I have nothing to say on that point. If it is your decision that it is not inter-connected, I would bow to your ruling.

Mr. Chairman: I do not deny that the words 'Presidency Magistrate' are used in both places. But the point at issue is whether this modification of section 406 is so connected with the amendment that an amendment of this nature, *viz.* the very court should be abolished, should be accepted by the House. In my humble opinion, this is not relevant.

Shri R. D. Mishra: All right. Then there is another amendment, No. 284, regarding a new clause, 13A.

Mr. Chairman: The reference is to amendment of section 55.

Shri R. D. Misra: Under section 55 of the Act, power is given to a Sub-Inspector of Police to arrest a man who has no ostensible means of subsistence but who commits no offence. The persons arrested under section 109 are to be tried according to a certain procedure and that procedure is laid down in section 117 which is there in the Bill in clause 17. These three sections are inter-connected. Because we are amending the procedure of trial of persons who are arrested under section 109 and tried, the question of arrest has also to be determined here.

Mr. Chairman: Since section 55 refers to the powers of the Sub-Inspector in regard to arrest and there is no proposal on behalf of the Government in this Bill to amend section 55 at all. I would like to know from the hon. Member how he proposes to make an amendment.

Shri R. D. Misra: My point is that if a person is arrested by the police under section 55, then he is to be tried under section 109 before the court

[Shri R. D. Misra]

according to the procedure which is going to be amended now by clause 17, which relates to section 117 and that such person's right is being curtailed. Can't we discuss that portion, that these persons are not to be arrested and tried?

Mr. Chairman: Am I to understand that since this procedure in regard to enquiry of cases coming under section 109 is going to be changed, therefore, the powers of the Sub-Inspector in regard to arrest of a person will also be affected? Is that the proposition?

Shri R. D. Misra: You know better whether they are inter-connected or not.

Mr. Chairman: I should say the connection is too remote. I do not see any connection between the powers of the Sub-Inspector to arrest and the change of procedure in the matter of inquiry of the case of a person who has been arrested under section 109. I am sorry, therfore, that I cannot allow it.

Shri Amjad Ali: There is my amendment No. 280 to clause 6.

Shri N. C. Chatterjee: I had an amendment.

Mr. Chairman: Let me dispose of Mr. Amjad Ali's point. His amendment is No. 280.

Shri N. C. Chatterjee: My amendment No. is 184. I think my hon. friend's amendment practically follows my amendment. Can I say a few words now?

Mr. Chairman: Other people are also standing.

Shri N. C. Chatterjee: I will only take five minutes, or only two minutes.

Mr. Chairman: There are others who may not take even five minutes and they have been standing for a long time.

Shri Raghavachari: All the amendments that have been moved relate to a number of subjects. I would first refer to clause 2 itself. It has practically been agreed that that clause, and particularly the amendment of definition of warrant cases, will be taken up later. I do not wish to say much about it except that in trying to extend the scope of summons cases, the fact that the old warrant porcedure is still retained for cases initiated by private complainants will have to be carefully considered.

The next clause in this group of clauses is clause 3. I am at one with the desire of Government that provision should be made for the Sessions Courts to hold inquiries or trials in the local places. The whole experience has been that when a witness is taken away from his surroundings, and is asked to give evidence somewhere outside, he may not speak the truth. In fact, this is a fact that requires to be considered carefully, in the matter of the dispensation of justice. We find that the witness is suffering from certain difficulties, because the trial takes place in some other atmosphere away from the locality, I feel that if a witness is to speak falsehood in his own surroundings, he will hesitate: and he will not do it as he now does while in outside surroundings. Therefore, the desire to take the Court to the particular place where the offence occurred and the witnesses live, has much to be said in its favour. But the real difficulty is, as my other hon. friends have just pointed out, the consent of the accused and the prosecution is required; and therefore, virtually it might mean that these two people will never consent, and therefore, the purpose of this amendment will be defeated. I could understand that, rather than the argument that the dignity of the Court is very much affected by its having to ask the wishes of the prosecution and the defence.

