3. The Rubber (Production and Marketing) Amendment Bill as reported by the Select Committee—3 hours.

I shall now ask the Minister of Parliamentary Affairs to move a formal motion with regard to the approval of this report by the House.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): I beg to move:

"That this House agrees with the allocation of time proposed by the Business Advisory Committee in regard to the Government legislative and other business which has been announced by the Speaker today.

Mr. Speaker: The question is:

"That this House agrees with the allocation of time proposed by the Business Advisory Committee in regard to the Government legislative and other business which has been announced by the Speaker today."

The motion was adopted.

Mr. Speaker: So, this becomes the Allocation of Time Order of the House.

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

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

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

The amendments for circulation of the Bill for eliciting opinion thereon, for recommitting the Bill to the Joint Committee and for the adjournment of the consideration of the Bill already moved are also before the House.

The House is already aware that 15 hours have been allotted to the motion for consideration of the Bill, out of which 12 hours and 20 minutes have already been availed of, thus leaving a balance of 2 hours and 40 minutes. This will mean that the general discussion on the Bill will continue upto about 2-50 p.m., when the amendments and the motion will be put to vote.

How much time will the hon. Minister take to reply?

The Minister of Home Affairs and States (Dr. Katju): Forty minutes.

Mr. Speaker: He will take about 40 minutes. That means, I will call upon him to reply at about 2 O' Clock.

Thereafter, the House will take up the Government Resolution by the Minister of Commerce and Industry.

Dr. Lanka Sundaram (Visakhapatnam): Sir, I would like briefly to intervene in this debate, though, as a Member of the Select Committee on this Bill, I had occasion to make my contribution to the extent possible. The object of my intervening today is to right the record of the statements made in particular by my hon. friend the Home Minister and also my esteemed and hon. friend Pandit Thakur Das Bhargava, with reference to the attitude of newspapermen to Clause 25 of the Bill.

In order that there may not be any misunderstandings about the attitude of the newspaper world, particularly the Federation of Working Journalists in India, to this Bill, I would, with your permission make two or three brief quotations from the statements made in the debate so far by the hon. Home Minister, and also by my hon. friend Pandit Thakur Das Bhargava.

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

Moving the motion for consideration of this Bill, the Home Minister said as follows. I am quoting from page 404 of the uncorrected record of the 16th instant.

[Dr. Lanka Sundaram.]

"Leaving that aside, the Joint Select Committee have gone the whole way to satisfy the Press."

I wish that the Press were satisfied as a result of the deliberations of the Joint Select Committee. Later on, on the same day, the Home Minister said the following. I am quoting from page 406 of the Uncorrected Debates of the 16th instant. This is what he said:

"No one, not a single individual has ever said anything against a Sessions Judge. The Sessions Judge represents the highest form of judicial integrity, of judicial independence in our judicial system, below the High Court."

On the following day, my hon. friend Pandit Thakur Das Bhargava, for whose experiences as a parliamentarian I have the greatest regard, unfortunately entered into a controversy on this question on the attitude of the newspaper world to clause 25, in particular, of this Bill. On the 17th instant, this is what happened—I am quoting from page 737 of the Uncorrected Debates:

"*Pandit Thakur Das Bhargava*: The Press people. This is what fell from the mouth of the hon. Home Minister.

Dr. Katju: Yes, yes. That is all right. When they gave evidence before the Select Committee, they said that they would rather prefer to have the case either in the High Court or in the Sessions Court.

Shri S. S. More: No, Sir.

Dr. Katju: Very well, I withdraw that .....

* * * *

Pandit Thakur Das Bhargava: What I was submitting was that the Press people are not the last word on the subject."

Then, later in the speech of my hon. friend Pandit Thakur Das Bhargava Dr. Katju intervened and said the following. I am quoting now from page 741 of the Uncorrected Debates:

"I share with the Press people the desirability in the public interest that this matter should be investigated in the very first instance by the Sessions Judge, because all Magistrates, according to my learned friends there, are under the thumb of the police and the executive machinery, and by God's grace, only the Sessions Judge enjoys the completest impartiality, integrity, independence and fairness; and I therefore say, let the trial be by him."

I have wearied the House with these quotations, because I find I am called upon as perhaps the only newspaper Member of the Select Committee, present in the House during the course of this debate, to set at rest one important point. The House would remember that immediately after my hon. friend the Home Minister made these interventions and statements, the Secretary of the Federation of Working Journalists, Mr. Chaturvedi, issued a public statement completely denying that the Press, as alleged or as stated by my hon. friend Dr. Katju, were satisfied with the clauses as emerged out of the Select Committee.

Dr. Katju: May I say this? I said that leaving aside what the Press called their fundamental objection to the change of the procedure at all, they said that they did not want this thing to be made from a private complaint into a complaint by Government. Leaving that aside, they were agreeable to the procedure. They have said that if their whole position is not accepted on the main point, then the procedure is much better than the procedure suggested in the Bill. That is what I have been saying all along.

Dr. Lanka Sundaram: I am glad my hon. friend has seen the point I have sought to make. I want to continue a little longer, so that I would have the record completely clear on this point.

I am in a sort of delicate position. As a Member of the Select Committee,

I have got access to the proceedings of the Committee. But I do not know to what extent I can make a reference to them. But with your permission, I would only make one small quotation, because the summary of the proceedings of the Select Committee, as printed in the proceedings of the Joint Select Committee, circulated to the House, are unfortunately not completely clear on this point. This is what is written on page 118 in the Summary of the evidence printed in the Report of the Select Committee, as circulated to the House. Para. 2(4) on page 118 reads:

> "It is preferable to have the procedure laid down under section 194 of the Cr. P.C....."

I would like to emphasise the word 'preferable'.

Here, I have got the proceedings of the Select Committee. I would not quote from it, but I require the indulgence of the House to say exactly what happened in the Select Committee, when Mr. Rama Rao, spokesman of the Federation of Working Journalists, gave evidence. It so happened that I was the man who put him the leading question. My question was:

> "Possibly, your case is that the existing law is sufficient, and the present law of bringing in the state should not be there."

The answer was—I am quoting again what Mr. Rama Rao said—"Exactly so". In other words, the whole case of the pressmen is, and continue to be, section 194, but not clause 25 of the Bill as is before the House this afternoon.

I hope that the hon. Home Minister would not forget this important point. If he is passing any legislation under duress, naturally he and Government have got to bear the consequences of such legislation under duress. I do not want to introduce any controversial or heated arguments in this matter, but I feel, in the light, particularly, of what the secretary of the Federation of Working Journalists, Mr. Chaturvedi, said, the Press is not completely convinced that this particular clause 25 in this Bill is all what they want.

Most of the speeches which were made so far during the course of this debate unfortunately overlooked one very important point concerning the Fourth Estate, and that is what is called "pleading privilege". No newspaperman worth his salt would ever reveal the source of information in a court of law, and you know that he cannot be sued for contempt of court. That is an inalienable privilege which has been there with the newspapermen all over the world. And I hope, under the new procedure sought to be created through this Bill, particularly, clause 25 and the related clauses 92 and 114, will not tamper with this important privilege of the newspaper world because once that is destroyed, the very foundations of journalism, honest, competent and truthful journalism, would have been destroyed.

Having said this, I would like to draw the attention of the Home Minister to one other important point, since I have quoted his references to the District Judges of India. I am not here to impugn the integrity of the Judges, especially the Judges of Sessions Courts in this country. I had occasion to know some of them personally, and I say, they are really men of integrity, and they do their duty by the people and the State. But let not my hon. friend forget what no less a person than the Chief Justice of India, Justice Mahajan, said recently in the Punjab, about the manner in which the District and Sessions Judges have complained to him about the interference of Ministers and other official sources in their day to day work. (*Interruption*) Still my hon. friend does not remember it. That is why I had to quote that particular paragraph of his speech while my hon. friend intervened in the debate when Pandit Thakur Das Bhargava was on his feet, on the 17th of this month.

Having said this, I would like to draw the attention of this House to

[Dr. Lanka Sundaram.]

one of the most important passages of the Report of the Press Commission. I am quoting from section 7, and I assure the House that I am not quoting out of context, because it is a point of importance, which I want my hon. friend the Home Minister not to forget:

> "It is also very desirable in public interest that there should be, in suitable cases, a magisterial inquiry, and a police investigation, in respect of serious allegations against a public servant, even if the public servant himself is unwilling to initiate proceedings and clear himself of the charges."

The House will notice that the Press Commission put it in a very mild form. It made a reference to suitable cases only. The sum and substance of the case of the newspaper world, as laid out in evidence, in cross-examination, by the spokesmen of the Federation of Working Journalists, in the Select Committee, and also in their memorandum, was that some sort of a guarantee like this must be there, instead of automatic presentation on the procedure sought to be initiated by a public prosecutor before a Court of Sessions. I wish the hon. Home Minister would not forget this point also.

Mr. Deputy-Speaker: Who is to decide which case is suitable?

Dr. Lanka Sundaram: That is the point. In fact, my hon. friend does not tell the House who exactly is the person to decide.

Mr. Deputy-Speaker: Therefore, the secretary has been clothed with that power.

Dr. Lanka Sundaram: I will come to that point later.

Shri S. S. More (Sholapur): It is the Cabinet decision.

Dr. Lanka Sundaram: Here the procedure under clause 25 and the relevant section is that the Public Prosecutor of the district will lay the case before the Court of Session. Now, the newspaper world says and the Press Commission has said that there must be a preliminary official investigation which must precede this.

Dr. Katju: Section 194 on which reliance was placed, refers to the Advocate-General laying the information before the High Court. The Advocate-General cannot do that without the previous permission of the Government. Similarly, the Public Prosecutor is not to lay the information on his own. He must get the prior permission of the Government to do so.

Dr. Lanka Sundaram: But, still the point that I have raised is not answered. Somebody must move at a certain stage. Which is the initial stage where somebody moves in the matter?

Dr. Katju: Government.

Dr. Lanka Sundaram: Government, that amorphous body which has far too many limbs which do not move sometimes and which unfortunately move in hurry at some other times.

Mr. Deputy-Speaker: If Government is amorphous, then what is the substitute?

Dr. Lanka Sundaram: The substance of the case of the pressmen is indicated in their memorandum to the Select Committee. With your permission, I will make a brief quotation. I am quoting from paragraph 9 of the memorandum of the Federation of Working Journalists: It is this:

> "In a Welfare State which is assuming responsibility for the daily needs of the citizen and where vast amounts are expended on developmental works, it is difficult for any journalist to avoid or evade the duty to criticise or comment upon the conduct of public officials."

I do not want to read the whole text. The important point is this. The Press, by doing this, is exposing

itself to both civil and criminal action. This is what the memorandum says:

> "In the criminal court, if the writings are defamatory, the paper has a good defence only if it comes within the exceptions mentioned in Section 499 of the I.P.C., namely, that it was publication in good faith and without malicious intent for public good, of comments on public servants in the discharge of the public functions, and that the comments were made honestly and the person making the comments honestly believed the facts to be as stated therein. In the case of civil libel, the responsibility is much heavier. But these risks are taken, because the editor and the Press are convinced of the righteousness of the cause and are reasonably certain of the accuracy of the facts."

Now, what happens under the Criminal Procedure Code as it is sought to be promulgated under the present Bill as emerging from the Select Committee? I can say that the so-called scurrilous Press and papers indulging in character assassination will go underground, and will disappear from the field temporarily. But what happens to the honest and upright working journalists? They cannot take the risk of publishing anything about matters which involve public interest, with the result that the whole Press will automatically become sulky and will not be in a position to discharge its duties, not only to the public but even to the Government by pointing out cases where exactly wrongs are being committed by public servants. I regret, as a working journalist who has been for thirty years in the field—and I happen to be still a working journalist today—I regret such a situation has arisen. I am most anxious that my hon. friend the Home Minister should protect himself against being called the principal instigator in this country for a police State. And, even at this late stage, I am sure he will relax a little, possibly relent a little more and do exactly what he has done in the Select Committee. I have said so in my minute of dissent that I was amazed at the resilience shown by the Home Minister in the Select Committee. A number of points have been softened, and I am perfectly willing to acknowledge it as I have done in my minute of dissent. But, in regard to this particular matter, it is not still too late in the day, because the second stage of discussion is coming on and we have got any number of opportunities to put our heads together. I assure him that the honest, upright Press of the country is behind the Government. The elections are coming very soon and the immediate result of the promulgation of this particular Bill will be, I am sure—I am speaking from this side of the House, Mr. Deputy-Speaker—will not be to the advantage of Government. In their own self-interest, they should not do anything to tamper with the hoary, customary traditions of the Fourth Estate. I have already given it in my minute of dissent and I repeat it here that nothing should be done to destroy the pleading of truth.

Having said that, I have one or two observations to make and I do not wish to detain the House any longer on this point. I made a reference to that in the Select Committee and I am also making this here, Mr. Deputy-Speaker, that verbal slander has not been brought within the scope of this particular Bill. It has also been mentioned in the memorandum of the Working Journalists. To my mind, verbal slander and written defamation ought to be placed in the same category. This is a lacuna which has got to be filled up. I asked my hon. friend the Home Minister in the Select Committee, and I repeat that request here, that he will set a time limit for what he calls bringing in a legislative measure to bring in slander within the mischief of the law of the land. Without that, I am afraid, this particular Bill will be incomplete and will not meet the requirements of the situation.

Mr. Deputy-Speaker: Slander is an offence under the Penal Code.

Dr. Lanka Sundaram: But it has got to be adjusted.

Mr. Deputy-Speaker: How? It need not be a cognizable offence.

Dr. Lanka Sundaram: Just as the law of defamation has been altered now under this Bill, this has got to be readjusted.

Mr. Deputy-Speaker: The law of defamation is not sought to be modified here.

Shri S. S. More: My friend is making a mistake. In the English law slander and libel are of two categories. But, as far as our law is concerned, they come under the defamation clause.

Mr. Deputy-Speaker: The Code of Criminal Procedure amendment does not modify any substantial law. It is only procedure. Till now it has been a non-cognizable offence. Under this it is sought to be made cognizable, if it is against a public servant.

The Deputy Minister of Home Affairs (Shri Datar): No; only the Public Prosecutor will file the complaint.

Mr. Deputy-Speaker: That is even much short of making it a cognizable offence. The Public Prosecutor has to file the complaint in proper cases, if the libel is against a public servant. That is the only distinction.

