they must be treated as part and parcel of the provisions in this Act passed by us.

Shri S. S. More: The usual formula is that provisions of such State legislations which are consistent are accepted. But the effect of this overriding clause will be that provisions which are inconsistent—even they will get validated.

Mr. Deputy-Speaker: What I say is that they ought not to be treated as inconsistent. We may take every provincial legislation and say that so far as Bombay is concerned, the punishment will be two years; so far as Madras is concerned, it will be three years and so on and so forth. What I mean to say is that clause 14 should be interpreted to mean that all those provisions of the State Legislature which are different from some of the provisions here must be treated as part and parcel of this Act. In those circumstances, there is nothing unconstitutional.

The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri Kanungo: I beg to move:

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

This is a small Bill.....

Shri S. S. More: Very innocent too!

Shri Kanungo: To my mind everyone is agreed about it. I suppose the opposition to the principles of prohibition has been transposed on this minor Bill and so, I think, it has created so much of controversy. Now that it has ended, I again submit that it is a very small matter. I again repeat Mr. Anthony's description that it is a provision to plug a very minor hole.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

PRISONERS (ATTENDANCE IN COURTS) BILL

The Minister of Home Affairs (Pandit G. B. Pant): I beg to move:

"That the Bill to provide for the attendance of prisoners in Courts and for obtaining their evidence therein be taken into consideration."

This is a tiny, non-contentious measure which does not call for any elaborate explanation or justification. The Bill was introduced in December, 1953 and it has been resuscitated after more than a year and a half. The hon. Members had ample time to sleep over it. It has not disturbed them in any way and therefore, they might let it go into the statute-book unscathed and unchallenged.

The Bill only provides a simple procedure for securing the attendance of prisoners for giving evidence in courts and for answering any charge which might be framed against them by any criminal court. The prevalent law on the subject is cumbrous and dilatory. It provides a very circuitous route and in place of such a route we are now, by this Bill, providing a direct channel of communication. The courts can send their directions straight to the officers of the prisons concerned. Under the Prisoners' Act which was passed in the antediluvian age in 1900, references had some times to be made to the State Governments or to the High Court. The matters with which we are concerned here are of a purely routine character. They do not call for the exercise of any discretion or judgment. Therefore, under this Bill a simple procedure has been prescribed to enable the courts to order the officers in charge of the

[Pandit G. B. Pant]

prisons to send to them the persons whose presence may be needed for giving evidence and in some cases for standing a trial. So, I hope all Members will unanimously adopt this Bill and we will have the benefit of saving an hour for free air outside.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to provide for the attendance of prisoners in courts and for obtaining their evidence therein, be taken into consideration."

Shri Raghubir Sahai (Etah Distt.—North-East *cum* Budaun Distt.—East): Sir, I welcome this Bill. In fact every provision should be welcomed and every measure should be welcomed which has the purpose of lessening or reducing the time of the trial of a case. Recently this House had the opportunity to take up the amendment of the Criminal Procedure Code. The very object—perhaps, one of the main objects—of that Bill was to shorten the trial of criminal courts. We all know how ably that measure was piloted here by the former Home Minister as well as the present Deputy Home Minister. That Bill was passed both by this House as well as by the Rajya Sabha. We hope that it will just come into operation and we shall have time to know that it has shortened the trials—I mean the criminal trials—to a very great extent.

I feel that this Bill which has been moved by the present Home Minister has also got that very object in view. As has been explained by him the present law involves a lot of delay in the trial of criminal cases as well as civil cases where the evidence of a prisoner who resides in a different jail is to be recorded. As the present law stands it is necessary for a court, if the prisoner whose evidence is to be recorded resides in a different jail, to send that order to the District Magistrate or the S.D.M. under whose jurisdiction that jail lay, or, if the distance of that jail was a hundred miles or more, then the order had to be passed through the High Court or the State Government. That involved a lot of delay. Now, by the passage of this Bill all that delay would be avoided.

Sir, with your permission I might give an illustration which would show how by the present law such delays are caused. I happened to be in the Budaun District jail in the year 1941. It so happened that Shri Mahavir Tyagi, the present Minister of Defence Organisation was also brought in from Dehra Dun to Budaun District jail. Unfortunately he was involved in a Prisons Act offence. By the time the case came up against him for that offence I was transferred to the Fategarh Central Prison. That trial took place in my absence. Shri Tyagi quoted me as a defence witness. Because the Central Prison was situated more than 100 miles from Budaun the order for my summons had to be passed through the Allahabad High Court and before I was brought to Budaun District jail some couple of months had elapsed. It so happened that the trial was very much protracted. Shri Tyagi was, therefore, put to a lot of trouble. All this delay could have been avoided if this necessary change had been brought in the law as it stood then.

I entirely agree with the purpose and with the object of this Bill. But, with your permission, Sir, I would like that a slight or a minor amendment may be accepted by the hon. the Home Minister. Unfortunately, I could not give proper notice of this amendment. I thought that I would be able to give it on Saturday, but it was a holiday. I have this morning given my amendment to the Secretary as well as to the Deputy Home Minister and I think it might have been studied by this time. The amendment is that in clause 5 I want that in line 42, after the word "detained" the words "in custody in or near the court" may be removed; and, instead of that the following words

may be added: "if the prisoner has to remain there for more than one day and if there is a jail; in the jail and if there is no such jail, in such suitable place in which the officer accompanying him thinks fit from the point of safety". Now, my only purpose in bringing in this amendment is to make the meaning entirely clear, for, the retention of these words "detained in custody in or near the court" do not make the meaning clear. Supposing a prisoner is got from Fategarh District jail to Budaun for his evidence being recorded and a particular date is being assigned for his evidence to be recorded and on that particular date either the case is not taken up or the examination of that witness is not finished, then he has to be sent back to some place where he ought to be detained.

Where can he be detained? He cannot be detained in the court or near the court. There are places where there are no jails. Supposing a first-class magistrate is holding his court in a tahsil town. Now, in most of the tahsil towns or taluk towns there are no jails, but the Magistrate can directly ask the officer-in-charge of the jail to send the prisoner. The officer-in-charge of that jail sends him in custody. The prisoner reaches the tahsil. There is no place where he could be detained. So, it should be left to the officer-in-charge who accompanies him to send him to the jail, if there is a jail, and to keep him there till his evidence is over or the charge for the answering of which he is brought, is over. If there is no jail, then he should be placed in proper custody, either in the police lock-up or in any fit place where he can be kept from the point of view of safety. Therefore, the addition of these words will make the meaning clearer. I hope the hon. Home Minister would be pleased to accept this minor amendment that I have introduced.

There is another very simple clause on this Bill. For certain reasons, if a prisoner is so required to be present in a different place, his presence can be held back or he may not be sent. For instance, if he is infirm or sick or if his term expires shortly and so on and so forth, he can be held back. These are very proper reasons for which the officer-in-charge can refuse to send him. So, all these are very salutary provisions and I warmly welcome this Bill and support it entirely.