Shri Tek Chand: Not the wishes, but permission.

Shri S. S. More: Not permission, but consent.

Shri Raghavachari: The point is that I for one feel that this requirement of the consent of these two people is put down for certain reasons which were elaborated by my hon. friend Shri Pataskar. There are reasons why this cannot be enforced upon the parties, and the trial compelled to take place in any particular locality. Therefore, the desire to take the Court or the administration of justice near the locality is a principle which I feel is worthy of appreciation. But whether, in actual practice, these things will lead to the inconveniences imagined or to the benefits that are contemplated, is a matter that should be judged by experience. This clause do so; there is no compulsion. It is provides that it is open to the Court to only a permissive provision saying that such a thing is possible and can be done. Therefore, I welcome that portion of the measure.

I now come to the system of Honorary Magistrates. I should think there is bound to be difference of opinion on this point. It all depends upon the mental aptitude of each individual, and his experience. If a man is very suspicious of human nature, then everything appears to be very black. If a man has confidence in human nature, it would look to him that this is a matter which is worth trying. For instance, in connection with this question of Honorary Magistrates, and Stipendiary Magistrates, we have not to forget the fact that it is not the pay that makes a man honest. It is his character that keeps him honest. It is the fear that he has of punishment sometimes that makes him not to be dishonest openly. But a dishonest man will try to be dishonest without running the risk of being caught. Therefore, this question of the Honorary Magistracy or the personnel that must be engaged to assist the judicial administration depends more upon the individual.

So far, these Honorary Magistrates were being chosen not on considerations of their qualifications at all but on other considerations mostly. What is now provided here is that they must have some judicial qualifications; other qualifications also are there, of course, as will be found provided in the Bill. I would agree with other hon. Members who said that their appointment must be with the approval of the High Court rather than in consultation with the High Court. The amendment proposed is that only the qualifications required of a person who should fill that post should be determined in consultation with or with the approval of the High Court, and not the appointment itself; the question of the appointment of the individual is left to the State. If that also could be provided for with the approval of the High Court, I for one would welcome the provision without any kind of reserve.

If you say that this power of selection must be given to the High Court, in practice, a difficulty might come. For, what is the machinery that the High Court or the District Magistrate or the local Magistrate has to recommend or report about the character, standing, stature and the integrity of a particular individual? Therefore, in the old system, they invariably gave this to the State, and through the Collector or somebody else, this thing was being done. But now when democracy has come to stay, and we want the society to participate in the institutions and assist the administration, I for one should think that these Honorary Magistrates or these kinds of agencies must be brought into existence more and more rather than be shunned as something which is not to be touched. In fact, we expect that people must not forget that when we are trying to amend a Procedure Code it is meant to be there for a number of years, and not for a particular Government or a particular party only. When democracy has come into existence, we expect that in every State, when the State exercises their power in this matter of selection, the popular representative, who is there,

[Shri Raghavachari]

namely the Law Minister, will take proper advice, when a selection has to be made from a panel of names. I, therefore, feel that the institution of Magistrates other than Stipendiary Magistrates is a thing which has to be developed, though years of previous experience make every man suspect that the system may not work properly. With that past experience, I think, when that experiment is now tried, certainly better people, more qualified, more efficient and men of greater integrity must be chosen. Then only can this system work satisfactorily. It is not a thing that should be rejected as something which should not be considered at all. In India we find that if any dispute arises, instinctively men appeal to the passer-by or somebody in the street and ask him to decide the matter. The urge in the country is not to go to a court or to a man who has got a knowledge of the law of evidence. You want all these technicalities of the Evidence Act etc. to be applied and therefore you say his personal knowledge will prejudice and he will be a corrupt fellow and he will have improper motives. In spite of our previous experience, there is no reason for us not to make this experiment. After all, it is not a thing which is going to replace our magistracy. Therefore, I think, that in so far as they have provided that the qualifications must be determined in consultation, and I would urge with the approval, of the High Court, and even in the matter of selection, the State Governments must be more cautious, then there is nothing to reject it. That is what I feel about it.