Dr. Lanka Sundaram: What I was suggesting is this. This matter has been gone into by the Select Committee on the last day. The minutes are clear on this issue. I do not say that slander is not covered by the existing law. As the law of procedure is sought to be altered it must also be brought on all fours with libel.

The other point is, that some of us in the Select Committee felt and which I have mentioned in my minute of dissent, that where the newspaperman is acquitted honourably, he should be given costs. In fact, I went to the extent of saying in the Select Committee that if you give the benefit of doubt to the newspaper, then it need not be given costs. But, where there is a complete discharge, there must be costs provided for (*Interruption*).

Dr. Katju: I only said that you should raise this on the floor of the House.

Dr. Lanka Sundaram: I hope the hon. House will not forget this particular point because, as you know, many journalists are not rich people, and the entire weight of the State is benind the prosecution and, when they are acquitted, they must be provided with costs. As long as the case is pending before a court of law they stand to lose their jobs.

Shri S. S. More: That should not apply to the Press only: it should apply to other political workers also. We are also not rich persons.

Pandit Thakur Das Bhargava: Why not ordinary men?

Dr. Lanka Sundaram: I have the greatest admiration for my friend Mr. More's intelligence but we are discussing here the pressman's position. We are not discussing about a civil wrong or a private wrong. We are dealing with offences against the State and the entire resources of the State are placed behind the prosecution.

No one in this country, no newspaper worth the name is willing to protect the scurrilous Press. But by acting against the scurrilous Press, do not destroy the honest Press that has been a source of strength to the community during the freedom fight and which is bound to be the strength of the government today or tomorrow. My hon. friend may not be there for ever; nobody knows what will happen the day after tomorrow. Nobody can tell us. Let us not try to destroy the honest and upright Press. What I am anxious is that in the Bill, as it finally shapes out of this hon. House, nothing should be done that will undermine the foundations of honest and upright journalism conducted by men of integrity and character.

Shri Altekar (North Satara): I have been watching the progress of the Bill for the last four days and I find that there is only one-way traffic lead-

ing to the rescue home for the accused only. It is represented that the accused is harassed, his civil liberties are curtailed and that his rights are being violated. Appeals have been made for sympathy towards the accused so that the House may run to the succour of this innocent and poor angel. Big guns in this House are all arrayed on the side of the accused. Great legal luminaries who adorn these benches and practise in the High Courts and the Supreme Court are also on the side of the accused. I am practising for more than thirty years at the Bar. I have also defended the accused. But, I find that there is also another party in a criminal trial, not only the accused. He comes very often with a broken leg, a maimed hand, injuries in his head or in some other parts of the body. Sometimes he complains that his father is done to death, his son murdered, or his other relatives sent to heaven. Very many times he says that his house is set on fire, his property looted and his valuables stolen. But the miseries of this poor creature do not invoke any sympathy or have evoked any sympathy so far. It appears as though his pitiful cries go unheard and that he sits here dumb as if he is the real accused waiting for a sentence either of death or banishment to be pronounced on him.

What I would like to press in this House is this. The rights of the accused for a fair trial should never be denied and there should be absolutely no hindrance in his way for proving his innocence. I yield to none in that respect. But what I urge is that the interest of the complainant also should be equally taken into consideration. I know that a defence counsel or a pleader is at his best when he is defending an accused, and all his resourcefulness and intellect shine at their best in full refulgence when he is cross-examining the complainant or the witnesses on his side. He is so devoted and truthful and his fidelity towards his client is such that he is wholly engrossed in securing his release. But there is also another aspect to the case, and it is a social aspect. While it is the duty of the advocate or the counsel for the defence to defend, at the same time we as legislators here have also to look to the social aspect, that is, the effects on society which this particular procedure or way of trial has and the consequences that emerge from it. A pleader, when he gets a ready bail from the magistrate or the judge, thinks highly of him. When he sees that the judge or the magistrate has got an acquitting tendency, he extols him, but what are the reactions of the masses outside? If we go to them we shall find that when they see that the accused, who are charged with heinous crimes, are released on bail, they look upon it with a sense of fear and dismay. When they see that persons whom they know to be guilty are acquitted in the criminal courts, there is a sense of horror in them and they think that these persons are let loose on society to harass and tyrannise the common man; that is how they look upon it.

I have discussed the provisions of this Bill with certain Bar Associations and also with the common man. The common man says and asks pertinently: Are these provisions going to convict the real culprits and that they will not be allowed to go scot-free? That is how they look at it. They ask whether a large number of accused, whom they know to be guilty and are let loose on society, practising tyranny and bringing *goonda raj* in villages, will be affected by this Bill. That is how their mind works, and that is their prime concern.

I at once agree that the agency of investigation has to be improved. It must be properly trained and they must do it vigilantly, without corruption, and with honesty. There is no doubt about it. I have also spoken to the people that they must be equally bold and come as witnesses against an accused who has really committed the offence.

But when all this is done, there is also another position which we have to take into consideration. There are

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certain peculiar positions which are given to the accused which make the side of the complainant really weak and vulnerable. I should like to point out that in the times to come—though as a matter of fact at this stage we will not be able to introduce this reform fully—we shall have to consider whether the accused should also be viewed with equality along with the complainant. He is immune from cross-examination; he cannot be called upon to get the oath administered to him. I at once agree that the general public in this country is illiterate and it is ignorant, and an accused can be easily outwitted by a clever prosecutor, no doubt. But is the category of the accused as such entirely different from that of the complainant? Does he belong to quite a different stock than the one from which the complainant and his witnesses come. They also are equally ignorant; they also are equally illiterate; and they also can be easily outwitted in a criminal court. We have always witnessed that. When we see that the accused has committed an offence when a certain case is made against him, the prosecution has laid the evidence and the witnesses are cross-examined and it appears to all intents and purposes that the accused has committed an offence—is it not desirable and is it not just that he also should be called upon—on oath I would say? This time may not be suitable for that, but should we not make an innovation—of course, we have made to some extent this time—that he should be called upon to explain the circumstances and nature of it, and state his case and submit himself for cross-examination on oath? Otherwise, what will happen is that there will be certain circumstances which are unexplained and which he alone can explain, and for want of an explanation he will get the benefit of doubt. If he is brought in a criminal court, he enjoys all the facilities of his being questioned in any way and he may not answer any questions, but if for the same purpose he is sued in a civil court, the situation is entirely otherwise. Take for instance the case of a criminal breach of trust. If he is sued in a civil court for money regarding which breach of trust is created, of course, he will have to put in his written statement and he will submit himself for cross-examination; his accounts would be challenged and he will have to explain the various entries and if there are some interpolations or changes in the accounts books, they will all be brought to light in the cross-examination, but if the matter is taken in a criminal court, no one can cross-examine him; simply the accounts will be seen; there may be room for doubt and he will get the benefit of doubt. I would like to say that this situation which obtains now is rather anomalous in a society which is advanced, in a society which is civilised and well educated.

I would like to say that the difference between these positions must be minimised and they should be brought on a par at the earliest possible opportunity. Of course, education will have to be spread, the economic conditions will have to be improved and the status of the general public enhanced to a great extent; no doubt, that will have to be done, but unless this particular aspect is taken into consideration, I would say that in many cases, this question of doubt will leave many accused, who are really guilty, free from being punished. Therefore, I would like to say that the innovation that is being made, that is, offering of the accused voluntarily for the sake of cross-examination is a step in the right direction. With all that it has got its handicaps. If he does not offer himself for a cross-examination, no adverse comments can be made. That will not in any way be taken into consideration by the judge. Under these circumstances, of course, the usefulness of this particular provision is really doubtful, but with all that, what I congratulate the Home Minister upon is that an innovation is being made. When fifty years ago it was introduced in England, there was also opposition to it to a great extent. But now that it has been introduced,

I would say that we would like to watch and know and get the experience as to how it works—whether it places the accused under a greater handicap, whether it helps him, and so on. All these things will have to be seen and ultimately we shall have to move in the proper direction as time, opportunity and also the circumstances in the country will justify.

I would like to say that the change that is being made is for the good, though of course it does not go far enough. We shall always have to bear in mind the objective conditions. They may develop in the course of some years. But we shall have to bear in mind that we have not, as yet, reached that particular status for effecting a radical change.

I would then go to the important fact, a great innovation, rather, I would say, that is being made in this amending Bill. That is in connection with sections 161 to 173. Up to this time, the accused was in a position to have the statement of the complainant and his witnesses when they were being examined and had stated anything which was different from what they have stated before the police. According to the provision that is now being made, under section 173, all these statements, all the documents that are there for the purpose of reliance by the prosecution will be placed not only on the table but in the hands of the accused long before the actual trial begins. The accused will know fully and quite well where he stands, what he has to answer and who are the witnesses and what they are going to speak against him. All the material necessary for being prepared for cross-examination at the trial will be in the hands of the accused. As the Chief Presidency Magistrate of Bombay has said, this is rather over-generosity. Another one has said that this is rather a dangerous innovation. I would say that in view of the desire for having an expeditious trial, the innovation that is being made is worth the experiment, because this will give all the material readily in the hands of the accused before the trial begins and the complainant and the accused go before the court. All the materials will be there. The charge will be framed and after the framing of the charge, the next date will be appointed on which the evidence will be led and the accused begins to cross-examine the complainant and the witnesses. There will be sufficient opportunity for studying the case. I would rather say that this would not, in any way, act as a handicap to the accused, because all the material is there, all information is there and he knows precisely the charge against him.

Then again, when the accused appears before the court—of course, at that time, there will be nothing by which he will be taken by surprise—there is absolutely no difficulty for him to cross-examine the witnesses for the prosecution. It is claimed that there should be two opportunities for cross-examination. I would like to bring to the notice of the House that in a sessions trial, there is only one opportunity for cross-examination. At the time of the committal, hardly, in 95 cases out of a hundred, any cross-examination is made. As a matter of fact, all the material is there when the cross-examination takes place only once in the Sessions Court. When it is contended that the witnesses are not being watched, while they are deposing before the court, I would also like to submit that the pleader or the counsel who is engaged in the Sessions Court hardly appears in the Magistrate's Court. He sees the witnesses and the complainant for the first time in the Sessions Court. Therefore, I submit that there is really no handicap in the way of the accused. On the contrary, I would like to say that before any witness is examined on oath, before any witness appears there in the court, all the material, all that the witnesses have stated, is in the hands of the accused. There will be now a very effective opportunity for the accused to approach the witnesses for the prosecution which is already done in many cases. They will now know exactly who is going to say what. They will

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know all this. Here, everything will be completely in their hands and it will be very easy for the accused or his partisan to approach the other side. It is a risk that is being taken. I say that in view of the particular risk that is being taken, the change that is being sought in section 162 is also desirable. First, it was intended that section 162 should be abrogated altogether. But now, the Joint Committee has in a modified form, restored it and has provided, that the complainant also should be in a position to contradict his witness if he becomes hostile and speaks differently and goes back upon his statement before the police. Now, there is a difference in the position as it obtained formerly and as it is now. The whole evidence that is given by the complainants and the witnesses before the police is in the hands of the accused. If the witnesses are won over or intimidated and they turn hostile, it is but just and consistent with the principles of natural justice that just as the accused has a right to contradict the prosecution witnesses if they have said a certain thing before the police and a different before the magistrate, the complainant also, when he has placed all the cards in the hands of the accused, should equally have the right to contradict his witnesses if they turn hostile.

Then it was contended that the police take down anything that witness may not say and such things are found written in the statement of the police. It might have been so in times that have gone by. But now, when the statements of the witnesses are to be handed over to the accused—they are to be given in the hands of the counsel for the defence, the police will have to take into consideration this particular provision and they cannot now take down a thing which the witnesses may not stand by. It is not possible. If, under such circumstances, the witness gets back and turns hostile and does not say what he has stated to the police, I think in the fitness of things—and it is consonant with natural justice—that the complainant also should have the right to contradict that witness.

About the section regarding committal proceedings, it was stated that when the depositions of material witnesses before the Magistrate are taken, the accused is gagged, that he is not given the right to cross-examine at the time, and is required to stand dumb, and hence the provision is absolutely of no use. I do not see eye to eye with those who criticise this provision. It is a fact, well known, that when a party is absent, when his pleader is not there, when the depositions are taken even before Magistrates or a Civil Court, the pleader on the other side asks many leading questions. When the accused is present, and his pleader also is present, it will not be possible for the prosecution to ask leading questions. That will be a check. The presence of the accused and his pleader will be a check upon asking leading questions before the Magistrate. Then again, it is intended for the purpose of speedy trial. As a matter of fact, in 95 per cent of the cases no cross-examination in committal cases is taken before the Magistrate. Here also the procedure will not be in a different form. It will be virtually of the same type. When I discussed the question with some Bar Associations, they have said that instead of mere police depositions, there should be the statement of the accused before the Magistrate in the presence of the accused and his pleader without any right of cross-examination. That was said by two or three Bar Associations.

Shri S. S. More: Were they criminal lawyers or civil lawyers?

Shri Altekar: They were all leading practitioners at the Bar on the criminal side.

Shri S. S. More: No one who is worth his salt will say that.

Shri Altekar: My hon. friend is entitled to hold his opinion. There is no question here of being true to salt but to social justice. Those who are practising at the Bar, practising for

several years, have stated that instead of having merely police statements for expeditious trial in this way, it will be better if there are depositions before the Magistrate in the presence of the accused.

My hon. friend Shri Frank Anthony asked: What is the use of having a few depositions of material witnesses at the time of the sessions trial? He said that this will not be sufficient in order to have a proper understanding of the case for the complainant. But he fails to understand, or he has not taken into consideration, or has overlooked, the provisions of sub-clause (3) of clause 29. There it is stated that all the statements of all the witnesses before the police which they want to lead in the Sessions Court, all the documents that are sought to be relied upon, and in addition to it, the depositions of material witnesses before the Magistrate will be supplied to the accused before the sessions trial begins and that will be sufficient material for purposes of the Sessions trial.