श्री आर० एच० एंड्रूज (नलगोंडा) : मुझे इस बिल के मुताल्लिक ज्यादा बातें नहीं कहनी हैं। सिर्फ एक दो चीजें कहने के लिये खड़ा हुआ हूं। यह एक मामूली सा बिल है। इस से पहले जो कानून था उस की वजह कुछ पेचीदगियां पैदा हो गई थीं, उन्हीं को दूर करने के लिये कुछ बातें एक खास बिल की हैसियत में रक्खी जा रही हैं।

जैसा होम मिनिस्टर साहब ने फरमाया कि पहले का जो बिल है उस को एक एंग्लो-इंडियन एक्ट में बनाया गया था। इस सिलसिले में मैं भी होम मिनिस्टर साहब से बिल्कुल सहमत हूं। मगर एक चीज जो मैं देखता हूं वह यह है कि एक दफा ऐसी है जो उसी एंटी इंडियन एक्ट में बनाई गई थी, मगर हमारे होम मिनिस्टर साहब ने उस दफा को भी इस कानून में दर्ज कर दिया है। मेरे मतलब पुराने कानून की दफा ४२ से है जो कि इस कानून की दफा ४ है। बिल की वजह अगर किसी प्रिजनर को या गुड आफ प्रिजनर्स को किसी मुकदमे में शहादत देने की जरूरत पड़े तो उन को जेल में ही रखने के लिये कहा गया है, इस वास्ते कि उन को अपनी शहादत का फायदा पहुंचाने से बाज रक्खा जाय। मेरी समझ में नहीं आता कि हमारे होम मिनिस्टर साहब जब एक तरफ कहते हैं कि यह एंग्लो इंडियन है तो फिर ऐसे मकासिद जो एंग्लो इंडियन हैं उन को इस कानून में लाने की जरूरत उन्होंने क्यों महसूस की। मैं यह इस लिये कहता हूं कि यह सचाई पार्टियों के खिलाफ पड़ता है। ऐसे कैदियों को जिन की

[श्री आर० एन० रंदड़ी]

शहादत की जरूरत सॉलाइटी को पड़ती है, पर जिन को किन्हीं खास वजहात की बिना पर हुकूमत यह समझती है कि उन को कैद में ही रक्खा जाय, उन की अगर किसी अदालत में जरूरत भी है तो भी उन को पेश नहीं किया जाता।

श्री रघुवीर सहाय : उन का बयान कमिशन से लिया जा सकता है।

श्री आर० एन० रंदड़ी : कमिशन से तो लिया जा सकता है, मगर दूसरे लोगों से उन को डिस्क्रिमिनेट क्यों किया जाता है? अगर आप को किसी चीज का खतरा है, अगर उन कैदियों के भाग जाने का खतरा है, तो ज्यादा गार्ड्स रख सकते हैं, काफी इन्तजाम कर सकते हैं। लेकिन यह डिसक्रिमिनेशन इस बिल में रक्खा गया है, यह मेरा आक्षेप है। जो ऐसे कवानीन हैं जिन को हमारे होम मिनिस्टर साहब एंन्टी इंक्विजिशन कहते हैं, वह बर्तानिया साम्राज्य के जमाने में बनाये गये थे। लेकिन ऐसे क्लाजेज को इस बिल में क्यों दाखिल किया गया, यह मेरी समझ में नहीं आता। बहुत से ऐसे कानून जो प्रिवेन्टिव डिटेन्शन के खिलाफ भी पड़ते हैं उन को भी आज हमारी कांग्रेस हुकूमत अमल में ला रही है। जिस तरह से बहुत से एंन्टी इंक्विजिशन चीजें आज इस्तेमाल की जा रही हैं, उसी तरह से शायद इस चीज को भी दाखिल कर दिया गया है। मैं दफा ४ की मुखालिफत करता हूं और होम मिनिस्टर साहब से विनती करता हूं कि वह मेरी इस चीज को कबूल कर लें।

दूसरी चीज जो मैं एंवान के ध्यान में लाना चाहता हूं वह यह है कि जब कैदियों को जेलखाने से कोर्ट में ले जाया जाता है, तो उन के साथ किस तरह का सुलूक किया जाता है। एक पार्टी का मेम्बर होने की हैसियत से, एक इनफरादी हैसियत से मुझे इस का काफी तजुर्बा है। उन लोगों के साथ इन्सानों जैसा बर्ताव नहीं किया जाता। उन को हथकड़ियां पहना दी जाती हैं। हम ने ऐसा है मामूली कैदियों से अच्छा सुलूक किया जाता है, लेकिन जो सियासी कैदी होते हैं, उन को हथकड़ियां पहनाई जाती हैं और जानवरों की तरह उन को एक दूसरे से बांध दिया जाता है, और इस तरह से कैदियों को कैदखाने से कोर्ट में ले जाया जाता है और वापस लाया जाता है। यह ऐसा तरीका है जो कि मैं एंवान के सामने लाना चाहता था।

इस सिलसिले में मुझे और ज्यादा कहना नहीं है सिवा इस के कि दरअस्ल जो चीजें इस से पहले के कानून में पेचीदगियों की थीं, उन को दूर करने के लिये यह बिल लाया गया है और इस का मैं स्वागत करता हूं और होम मिनिस्टर साहब से विनती करता हूं कि खास तौर से दफा ४ जो है उस को वह निकाल देने की कोशिश करें।

Shri Raghavachari (Penukonda): I welcome the provisions of this Bill generally. I have only very few remarks to make, and they relate only to very small points.

The first point that I want to submit is that provisions are limited to the prisoners who are in jails situated within the State in which the court functions. For instance, I belong to Andhra and the jail is situated in Mysore. I do not mean to say that all the Andhra State jails are in Mysore State, but certainly for the ceded districts and the other districts, the jail is in Bellary and Bellary is now outside the Andhra State Therefore, it means that the provisions of this Bill are of no avail to us in those parts.

Mr. Deputy-Speaker: That is only in respect of a civil court.

Shri Raghavachari: This applies to civil courts also. That is the real difficulty I am referring to. So, that is a matter which may possibly be considered. Some other provision may be made so that a jail though situated in a particular State may be considered to be a jail falling

within the State wherefrom the order of confinement of the prisoner is issued.

The other point is this. My friend was mentioning the need for amending a certain phrase in clause 5. In this connection I wish to invite his attention to clause 9(e) which says:

> "the escort of prisoners to and from courts in which their attendance is required and for their custody during the period of such attendance".

I feel that there has been a contemplation of the possibilities of these difficulties and hope that they can certainly be covered by the rules to be made.

There was some reference to some inconveniences. Though I do not wish personal experiences to be here, narrated, nevertheless, it happened that I had to go as a witness to a civil court when I was in Ballary a prisoner. Then the difficulty was the court had to make some provision for the custody of the prisoner. The court to which I had to go had little accommodation. In such cases, we will have to be sent to police custody or other places. The place where we had been put up namely Bellary was convenient and we had liberties and it had no irksome provisions of a sub jail. Such difficulties might arise, but in making the rules. I expect that some provision will be made in respect of cases of that kind. That is the second thing which I wanted to submit.