As regards investing more powers on all magistrates, my own feeling is that the language as it is in clause 6 about the requirement of ten years experience, is not happy. The language used is:

> "invest any District Magistrate, Presidency Magistrate, or Magistrate of the first class who has, for not less than ten years."

exercised this power. Mr. Chatterjee has given an amendment and Mr. Amjad Ali has also given an amendment. The difficulty is this. As the language now stands, it looks to me that the words 'who has for not less than ten years' qualifies only the first class Magistrate and not the District Magistrate or the Presidency Magistrate. In fact, if a State Government wants to invest anybody with this power, without this ten years experience, then all that they have to do is to make him a Presidency Magistrate of a District Magistrate and then invest him with these powers. Therefore the requirement that he should have exercised the powers of the first class Magistrate for not less than ten years satisfactorily will not be there if you keep the language as it is. That is why our friends have given notice of these amendments. If the idea is that any Magistrate who is to be invested with these powers must have exercised the powers of a first class Magistrate for not less than ten years, then the language of this clause requires amendment.

Then, clause 7 is also for extending the powers of some Judges, from seven to ten years.

Then, there is clause 8. They want to increase certain powers. Every one of these clauses is for increasing the powers of the Magistrates, Special Magistrates etc. Even the powers of the ordinary Magistrates of the first class, second class and third class for imposing fine is being enhanced. The argument advanced is that money has lost its value at present. I say that punishment should not be changed because of a change in the values of things. Tomorrow it might increase; and then, are you going to amend the Criminal Procedure Code because things have become costlier? Basing the fines on the present valuation of things is not rather a good principle. You are increasing these fines—practically doubling them. There will be much inconvenience and difficulty experienced. I for one think that if

these powers are enhanced it will be rather risky if the separation of the judiciary and the executive is not completely effected. Then these things can be expected to be exercised moderately and with caution.

The other thing that I find here is that they want the panchayat members also to be held responsible, as persons who have to give some information under clause 11. Even under the old law it is practically a dead letter. I have not seen anybody having been proceeded against for not doing these things except when the police investigating officer has some grudge against a particular individual and will take into his head to report. He sends a report and then that individual is suspended or punished, if a Government servant. That is how things are going on. I find that thousands of panchayats are now being brought into existence in this country and it may be that many people will be exposed to this risk.

I welcome the omission sought to be made in clause 15 because such lists are not now being given under the pretext that the request has not been made. So, this amendment is good to that extent.

I would, in the end, without taking much of the time of the House, submit that the warrant cases being confined to punishment for over a year cannot be easily accepted because there is one other point in that connection. The amendments proposed have practically made all trials summons trials. I do not know whether there is any difference between a warrant case and a summons case. The distinction has all disappeared now.

Shri S. S. More: Only cases under clause 25 will be warrant cases.

Shri Raghavachari: All the material for the charge in the Sessions court is something which a police officer has collected. Even a sessions trial becomes a summons trial; warrant trials become summons trials; and the summons trials are already summons trials. There is absolutely nothing which really indicates any difference between a summons case and a warrant case as proposed. In the case of private complaints they have provided that the old procedure continues.

Shri Gadgil: It seems that most of the amendments are to clauses 2, 3, 4 and 6, out of these 15 clauses. So far as the definition of a summons case is concerned, I think, it is on the right lines. After all, there are just 344 offences enumerated in the Indian Penal Code out of which, 76, according to the present definition, come under summons cases. New Definitions will add only 26. I think, it should be acceptable to Mr. Dabhi and this is not a matter on which one should spend the time of the House. Nor do I think any great principle is involved in this.