I was told by some Bar Associations that this new provision which is being made for purposes of Sessions cases should be for crimes punishable otherwise than by death or transportation for life. But in so far as heavy crimes are concerned, where there is capital punishment or transportation for life, the committal proceedings should be retained; and after having the experience or seeing the results as to what happens in other Sessions cases the new procedure should be extended to these very serious offences. When the judiciary and the executive are separated—as I find is the case in Bombay—and Magistrates are relieved of many of their executive functions, they will find sufficient time, and the trial with respect to these committal proceedings in serious cases can be expedited and they can be finished say in four weeks or so. This new procedure that is laid down for the purpose of Sessions cases should be for offences other than those for which there is capital punishment or transportation for life.

The fundamental principle that it is better to allow ten guilty men to escape rather than to allow one innocent person to be punished is quite right. But that is an extreme case that has been taken into consideration. What is intended by that is that the innocent person should not be punished in any way, and that care and attention should be paid to see that no innocent person suffers. But that does not mean that the portals should be flung wide open for the ten guilty to go scot-free. Let the guilty be brought to book and the innocent allowed to go out in an honourable way. The important question that is troubling the minds of several people is how real offenders who have committed crimes would not escape from the criminal courts and be free to make a *goonda raj*. We have to look at this problem in a calm and considerate way without in any way infringing upon the liberties of peaceful citizens.

My hon. friend Shri Gopalan said that 50,000 accused acquitted by the courts, were quite innocent. I would like to bring to the notice of the House that in cases where the accused are allowed to go scot-free by giving the benefit of doubt, they are not necessarily innocent. We find in several cases that the judge or the magistrate remarks that though morally convinced, according to the law he is not in a position to convict the accused. Therefore we have to pay great attention in laying the foundations of a procedure which will not in any way handicap the defence and at the same time will not allow the guilty to escape. That is the important factor we have to take into consideration and in the light of that analyse the changes that are sought to be made by this amending Bill.

Whenever any changes are made in the criminal law, a cry is raised by the Opposition that it is intended against them.

Shri S. S. More: Why Opposition? Even some respected Congressmen said that.

Shri Altekar: I would like to say that it is not intended against them or their party. I would say that it is not the proper way of approaching the question. It is not intended specifically against any party; it is intended against only one class, the class of criminals. This class is above any party, above any caste, above any creed. It is only intended against that and none else.

Then, a charge was made against the Select Committee that it has not taken into consideration section 109 and 144 of the Criminal Procedure Code. I would like to point out that the Joint Committee was wise in not touching these sections, because these are important sections and whenever much important sections are dealt with, that matter must be specifically before the public.

When this amending Bill was published in the Gazette these sections were not there. Therefore, the Joint Select Committee rightly thought that unless public opinion is elicited on these sections, unless they know what people think about them, it was not desirable to make any modifications in these sections. I would like, incidentally, to bring to the notice of the House that certain remarks were made in connection with a situation that arose in my constituency, that is North Satara District. There is a sugar factory there to the management of which the peasants had rented their lands about thirty years ago. The lands were improved by better cultivation and irrigation, which naturally gave high profits to the factory. The peasants thought that they ought to get a higher rent for their land. A compromise talk was initiated and ultimately they actually arrived at a compromise, and in the light of that rent notes were executed in many cases.

Shri S. S. More: It is not correct.

Shri Altekar: At that time some persons who did not belong to that particular region, came there and—I would not like to use harsh words—inspired the peasants to start an agitation. It was stated to be a satyagraha, but I know the facts. Many villagers, many peasants in the village, were intimidated. They were asked not to come to terms and not to execute the agreements. The peasants said to us: "We, as a matter of fact, are willing to get these executed; they are in our interest; but we are being intimidated, we are being frightened."

Shri S. S. More: That is not a correct statement.

Shri Altekar: That is my constituency and I have first-hand information of the situation.

Shri S. S. More: I have got super first-class knowledge, because I too have visited that place.

Mr. Deputy-Speaker: Both the statements may be correct, as they come from hon. Members.

Shri Altekar: So, when a certain situation is created, when a certain agitation is started under the name of satyagraha, which disturbs the peace in that area, certain provisions of law have to be made use of. Before any attempt is made to modify those provisions, public opinion will have to be consulted. Unless it is elicited it will not be desirable to touch these sections, and therefore the Select Committee has rightly not affected these sections.

1 P.M.

Shri S. S. More: Does it mean that the House commanded the Select Committee to take all those provisions into consideration? If that is accepted, the House was wrong?

Shri Altekar: The whole criminal procedure was there before the Committee. But the Committee thought that as regards important sections which provide for establishing peace and tranquillity in the country, and the amendments in respect of which were not published in the Gazette and specifically placed before the public and their opinion elicited on them, it would not be desirable or justifiable to touch these sections unless such

publication was made. That was the view of the Select Committee, and I think it is right in every way.

Mr. Deputy-Speaker: The hon. Member has taken sufficient time.

Shri Altekar: I will finish in four or five minutes. My hon. friend Shri R. D. Misra stated that there were ten big volumes of opinions that were given for consideration, that there were opinions of various High Courts, Bar Associations, Judges and so on, and he asked how could the Select Committee go through all these in sixty-five hours which were at their disposal. My hon. friend is a pleader practising at the Bar. He must know that in order to argue a case for one hour before the court a pleader has to work for several days. When these volumes were supplied they were gone through by the Select Committee Members and they were properly considered. Of course with all that labour preceding, they have considered all questions in these sixty-five hours.

There are several other points, but I would not like to take the time of the House. I would say what I have to say when the clause by clause discussion comes in. I wanted only to make these general observations that I have made, and I submit that the Report of the Joint Select Committee should be accepted with certain changes that I have suggested and would like to suggest.

Mr. Deputy-Speaker: I find still a number of hon. Members wanting to speak. But there is no time. I have to call upon the hon. Minister to reply at 2-10. Even assuming it at 2-15, he can conclude before 3 o'clock. By 3 o'clock the question will be put and the other work will commence. Therefore we have only an hour or an hour and a few minutes for the other Members to speak. I will allow fifteen minutes for each Member. I will call upon two from this side and two from the other side and thus do equal justice to both sides. I will now call upon Shri Sarangadhar Das. In calling upon Members I have also to bear in mind the number of times that an hon. Member has got up.

Shri S. S. More: Young men will have an advantage!

Shri Sarangadhar Das: (Dhenkanal—West Cuttack): I am the youngest of all!

Shri U. M. Trivedi (Chittor): Those who were on the Joint Committee need not take up our time now. The others, I submit, may be given more opportunities to speak.

Mr. Deputy-Speaker: They did so at the earlier stage; they never participated in the debate when the Bill was referred to Select Committee. But the other hon. Members who speak have developed the habit of speaking again and again and they complain against those hon. Members.

Shri Sarangadhar Das: I endorse the view already expressed by many Members, both on the Treasury Benches and on this side, that it is not desirable to pass any piece-meal legislation like this but to go over the whole of the Indian Penal Code and the Criminal Procedure Code and bring them up-to-date in conformity with our Constitution.

After doing that, the principal thing that strikes me is this clause 25, that is the insertion of a new section about defamation. You know very well Sir, that in the Constitution a privileged class has been created. The Constitution has given special privileges to the ex-Rulers. That is to say, although everyone is equal before the law, although everyone has one single vote, man or woman, the special privileges that the ex-Rulers used to enjoy during the British regime have been continued: which means that a certain class of people have been discriminated in favour, or rather the whole public has been discriminated against. So it seems to me it is an age of discrimination through which we are going. Although we do say that we want to establish an equalitarian society and all that, in practice we take recourse to discriminatory action.

I am amazed that many of the Members on the Treasury Benches have said

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that this amendment should not be looked at from the party point of view. Because almost everyone on this side has opposed certain provisions in the amending Bill, it is taken for granted that everyone on this side criticises the amendment from a party point of view. That view is absolutely wrong. We are all representatives of the people; we represent the public. We feel that the public is being repressed or oppressed in a certain way, while the Members on the Treasury Benches may not feel so. So when we say that a certain measure is objectionable, it is not that it is objectionable because it hits the Praja Socialist Party or some other party, but because it hits the public. I will now point out how it hits the public.

Under this clause 25 dealing with defamation, power is being given to a policeman, a constable, or a *patwari* or a *chowkidar* to take the permission of the Public Prosecutor and sue a member of the public or even a Member of this House.

Shri Lokenath Mishra (Puri): Well, you are wrong. No permission of the Public Prosecutor is there. His permission is not necessary.

Shri Sarangadhar Das: He will go to the Public Prosecutor—the *Chowkidar* will—and he will easily get the permission.

Dr. Katju: I imagine, if I may say so with respect, that my friend has not closely studied the provisions in the Report of the Joint Committee. The Public Prosecutor is to get the permission, before he files a complaint, of the superior officer or whatever it is. The Public Prosecutor has no right of his own to file a complaint.

Shri Sarangadhar Das: I have not said that. I have studied the Report thoroughly.

Dr. Katju: I withdraw it then.

Shri Sarangadhar Das: It is easy for any Government servant to get the Public Prosecutor to recommend to the higher officer or the higher authority and get the permission, ...

Dr. Katju: What is the harm?

Shri Sarangadhar Das: While we cannot get it.

Dr. Katju: Who are you?

Shri Sarangadhar Das: A member of the public. I am a member of the public.

Mr. Deputy-Speaker: Nobody prevents.

Shri Sarangadhar Das: I have said so many times that at the present time in all the Governments there is corruption, there is nepotism, there is incompetency. These things have been proved by the Public Accounts Committees, by the Estimates Committees and by all Committees, and Auditors. You cannot say that we are exaggerating things as you were saying three or four years ago. This has all been proved. But, no action is taken. If a member of the public criticises some one—a Minister or Secretary—immediately, they come down upon him and say that he is to be prosecuted and punished while a member of the public has no right to do anything or to prosecute a constable who defames him unless he gets the permission of the Government to prosecute the constable or *patwari* or anybody. In this matter, there is discrimination. Government servants from top to bottom are protected against any attack from any quarter while the public are being gagged that they can't say anything. The moment they say, they come within the mischief of this section.

I wish to know from the Home Minister what the Governments of West Bengal, Madras and Bombay have said about this section.

Dr. Katju: About the defamation matter?

Shri Sarangadhar Das: About section 25. There are certain things that are not printed in the book. Certain

things have been kept back. (*An Hon. Member*: Secret.) I challenge the Home Minister to place these opinions on the Table of the House.

Pandit Thakur Das Bhargava (Gurgaon): If they are printed, who cares? In regard to commitment, almost all the Governments have opined against it. Yet we have got the commitment proceedings.

Dr. Katju: I think those documents have been circulated.

Pandit Thakur Das Bhargava: Your report says that almost all the Governments have concurred in this opinion.

Dr. Katju: The opinions of the Governments that you want will be in Book D or Book C.

Shri S. S. More. These opinions are conveniently summarised. That is what he means to say.

Dr. Katju: He wants the whole, *In extenso*?

Some Hon. Members: Yes.

Shri Sarangadhar Das: The opinions of the three Governments, particularly, West Bengal, Madras and Bombay, should be laid on the Table of the House.

Dr. Katju: On defamation? I shall give them to you.

Shri S. S. More: The original.

Dr. Katju: I cannot multiply the original. Original is one. I can give a copy of it tomorrow.

Shri K. K. Basu: True copy.

Dr. Katju: Is it in order, Sir, for any hon. Member to say that he wants a true copy, signifying .....

Mr. Deputy-Speaker: Any copy becomes 'true' if the words 'true copy' are added at the end.

Shri Sarangadhar Das: Therefore, I feel that this clause should be deleted. The provisions that we have now, as far as criticising government servants are concerned, and whatever punishment is to be meted out to them according to the present law is sufficient. There is no use making this provision so that there may be no criticism. In recommending this, I say to those of my friends who had asked not to look at it from a party point of view, that, no matter which party is in power, there would be people outside who can see things, who can listen to grievances from the public and express them. Today a certain party is in power. There may be some other party later on. Some day my party may come to power. (*Some Hon. Members*: No chance.) Please do not get away with the feeling that when I state like that that I am anxious to come over there. That is not the point. (*Interruptions*) That is not the point.

Mr. Deputy-Speaker: Order, order. The hon. Member may address the Chair. He can come here at any time.

An Hon. Member: That is not a crime.

Shri Sarangadhar Das: They are taking my time.

Mr. Deputy-Speaker: The hon. Member may go on.

Shri Sarangadhar Das: No matter what party is in power, there will be people in a democracy who will criticise that party and so, when this recommendation is made by me that this provision should be deleted from this amendment, I say this for the good of every party. I do not wish to take any more time. My time has been taken away by these people.

Mr. Deputy-Speaker: Ten minutes for each hon. Member. Thirty-five hours have been allotted for the clause by clause discussion.

Dr. Krishnaswami (Kancheepuram): I shall attempt to finish in ten minutes or even earlier.

My hon. friend the Deputy Minister of Home Affairs, intervening in the debate the other day, said that the amendments were calculated to improve the tone of the administration of our criminal law. He spoke of the yellow Press, not a wise thing

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to do, especially as we are likely to dub most papers with which we disagree as yellow. He talked of 36 crores of our people who are interested in the administration of criminal law.

There is a great misunderstanding of the attitude of the Press, on the provisions of this Bill. If I refer to the views of journalists, it is with a view to correcting an error into which the Home Minister and his deputy have fallen. The Home Minister maintained that the Press was anxious to have a section similar to section 194 of the Criminal Procedure Code. The statement issued by Pressmen two days ago is that they are not in favour of section 194 at all. What they were told by the Select Committee was that there was a provision in the United Kingdom authorising the Attorney-General to prosecute after obtaining permission from the Home Secretary. The Pressmen pointed out that there was a similar section in the Code of our country. But—and this is the important point—they were not in favour of an amendment being introduced when there was already a provision to that effect in the shape of section 194 in our Criminal Procedure Code. They suggested further that it would be better if there was no discrimination made between public servants and private citizens. In so affirming, they were on solid ground and the minority of the Press Commission appears to have given doughty support to this standpoint and has done better justice to the cause of freedom than the majority of their colleagues on the Press Commission. The minority has said:

> "There seems to be no support for the view that the criminal law as it stands does not give sufficient protection to public servants. The difficulty that might be felt by public servants serving outside the country cannot be a ground for conferring the privilege of exemption from normal processes to all public servants. The Criminal Procedure Code prescribes special procedure under section 197 in the case of prosecution of some public servants, magistrates and judges acting in the discharge of their official duties, but they should not be allowed the benefit of the extraordinary procedure of being exempted altogether from examination prior to taking cognisance of the offence in cases in which they are the complainants."