4 P.M.

There is only one other thing which I feel is a serious matter. Always when a man is in some jail—district jail or some jail—if anybody wants to have him brought to a near place where all his relations are, it is not very difficult for a party in court to give his name as a possible witness and be prepared to pay the expenses of the man being brought all the way. The man himself may be unwilling to come. So, once you give a right like this that the man can be summoned, it is likely to be abused in some cases. That is the possibility, though I hope that a court in such a situation may possibly exercise a little care before it actually summons and not examine him on commission, as is otherwise permissible.

सरदार ए० एस० बहादुर (बिलासपुर) : यह जो बिल माननीय होम मिनिस्टर साहब ने इस हाउस के सामने पेश किया है, मैं इस का स्वागत करता हूं। मुझे जहां तक जेलों का मुआयना करने के बाद तजुर्बा हासिल हुआ है उस की बिनाह पर मैं कह सकता हूं कि वहां पर जो अंडर ट्रायल्ज रहते हैं, जो कैदी रहते हैं, जिन को कि मान लीजिये सौ मील दूर जाना होता है, उन लोगों को तीन तीन और चार चार महीने तक, जब तक कि हाई कोर्ट से आर्डर्स न आ जायें, जेल में ही रहना पड़ता है। इस बिल के जरिये से यह सुविधा हो जायेगी कि अब वे कम से कम समय के भीतर जा सकेंगे।

मेरे एक माननीय सदस्य ने यह कहा कि जो क्लाज नं० ४ है इस क्लाज के मुताबिक उन का ख्याल यह है कि यह कानून किसी पार्टी के लिए बनाया जा रहा है। मैं अर्ज करना चाहता हूं कि किसी खास पार्टी के लिए यह कानून नहीं है। बात असल में यह है कि जो लोग डकैतियों के मामलों में इन्वाल्वड होते हैं या जो लोग कत्ल के मामलों में इन्वाल्वड होते हैं यह क्लाज उन लोगों पर ही लागू होती है। मेरे माननीय दोस्त अगर यह चाहते हैं कि ऐसे लोगों को हथकड़ी लगा कर न ले जाया जाये तो मैं उन से पूछना चाहता हूं कि यह कहां तक ठीक बात होगी। आज कल किसी भी राजनीतिक कैदी को हथकड़ी लगाकर नहीं ले जाया जाता है। हां १५ अगस्त, १९४७ से पहले लोगों को, जो कि राजनीतिक कारणों की वजह से गिरफ्तार किये जाते थे, हथकड़ी लगाकर ले जाया जाता था, लेकिन अब उन को हथकड़ी लगाकर नहीं ले जाया जाता है। इस लिये यह कहना कि ऐसे लोगों को जो कि डकैतियां करते हैं या कत्ल

[सरदार ए० एस० सहगल]

करते हैं, हथकड़ी लगाकर न ले जाया जाए मेरे विचार में गलत बात होगी। हम ने देखा है कि आज कल जो लोग सत्याग्रह करते हैं और उन को गिरफ्तार किया जाता है तो उन को हथकड़ी लगाई नहीं जाती है।

इस के साथ ही साथ एक माननीय सदस्य जो सब से पहले बोले हैं क्लाज ४ पर कहा है कि हर एक तहसील में जेल नहीं होती है। उन की यह बात ठीक है। लेकिन यह बात भी सही है कि हर एक तहसील में लाक-अप तो होता है वहां पर जब किसी प्रिजनर को ले जाया जाता है और स्टेटमेंट वगैरह जो उसे देना होता है और मान लीजिये कि दूसरे दिन उसकी पेशी है तो वह तहसीलदार या एस० डी० ओ० के हुक्म के मुताबिक वहां के लाक-अप में रखा जा सकता है। यह इस लिये जरूरी है ताकि उस कैदी को जिस को कि सौ मील से दूर जो जेल है वहां पर रखा गया है वहां पर ले जाने के बजाय वहीं पर लाक-अप में रखा जा सके।

इन शब्दों के साथ जो बिल रखा गया है उसका मैं स्वागत करता हूं।

Shri Vallatharas (Pudukkottai): A more comprehensive outlook in favour of the courts in order to secure the attendance of prisoners for purposes of trial could have been taken. This subject should have been considered along with the Criminal Procedure Code (Amendment) Bill wherein a relevant consideration can be given. But now a part of the Prisoners Act is segregated and is sought to be codified separately. Along with it, we will have to look into certain provisions of the Prisons Act also. Once we separate a chapter from a main Act, care must be taken to see that some of the definitions are provided very clearly in the New Act that is to be brought, so that for definitions, the two Acts may not be referred to. In an independent legislation of this kind all the definitions must be brought here and they should from part of the new Act. Legal drafting should always consider that a statute which is sought to be introduced must be self-contained and as far as possible references to other statutes must be minimised. If you take the definition given here, it says:

> "*Prison includes any* place which has been declared by a State Government, by general or special order, to be a subsidiary jail," etc.

In the old Prisoners Act which was enacted some decades ago, the conception of a prison should have been limited at that time; now we have got across so many aspects of the prison that it is quite essential that the definition of a prison must be stated in the main Act. If I am to give a definition of 'prison' correlating all the aspects of the Prisoners Act and the Prisons Act I would say:

> "Prison means any jail or place used under the order of the State or the Central Government for the detention of prisoners."

In the course of the Act, I do not see any provision enabling the Central Government to establish a prison. If at all any person has to be confined by the Central Government, it should be in a prison created by the State and not by the Central Government. We must find some provision to enable the Central Government to declare certain places as jails, so that under the growing needs of the enforcement of law and order, the Central Government may have its own institutions wherein detentions can be made. I feel that the Central Government must necessarily have the power to declare certain places as jails for detention of prisoners.

Prison includes also:

> "any place for the confinement of prisoners who are exclusively in the custody of the police;"

I find this in the Prisons Act. There are certain places where the jurisdiction of the jail authorities does not prevail, but the police people are given exclusive custody of the prisoners. If under the present Act, these places cannot be considered as jails, a prisoner in such jails cannot be summoned by any court. Though this comprehensive conception has been placed in the earlier statute, the present statute does not adopt it. In my humble opinion, there is a lacuna here.

Prison includes:

> "any place specially appointed by the State under section 541 of the Criminal Procedure Code."

This is also to be found in the Prisons Act.

Thirdly, prison should include:

> "any place declared by the Central or the State Government in the official Gazette to be a subsidiary jail."

As it is, only the State Government can declare a place as jail; I want powers to be given to the Central Government also to declare certain places as jails.

Then, prison should include:

> "any reformatory, Borstal institution and institutions of detention of prisoners under the Preventive Detention Act, 1950."

According to the Bill as it is,

> "'Prison includes any reformatory, Borstal institution or other institution of a like nature."