So far as clause 3 is concerned, the amendment moved by Mr. Tek Chand is really surprising. When the original clause was there, they said all sorts of things will happen to the prejudice of the accused if the place of the trial were to be changed. Therefore, the Select Committee was quite right in insisting that there should be the consent of the accused for the change of place. When consent of the accused is necessary, it becomes all the more necessary that the prosecution should also agree. Apart from the present provision, the Sessions Court can visit places for the purpose of local inspection and that power is already there. One has to see where truth is more likely to be spoken, whether in the grave atmosphere of the Sessions Court hall with all the paraphernalia of the police here and there or whether in the presence of that mighty *demos* in the village, where the grave dignity is already there, where the whole group of those persons who have seen or heard about the crime directly or indirectly is present. One has to see and judge where truth is more likely to be spoken. If, after taking into consideration all these facts, the general convenience of the parties and the consent both of the prosecution and the accused, the Court comes to the

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conclusion that the trial should be held at a certain place, either partly for the purpose of recording the evidence or otherwise, I think that discretion should be allowed. I think it is a progressive step. (*Interruption*). Unless you make a salutary provision about it, I think the objections that were raised during the general discussion when the reference to the Select Committee was being made in the House, will become valid. I was saying about the institution of Honorary Magistrates....

Shri Amjad Ali: To illustrate, let us take for example a deaf and dumb witness in a Sessions Court. He may be the only eye witness, and without reference to the particular place of trial, the case may not be proved. Deaf and dumb witnesses are examined under section 118 of the Evidence Act, but if without reference to the particular place, trial is no good, would he insist in that case also on the consent of the accused and the prosecution?

Shri Gadgil: The population of deaf and dumb people in this country is less than .01 per cent.

Shri S. S. More: You are an authority on that!

Shri Gadgil: Really we are legislating for normal state of affairs and not for exceptional cases. Although what my hon. friend says is remotely relevant, it is not important. Therefore, I refer to the discussion on the institution of Honorary Magistrates. We are accustomed to swear by democracy, and the very idea of democracy is that people should be associated with the Government at the stage of formulating of the policy, its execution and, if it is possible, in the discharge of judicial functions also. In other countries, for instance in America, the judges are elected. I am not for that system, but if we can secure the dispensation of justice by local people who obviously know and can take a proper and balanced view of the crime, then it is desirable. For instance, take the Bombay State which includes three regions—the Gujerati speaking region, the Marathi speaking region and the Kannada speaking region. A man coming from the northern part of Gujerat is to go to the southernmost part of the Bombay State, let us suppose. What kind of approach he can have for the particular trial that he is asked to conduct; but if it is entrusted to a local man, he will have a more balanced view; he will not under-rate or over-estimate it, and there will be a sort of confidence created in the people that here are persons who are doing not only public service but who are doing it in a popular way. I submit that simply because that certain Honorary Magistrates acted badly, it should not be generalised or be stated that the entire system is bad. We have—at least myself and Mr. More—have plenty of experience of appearing before Honorary Magistrates, and I agree with him when he said that some of them were very good. The whole trouble is that the choice is not made in a perfect way. Undoubtedly some political consideration is attached to it. If it is a question of removing this evil, we can consider the method or machinery of appointment...

Shri S. S. More: Would you accept appointment by High Courts?

Shri Gadgil: That is not the present point. The whole question should be discussed separately—whether the appointment should be by the executive of the day or whether there should be some screening agency between actual appointments and proposals made—but the point I am making and which I think is very much appreciated by the House is that it is wrong to condemn the entire system of Honorary Magistrates, and, therefore, I am of the view that in a democratic country like ours, we should have more Honorary Magistrates, and if justice is made cheaper, it reflects in the burden of taxation the country will have to pay.