It is not just that public servants should be placed in a special category, that the State should incur expenses on their behalf, and that the resources of the State should be utilised for this purpose.

Mr. Deputy-Speaker: I suppose that it is when the public servant is accused while acting in his public capacity that this privilege is given. Is he not normally entitled to get reimbursement?

Dr. Krishnaswami: Yes, he is normally entitled to get reimbursement if it is proved in a Court of law that the allegations levelled against him are unfounded. But here, the expense is incurred by the State once it initiates proceedings. There is no provision made for the public servant paying damages to the State or compensation if the case against him is proved. It is a significant difference. When we are contemplating reforms in the realm of criminal jurisprudence, we must take account of the time spirit, the constitutional provisions under which we are working and more particularly the fundamental rights and the new administrative and political set-up in which we are living.

My hon. friend the Home Minister knows better than any other hon. Member in this House that Government have been taking steps to separate the judiciary from the executive. True we have our quarrels with the Government on the pace at which such separation is taking place, but nobody disagrees with the objective. Any reform of our Criminal Procedure should necessarily take account of the

new administrative set-up and should not run counter to the new set-up visualised.

The Criminal Procedure Code has been in vogue since 1898. All amendments that have been made until now have not touched the framework of the Code. The new amendments introduced by my hon. friend and approved by the Select Committee are of a fundamental nature and in many respects go against all established canons of civilised jurisprudence. I shall deal with only four aspects of the new reform, committal proceedings, disputes relating to immovable property, and the new provision—modification of sections 161 and 162 and the modification of the new provisions relating to punishment for perjury.

I have not been able to understand the purpose served by amending the procedure relating to committal proceedings. The basic foundation of a committal procedure is essentially the gravity of the offence alleged to have been committed by the accused. The more grave an offence, the more strict scrutiny is required, and therefore double scrutiny has been envisaged, in all established systems of criminal jurisprudence. Now, it is irrelevant who the complainant is. What is relevant is the nature of the offence. Can there be any rational justification for distinguishing between a private complainant and a policeman? We have to ask ourselves why this distinction has been made. It is an innovation. It has been justified on two different grounds by my hon. friend. Firstly, he relies on statistics and suggests that 90 per cent. of the cases are committed automatically to the Sessions Court; secondly, he points out that police reports are likely to be more disinterested than complaints made by private persons. I am afraid that the first ground would have little validity in the new set-up. In the past when the magistrates were under the control of the executive, there was reason for expecting that they would perhaps unconsciously act under the influence of the executive and therefore automatically commit all accused to stand trial in a Sessions Court. But in future they would be under the judiciary. But the second point has some substance. May I ask my hon. friend a question? If police reports are so disinterested in character as to entitle their being classified into a separate category, why have a committal procedure at all, or rather why have a shadow of a committal procedure? A novel procedure has been recommended by the Select Committee. My grievance against the Select Committee is that they have not had the courage to go the whole hog with my hon. friend the Home Minister and drop the committal procedure altogether. If you are to provide for a committal procedure, you cannot take away the valuable rights which have been given to the accused in the interests of fair hearing under our Criminal Law. The advantage in the previous committal proceedings was that the accused could cross-examine and obtain discharge. The Select Committee have amended the Bill to permit the accused obtaining discharge, but how is he to be discharged if he is to be merely a silent spectator of events, if he cannot cross-examine witnesses, and if the documents that are placed in his hands do not give a complete picture of the case against him? The accused is made under the new provisions to state his whole case and is put in a very disadvantageous position.

There is another aspect of the matter which I hope the House will consider. We must realise the difficulties of magistrates. The nature of the charge depends, after all, on the type of the evidence before the committing magistrate. But if untested evidence is placed before the court the magistrate might commit the accused on a more serious charge for trial in the Sessions Court. I should like this aspect of the matter to be gone into more thoroughly, and when the time comes for clause by clause discussion, I hope to have to say something about it. I trust that the Deputy Minister of Home Affairs and my friend the

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Home Minister will keep an open mind on this issue and will attempt to meet the wishes of the vast majority of us in this House.

This is not a party question. This is something which transcends party barriers. This is a question which deals with the fundamental principle of a fair hearing for the accused. It is idle prattle to suggest that 36 crores of our people are interested in seeing that the guilty are punished and that in the process if an innocent man is punished it is not a matter of serious consequence. What, after all, is the basic consideration which has motivated my hon. friend in simplifying this procedure, or at any rate attempting a simplification of procedure? The motive of Government seems to be speed. By all means let us have speed, but let us not have speed at the expense of justice. Because, fundamentally we have to realise that unless people are confident that they are going to have justice in our courts of law, there will not be any respect for law.

I should like now to deal with the amendment dealing with offences relating to immovable property. The amendment in the shape it has emerged from the Select Committee is the most confusing and muddled piece of reform that I have ever come across. The old section of the Criminal Procedure Code laid down that the magistrate had the power to enquire, after taking evidence, as to which of the parties was in actual possession. Who was entitled to be in possession and the title to property were questions to be determined by the Civil Court. The Criminal Court, according to the old Act, exercised what in the lawyer's parlance is termed preventive jurisdiction. My hon. friend the Home Minister was logical when he suggested that the magistrate was not to decide possession, but to attach the property and then leave it to the parties to go to the Civil Court. This proposal had attractive features about it, but there was one consideration against it which I believe was taken into account by the Select Committee. They thought, as many in this House do, that this procedure would in all cases lead to litigation in Civil Courts, which might be avoided if the magistrate puts somebody in possession. The other party might vanish into thin air as has happened in many cases of which we are aware. However the framers of the new amendment err in assuming that they have found a short-cut to litigation. I have never come across in all my knowledge of Criminal Procedure or Civil Procedure of a magistrate being asked to decide a case within two months, and if he does not decide it within that period, of being completed to refer it to the High Court. How is the Select Committee or Parliament in a position to determine the time-limit for these cases? We can simplify the procedure, but the High Court, after all, which exercises the supervisory control over the subordinate magistracy, is in the right position to determine whether a particular case has been dealt with in leisurely fashion, whether a particular case has been disposed of summarily or whether a particular case has not been heard properly. Besides, what is the logic of the Select Committee suggesting that the dispute should be referred to the Civil Court, and to determine what? Is a Civil Court to determine who has been in actual possession? Possession is a matter of fact. It is not a question of law. We are, according to the Select Committee, to have a reference to the Civil Court and worse, that Court is to have a time-limit fixed for deciding this fact of possession in three months. Then later legal possession has to be determined, and I suppose afterwards the legal title has to be adjudicated upon; we are to have naturally a multiplicity of suits. This is indeed speedy reform with a vengeance. I make this recommendation to the House that it should accept the new section 145 as amended by the Select Committee, omitting of course the two months' period, and retain the old section 146 of the

Criminal Procedure Code which has advantages no envisaged by my hon. friend.

I now pass on to a consideration of the most controversial reforms proposed by my hon. friend. My task has been rendered easier by the labours of my hon. friend Pandit Thakur Das Bhargava whose researches into sections 161 and 162 extorted the admiration of the House. I shall confine myself to one or two points which have not hitherto been raised in this debate. The old procedure furnished the accused with an opportunity of using statements made to police officers, only for the purpose of contradicting prosecution witnesses who went into the box. This is a most valuable right. The prosecution could not use the statements as primary evidence; it could not use them even for the purpose of discrediting witnesses. I remember that in the original Bill there was a proposal to use such statements for corroborative purposes. I am glad that the Select Committee turned down this proposal. But what is the amendment that is suggested by the Select Committee? The amendment makes the position of the accused, in some respects, much worse than what it would have been even under Dr. Katju's original Bill.

Why should these statements be used for the purpose of discrediting witnesses? After all, statements made to the police are the basis on which a prosecution is initiated. If the accused is able to cast doubts on the veracity of these statements on which the prosecution is initiated, why should he not go scot-free? The Select Committee has given the right to the police to use these statements for the purpose of discrediting prosecution witnesses. Imagine what the effects would be. The statements made to the police may be under duress. As you are well aware, constituted as our investigation department is, constituted as the police is, statements can be extorted from witnesses. If the witnesses are confronted by the accused, this fact would be brought to light, and this in itself would tend to act as a salutary check on the police "fabricating cases". But if the police declare certain witnesses to be hostile, as can be done under the new law, then what is likely to happen is that the fact of police duress is likely to be ignored, and may not count at all in future, in our courts of law.

Further, hostile witnesses may run the risk of facing prosecution on the ground of their having been perjured witnesses. These are facts which have to be appreciated by the House, so that it may realise that this radical amendment, which has been made by the Home Minister and the Select Committee, tends to deprive the accused of a valuable right and puts a premium on evidence given under duress.

I believe it was my hon. friend Pandit Thakur Das Bhargava who referred to police reports and police statements and said that many of these statements were summaries of what were alleged to have been made to policemen. What ground is there for your giving additional rights to the police to use such statements to discredit hostile witnesses? If the basis on which a case is built collapses, then the accused must be released. There is no sense in attempting to weight the scales against the accused. I do feel that here we are against one of the fundamental premises which governs my hon. friend's thought process.

The Home Minister has in many speeches, pointed out that he is one of those who feel that the accused are having a gay time in our courts of law, that many of them are acquitted, and most of the accused deserve to be convicted. Holding such views as these, I am not surprised that he should have pleaded for more powers being given to the police. I am all in favour of investigation of crimes, but I do feel that these powers which are given to the police will work to the detriment of the accused; that a fair hearing that we wish to assure the accused, and which is enjoined on us by the Constitution, will not be

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possible. "Procedure prescribed by law" will be reduced to a farce, if we accept these suggestions of the Select Committee. I yet hope the hon. Home Minister will keep an open mind, and at least partially revise his approach to these questions pertaining to criminal procedure, so that Parliament may not be led into error and the people may not curse us for having abandoned a welfare State in favour of Police Raj.

श्री तेलकीकर (नान्दंड): जनाब डिप्टी स्पीकर साहब, मैं आपका बहुत शुक्रगुजार हूं कि आपने मुझे इस विषय पर बोलने का अवसर दिया। वक्त बहुत कम है इसलिये मैं जाब्ता फौजदारी एक्ट की मुख्तलिफ दफाओं पर हाउस की तवज्जह मबजूल नहीं कराना चाहता हूं क्योंकि एक तो वक्त नहीं है और दूसरे यह बहुत ही वसी है, लेकिन मैं इस के कुछ बुनियादी उसूलों की तरफ जरूर इस वक्त तवज्जह दिलाना चाहूंगा।

असल बात यह है कि हमने पिछले पचास, साठ सालों से अंग्रेजी क्रिमिनल प्रोसिज्योर कोड ही के माहौल में जिंदगी गुजारी है एक दायरा उसका हमारे अतराफ कायम किया हुआ है और हम उस दायरे से बाहर नहीं आ सकते। जिनको कि हम कार्डिनल प्रिंसिपल्स आफ जुरिसप्रुडेंस कहते हैं बुनियादी उसूल जाब्ता फौजदारी के या यह कहिये कि जो दंड विधान के मौलिक सिद्धान्त कहे जाते हैं उनके दायरे के बाहर हम नहीं जा सकते और हकीकत यह है कि जब तक हम उसके बाहर न निकलें मैं नहीं समझता कि कोई हकीकी सूरत हमारे सामने आ सकेगी। यह ठीक उसी तरह है कि एक पेंटर ने कहा कि मैं एक खूबसूरत तसवीर बनाना चाहता हूं और इस वास्ते मुझे अपने सामने किसी बंदर की तसवीर को नहीं रखना चाहिये लेकिन चूंकि उसके दिमाग में बंदर की तसवीर बसी हुयी थी और उसके बारे में सोचता था इसलिये वह अपनी कोशिश में कामयाब नहीं हो सका। बिलकुल ठीक यही बात हमारे इस जाब्ता फौजदारी कानून में तबदीली करने की है। जब तक हम उस बुनियादी उसूलों के कहे जाने वाले दायरे के बाहर नहीं निकलते हम कामयाब नहीं हो सकते और जब क्रिमिनल प्रोसीज्योर कोड हम मुदाग्राना बनाते हैं तो हमारा खयाल पहले उन्हीं कार्डिनल प्रिंसिपल्स की तरफ दौड़ता है और उन बुनियादी उसूलों की तरफ यहां पर हाउस के बड़े बड़े कानूनदां लोगों ने तवज्जह मबजूल करायी है। हमारे मिनिस्टर साहब ने इस तरमीमी बिल को रखते हुए बतलाया कि जाब्ता फौजदारी कानून में तरमीम करने से हमारा मकसद यह है कि न्याय जल्दी लोगों को मिल सके, काम की रफ्तार बढ़ायें, लोगों को इंसाफ जल्दी दिलायें और सस्ता दिलायें लेकिन मेरी राय में हमारा यह आखिरी मकसद नहीं हो सकता, यह मीन्स हो सकते हैं उसकी तरफ जाने का रास्ता हो सकता है लेकिन आखिरी मकसद तो मुल्क में से यह जो क्रिमिनल मेंटेलिटी, अपराध की प्रवृत्ति है इसको कम करना है और हमें देखना चाहिये कि मौजूदा दायरे में रहते हुए हम इसको करने में कामयाब हो सकते हैं या नहीं। यह चीज महज इसी से नहीं आ सकती कि आप जस्टिस को स्पीडी कर दें। मैं मानता हूं कि आप रफ्तार में तरक्की करते हैं लेकिन सिर्फ यही हमारा मकसद और नस्बुलैन नहीं है। असल मकसद तो यह है कि जो एक गुनाह की प्रवृत्ति है वह कम की जाय और वह हम उस वक्त ही कर सकते हैं जब हम अपने मौजूदा बुनियादी कहलाने वाले उसूलों में तबदीली नहीं लाते। मसलन् मौजूदा कार्डिनल प्रिंसिपल्स आफ जुरिसप्रुडेंस जिन पर हम अमलपैरा हैं उन में यह कहा जाता है कि यह बेहतर है कि पचास गुनाहगार छूट जायें लेकिन एक भी बेगुनाह सजा न पाये। यह उसूल हमारे सामने