What are these other institutions of a like nature? When you want to enact a criminal law, you should be precise and definite. Civil law may be lenient or loose. In criminal law, there is no place for words like "etc., in such matters and in similar ways." The insufficiency of the legal conception will be demonstrated only by such expressions. We shall be able to conceive of all possible phases and put them definitely. Here, I disagree with the use of the words "or other institutions of a like nature". What is that like nature? We cannot allow the courts of law to infer or interpret it as they like. We must be definite. I think it is better that we add here the places where the prisoners are detained under the Preventive Detention Act Prisoners under this Act are detained in Central jails or in other places specially created for that purpose. Simply because a person is taken as a detention prisoner under the Preventive Detention Act, Government has got a lot of control over that person. He will not be ordinarily sent to a court of law for giving evidence or for conducting his own cases. I say that the detention prisoners must be placed in these matters on a par with other prisoners, so that the power of the courts extends to sending for the detention prisoners also, unless for some reason or other the Government imposes the condition that they should not be taken out.

For these reasons, I say that the definitions of prison and prisoner must necessarily be put in here, and there should be no omission here in this respect because they are to be found in the other two Acts, and we cannot refer to those Acts every time.

That is not the way in which you have to consider this question. What does 'prisoner' mean? The Bill is silent. We will have to refer to the Prisoners Act or the Prisons Act. Of course, now-a-days, a prisoner does not mean a prisoner of those days. He is a prisoner of the modern times, scientific days. A prisoner means a criminal prisoner, a convicted person or a civil prisoner, as defined in subclauses 2, 3 and 4 of section 3 of the Prisons Act. A prisoner includes a person detained under the Preventive Detention Act of 1950. As the Act stands at present, there is no reference to detention prisoners at all. Detention prisoners cannot be segregated to form an independent section. The necessity felt by the courts of law should cover these persons also.

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In that light, I would submit to the hon. Minister to consider the question and include a clear provision as to the definition of prisoner and prison in the light of the present day needs and also in the light of the definition provided by those two old Acts.

Clause 3(1) says:

> "Any civil or criminal court may, if it thinks that the evidence of any person confined in any prison is material in any matter pending before it, make an order in the form set forth...."

I have to make a very important suggestion in respect of this clause. A prisoner also includes a civil prisoner. The whole tendency of this Bill borders upon the criminal conception. Only a criminal prisoner is sought to be brought before a court for trial to answer a charge against him. Or he is sought to be brought before a court to depose as a witness. Deposing as a witness may be necessary in the case of the civil prisoner as in the case of the criminal prisoner. There may be a civil prisoner against whom execution proceedings or a suit may be pending. Will he be denied the opportunity to be produced in the court to enable him to attend the suit or the proceedings? Suppose the court thinks that that man must have an opportunity to conduct his trial or participate in the trial of a suit or conduct an enquiry in execution proceedings. The civil court must have the power to send for that person if his presence is necessary in the trial of a suit or in execution proceedings. The privilege extended to a prisoner in a criminal case of being brought before the court to answer a charge against him,—a criminal case cannot go on in the absence of the accused and the law prevents the trial—should be extended to the civil prisoner also. Simply because one is a criminal prisoner and the other is a civil prisoner, there cannot be any discrimination against a civil prisoner. The civil prisoner cannot be allowed to lose his rights whereas a criminal prisoner is allowed to conduct his case and get an acquittal. This section must somehow comprehensively canvass that position. In the case of both criminal prisoners and civil prisoners, whenever there are civil suits or execution proceedings instituted or pending against them in the civil court, the civil court, if it thinks that their presence is necessary for the proper conduct of the suit or execution proceedings, must have the power to send for them and allow opportunities to them to conduct the trial or execution proceedings, just as in a criminal case, the accused is enabled to do.

The clause further says:

> "Provided that no civil court shall make an order under this sub-section in respect of a person confined in a prison situated outside the State in which the court is held."

When the Central Government is legislating, why should it narrow down to the small precincts of a State? Though a court of law is situated in a particular place for the sake of convenience, it has got extensive jurisdiction. A man in Calcutta may sue in a court in Trichinopoly on the basis of a contract or on the basis of a negotiable instrument. Under the existing provision, if the court wants a person concerned in that suit, to give evidence, it cannot send for that man from Calcutta. I concede there is inconvenience, delay, cost and other things. But, the initial right must be conceded here. It should be throughout India and not within the precincts of a State. In view of the great expenditure involved or of some serious inconvenience a person need not be brought, but a commission may be appointed. But, the initial right of a civil court to send for a person from any place in the Indian territory must be given here. The State barriers must be removed.

Mr. Deputy-Speaker: In the Civil Procedure Code, is there a power to compel the attendance of witnesses from beyond a distance of 50 miles or a particular distance?

Shri Raghavachari: He cannot be compelled.

Shri S V. Ramaswamy (Salem): It is 200 miles.

Mr. Deputy-Speaker: Under the Civil Procedure Code, there is no right for compelling any person to come and give evidence if he is beyond a particular distance. The hon. Member wants something that is not provided in the C.P.C. if he is in confinement in a prison.

Shri Vallatharas: I would submit that in these cases, this distance of 50 miles or 250 miles is a question of convenience.

Mr. Deputy-Speaker: Even when he is free, he cannot be asked to come. When he is in jail?

Shri Vallatharas: When a person is in jail, he is not free. The court thinks that his evidence is useful; so the court must be given the power to send for him. In this case of 250 miles, a person cannot be compelled to come against his will. That is a different matter. Suppose he is prepared to come, what is the position? I am putting it this way. As days go on, we gain experience in litigation, under the present day conditions. Suppose a person of Madras is detained somewhere in the Punjab as a prisoner in some jail. He may be willing to go into the box and give evidence in Madras. The court may avail of his evidence. If he is willing, he may have a chance to come. All these are extreme contingencies. The substantial point is that these barriers of State must not be there. Any court which is authorised under the Bill within the Indian territory should be allowed to summon any person from anywhere in India. It must be all-comprehensive. Whether there are provisions regarding 50 miles or beyond 50 miles, the general principle must be there.

Sub-clause (3) says:

> "No order made under this section by a civil court which is subordinate to a district judge shall have effect unless it is countersigned by the district judge....."

The existing provisions are so complicated that oftentimes delay is caused. The object of the present Bill is to prevent delay. If a judge lower than a district judge wants to send for a person, he must submit it to the district judge who must endorse it. After all, much progress is not made from the old Bill. The sub-judge and the district munsiff are not entitled to send for of their own accord. On the other hand, a first class magistrate, who is in the rank of a district munsiff is given power to send directly summons for witnesses. What is the preference that is given to a first class magistrate over and above a sub-judge or a district munsiff? Under the present system of the separation of the judiciary and the executive, a district munsiff is *vis-a-vis* a first class magistrate and the sub-judge or a district judge has the rank of a district magistrate. Why should there be a partial outlook discriminating between these two sets of people? While a first class magistrate can send a summons independent of the district magistrate, why cannot a sub-judge send summons independent of the district judge? A district munsiff has got original jurisdiction. He is a responsible person in a locality. Similarly also a sub-judge. They are not ordinary persons. They are not panchayat courts or small cause courts. They are responsible people having full qualifications and experience in whom original jurisdiction is invested. The sub-judge has also appellate powers over the district munsiff. These two persons should be entitled to send summons of their own accord without the endorsement of the district judge. Further, I would submit that in the case of civil courts lower in rank than a district munsiff alone, the

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endorsement of the district judge should be required.