Another point that was made about the investing of certain Magistrates with special powers. In the good old days there was a distinction of regulated provinces and non-regulated provinces. Now, that distinction is gone and all the constituent States are today on par so far as these powers are concerned. That is the very reason why one should reconsider the whole thing, and in the interest of speediness of justice, it is for us to consider whether what was found to be very useful in the good old days would not be useful in the present circumstances. I think that is the idea behind this particular clause—clause 6. It has been suggested that it should be done with the approval of the High Court. I agree that the High Court is the institution in which people have ample faith. All that is good, but how many functions should be loaded on the High Court Judges? Is it seriously suggested that even this particular matter should go to the High Court? Should even the appointment of Honorary Magistrates be made with the approval of the High Court? What is proposed in clause 4 is that the qualifications should be laid down in consultation with the High Court, and when that is done, when the general policy is laid down, its implementation must necessarily rest with the executive of the day. So far as the investment of special powers is concerned, I think this way. After all, who is to judge whether a particular region has developed very recently extraordinary criminal tendencies? The statistics of crimes and the relevant data are collected by the executive, and it is in a better position to say that in this particular region a particular Magistrate—not by name but by his office—should be invested with additional powers. That *prima facie* judgment of the executive ought to prevail, but a safeguard has been introduced as a result of opposite viewpoints that were pressed while the matter was under general discussion here and also in the Select Committee. Therefore, the formula "in consultation with the High Court" is the right formula. If you say that in every case it should receive the approval, then if the High Court Judges are careless, they will merely see the list and okay it, but that is not the object. If the High Court Judges are trustful of the executive of the day and if they find that the reports made about the particular area being a little more criminal in the recent time, they will naturally agree with it. I can say with some authority that the recommendations of the High Court in such matters are normally accepted by the executive of the day.

Shri S. S. More: Where is the guarantee?

Shri Gadgil: It is only very rarely and in circumstances where there is full justification for the executive that they very respectfully differ from the recommendations of the High Court. In the circumstances, I think what is stated in clause 6 is correct. I understand there is an amendment by Mr. Chatterjee just for the exclusion of 'District Magistrate'. All I can say is that it is worth consideration.

Shri Bogawat: I have given my amendment to clause 3 to the effect that the consent of both the prosecution and the accused should not be there. My reason is this, namely, that the object of the clause is that there should be proper justice. If the Court holds an enquiry at a place wherein the witnesses are available and the place is convenient to all witnesses of the prosecution and the accused, it is but natural—and society also tells us—that when the evidence is taken at the spot, it is very difficult for witnesses to tell lies and they cannot be induced because all the people are close by and they are listening to the evidence of the witness before the Court. With this point of view, it is very necessary that the trial should be at a place near about the place where the offence took place. Moreover, the place where the offence took place can be seen very well and it is our experience that much more impression can be created on account of seeing the site. If this clause "with

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the consent of the prosecution and the accused" is put there, naturally the prosecution may give the consent, but it is very difficult for the accused to give the consent because the accused does not want the whole evidence and may try to avoid it, and we have the experience that it is the side of the accused which tries to induce the evidence of the prosecution and see that true evidence is not coming forth. In order to avoid this it is quite necessary that the consent of the accused may not be taken. Some hon. Members have suggested that in order to see that no injustice is done to the accused, his consent should be taken. By changing the place can there be any injustice to the accused? On the contrary the accused can bring in more evidence if his case is good.

Shri S. S. More: What about his advocate?

Shri Bogawat: We need not be bothered very much about the advocates. The advocates would go there to help the accused. It is not very difficult for an advocate to go to a place which is only about 20, 30, or 40 miles away from the district headquarters. So my hon. friend should not worry very much on that score.

Shri Altekar (North Satara): Can the advocate of the choice of the accused go there?

Shri Bogawat: Does the hon. Member mean to suggest that an advocate would charge less at the headquarters than at the place where he has to go? Normally an advocate charges more at the headquarters. So, I do not think the accused would have to incur more charges on that score. In fact, in deserving cases many young and energetic advocates would be coming forward to help the accused and they are not likely to charge as much as older people who may have a wide practice. My opinion is that invariably it is the older advocates who charge more, who want to screw out money from the accused, and do not want to undertake cases unless they are paid heavily. That is the idea of the old advocates. Even now they have not given up the practice of screwing out money from the accused and do not want to help our countrymen. Mr. More should have this idea that if the place of trial is changed from the district headquarters to the place of the offence, advocates should charge less, and be helpful to the accused.