रखा हुआ हैं और मेरी समझ में यह उसूल ही बुनियादी तौर पर गलत हैं और क्यों गलत हैं इसकी वजह भी आप समझ लीजिये। आखिर हमारा मकसद क्या हैं ? हम यह चाहते हैं कि हमारे मुल्क में अपराध करने की प्रवृत्ति कम हो, लोग झूठ न बोलें, हमारे मुल्क में चोरी न हो, हमारे मुल्क में डाके न पड़ें और कत्लेआम बन्द हो जाय और जाहिर हैं कि इसके लिये कुछ तकलीफ भी बर्दाश्त करनी होगी। यह गुनाहगारी की मेंटेलिटी तभी खत्म होगी जब हम गुनाह करने वालों को माकूल और सख्त सजा दें ताकि आयन्दा उनको फिर अपराध करने का साहस न हो और दूसरे लोग उनसे सबक लें। जैसे हमारे डाक्टर काटजू साहब ने भी कहा था कि आज सूरत यह हो रही हैं कि लोगों में गुनाह करने की प्रवृत्ति बढ़ रही हैं, एक अपराधी सजा काटने के बाद जब निकल कर आता हैं तो फिर पचासों गुनाह कर लेता हैं और नतीजा यह हो रहा हैं कि गुनाहों की तादाद बढ़ती जा रही हैं और उनकी ख्वाहिश और फिक्र हैं कि किसी तरह से हमारे देश में गुनाहों की संख्या बढ़ने न पाये और उनमें कमी हो लेकिन दूसरी तरफ दूसरे देशों से यह जो हमने सिविल एन्ड इंडिविजुअल लिबर्टी का नोशन लिया हुआ हैं यह उस मकसद को हासिल करने में रोड़ा अटकाता हैं और मेरी राय में तो यह बेहतर हैं कि "एक बेगुनाह शख्स को भले ही सजा हो जाय लेकिन पचास गुनाहगार शख्स न छूट पायें," हमारा नजरिया यह होना चाहिये क्योंकि अगर एक गुनाहगार छूट जाता हैं तो वह बाहर यह खयाल ले कर जाता हैं कि गुनाह करके मैं छूट सकता हूं और वह कत्ल का अपराधी छूटने के बाद दूसरा कत्ल या और इसी तरह के अन्य अपराध करता हैं और इस तरह अपराधों की संख्या बढ़ती हैं। यह नजरिया इंडिविजुअल लिबर्टी और सिविल लिबर्टी का जो दूसरे मुल्क से आया हैं वह गलत हैं। मैं तो कहूंगा कि यह बेहतर हैं कि एक बेगुनाह के हक की पामाली हो जाय क्योंकि एक की पामाली की वजह से हम हजारों लोगों को परेशानी से बचाते हैं। हमें एक व्यक्ति के अधिकार की अपेक्षा सारे मुल्क और नेशन का इंटरेस्ट ऊपर रखना चाहिये। हमारा उद्देश तो greatest good of the greatest number होना चाहिये, हमें देखना चाहिये कि लोगों में अपराध करने की प्रवृत्ति कम हो और वह इसी तरह सम्भव हैं कि कोई अपराधी छूटने न पाये और उसको कठोर दंड मिले।

आप को मालूम होगा, मैं मिसालन रखता हूं, कहा जाता हैं कि फलां मुल्क को पहिले जमाने में मालूम नहीं था कि गुनाह क्या होता हैं, उन को मालूम नहीं था कि असत्य क्या होता हैं। लेकिन यह कैसे होता था ? उन के दिल में सत्य और अच्छपन की बड़ी अजमत थी। मैं उदाहरण के तौर पर कह सकता हूं। धर्मराज ने थोड़ा सा झूठ कहा था कि :

"नरो वा कुंजरो वा"

लेकिन इतना भी बर्दाश्त नहीं किया जा सका और स्वर्ग जाते हुए उन को बड़ी मुश्किल आ गई। पुराने जमाने में सत्य की यह अजमत थी और यह अहतराम था। इसी तरह से मैं समझता हूं कि क्रिमिनल प्रोसीजर कोड के सेक्शन्स को भी बदलना चाहिये जिस से कि सत्य की अजमत बढ़े और सत्य बोलने वाले को कुछ सिला मिले। साथ ही गलत बोलने वाले को कुछ ज्यादा सजा मिले। मान लीजिये एक आदमी ने कत्ल किया फिर उस से बचने के लिये पचासों गलत बातें कहीं। मैं समझता हूं कि ऐसे आदमी को दूनी सजा मिलनी चाहिये। एक तो कत्ल की सजा और दूसरी गलत बयानी की। इस तरह से यह होगा कि जो वकील उस आदमी का मुकदमा करेगा वह उस से कहेगा कि तुम मेरे मोवक्किल हो, मैं तुम को

[श्री तेलकीकर]

गलत बयानी से बचा सकता हूं, लेकिन इस में खतरा है छूटने की उमीद के साथ सजा के बढ़ जाने का भी। वकील लोग इस तरह से करें तभी काम चल सकता है नहीं तो आज कल की ही हालत चलती रहेगी। हम देखते हैं कि आज कल अदालतों में यह नहीं देखा जाता कि किस ने सत्य कहा और किस ने असत्य कहा, आज यह देखा जाता है कि दोनों में से किस ने कम गलत कहा है। दोनों तरफ से गलतियों के हुजूम रक्खे जाते हैं और न्यायाधीश का काम यह होता है कि सत्य को चुनने के बजाय कम गलत बोलने वाले को ही सच्चा समझे। इसलिये बुनियादी उसूल को दिल से हटा दें और दूसरे उसूल को रखें।

यहां पर जितनी चीजें रफ्तार बढ़ाने के लिये बताई गई हैं उन के अलावा और चीजें भी रफ्तार बढ़ाने के लिये शामिल की जा सकती हैं, जैसे कमिटल प्रोसीडिंग्स हैं, वारंन्ट केसेज हैं, समन्स केसेज हैं, समरी प्रोसीडिंग्स हैं, इन को तब्दील करने का मसला रखा गया, उसी तरह से आगे चल कर जिन केसेज में ५० रुपये तक जुर्माने की सजा दी जा सकती है उन को पंचायत अदालत के हवाले कर देना चाहिये। वहां पर आज कल के न्यायालयों का उसूल नहीं होता है। वहां पर सत्य और असत्य देखने की टेन्डेन्सी ज्यादा होती है। छोटे मोटे मुकदमे वहां चले जाया करें तो अदालतों का भी काम हल्का हो जायेगा और सत्य की भी प्रवृत्ति बढ़ जायेगी। मैं अपने यहां की एक मिसाल बताता हूं। वहां हाल में पंचायतें कायम हुई हैं। उन में अदना अदना आदमी शामिल हैं, लेकिन हम देख रहे हैं कि वहां प्रवृत्ति सत्य की ओर बढ़ती जा रही है। वह लोग समझते हैं कि इस तरह से जनता के साथ बर्ताव करने से लोग हम को सच्चा समझेंगे और हमारी इज्जत बढ़ेगी। तो आप अदालतों के बजाय जो छोटे छोटे गुनाह के मुकदमात हैं उन को पंचायतों को दे दीजिये। इस तरह से जो क्रिमिनल प्रोसीडिंग्स का एलॅबोरेट प्रासेस है उस में जनता की सहूलियत की नजर से भी कमी करने की जरूरत है। इस से असत्य भी घट जायेगा और सत्य की प्रवृत्ति बढ़ेगी।

चन्द दफात की तरफ भी मैं आप की इजाजत से इशारा करना चाहता हूं। बाज दफात के मुताल्लिक यह कहा गया है कि फलां चीज से नाइन्साफी होती है, फलां चीज से नाइन्साफी होती है। दफा १६२ के बारे में कहते हैं कि एक्यूज्ड को मजबूर क्यों किया जाय कि वह बयान दे? मुझे ताज्जुब होता है कि यह कहा जाता है कि वह अपना बयान देगा तो उस के हालात सामने आ जायेंगे, उस की गुनहगारी साबित हो जायेगी। आप लोग डर रहे हैं कि कहीं उस का गुनाह सामने न आ जाय। मैं तो कहता हूं कि उस के बयान से उस की गुनहगारी मालूम हो जाय तो और अच्छा है शायद वह कुछ अपने मुंह से ऐसी बात कह जाय जिस से कि उस का गुनाह मालूम हो जाय। आप इस से घबराते क्यों हैं? मैं देखता हूं कि इस देश में हमेशा गुनहगार को ज्यादा ही महफूज रखा गया है। मुझे यह कहने में कोई दरेग नहीं है, मैं वकील हूं, मैं ने वकालत की है और जिन उसूलों को आप रखते हैं उन्हीं के जरिये मैं ने मुलजिमों को डिफेन्ड किया है, हालांकि मुझे मालूम था कि वह गुनहगार हैं लेकिन मैं ने उन को बेगुनाह साबित करने की कोशिश की है। मैं जानता हूं कि हमारी अदालतों में क्या होता है और उन को बदलना ठीक ही है। मैं समझता हूं कि हमारे होम मिनिस्टर ने बड़ी हिम्मत की है बहुत सी चीजों में तब्दीली कर के, और मैं उम्मीद करता हूं कि वह तब्दीलियां गुनहगार को पकड़ने में काफी मददगार होंगी।

इस तरह से मैं इस बिल की ताईद करता हूं लेकिन जैसा मैं ने अमेन्डमेन्ट दिया था कि इस बिल को पब्लिक की

राय जानने के लिये भेज दिया जाता, उस के बाद अजसर नॉ बिल को ठीक से लाया जाता और उस में नये उसूलों पर अमल किया जाता तो ज्यादा अच्छा होता ।

Shri Sadhan Gupta (Calcutta—South-East): In the short time that is available now, it would be impossible to go into the details of the clauses or even perhaps to refer to all the clauses of the Bill that are mischievous. Therefore I shall confine myself to the salient features in the Code and refer to clauses as little as possible.

It has been mentioned by more than one hon. Member that this Code is a British law. I can say at once that I am not a *stutipathak* of British law like Mr. Deshpande. Of course, I once was. I could not help that because the propaganda let loose by the British and even supported by some of our national leaders had convinced me that the law that the British gave us was at least just, whatever tyranny they might have imposed upon us. But, through my practice in courts and particularly through my political experience, I have learnt to detest British law, at least as far as the punishment of crimes and procedure in the matter of crimes is concerned. The British came not on a mission of philanthropy but with a definite and sinister object, the object of looting as much as possible from our impoverished land. For this, machinery was necessary and the Criminal Procedure Code was part of such machinery. The first Code, as far as procedure in the mofussil courts is concerned, was enacted in 1861. With the memory of the Sepoy Mutiny which had just shaken British power to its roots, with a spirit of nationalism smouldering and sometimes even bursting forth in minor explosions, with growing indignation and hatred against the British indigo planters and tea planters and other ruthless representatives of British imperialist and capitalist enterprise, the Code was what it was expected to be, a law full of a spirit of contempt for the civil liberties of the people and their right to be protected from the arbitrary interference by the executive and, particularly, the oppressive and corrupt police. As expected, it made the police the supreme arbiter of the destinies and allowed them a free hand in harassing, oppressing and terrorising the people of those days in the name of investigation and security for good behaviour and so forth. It gave the magistrates the unrestricted right of restricting the civil liberty and the public and even the private activities of the citizens. True, there were certain good provisions. The provisions regarding trials, with certain exceptions, were, on the whole, satisfactory and even commendable. But, this was only to be expected because, however oppressive a tyrant may be, conciliation must necessarily form a part of his tactics of oppression and exploitation. The better provisions—whatever provisions there are—for protection against the executive, and particularly, against the police, came much later and as a result of the discontent of the people against oppression. Mr. Deshpande will perhaps correct his lofty impressions about this British law when I tell him that such provisions as those prohibiting use of police statements for corroborating prosecution witnesses and only limiting them to contradiction were not given to them out of grace, but were forced in order to conciliate a seething people. Even the right of *habeas corpus*, which is the elementary right in every civilized jurisprudence, was conferred only the other day on High Courts, apart from High Courts in the Presidency towns and even in their case the jurisdiction was confined only to the limits of the presidency area of the town. I said that the provisions regarding trials were on the whole satisfactory, but even there, serious inroads were made. All sorts of special courts were created where difficulty was apprehended. There were courts of special magistrates; jury trial was not made universal, and of course, when need arose, the Code was freely superseded by laws providing for special courts and special tribunals, of which we cherich such

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horrid memories. This Code has an ugly history and an anti-national background and it is being sought to be amended. There can be hardly any doubt whatever that such a detestable Code does need amendment; it needs amendment to provide a procedure which will secure justice with speed and little expense, and as a necessary corollary to the need for securing justice, there should be adequate and full opportunities to the accused for defending himself. In a land which is supposed to be independent and democratic, it must also de-bureaucratise the administration of justice and provide for the association of the common people with its administration as much as possible. Above all, it must guarantee that the innocent citizens do not have their civil liberties interfered with or be harassed by the police or even those guilty citizens have not their civil liberties unduly interfered with or unduly harassed. It must also establish equality between all citizens, from the highest to the lowest, in the economic, political or administrative hierarchy. The tests by which this Bill must be judged are precisely these very tests. The Home Minister has given a list of the good things that the Joint Committee has done, but what we are concerned with is not whether the Joint Committee has made a very reactionary Bill a little less reactionary, but whether the Joint Committee has given us a Bill which secures speedy and inexpensive justice and offers adequate opportunities of defence to the accused. Does the Bill rid judicial administration of bureaucracy and associate the common people with it? Does it secure equality among the citizens in any aspect of the administration of justice? Does it protect citizens from interference with their civil liberties and from harassment at the hands of the executive and particularly the police? In all these respects, this Bill has not only miserably failed, but has in fact rendered the British Code more reactionary than it has hitherto been. I shall not deal with the details of this matter. It has been discussed at length by various speakers. In the name of justice, speedy justice, really nothing has been done except to inflict injustice on the accused; how in the case of defence of the accused, the rights of defence have been curtailed and so on and so forth. In the matter of judicial democracy, in the matter of associating the common people with the administration of justice, what has been done is not to extend the jury system, but to abolish the assessor system. No one is in love with the assessor system, but I must say that where the jury system is not introduced, the assessor system is at least a better system than a trial by the judge alone, because whatever the limitations within which an assessor works, he has an opportunity of giving an opinion and he gives an opinion which is supposed to help the judge in arriving at a conclusion. That is not a good thing, but that is a better thing than having none of the common people associated in the matter of justice.