"and no order made under this section by a criminal court which is inferior to the court of a magistrate of the first class shall have effect unless it is countersigned by the district magistrate....."

Nowadays, what is the difference between a first class and a second class magistrate? Every second class magistrate is a law graduate having put in a service of three or five years in the bar.

Shri Raghavachari: Not throughout India yet.

Shri Vallatharas: All right, we have stepped into it. In spite of the fact that violation of prohibition exists everywhere, we are trying to prevent it. Once you give a status to a court, when it should be occupied only by regularly qualified law graduates, and people who have got experience, we must give them a certain privilege and we must make their status also a bit respected by the public. So, I would submit even the sub-magistrates who are now B. Ls. according to the present system, must be entitled to send a summons of their own accord without the endorsement of the district magistrate. A criminal court which is lower than a sub-magistrate's court alone should be required to get the endorsement of the magistrate.

Coming to the next clause, sub-clause (2) reads:

"Before making an order under sub-section (1)....."

I concede that power should be given to the State Government and the Central Government to restrict the scope of removal of prisoners from a certain place. But Government should not be given an absolutely free hand. Government should not be allowed to grope in the dark or go about with eyes wide open without any object in view.

"(a) the nature of the offence for which or the grounds on which the person or class of persons is detained in prison;"

There are 511 sections and there are other minor Acts. So, if the case of every person who happens to be convicted is sought to be taken for consideration, then the Government will begin to consider the position, ostensibly in an indiscriminate manner: this man is arrested for a nuisance under a local Act, this man is put into prison for two months for theft of a small ear-ring--all these simple cases they will have to consider. On the other hand, I submit Government will have to exercise their powers to restrict their power regarding the removal of prisoners only in certain defined cases, and for that their concern is only the question of law and order. For instance, two brothers quarrel, and one is charged for an offence under section 323 I.P.C. The man is sentenced for two months. It is not necessary that Government should exercise all its power to see whether this man should be allowed to be taken out of the jail to depose his evidence. These are small and silly matters about which no consideration can be had. But on the other hand, the responsibility must be greater. Instead of sub-clause (a), I suggest that Chapters VI, VIII, XVI and XVII of the Indian Penal Code and Chapter VIII of the Criminal Procedure Code alone must be the chapters which should apply, only the offences in respect of the sections contained in these Chapters should be the subject of consideration by the Government in respect of prisoners who are to be taken away. The offences relate to dacoity, murder, sedition against the State, serious rioting etc. Chapter VIII of the Criminal Procedure Code refers to good behaviour. Of course, it is quite an important matter. The right of the Government to exercise its powers to preventing the removal of these prisoners must be confined only to such sections of the criminal laws wherein the presence of the prisoner outside jail might lead to a disturbance of public peace and order or may lead to untoward events about which Government will have to be on guard

in the interests of the public. Only such things must be brought under the restrictive provision of clause 4.

Then, in cases of persons detained under the Preventive Detention Act also, when they are sought to be removed, the Government should necessarily enjoy the power to prevent that removal or permit that removal.

Then, there is the likelihood of any breach of the public order if the prisoner is taken to a place where the court is situated. Here, the wording is loose. Sub-clause (c) reads "public interest, generally". What is "public interest, generally"? Unless the removal of the prisoner endangers the public peace and order, there is absolutely no reason that is conceivable to justify the prevention of the removal of the prisoner for the purpose of giving evidence etc. So, sub-clause (c) is totally unnecessary and it must be removed. And instead of that there must be a specific provision, reading:

"the likelihood of any breach of public peace and order if the person is taken to the place where the court is situated."

Suppose "A" is an important personality in Nagpur and if he is taken to Rameswaram, there is practically no necessity for apprehension of breach of peace and order. Supposing he is taken to a place within 50 miles of Nagpur, there may be incidents in which public order may be endangered. Only in such cases the power should be used. General power saying "public interest generally" is too vague and it cannot be put into criminal legislation.

One of our hon. Members asked: when a prisoner is taken to the court, in whose custody will he be? In this connection, I must submit that I know in the Madras districts, many of the district magistrates and District and Sessions Judges have been thinking about how to see that the prisoners who are brought to court are sent back to the jail so that they may be admitted into jail before the scheduled time for it to close, whether it is 5 O'clock or 6 O'clock in the evening. I have seen that invariably in sub-magistrates' courts and first class magistrates' courts remand prisoners are kept till 7 or 8 O'clock in the night, whether they are removed or brought there. This is a system which we must straightaway condemn, and any magistrate who happens to detain a prisoner after 5 P.M. should be taken to task very seriously. And you know, our police, in spite of the fact that it is a necessary institution in our country, is neither civilised, nor advanced, nor intelligent, nor honest, nor at least self-respecting. In the darkness when prisoners are taken, at 6-30 or 7 P.M., a vindictive sub-inspector or some other people come and gives the prisoner four or five blows. I have seen so many cases and have written to local authorities, but they never care, but all these things, all these cruelties are going on before our very eyes. I appeal to the Central Government, because this is a Central Act, that there must be a strict injunction that remand prisoners must be taken to the jail or the place of detention before 5 P.M. from the Courts.

Pandit Thakur Das Bhargava (Gurgaon): It is not relevant to this Bill.

Mr. Deputy-Speaker: That is not relevant to the Bill at all. The hon. Member is going to the Criminal Procedure Code. The scope of this Bill is very limited. I am really surprised that the hon. Member should go on, referring to various other matters, after time and before time. After sunset and before sunset are not part and parcel of this Bill. Part IX of the Prisoners Act is sought to be amended by this Bill—that is about their attendance in civil and criminal courts as witnesses. Whatever happens to other prisoners in general, whether they are taken before time or after time, will be a matter for modification of the Criminal Procedure Code.

Shri Vallatharas: I would restrict myself to the observation that in

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respect of the prisoners who are taken out, they should never be detained after 5 P.M. in the court and sufficient previous caution must be taken to send them even earlier so that they may reach their place of detention before 5 P.M.

Shri S. V. Ramaswamy: Will not all these be provided by the rules?

Shri Vallatharas: In the rules they must be provided. There are so many rules existing. As a lawyer I have seen for 25 years, you have also seen though you are shy to admit because this is a national Government. Anyway, things are going on.

Mr. Deputy-Speaker: The hon. Member will kindly address the Chair.