I now come to the much-debated question of the system of Honorary Magistrates. My personal experience is that Honorary Magistrates with legal experience have been very much helpful and have compromised hundreds of cases, and the parties to the dispute have been put to little expenses. That at any rate has been my experience. I do not know whether my hon. friend Shri More's experience has been different. But I would like to emphasise the fact that persons appointed as Honorary Magistrates must have some knowledge of law and I do not see any reason why more and more of the retired persons, persons experienced in law should not come forward and volunteer their services. This will be a boon to the parties. Paid Magistrates are generally not in favour of compromises, because they do not know the people of the locality. The Honorary Magistrates being persons of the locality know the parties better, they know the offences better.

Shri S. S. More: Does the hon. Member mean to say that Honorary Magistrates know all offences?

Shri Bogawat: Not all offences.

I, therefore, consider that the system or institution of Honorary Magistrates is very essential for dispensation of cheap justice: provided persons with knowledge of law are chosen for the job.

I now come to clause 6. Much is made of the words "in consultation

with the High Court". We can understand Magistrates who have much experience and who have put in several years' service being entrusted with powers. But if inexperienced Magistrates are to be invested with more powers, so that there may be speedy justice, it is but natural that the executive should consult the High Court. We should not neglect our High Courts. In this connection I may tell the House that in my State,—Bombay, there is complete separation of judiciary and the executive. You know what is the effect. In certain cases, where a Superintendent of Police, or District Magistrate has given his consent to withdraw a case in the public interest, the Magistrates have refused sanction. This is the result of the separation of the judiciary from the executive. In such cases it is but natural that the High Courts should be consulted. It is not necessary that there must be approval of the High Court and the executive is not bound by it. If the Magistrate is quite competent, or has put in several years, it is natural for the Government to appoint such Magistrates to try such offences.

Mr. Chairman: This refers only to making of rules about qualifications.

Shri Bogawat: Shri Raghavachari said something about money having no value. But if there is a heavy fine people are still afraid. If it is only a fine of Rs. 5, or Rs. 10, they say *de do, das rupaye hai*. This is the attitude of the accused, in some cases, not in all the cases. If they are fined Rs. 500 then they are afraid. So, we should not think that money has no value. What is mentioned in clause 8 is quite correct that up to a limit power should be given to Second and Third Class Magistrates, beyond that it should go to First Class Magistrates. What is suggested by the Select Committee is quite correct.

Shri N. C. Chatterjee: I have strongly criticised the Report of the Joint Select Committee.

Shri Datar: Government are going to accept the hon. Member's amendment No. 184.

Shri S. S. More: Is it an attempt to bribe?

Dr. Katju: I take it that the hon. Member, Mr. Chatterjee, wants that the District Magistrates also should have ten years' experience.

Shri Amjad Ali: And also the Presidency Magistrates.

Mr. Chairman: But does not the present wording convey that meaning?

Shri N. C. Chatterjee: The language is very unhappy, with all respect to the draftsmen.

Dr. Katju: It will be put beyond doubt.

Shri S. S. More: It should come like a proviso.

Dr. Katju: I shall see to it that it is done.

Shri N. C. Chatterjee: I have criticised some of the recommendations in the Report of the Select Committee strongly. I do agree with Mr. Gadgil that what the Select Committee has done in regard to clause 3 is a distinct improvement. First of all, it is quite clear that it would be very difficult for an accused to obtain competent legal assistance if the trial takes place at a place 25 or 30 miles away from the headquarters. My friend who was the last speaker has great experience of Honorary Magistrates and some Sessions Judges and he has great faith in legal adolescence. But will any accused have any faith in any lawyer of standing or with any experience who will accept practically nominal fees to go to a place twenty-five miles away from the headquarters? It is a shocking statement. We wish it were possible. But looking at realities, having regard to our experience, it is impossible to expect that any lawyer of any position or with any sense of responsibility will

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be available to the accused for putting up a proper defence at any place, say, thirty or forty miles away from the seat of the district headquarters.

Shri S. S. More: He can secure more work for his juniors.