In the matter of using statements made before the police, it has come up for considerable criticism. I shall not deal at length with that aspect of the matter, because I have no time, but there has been a recent judgment by a judge in this very city in which he said this about the manner in which the police carries on investigation. It was in a Press report and it appeared in *The Statesman* of Friday. About the manner in which the investigating officer succeeds in getting witnesses, the judge said that it does not require much imagination to infer that facts procured in this fashion not only could hardly be called fair or independent, but it amounted to almost extorting from witnesses that the accused was a murderer. That is how a Sessions Judge of this city feels. It is provided that even in the case of statements like this—extorted statements—on the strength of that, prosecution witnesses can be declared hostile. What is the justice in it? A prosecution witness may be telling the perfect truth. Yet on the basis of a statement which he perhaps never made or which has been extorted from him, he will be declared hostile

and everyone knows—you know as a lawyer—that once a witness is declared hostile, his evidence is of no use. Why should the defence be deprived of a favourable evidence because the police chose either to extort a contrary statement or to write down in the name of the witness a statement which he had never made? On this ground I strongly object to this provision.

I have no time to go into the other provisions, but I will just refer to the provision about defamation, and in particular Dr. Katju sought to support his section 198B and so forth on the ground that the Press Commission wanted it. May I point out at once that the Press Commission or rather the working journalists in the Press Commission disagreed with it, and it is really the working journalists who are concerned with the measure and not others, and the working journalists' opinions are entitled to the highest respect. Dr. Katju also said that the Federation of Indian Working Journalists wanted the procedure under section 194. That is not correct. The position that the Federation took is amply illustrated in the proceedings of the Select Committee and it is also reiterated in their statement. They have clearly indicated that they are unreservedly opposed to any kind of distinction between citizen and citizen, whether President, Vice-President or Rajpramukh. I entirely endorse the view because there is no sense in putting the President, Vice-President, Governor or Rajpramukh above everyone. If the President, Vice-President or Governor is entitled to respect, he must win the respect by his own character, by his own personality and not by virtue of office. Can Dr. Katju point out a single country in which the President, Vice-President or Governor enjoys these unusual rights,—rights in respect of defamation, rights even in respect of their position as witnesses?

P.M.

Every witness is entitled to have his evidence evaluated and every party is entitled to have the witness's evidence evaluated without any consideration as to his political standing which is divorced from his personal standing. What is provided is that the President or a Governor or a Rajpramukh must be treated on a footing entirely apart—as if they were descended from Heaven, in the matter of treatment of witnesses. They could not be examined in open Court. They will not be made to come and get into the witness box. They will be examined on commission. It is clear what kind of impression it will have on a Court. It would put a premium on their evidence. For all you know, the President may be a characterless person in our society where the President is elected by the Legislatures and where the Legislature is under party control. It would be possible for him to bribe his way to Presidentship. It does not follow that a President will always be like the President we have or that a Vice-President will always be like the Vice-President we have. Therefore, why should such persons merely by virtue of their office have a privilege, a privilege which they do not merit as personalities?

In conclusion, I want to say that here is a Bill which in the name of speed, strips the accused of his elementary rights of defence, in the name of justice, makes the executive supreme, in the name of giving an opportunity to expose corruption, seeks to stifle and strangulate the voice of criticism. All this may be good for Congress Governments. I know all this would be excellent for Congress Governments. They have at least some Ministers in their ranks who, though they get only Rs. 500 before the war, could yet display such financial wizardry that they could put up palatial buildings. All this may provide a shade, a much-needed shade, for many a shady deal. But I warn the Government that people do not think it is good for them. The timorous ripples of doubt that arise from the Congress ranks as a whole and the protests that arise from our ranks only reflect, very inadequately reflect, the indignation of the people.

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The Government may find that ultimately they have created more trouble than they reckoned for. I would, therefore, request them once again not to play with the rights and liberties of the people and I would request that good sense may dawn on them and they may yet withdraw the Bill and present a proper Bill which will secure civil liberties, which will secure speedy and inexpensive justice, which will secure the accused the rights of defence and which will secure democracy in judicial administration or at least do away with the rank bureaucracy that prevails in the judicial administration.

Mr. Deputy-Speaker: I am sorry there is no time to call upon other hon. Members.

Shri L. N. Mishra (Darbhanga *cum* Bhagalpur): I have been waiting for a long time. You promised me.

Mr. Deputy-Speaker: Of course. How long will the hon. Member take? It would not be right for me to give only, say, five minutes. Yes, the hon. Minister.

Dr. Katju: If I have the slighest consciousness that the Bill was calculated to produce results which were painted in such lurid colours by my hon. friend who has preceded me, I tell you I would tear up the Bill.

Dr. Lanka Sundaram: You said that last time.

Dr. Katju: So much eloquence has been heard on this, I thought very unsentimental matter, that sometimes I am amazed. The Bill contains no less than 43, what I might call, major amendments, and 20 minor amendments. Hon. Members have spoken about piecemeal legislation. I heard it, and wondered, because every single section of the Code of Criminal Procedure has been read over, considered, pondered over, opinions invited and, rightly or wrongly, we took a particular view. To think of this thing as a piecemeal legislation, as a tinkering with the infinite problem, is, if I may say so, without meaning any offence, really a misuse of language and not the proper way of dealing with this Bill.

Something was said about the Law Commission. Hon. Members have been supplied with four bulky volumes, at least three of them are fairly bulky, very closely printed. I had the figures collected and I found that 27 State Governments have sent considered opinions on every single provision in the Bill. 13 Chief Ministers, in their personal capacity or as official heads of their cabinets, five Governors, our Attorney-General, 11 advocates from the States—I know personally that they have written after consulting the senior and junior members of the Bar—and the Judges of the Supreme Court have done the Government of India the honour of having gone through the Bill and sending the Government their individual opinion.

Shri S. S. More: The opinions of the Supreme Court Judges on the provisions of the Bill are not printed. Only the replies given by them to the memorandum that has been circulated have been printed in Book C.

Dr. Katju: Mr. More will be welcome to the Home Ministry. He shall have the whole file placed before him. All the Members will be welcome.

Dr. Lanka Sundaram: It is all over.

Mr. Deputy-Speaker: They say those opinions have not been circulated.

Dr. Katju: They are there. The Members have been supplied with these four fat books. If you do not have them, I shall let you have them this evening.

Mr. Deputy-Speaker: Has any hon. Member on this side not been satisfied with the opinions given, and has he written to the Minister for those opinions?

Shri S. S. More: The hon. Minister made a statement that the Judges of the Supreme Court replied to the provisions of the Bill. My submission is that before that, a very exhaustive memorandum was circulated by the

Home Ministry under the signature of Dr. Katju, and the opinions were elicited to that memorandum and not to the particular provisions in the Bill.

Shri N. C. Chatterjee (Hooghly): Their Lordships of the Supreme Court have never tendered their opinion on the provisions of the Criminal Procedure Code (Amendment) Bill. What we have been supplied is, Book C, printed from page 309 onwards, which is in reply to the memorandum which Dr. Katju had circulated prior to the introduction of this Bill.

Mr. Deputy-Speaker: Are there any independent opinions given by the Judges of the Supreme Court regarding this Bill?

Dr. Katju: The Bill follows the memorandum. Book B contains the opinions received on the Bill. Book C contains the opinions received from the Bar.

Mr. Deputy-Speaker: Whatever is there, is there in the Bill. There is no other opinion apart from what has been printed. Very well.

Shri N. C. Chatterjee: The hon. Minister has said that the Judges have been kind enough to record their opinion on the provisions of the Bill. What I am pointing out is that it is only on the memorandum. It is only fair if you could be good enough to supply us copies of their opinions on the Bill. They are very important and are entitled to the highest respect.

Dr. Krishnaswami: We should like to have the opinions of all the Advocates-General.

Dr. Katju: Very good.

Mr. Deputy-Speaker: The hon. Minister may make it clear. If opinions have been received from the Judges of the Supreme Court only on the memorandum, it is better to say so. If on the other hand opinions have been received on the provisions of the Bill, apart from the memorandum, and if they are being referred to here, it is but natural for the other side to say that those opinions ought to have been circulated.

Dr. Katju: Every opinion that has been received has been summarised either in Book C, or Book D and there is no other opinion. The Bill closely follows the memorandum, with some minor changes. I was suggesting that all the Judges of High Courts have considered this measure. One hundred fifty Judges, five Judicial Commissioners and 67 District and Sessions Judges have sent their opinions on the Bill.

Dr. Krishnaswami: Have they approved of the Bill?

Mr. Deputy-Speaker: All the opinions are there in the papers circulated. What is the good of asking for a synopsis?

Dr. Krishnaswami: He was referring to the opinion of the Advocate-General.

Mr. Deputy-Speaker: He said there is no other opinion except the ones circulated.

Dr. Katju: Everything you find in these books.

Mr. Deputy-Speaker: The hon. Minister should be a little more precise.

Dr. Katju: Do you depend upon these gentlemen to do me any favour. I was suggesting that nearly 500 opinions have been noted and summarised in these Books C and D. Apart from that there are opinions which were collected in the previous years. Now what would a Law Commission do?

Shri S. S. More: They would cross-examine the witnesses.

Mr. Deputy-Speaker: I am not prepared to allow this kind of interruption. Does the hon. Member want the Minister to proceed or not? I am not prepared to allow the hon. Member to go on interrupting. He will kindly resume his seat.

Shri S. S. More: It is my right. I have every right as a Member.

Mr. Deputy-Speaker: The hon. Member has no right to go on interrupting and make the work of this House impossible.

I am shortly going to put the motion to the House. I shall then allow the hon. Member to raise not one hand but both the hands.

Shri S. S. More: Under what rule?

Dr. Katju: Any suggestion now at this stage after about eighteen months of travail and closest examination by all the Judges, Advocates, associations throughout the country, a number of letters printed in the newspapers, editorial articles, that the matter should be referred to the Law Commission would do no particular good to this Bill, or this particular piece of legislation. I do not want to use provocative language, but this appears to me to be only a dilatory motion.

This Parliament is not going to surrender its authority, to abdicate its functions, law-making functions, to anybody. Supposing a Law Commission is appointed today. Very well, it takes, two years, three years, four years, or only six months. It makes certain proposals. It will be open to Government to say: We agree with the recommendations of the Law Commission or we do not agree with them. The whole report will be subjected to examination.

Let me give the House an instance. Before this Bill was introduced in the memorandum which was circulated it was suggested that defamation may be made a cognizable offence, the idea being that in addition to the public servant defamed who may go as a private complainant, Government must also have an opportunity of having the matter investigated by a Judge. Now that was mentioned in the memorandum in the month of September 1953. The matter went on. There were discussions about it and opinions were received on the memorandum. This very question was considered by the Press Commission. Now the Press Commission was an independent body. The Press Commission has submitted a one thousand page report. Most of its recommendations have been welcomed. At any rate, no one would dare suggest that it was not an independent body. It was presided over by a distinguished Judge of the Bombay High Court. All its members were eminent public men. I will single out one name, that of Shri C. P. Ramaswami Ayyar, a most distinguished lawyer in his own time, a great advocate, a civil administrator, a great figure in our public life. By a majority of seven to four the Press Commission has reported, not on the procedure,—I shall come to the procedure later—but on the main point, that it is desirable that there should be another mode of investigation into this matter, it is said in so many words that in addition to the public servant defamed, Government should also have a right to institute criminal proceedings and to have the matter judicially investigated.

Having said so on principle, the procedure they have suggested is not a reference to the Advocate-General or a reference to the Public Prosecutor, or the launching of proceedings before a Sessions Judge or before the High Court. They say that Government should authorise the superior authority,—if I am an inspector, then my Superintendent, if I am a Superintendent of Police,—then the Inspector-General,—to go and launch a complaint for investigation into that matter.

This particular provision about defamation which has been approved by the Joint Select Committee, was referred to as foolish, as retrograde, as reactionary, as destructive of the liberty of the Press and so on and so forth. No one then said that this is a matter which apart from Government has also been considered by an independent Commission and therefore the verdict of the Commission is entitled to some weight. It is the verdict of an independent, impartial semi-judicial body, which has brought an objective mind to bear upon this matter.

This brings me, Mr. Deputy-Speaker, to another point. As I said, the Bill goes deep into procedure in a variety of its aspects. I do concede that every single Member is entitled to rise and say: "I condemn this particular provision." Very good. But no one has said, excepting one or two that in this particular matter the Government is fortunate enough to have the majority view in support of it. So, it is not purely the view of Government; it is also the view of a Commission.

Hon. Members have been saying: "The Law Commission should go into this matter so that there may be an investigation by an independent body and a variety of opinions may be collected. The Press Commission has been sitting for twenty-two months and its recommendations will come before Parliament in one form or another. This particular matter has come before you because it deals with a subject of general interest, relating to criminal procedure.

My submissoin, therefore, is that in regard to this Bill, the matter has been under investigation, has been under consideration for the last three years—from the beginning of 1951. I say with all seriousness and with the fullest sense of responsibility that no one here is anxious in the slightest degree to let any innocent man suffer. No one is in the slightest degree anxious to interfere with the main proposition that the accused is entitled to the benefit of doubt; he is entitled to be presumed innocent till he is proved guilty. But the state of affairs in the country everywhere is not sound so far as the administration of criminal justice is concerned, because there is so much delay. I am not saying you should in any way hamper the accused in putting forward of his case. But suppose you find that two or three years elapse. I had a case yesterday or day before yesterday where commitment proceedings lasted thirteen months. It was a very abnormal case. The usual delay is five, six or seven months; and the trial before the Sessions Court commences four, six or seven months later. There are very few cases in which a murder case is disposed of within twelve months by the Sessions Judge.

I am not dealing here with the quality of justice. But it is desirable, as one hon. Member from here and one from there said, that the matter should be disposed of without delay. If you keep an innocent man in jail for twelve months, can you imagine of a more shocking piece of cruelty, with the trial and a sentence of death hanging over that man's head from day-to-day?

That is the object of the whole Bill, and I do submit that in this matter the Law Commission will not be able to render you any assistance whatsoever, because the matter has been so fully examined from every conceivable, every possible aspect by Judges, by Public Prosecutors, by the highest officers, by the Attorney-General, by Bar Associations.