Shri Vallatharas: But this is an internal affair and we should not be ashamed of admitting certain drawbacks and inconveniences and failures that occur in the course of administering justice in courts of law. We are here to correct and ameliorate them. I put it in a very noble and honest sense.

Coming to clause 7....

Mr. Deputy-Speaker: General observations are made at this consideration stage. If the hon. Member has got any particular details with respect to any clauses, he may speak when we come to the clauses.

Shri Vallatharas: I am against delegation of powers to the State Governments. In some other laws and statutes delegation exists. But that does not mean that we should follow that practice for all time. Here when we are enacting a Central legislation, we should see that the provisions of that legislation should be carried out under the guidance and direction of the Central Government. So, the rules which will have to be framed under this legislation must be framed by the Central Government, and I would submit that those rules must be placed on the Table of the House for the perusal of Members of Parliament. In making those rules, I would submit, the case of prisoners should be given greater consideration than at present.

पंडित ठाकुर दास भार्गव : यह बिल निहायत अच्छा बिल है । इसके अन्दर ज्यादा नुक्ताचीनी की जरूरत नहीं है, लेकिन मैं दो, तीन बातों की तरफ तवज्जह दिलाना चाहता हूं जो मुझे एक वकील की हैसियत से इसमें खटकी हैं ।

आमतौर से ऐसा होता है कि जब कोई ट्रायल होता है तो आकर प्रिजनर यह शिकायत करता है कि हमको पुलिस ने गवाहों को दिखला दिया है । आइडेंटिफिकेशन जो होता है उसमें आम एतराज यह होता है कि हमको जेलखाने से बाहर लाकर कोर्ट में लाये और हमको पुलिस ने इस्तेगासे के गवाहान को दिखला दिया, इसलिए आइडेंटिफिकेशन बिल्कुल गलत है । क्रिमिनल कोर्ट्स को पावर दी गई है कि ऐसे केसेज में, केस अंडर कमिटल में जब तक कि कोई क्रिमिनल बीमार न हो और उस वजह से जा सकने से मजबूर न हो, उनको अख्तियार है कि उसको बुलायें और उनके बयान भी ले लें और उन पर चार्ज भी लगा दें । मेरी अदब से गुजारिश यह है कि प्रिजनर का खुद यह एतराज करना कि मुझ को किसी जगह भेजा जाय या न भेजा जाय, इसका इस सारे एक्ट में कोई जिक्र नहीं है और जो कि निहायत जरूरी चीज है । आमतौर पर जिन आदमियों को डाके वगैरह के मुकद्दमात में जहां कि शिनाख्त बड़ी जरूरी होती है, पुलिस उनको हिदायत करती है कि तुम उनका मुंह ढांपे रक्खो, अगर कहीं कोर्ट वगैरह में लाना होता है तो उस वक्त तक उनको नहीं लाते जब तक कि उसका आइडेंटिफिकेशन न हो ले, उसके पहले जेलखाने से कोर्ट में उनको नहीं लाते, लेकिन इसके अन्दर कोई ऐसा प्राविजन नहीं है जिसके अन्दर ऐसे कैदी को जिसके कि बरखिलाफ आइडेंटिफिकेशन हो रहा हो और जिस को बाहर लाना वाजिब नहीं है आने से रोका जा सके ताकि गवाहान उसको न देख लें । कितने ऐसे केसेज हैं जिनमें कोर्ट में

अगर यह साबित हो जाय कि किसी गवाह को आइडेंटिफिकेशन से पहले उसको जेल से बाहर लाया गया है, तो कोर्ट इसी बिना पर उस मुकदमे को खारिज कर देती है कि पुलिस ने उन गवाहान को दिखा दिया। मैं अदब से अर्ज करना चाहता हूं कि ऐसे मुकद्दमात के वास्ते इसमें कोई गुंजायश नहीं है। इन एतराजात के रोक के लिये कोई गुंजायश नहीं है। इसका भी लिहाज रक्खा जाना चाहिए कि प्रिजनर का अपना एतराज कि मुझ को फलां जगह न भेजा जाय, यह कंसिडर किया जाना चाहिए। मैं समझता हूं कि आनरेबुल मिनिस्टर के इल्म में कितने ही ऐसे केसेज होंगे, आनरेबुल मिनिस्टर का तजुर्बा मुझ से ज्यादा है। पंजाब की निस्बत मैं जानता हूं जहां कई अशखास इस गरज से कि फलां प्रिजनर को नुकसान पहुंचा दिया जाय, या कत्ल कर दिया जाय, उसको मौका देते हैं कि किसी तरह कैदी को एक जगह से दूसरी जगह ले जाया जाय और रास्ते में उसको शूट कर दिया, या चंद आदमियों ने उस पर हमला कर दिया और उसको मार दिया, मैं इस तरह के कई एक केसेज आपको बता सकता हूं जहां ऐसा वाकया पेश आया। मेरा कहना यह है कि ऐसे केसेज में जिस शख्स को आप ले जाते हैं, उसका कम से कम एतराज सुन लीजिये, कम से कम उसको अपना एतराज कह लेने का मौका दीजिये, अगर वह नहीं जाना चाहता तो जबर्दस्ती उसको क्यों भेजा जाता है? सिविल केस में क्या होता है, आप किसी गवाह को बुलाइये, उसकी मर्जी है कि वह आये या न आये, आप ज्यादा से ज्यादा उसके खिलाफ वारन्ट जारी कर देंगे, या और कुछ उसके बरखिलाफ कर देंगे, लेकिन किसी को मजबूर नहीं किया जा सकता। लेकिन यहां पर जिस आदमी का जिस्म आपके कब्जे में है, उसकी यह लाइएबिलटी है कि आप उसको उसकी मर्जी के खिलाफ पकड़ कर अदालत में पहुंचा देंगे। वह जाना नहीं चाहता, वह एंबाएड कर सकता है या वहां पर जाकर नानकोआपरेट करे और बयान न दे और जिसके लिए उसको ६ महीने की कैद हो जाय, या वह मजबूर है जाने के वास्ते। ऐसा हो सकता है कि जहां किसी दोस्त ने या दुश्मन ने आमतौर पर पोलिटिकल केसेज जब चलते थे और जब हम किसी को बुलाना चाहते थे, किसी मुकदमे में बुलाना चाहते थे तो कोर्ट में दरख्वास्त दे देते थे और बुला लेते थे, लेकिन अगर कहीं ऐसे केसेज हैं जिनके कि अन्दर प्रिजनर्स नहीं जाना चाहते और न जाने के उनके पास बड़े अच्छे बजूहात हैं, लेकिन आप उसको मजबूर करते हैं कि वह चला जाय, ऐसे केसेज में मैं समझता हूं कि जब तक कि वह प्रिजनर न बने, अंडर ट्रायल हो, उसको आपको इसका डिस्क्रेशन देना चाहिए कि अगर वह चाहे तो इंकार कर दे और कह दे कि मैं इन हालात में नहीं जाना चाहता। आप उन हालात में दाखिल हूजिये या उसको इंकार करने दीजिये, उसके बाद पूछें कि भाई क्यों नहीं जाते? लेकिन जब तक केस खत्म नहीं होता, बड़ी माकूल वजह होती है कि वह इंकार कर दे कि मुझ को न ले जाया जाय क्योंकि मुझ को गवाह देख कर शिनाख्त न कर लें, खासतौर डाकुओं के मुकदमों में शिनाख्त से बचना बिल्कुल लाजिमी चीज है क्योंकि ऐसा न होने से बहुत से केसेज रुइन हो जायेंगे और इनजस्टिस हो जायगी और प्रासीक्यूशन के साथ भी और डिफेंस के साथ भी इनजस्टिस हो सकती है।