Shri N. C. Chatterjee: Of course it will be a good thing, having regard to the unemployment in the profession, that some junior members will get some work. But we should not look at it from that point of view. I think the Joint Committee has rightly pointed out that it will not be fair to the accused to make a change of the venue and it would be desirable that the consent of both the accused and the prosecution should be taken for that. I cannot understand what is the objection in asking for the consent of the prosecution and the accused. I think it will be absolutely unfair to the defence to say you can transfer a case to another place without the consent of the accused. That would be most unfair. And I am surprised to find serious arguments being advanced that that will help the defence and not deter the defence in putting up a proper defence at the trial.

It is also clear that there is no question of any insult or affront to the dignity of the Court of Session. I understand a point has been made by my hon. friend Shri Tek Chand that it will be derogatory to the dignity of the Court of Session. Look at the section as drafted by the Joint Committee. The Joint Committee is saying that it would be better if the change in the venue of trial is left to the discretion of the Sessions Judge, depending on the convenience of parties and witnesses. Therefore they are not taking away the discretion of the Judge. It is his decision which will be final. There is nothing objectionable in what they have suggested and you should accept that amendment.

Shri Tek Chand: This is most surprising. How is the Sessions Judge's decision going to be final when he has to obtain the consent of both the parties?

Shri N. C. Chatterjee: That consent is not final, is not binding, is not mandatory on the court. Even after the consent is given by the parties, the Sessions Judge shall have the discretion still to say whether in the interests of justice he would send it to another place or not. If it had been put down that he must as a matter of course follow in every case the consent of the parties, it would have been a different thing; you can say in that case that it is an affront or a wanton derogation of the dignity of the court. But that is not the point.

As regards Honorary Magistrates my friend Shri Bogawat said that his experience has been very favourable. But our experience in Bengal has been different. Really it will be the machinery for executive nepotism of the worst possible type. When an Honorary Magistrate dies, his son would solemnly put in an application "my father having died, the family is starving, kindly give me the honorary magistrateship"!

Dr. Katju: When was it? Forty years ago.

Shri N. C. Chatterjee: I want that non-official agencies should be fully utilised in administering justice. In a country like England you know that a good many of the Justices of the Peace are Honorary Magistrates and they are doing first class judicial work. About three-fourths of judicial work on the criminal side in England and other countries is done by Honorary Magistrates. We have retired Judges. An ex-Chief Justice of the Calcutta High Court was acting as a Justice of the Peace in some areas. I know that Justice Edgley, one of the seniormost Judges of the Calcutta High Court, was acting as a Justice of the Peace. These people should come forward. We should lay

down certain criteria, we should remove them from executive influence, we should prescribe certain standards, certain qualifications, and give chances to people. And let the hon. the Home Minister stand up and say 'we will not make it any more a matter of nepotism or the District Magistrate's jobbery'. Shri Gadgil admitted that political influences are brought to bear upon such appointments. That should be eliminated. Our object is to have speedy justice, and social justice. It is desirable, and it is the duty of all citizens in the new set-up to come forward and help the State in securing speedy justice and also cheap administration of justice and in eliminating law's delays which are a perfect disgrace, in many parts of India. And we should appeal to all self-respecting citizens that in the new set-up they should come forward—provided there is no question of executive influence, provided they are made to function under High Courts and under honourable conditions—that they should come forward and render service to the State as other countries' lawyers, *ex*-Judges, *ex*-Magistrates are rendering to their States.

Shri Gadgil: They prefer to be Members of Parliament!

Shri N. C. Chatterjee: That is a humble service we are rendering. But I take it that if you ask anybody to act as a Presidency Magistrate or some kind of Magistrate with first class powers he will come forward and do it. I do not think public spirit is lacking so much in India. But do not call them Honorary Magistrates; do not put them under District Magistrates; and do not make them engines of local nepotism or jobbery.

TEA (SECOND AMENDMENT) BILL

The Minister of Commerce (Shri Karmarkar): Sir, on behalf of Shri T. T. Krishnamachari, I beg to move for leave to introduce a Bill further to amend the Tea Act, 1953.

Mr. Chairman: The question is:

"That leave be granted to introduce a Bill further to amend the Tea Act, 1953."

The motion was adopted.

Shri Karmarkar: I introduce* the Bill.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, the 25th November, 1954.

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*Introduced with the recommendation of the President.