My friend Mr. Gopalan said—his amendment is of a limited description—he says: circulate it or rather refer it back to the Joint Select Committee for consideration of the matters mentioned by me. And there specific reference has been made to four, what we call, preventive sections of the Criminal Procedure Code. In a way you may be right in saying it is really substantive, or it is substantive *cum* procedural. The Joint Select Committee took the view that it was an important matter, it was necessary that public opinion should be collected upon it, and it also said this—I do not know whether it says so or not in the Report—but at the meetings it was suggested, let this stand out, let it be referred for public opinion, to the public at large, to the State Governments, to the professional opinion and the Government should bring forward another Bill. And then it was said in one Bill all things have been said about this matter or that matter, if anyone suggests that something is imperfect somewhere or requires rectification it might be done.

[Dr. Katju]

But what I was suggesting was that those four matters, what you call the preventive sections, that is sections 107 to 110 plus section 144, they stand upon a pedestal of their own. They are unconnected with the main things. What is the meaning of the Criminal Procedure? How should a case start, how it should be continued, what method of trial should there be—that is all that is Criminal Procedure in substance.

Please remember that this is not in any way connected with the Penal Code. The Penal Code is quite different. You may appoint a Law Commission, or you may take any method of investigation into the Penal Code, and the Penal Code may say that notions of criminality have changed, a black-marketeer for instance should not merely be given a punishment of a fine of fifty rupees or one month's imprisonment, having regard to the seriousness of his crime he should be sentenced to seven years, or that times have changed, new crimes may have developed, some crimes may be minimised (some crimes against property), some crimes may be intensified or may be magnified and so on. But that is all regarding the Penal Code. It has nothing to do with the Criminal Procedure Code.

Similarly you take evidence. I am saying this because some observations were made that all these three things were connected with one another. I respectfully submit it is not so. What is the Evidence Act. When I went to the law college I was told that Evidence Act means this: suppose a witness says 'I have heard it', produce him to tell what he has heard; if he has seen it, produce him to tell you what he has seen. This is the gist of the Evidence Act. It has nothing to do with the Criminal Procedure Code. The two things are different.

An Hon. Member: Law simplified!

Dr. Katju: My respectful submission is that you cannot hold up the Criminal Procedure Code because the Evidence Act has now become eighty years old and may require consideration in the light of public opinion or professional opinion.

I will not deal with this matter any further because my hon. friend the Deputy Minister has already dealt with it, and that is quite sufficient for my purpose.

What happened at the time of considering the motion for reference of the Bill to the Select Committee has again happened. There also these points were raised, and I submit—I do not say it binds anyone—but consideration of a motion for reference of a Bill to a Select Committee means whether the House agrees with the broad principles of the Bill or not. At that time also there was a specific motion for circulating the Bill for eliciting public opinion. The House turned that motion down. And then my hon. friend Mr. Chatterjee wanted its reference to a Law Commission. That was also turned down, and the House said 'we will go into it'. And the Joint Select Committee consisting of forty-nine Members, mostly eminent lawyers, coming from all parts of the country, acquainted with the conditions prevailing in different parts of India, they considered the matter in a most painstaking manner, every single thing. The House knows, and the Members of the Select Committee will bear me out, everyone brought a perfectly open mind to the discussion; there was no question of guidance of any sort or description there; and a report has been produced before you.

The virtue of that report is this—I had made a sort of summary here—that out of all the points raised, the difference of opinion is so slight. As I said, there are forty-three major amendments and twenty minor, altogether sixty-three. Out of these the one which excites the greatest comment is defamation, and there are six Notes of Dissent on it. On two, one about honorary magistrates and another about summons procedure, there is one Dissenting Minute. Otherwise this is a vast majority. Similarly on two, that is section 107 and warrant

procedure, there are just two Dissenting Minutes. The biggest one, as I said, was on defamation. That of course has excited the greatest interest; I do not know why. Because it is really not a matter for lawyers; it has got some politics into it.

Anyway, the Bill now comes before you not on the authority of the poor Government or of the Home Minister, but it is backed by a large section of Members of this House and the other House who have bestowed pains over it, who have bestowed time over it, and taken a completely detached view of the matter. Let us assure you—and I think my friend Mr. More will bear me out, and everyone will—that every single Member of the Joint Select Committee was, day in and day out, throughout the sittings, most emphatic that nothing should be done to jeopardise the interests of the accused person. Every single amendment that has been made—though it may be condemned now, I do not blame that—was effected in order to protect the accused.

I will give you just one illustration and that brings me to the main point. My hon. friend for whom I have got great regard, dealt at length with the commitment procedure, and he said that he has been long in favour of doing away with the commitment procedure altogether, that the accused should go from the police direct to the Sessions Court. He said that the original suggestion that was made in the Bill as drafted was a sound one and should have been accepted. He says that something has now been done, hotch-potch, neither fish, nor fowl nor good red herring. He said, I am ashamed of that procedure; that is what he said. I rubbed my eyes. As a poor advocate, I always thought that the stronger the case, the more moderate the language and the weaker the case, the greater you shout and the Judge pays you for it. I submit I considered this because this is one of the big points raised in the debate by everybody. He said Dr. Katju's original Bill was quite all right, and this Bill is quite all wrong. Why? Because, it is something extraordinary; it does not allow the right to cross-examination. I am a simple man. He might have thought that this point was clear. Shri Frank Anthony caught it, Shri N. C. Chatterjee caught it, Pandit Thakur Das Bhargava caught it; everybody caught it. Were these 49 people of the Joint Select Committee blind, including Shri S. S. More that they did not catch this point?

Shri S. S. More: He is inviting an interruption from me.

Dr. Katju: Why did they do so?

Pandit Thakur Das Bhargava: All the State Governments supported it; the Home Minister himself supported it.

Dr. Katju: I won't yield. They may put the question to themselves as to why the Joint Select Committee had agreed to it.

Let us take the picture. Let me assure you that I am not wedded to it. When we have the clause by clause discussion, you may make any change you like. But, please consider this from the point of view of the Joint Select Committee. The original Bill was constructed upon two or three principles. First, the diary statements, which, we all know, are the very foundation of every criminal trial. Say what you like, if any prosecution witness departs in anyway from the diary statement, the case is finished. You may say that it is something cooked up by the Police Inspector. If the defence counsel is able to bring about a contradiction or divergence between the diary statement or the substance of the diary statement and the statement made by the witness at the trial itself, the case is finished. That is the reason why they said that a copy of the diary statement should be given to the accused at the earliest possible opportunity. The scheme of the Bill as presented to the House was that in order to stop suborning or winning over of witnesses, the statement

[Dr. Katju]

should be recorded as early as possible under section 164 before a Magistrate on oath. You know, Sir, that by merely recording, you do not make that statement admissible against the accused. What you do is, you bind the witness down to a particular statement. If he contradicts himself, he may be confronted by the section 164 statement and he may be punished for perjury; but it is no evidence against the accused. The evidence against the accused is that statement which is given at the Sessions trial or before the Magistrate. The original Bill proposed that in order to make a witness not sell his soul or depart from his statement, he should be examined before a Magistrate. The House knows what happens. At the original debate, many of my hon. friends here, perfectly rightly, said that a statement under section 164 should be considered to be tainted, that the accused is not there, that the witness is under the influence of the police and he may be made to say anything or do anything and so on. We thought over this. We said that there is a great deal of force in it. What has to be done? The witness should be examined in a freer atmosphere: he has to be examined before a Magistrate. Under the original Bill, suppose there were four eye witnesses, the eye witnesses may have been taken to four Magistrates on four different occasions. We said that we will cut that out and we will bring all the four witnesses before the Magistrate when he takes up the case. Under the original Bill, please remember, the case had to go before one Magistrate in order to enable him to say as to whether the case should go to a Magistrate or the Sessions Judge. We said, let the statement under section 164 be taken before the so-called committing Magistrate in the presence of the accused, in the presence of his lawyer and in a free atmosphere, where no objection can be taken that the witness was entirely under the thumb of the police and that the Police Inspector was, so to say, riding over the Magistrate himself and inducing the Magistrate to take down anything that the Inspector suggested. The question at once came up, what about cross-examination. The Joint Select Committee considered it; I was not very lukewarm about it. The Joint Select Committee was basically inclined to protect the interests of the accused. They said that it is true that at least in 90 per cent. of the cases, there is no cross examination before the committing Magistrate. The more serious the case, the graver the offence, the defence counsel is most reluctant to cross-examine. In 10 per cent. of the cases, there may be nominal cross-examination. In one or two per cent. of the cases, a few questions may be put. But under section 288,—I think Pandit Thakur Das Bhargava referred to it—the accused having got the right to cross-examine, that statement made before the committing Magistrate becomes admissible as positive, definite evidence against the accused and can be transferred to the Sessions file. The Members of the Joint Select Committee said, we would rather not have it. Only that statement should be evidence against the accused which is made by the witness before the Sessions Judge. Otherwise, what happens? A witness makes a statement before the committing Magistrate today. There is no cross-examination. He goes to the Sessions Court and he departs from his statement before the committing Magistrate. If the prosecution can make out or if the Sessions Judge has reason to believe that the witness has been won over, the Sessions Judge says, you can cross-examine him. He is confronted with his statement before the committing Magistrate on oath, on which there has been no cross-examination. The Sessions Judges takes up that statement and writes in his judgment that the statement of this witness before me is false, the satement which he has made before the committing Magistrate is right and I convict the accused on that statement. This is what the Sessions Judge does. Ask Shri N. C.

Chatterjee; he will tell you. The Members of the Joint Select Committee were not prepared for this. They said, what is the good of this cross examination; the cross examination never takes place in 90 or 95 per cent. of the cases; yet the accused runs the risk of the statement being made evidence against him in the Sessions trial. It was from that point of view that the Members of the Joint Select Committee said that there should be no cross-examination. When you consider the Bill clause by clause, if any opinion is expressed that this should be struck out, I shall be prepared to strike it out. Let it be open. Wait. In 95 per cent. of the cases, by choice, there will be no cross-examination. And there will be this risk, *viz.*, the statement being taken over to the Sessions file, if the witness makes the slightest departure from the committal statement. Now, I am only saying this because the Members of the Joint Select Committee did not have much opportunity to speak here and a good many harsh things were being said against them, and I thought somebody should put the case on their behalf. That is the gist of the matter.

That brings me to Mr. Anthony's point. Mr. Anthony said: "Look at this poor accused person. He runs the risk of being examined twice—once by that dreadful man, the Magistrate, and another time by the Sessions Judge." He was saying this in his melodramatic manner, in his wonderful manner. I tell you I sometimes hear his speeches in my dreams. He was saying all that, and I scratched my head. I say that in a majority of cases the accused says before the Magistrate: "Sir, I reserve my defence. I shall answer before the Sessions Judge."

Shri Frank Anthony (Nominated—Anglo-Indians): And an adverse inference is raised.

Dr. Katju: He keeps silence, mum. I am not saying what he can do or what he cannot do, but his risk is nominal, non-apparent. What does the Magistrate say? The Magistrate asks him: "Have you committed this theft?" He says: "No, Sir". "Have you committed this murder?" "No, Sir". Then he asks: "Have you heard these witnesses come before you? Have you got to say anything in this case?" He says: "I reserve my defence, and I shall say it before the Sessions Judge".

Pandit Thakur Das Bhargava: Most unusual.

Dr. Katju: I am perfectly willing to meet him half way or the whole way. What does he want? What do you want? Bring it. If you say the Magistrate should look at him and not put any questions, then very well.

Then, there is another point. My hon. friend Pandit Thakur Das Bhargava who, as the newspaper says is a legal luminary, said: "Have you ever heard of a man being discharged on incomplete evidence?" I tell you, I again rubbed my eyes in wonder. What is discharged? Here is a retired Judge, Mr. Chatterjee. Ask him. I have got here many opinions given by Supreme Court Judges. Correct me if I am wrong.

Pandit Thakur Das Bhargava: It is perfectly wrong. Since you ask me to correct you, let me correct you now. This is perfectly wrong that I stated that any person can be discharged on incomplete evidence. Any person can be charged on incomplete evidence. I can understand that if there is a *prima facie* case. But any person cannot be discharged on incomplete evidence unless evidence is finished.

Dr. Katju: Very well.

Pandit Thakur Das Bhargava: Don't put absurd things in my mouth.

Mr. Deputy-Speaker: There is a world of difference between charging and discharging.

Dr. Katju: I only say that the law today as it stands is, on the strength of the judgments of all the High Courts in India and the Supreme Court, that it is not the function of a Magistrate—a Committing Magistrate—to go into the rights or wrongs,

[Dr. Katju]

the truth or otherwise of the prosecution case. If three witnesses come in a murder trial and say that they saw with their own eyes the accused cutting the throat of the deceased, and on the side of the accused three witnesses come who say that on that day at that hour they saw the man in Calcutta while he is supposed to have committed the murder at Delhi, then the rulings are perfectly clear that it is not the function of the Magistrate to say which set of witnesses is telling the truth. He must commit the case to Sessions, because there is a *prima facie* evidence, and it is only the Sessions Judge who can go into it. Now, that is the law. Now, I suggest to you that here the Magistrate will have before him the diary statements, the statements under section 164—then any statements which he may himself record. The poor Joint Select Committee I tell you has done wonders. You do not recognise it. While cross-examination is forbidden in the interests of the accused, permission is given to the accused,....

Shri Pataskar (Jalgaon): In the interests of the accused?

Dr. Katju: ....to his lawyer to suggest any person that he may ask through the Magistrate....

Pandit Thakur Das Bhargava: Where is the permission? It is not given in the clause.

Dr. Katju: The Magistrate can examine the witness. The Magistrate can put questions to the witness. Very well. Now, the original proposal in the Bill was that the Magistrate should send the accused to the Sessions. Now, Member after Member, I think including Mr. More, got up and said: "Supposing there is not a bit of a case, not a scintilla of evidence against one man, won't you allow him to point out this to the Magistrate?" The Magistrate reads the diary, reads the statements, reads all other evidence, and says to the Public Prosecutor or the Prosecuting Inspector: "You have got 20 accused here. What about Sham Narain? There is no evidence against him. Will you point out to me if there is any evidence against him?" And he says: "There is none." Then, why drag poor Sham Narain to the Sessions Court? Please remember the Joint Select Committee people fought for that one unfortunate person. If you want that nobody should be discharged, I am very happy. Send everybody to the Sessions Court.