इसके अलावा जनाब मुलाहिजा करमायेंगे कि मेरे एक लायक दोस्त ने यहां पर एतराज किया कि इसमें दफा ४ क्यों रक्खी है? मैं अदब से अर्ज करूंगा कि जिस तरीके से प्रिजनर को ले जाया जाता है और उनको बाहर लाते ले जाते हैं, तो उनके विषय में काफी एहतियात बर्तना चाहिए कि कहीं वह एक्सपोज्ड न हो जाय। हरएक के लिए एब्सोल्यूट रूल बनाना मुनासिब नहीं होगा। यह बिल्कुल नाजायज होगा। लेकिन अपने इंटरेस्ट में और प्रिजनर के इंटरेस्ट में यह बहुत जरूरी हो जाता है कि उनको एक्सपोज न किया जाय।

जहां तक पब्लिक ला एन्ड आर्डर का सवाल है हमें देखना चाहिए कि जिस प्रिजनर को ले जाया जा रहा है वह किस किस्म का है। अगर कोई डकैती के केस का कैदी है तो जाहिर है

[पंडित ठाकुर दास भार्गव]

कि उस को हथकड़ी बेड़ी डाल कर मास्क्ल पुलिस के पहरे में बाहर ले जाया जाय क्योंकि अक्सर हमारे देखने में आया है कि किसी डेंजरस कैदी को दो पुलिस के सिपाही हथकड़ी बेड़ी डालकर ले जाते हैं और मौका पाकर उसके दूसरे साथी उसको छुड़ा लेते हैं, उसकी बेड़ी भी काट डालते हैं और सिपाही को धक्का देकर भाग निकलते हैं। इसलिए यह कहना कि प्रिजनर्स को एब्सोल्यूट राइट दे दिया जाय और कोर्ट को अख्तियार न हो, कुछ ठीक नहीं जंचता। और इससे काम चलने वाला नहीं है। देखना यह है कि रीजन क्या कहता है और ऐसे केसेज हो सकते हैं जिनमें स्टेट को अगर अख्तियार नहीं रहेगा तो पब्लिक ला एन्ड आर्डर कायम नहीं रह सकेगा। स्टेट को यह अख्तियार रहना चाहिए कि एब्सोल्यूट केसेज में डेंजरस किस्म के प्रिजनर्स को बाहर न भेजा जाय, वरना हो सकता है कि ऐसा करने से नक्सें अमन को खतरा पहुंचे। मिसाल के तौर पर मैं कहूंगा कि अगर गोडसे को किसी ऐसी जगह से जाया जाता जहां महात्मा गांधी के भक्त होते, तो पता नहीं क्या हश्र होता। इसके अलावा यह सरकार के भी खुद इंटरेस्ट में है कि अगर कहीं कोई मूवमेंट चल रहा हो तो हो सकता है कि प्रिजनर खुद बाहर जाना चाहता हो ताकि अपने लोगों और साथियों से मिले और मूवमेंट को शह दे, उस हालत में सरकार को यह अख्तियार रहना चाहिए कि वह प्रिजनर को बाहर न जाने दे। मैं समझता हूं कि दफा ४ बड़ी जरूरी है। मैं एक चीज इसके अन्दर नहीं समझा और जिसके बारे में मैं एक्सप्लेनेशन चाहता हूं। क्लाज ६ में पावर टु मेक रूल्स में पार्ट डी में आपने इस तरह लिखा है :

> "The manner in which a process directed against any person confined in a prison issued from any court may be served upon him."

जहां तक मैं इस बिल का मतलब समझा हूं, वह सिर्फ इतना ही है कि अगर किसी के खरीलाफ चार्ज है तो उसको आप किसी कोर्ट में ले जायं जिसके जुरिसडिक्शन में वह हो, अगर कोर्ट का हुक्म हो जैसा कि सेक्शन डी में लिखा है कि किसी शख्स के नाम अगर कोर्ट का सम्मन आये, उसके ऊपर आप तामील करें और एक्स पार्ट प्रोसीडिंग हो जाये अगर वह पहुंच न सके तो जिम्मेदारी किस की है, यह इस एक्ट की मंशा नहीं है। इसके अन्दर प्रोसेस कि किस तरह से तामील किया जाय, नहीं दिया है। यह जो सिविल प्रोसीज्यौर कोड में और और जगह होना जरूरी है, इस एक्ट के अन्दर मुझे इसकी रेलिवेंसी मालूम नहीं है। मैं चाहूंगा कि अगर हो सके तो मुझे इसको समझा दिया जाय तो बेहतर है कि यह किस गरज के वास्ते रक्खा गया है। जहां तक इस एक्ट में मैं देखता हूं तो पाता हूं कि जो मामूली आजादी सिविल केसेज में हर शख्स के लिये होती है वह इससे कम हो जाती है, आप मजबूरन इसके जरिए कैदी को जकड़ते हैं, जहां वह जाना नहीं चाहते वहां जाने के लिए मजबूर करते हैं और जहां वह जाना चाहते हैं वहां एक तरह से उसको पूरा अख्तियार भी नहीं है कि वह जो चाहें सो कर सकें।

जहां तक प्रिजन रूल्स का बेड़ी हथकड़ी लगाने का सवाल है, पंजाब जेल कमेटी का मैं चेअरमैन था। हमने उसको बिलकुल लिबरल कर दिया। मैंने खुद पोलिटिकल प्रिजनर्स को अपने दोस्तों को देखा है कि उन के बेड़ी डाल कर एक जगह से दूसरी जगह ले जाया जाता था। खुद हिसार बार असोसियेशन के प्रेसीडेंट को बेड़ी डाल कर ले जाया गया था, अब वह रूल्स नहीं हैं, अब वह ब्रूटालिटी प्रैक्टिस नहीं होती। और आज के दिन हम देखते हैं कि जितना सैफटी डिमांड करती है उतने ही रिस्ट्रिक्शंज लगाये जाते हैं। मैं यह भी अर्ज करूंगा कि प्रिजनर्स को उनके स्टेटस के मुताबिक सफर में आराम दिया जाय जब कि वह एक जगह से दूसरी जगह ले जाये जायं। अगर मामूली प्रिजनर हैं तो थर्ड क्लास में ले जायं। अब भी जिन लोगों को सिविल कोर्ट गवाही के लिए बुलाते हैं, उनके एक्सेस सफर खर्च के उनके स्टेटस के मुताबिक हैं। इस लिये कि जो प्रिजनर्स ए, बी, सी क्लास के हैं उन के स्टेटस के मुताबिक

उन को खर्चा देना चाहिये और उन को अनट्रू रीस्ट्रिक्शन्स में नहीं जाना चाहिये। इस लिये मैं इस बिल को सपोर्ट करता हूं और मैं चाहता हूं कि जो रीस्ट्रिक्टिव प्रोविजन्स हैं उनकी तरफ तवज्जह दी जाय।

इन अल्फाज के साथ मैं इस बिल को सपोर्ट करता हूं।

Pandit G. B. Pant: I am thankful to the Members of the House for the reception that they have accorded to the Bill. On the whole, they seem to be satisfied with its provisions and think that they are an improvement on the existing corresponding provisions in the Prisoners Act.