Now, this is the whole burden of the song—for three days it has been sung in this Parliament, in this Lok Sabha—that the commital proceedings suggested by the Select Committee is wonderful, unheard of, a monstrosity, but I tell you that this monstrosity has been constructed solely in the interests of the accused.

Shri Pataskar: No, no.

Dr. Katju: Otherwise, I am perfectly willing, if the Members of the Select Committee will agree with me, to go back and say that every case should be committed to the Sessions—no question of cross-examination, no question of examination, straight.

Now, I am finishing my time. There is just one other point, and that is about section 162. Here again, the tendency is to make the most of a slight molehill and then create an impression throughout the country that the whole Parliament is absolutely against this Bill. Why? Because everybody is questioning section 162. I think three or four gentlemen referred to it and said: "The diary statement is something put into the mouth of a witness. It is nothing but the cleverness of the investigating inspector". Very well, I accept it. If that is so, then why try to damage my reputation by contradicting me by this? What I am saying is this. I am the witness. I go before the investigation. I am interrogated and without reading it to me, the interrogating Inspector sets down something. According to you, goodness knows what he sets down—just what he thinks fit. Then I come before the Magistrate and I say something before him which

hurts you, the accused. But then why do you confront me with that diary. You, on behalf of the accused, seek to destroy me through that diary. Either you say that I am responsible for the diary statement or not. Please remember, the argument is this, that for the purpose of the accused and cross-examination by his counsel, every word of the diary is mine and for every change that I make before the Magistrate I ought to be condemned by being shown that diary statement. Sometimes a man says at the time of the commission of the crime he saw present there six people.

Mr. Deputy-Speaker: Is it not one of the cardinal principles of the Evidence Act that a statement can be used against the man though he may not be able to use it in his own favour?

Dr. Katju: The argument here is that the statement is not that of the man, but is that of the wretched Inspector. I tell you what happens is this. Whenever a man is confronted with a diary statement, at least 50 per cent. the witness denies and then the Police Inspector, and he is made to swear and to read the diary. He is asked: "Did not Sham Narain tell you so and so?" "Of course", he says, "it is certain he said so." Then he is confronted. The point I was making was, for the purpose of cross-examination by the defence, for the purpose of contradiction, the statement is attributed to the witness in the police diary, but for the purpose of cross-examination by the prosecution counsel, with the sanction of the Magistrate, that is not permitted.

Shri Sadhan Gupta: Because he is your own witness.

Dr. Katju: There is no such thing as "own" witness. There is no one as own witness. Do you mean to say it is a civil case? In a criminal case, there is no one as own witness. So, this is—sometimes I fail for want of proper words—twisted memory or twisted mentality, which goes into these critical matters.

The one thing which you and I are interested in, as also Members of Parliament, is that justice should be done. Justice should be done; it is not as if the accused should escape, or the prosecution should suffer.

Shri M. S. Gurupadaswamy (Mysore): But you are denying it.

Dr. Katju: You are all here. Here is a trial, and the judge does not say, I want to convict the accused, or I want to release him—that is dishonesty. Here in Parliament when we are considering this Bill, I respectfully submit, our attitude should be that there should be a fair proper trial, the guilty man being punished and the innocent man escaping.

One word more, and I have done.

Dr. Krishnaswami: You can go on. (*Interruptions*)

Dr. Katju: Lots of things have been said about section 145. It was said that it was quite curious. I think my hon. friend there said it. Probably, they do not know that these inquiries into possession have taken eight months, twelve months or thirteen months. But the procedure which has now been devised by the Select Committee is easy. You get all the affidavits and everything; the Magistrate gives them. If he can make up his mind one way or the other, he says so. If he cannot make up his mind, then in that case, we have followed the other enactments—there are some Acts in Bombay, and there are some in Uttar Pradesh, where if a question arises, the Civil Court, which is a bit more familiar with the matter prepares an issue as to who was in possession on, say, 10th January; and if anyone has anything to say, he says it, then the witnesses are examined and they say what they have to say; and the case is all finished.

Before I sit down, I will refer to one other point raised by Shri Sarangadhar Das from Orissa. He challenged me to produce the letters sent by the Madras Government, the Bombay Government and the West Bengal Government. May I just be permitted to read a few extracts from them?

[Dr. Katju]

In respect of defamation cases, the West Bengal Government have stated:

> "In respect of public servants, the provisions are much too wide."

When the Bill went, the proposal was that it should be made cognizable. Please remember this.

> "Any criticism of a public servant will be immediately cognizable by the police, even in cases where the criticism is ill-founded. Such a provision may defeat the ends of justice and may encourage employees whose conduct is blameworthy."

This, you would find in Book D.

> "It is suggested that the provisions relating to the President, the Governor, the Rajpramukh and a Minister may stand...."

A Minister—poor fellow—has been the butt of all criticism here.

> "...but that in respect of public servants, the provisions may apply only when the prosecution is authorised by the State Government."

In the original Bill, the provision was that it should be cognizable, namely that the police can prosecute anybody. The West Bengal Government suggested that this provision should be there, with the sanction of the State Government. My hon. friend Shri N. C. Chatterjee will find it on page 122.

The Madras Government—I think it was my hon. friend Shri N. C. Chatterjee who said he had heard it said that Rajaji was against this—say:

> "This Government supports the principle...."

They support the proposal to make it cognizable.

> "....to make the offence of defamation against public servants cognizable. There is, however, no need to make the offence, which is punishable with simple imprisonment for two years, triable only by a Sessions Court."

Please note this. The Madras Government say, they support the proposal, but they do not support trial by a Sessions Judge; they say that it should be an ordinary Magistrate.

As for the Bombay Government, they say:

> "This Government agrees with the amendment."

These are the three things that I wanted to place before the House, and I have done so.

In conclusion, I respectfully ask the House to do some justice to the Joint Committee, to recognize their labours, and to get along with this Bill. I need not assure you that every single amendment which has been tabled, or which may be tabled, will be considered only on the merits. I am not bringing—Government are not bringing—in any militant mood against any amendment. Let us get along with this Bill.

Mr. Deputy-Speaker: Before I put the motion for consideration. I shall put the amendments to the vote of the House.

So far as Shri Vallatharas's amendment, namely, that the Bill, as reported by the Joint Committee, be circulated for the purpose of eliciting opinion thereon, is concerned, I rule it out of order, as being dilatory.

Then, there is amendment No. 31 which reads:

> "That the Bill, as reported by the Joint Committee, be circulated for the purpose of eliciting opinion thereon along with the amendments which the Joint Committee failed to consider, for the reason that 'these amendments raised important issues and opportunities for eliciting opinion thereon had not yet been given'."

These matters were raised by means of an amendment to the original motion for reference to the Joint Committee. The Joint Committee said that these are of such vital importance, that opinion has to be taken on them independently. The hon. Mem-

ber wants that this Bill should now be circulated for eliciting opinion on those points, that after it comes back, it should be recommitted to the Joint Committee, then it must come back, and so on.

Though I am not inclined to rule this out of order as being dilatory, because these matters could have been considered but for their importance, I want the hon. Member to tell me and the House whether I need put his amendment to vote.

Pandit Thakur Das Bhargava: It is not a dialatory motion at all.

Mr. Deputy-Speaker: I am not ruling it out of order.

Pandit Thakur Das Bhargava: It is a substantive motion, and I want it to be put.

Mr. Deputy-Speaker: Yes, I shall put it immediately. The question is:

"That the Bill, as reported by the Joint Committee, be circulated for the purpose of eliciting opinion thereon along with the amendments which the Joint Committee failed to consider, for the reason that 'these amendments raised important issues and opportunities for eliciting opinion thereon had not yet been given'."

The Lok Sabha divided: *Ayes* 38; *Noes* 141.

AYES

Division No. 2.] **[3 P.M.**

Amjad Ali, Shri
Anthony, Shri Frank
Bahadur Singh, Shri
Basu, Shri K. K.
Bhargava, Pandit Thakur Das
Biren Dutt, Shri
Chatterjee, Shri Tushar
Chatterjee, Shri N. C.
Chowdhury, Shri N. B.
Das, Shri B. C.
Das, Shri Sarangadhar
Deogam, Shri
Gidwani, Shri
Girdhari Bhoi, Shri
Gupta, Shri Sadhan
Gurupadaswamy, Shri M. S.
Krishnaswami, Dr.
Majhi, Shri Chaitan
Mascarene, Kumari Annie
Menon, Shri Damodara
Missir, Shri V.
More, Shri S. S.
Murthy, Shri B. S.
Nambiar, Shri
Narasimham, Shri S. V. L.
Nayar, Shri V. P.
Pandey, Dr. Natabar
Patnaik, Shri U. C.
Raghavachari, Shri
Randaman Singh, Shri
Rao, Shri P. Subba
Reddi, Shri Ramachandra
Singh, Shri R. N.
Sinha, Shri Nageshwar Prasad
Subhrahmanyam, Shri K.
Sundaram, Dr. Lanka
Verma, Shri Ramji

NOES

Abdus Sattar, Shri
Achint Ram, Lala
Agrawal, Shri M. L.
Alagesan, Shri
Altekar, Shri
Ansari, Dr.
Azad, Maulana
Barman, Shri
Barupal, Shri P. L.
Basappa, Shri
Bhagat, Shri B. R.
Bhakt Darshan, Shri
Bhatt, Shri C.
Bose, Shri P. C.
Brajeshwar Prasad, Shri
Chaliha, Shri Bimlaprasad
Chandrasekhar, Shrimati
Chaturvedi, Shri
Chaudhary, Shri G. L.
Chettiar, Shri Nagappa
Dabhi, Shri
Das, Shri B. K.
Das, Shri N. T.
Datar, Shri
Deb, Shri S. C.
Deshmukh, Shri C. D.
Dholakia, Shri
Dhusiya, Shri
Dube, Shri Mulchand
Dube, Shri U. S.
Dutey, Shri R. G.
Dwivedi, Shri D. P.
Dwivedi, Shri M. L.
Gandhi, Shri Feroze
Gandhi, Shri M. M.
Gandhi, Shri V. B.
Ganpati Ram, Shri
Gautam, Shri C. D.
Ghosh, Shri A.
Ghulam Qader, Shri
Gounder, Shri K. S.
Govind Das, Seth
Hem Raj, Shri
Ibrahim, Shri
Jayashri, Shrimati
Jena, Shri K. C.
Jena, Shri Niranjan
Joshi, Shri M. D.
Joshi, Shrimati Subhadra
Kale, Shrimati A.
Karmarkar, Shri
Katju, Dr.
Keshavajengar, Shri
Khongmen, Shrimati
Krishna, Shri M. R.
Krishnamachari, Shri T. T.
Kureel, Shri B. N.
Lal, Shri R. S.
Lallanji, Shri
Laskar, Shri
Lugani, Shri N. M.
Lotan Ram, Shri
Mahodaya

Majhi, Shri R. C.	Raj Bahadur, Shri	Sinha, Dr. S. N.
Majithia, Sardar	Ram Dass, Shri	Sinha, Shri Anirudha
Malliah, Shri U. S.	Ramanand Shastri, Swami	Sinha, Shri Jhulan
Malvia, Shri B. N.	Ramaseshaiah, Shri	Sinha, Shri Satya Narayan
Malviya, Pandit C. N.	Ranbir Singh, Ch.	Sinha, Shrimati Tarkeshwari
Mandal, Dr. P.	Rane, Shri	Sinhasan Singh, Shri
Masuodi, Maulana	Rao, Diwan Ragavendra	Somana, Shri N.
Masuriya Din, Shri	Sahu, Shri Rameshwar	Subrahmanyam, Shri T.
Mehta, Shri B. G.	Saigal, Sardar A. S.	Sundar Lal, Shri
Mishra, Shri Lokenath	Saksena, Shri Mohanlal	Suresh Chandra, Dr.
Misra, Shri B. N.	Samanta, Shri S. C.	Telkikar, Shri
Misra, Shri R. D.	Sanganna, Shri	Thimmaiah, Shri
Morarka, Shri	Sankarapandian, Shri	Thomas, Shri A. M.
Nair, Shri C. K.	Satish Chandra, Shri	Thomas, Shri A. V.
Narasimhan, Shri C. R.	Sen, Shri P. G.	Tivary, Shri V. N.
Natawadkar, Shri	Sen, Shrimati Sushama	Tiwari, Pandit B. L.
Nehru, Shri Jawaharlal	Sewal, Shri A. R.	Tiwari, Shri R. S.
Nehru, Shrimati Uma	Sharma, Pandit K. C.	Ukey, Shri
Palchoudhury, Shrimati Ila	Sharma, Shri K. R.	Upadhyay, Shri Shiva Dayal
Pant, Shri D. D.	Sharma, Shri R. C.	Upadhyay, Shri S. D.
Parikh, Shri S. G.	Shastri Shri Algu Rai	Vaishnav, Shri H. G.
Patel, Shri B. K.	Singh, Shri D. N.	Vaishya, Shri M. B.
Pathrikar, Dr.	Singh, Shri Babunath	Varma, Shri B. B.
Pawar, Shri V. P.	Singh, Shri M. N.	Varma, Shri B. R.
Rachiah Shri N.	Singh, Shri T. N.	Venkataraman, Shri
Radha Raman, Shri	Singhal, Shri S. C.	Vishwanath Prasad, Shri

The motion was negatived.

Mr. Deputy-Speaker: The question is:

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

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That the Bill, as reported by the Joint Committee, be recommitted to the Joint Committee with instructions to report in respect of amendments which the Joint Committee failed to consider as 'some of these amendments' as mentioned in para. 55 of the report 'raised important issues and opportunities for eliciting public opinion thereon had not yet been given' in spite of instructions by the House to the Joint Committee to report about all such amendments."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That the consideration of the Bill, as reported by the Joint Committee, be adjourned till such time as the matter of the appointment of the Law Commission is decided by the Government and if the decision is in the affirmative till such time as the final report of the Law Commission is presented to the House."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

RESOLUTION *RE* ENHANCED EXPORT DUTY ON TEA

The Minister of Commerce (Shri Karmarkar): I beg to move.....

Mr. Deputy-Speaker: On behalf of Shri Krishnamachari