Many points have been raised which do not actually arise out of this. I sympathise with some of them and I can say categorically that I do not want any single prisoner to be harassed or any person to be put to any unnecessary inconvenience or discomfort. Even prisons are now to be treated as reformatories and however confirmed a prisoner may be, or however habituated he may be, it should be the effort of the authorities concerned to reform him so that he may grow into a useful member of society and, on coming out of the prison, may be able to live a better life, a good life, benefit himself and also serve the community.

So far as general principle and policy are concerned I think there can be no possible difference between the Members sitting on the other side and those of us who happen to be sitting here. I would be sorry indeed if any prisoner were treated in a manner unbecoming of his position or in the least derogatory to his condition or involving any inconvenience. All those things are repugnant to our system of administration and we wouldn't try to encourage them at all. So when prisoners are taken out under this Bill to give evidence in any court, I entirely agree that they should be treated with courtesy, and only such measure of restriction and restraint should be imposed as is necessary for the maintenance of law and order and for purposes of security. Beyond that, nothing should be done that would, in any way, humiliate or harass him.

So far as matters which do not come within the purview of this Bill are concerned, I hope I am not expected to dilate on them or to say more. As to the clauses of this Bill, I think many of the observations are due to a misunderstanding of the purpose of the Bill and of the exact language and text of the various clauses. If they were examined in their proper text and context, then there would be no occasion for any criticism. The Bill has only a very limited objective and scope. It is to cut out unnecessary delay, to expedite the trial of cases and to save the time of public officers. These purposes are to be ensured by the amendments that have been made in the original provisions that appear in Part IX of the Prisoners Act.

Some suggestions have been made. If I had felt that there was any need for further clarification, I would have readily accepted them. But I do not think that they will make the position at all better than it is. So far as the definition of the word 'prison' is concerned, it is used in our Constitution. Prison, reformatories, borstal institutions—all are mentioned in the State List. Then the definition that we have given here is more or less on the same terms in which it appears in the original Prisoners Act. There a prison is defined as this:

> "'Prison' includes any place which has been declared by the provincial Government by general or special order to be a subsidiary jail".

No definition of 'prison' has been given. The word 'prison' has in a way been given a magnified and enlarged meaning, that is, it is not only a prison in the strict sense of the term, but also certain other institutions such as borstal institutions and reformatories which might be treated as prison for the purposes of

[Pandit G. B. Pant]

this Act. I do not think that any difficulty has been caused because of this inclusive definition and not the precise definition of the word 'prison' itself. We all know that 'prison' is defined in the Prisons Act and we all know that 'prison' is a word of every-day expression. it is not necessary to give it further prominence by defining it in this Bill. The purpose will be very well served. It has been, I think, thoroughly serving the purpose during the last 55 years; so we needn't worry about it further.

Something was said about the custody of the prisoner who is taken to a court to give evidence. About that, a reply has already been given, but my friend, Shri Raghubir Sahai, will kindly take it into consideration that rules are framed under this Bill; instead of making any rigid provision ourselves, we felt it would be proper and appropriate to give this power to the States. Conditions may vary from place to place, and in fact even from district to district. So it would be better to delegate this authority to them, and they can then lay down the conditions and also specify the places where prisoners, who are carried to give evidence can be kept, if they have to be detained for more than a day. That will, I think, fully satisfy him.

As to clause 4, I think Pandit Thakur Das Bhargava has, in fact, given a very strong reason as to why clause 4 should be there. I entirely agree with him that prisoners who are under-trial and who have still to undergo identification, should not be carried from the prison outside till the process of identification has been fully exhausted and carried out. So we require clause 4 for prisoners of this type. He will please see that clause 4 is meant to ensure the security of persons of this sort. They need not be taken out and if any occasion arises when any misuse is made of the provisions of this Bill, if he will kindly bring even a single instance to my notice I shall issue a circular to the State concerned. But I am sure that no State will ever like a prisoner who is charged with a serious offence and has still to be placed before witnesses for identification to be taken out of the prison, to be exposed to the view of the likely witnesses. That would be extremely improper and nobody will do it.

Some references have been made to the word 'prisoner'. I am going to move a few verbal amendments so that the word 'prisoner' may not be there, but we may say that any person who is confined in a prison. That word will be wide enough and will cover all species of persons including civil prisoners. That would, I think, remove the difficulty which has been felt by some of the hon. Members here.

I do not exactly remember if any other objection has been raised. But I hope what I have said will satisfy hon. Members and now we may accept this motion and pass on to the next motion.

Mr. Deputy-Speaker: The question is:

> "That the Bill to provide for the attendance of prisoners in courts and for obtaining their evidence therein be taken into consideration."

The motion was adopted.

Clause 2— ;—(*Definitions*)

Pandit G. B. Pant: Sir, I beg to move that in clause 2 a new sub-clause be inserted in the following terms.

In page 1,

(1) *after* line 8, *insert*:

> "(*a*) *confinement in a prison*'— references to confinement in a prison, by whatever form of words, include references to confinement or detention in a prison under any law providing for preventive detention;"

(2) in line 9,

for "(a)" *substitute* "(b)";

(3) in line 15,

for "(b)" *substitute* "(c)".

The word 'detain' appears later on; but we thought that it will be better to give a definition of confinement in prison here in clause 2 itself.

Mr. Deputy-Speaker: It is in the definition clause.

The question is:

In page 1,

(1) *after* line 8, *insert*:

"(a) *'confinement in a prison'*—references to confinement in a prison, by whatever form of words, include references to confinement or detention in a prison under any law providing for preventive detention;"

(2) In line 9,

for "(a)" *substitute* "(b)";

(3) In line 15,

for "(b)" *substitute* "(c)".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3. —(*Power of courts to require appearance of prisoners etc.*)

Shri Vallatharas: I have submitted an amendment to sub-clause (2). I am not moving it.

Mr. Deputy-Speaker 'Very good.

Shri Vallatharas: I am moving my amendment to sub-clause (3). I beg to move:

In page 2, lines 11 to 13,

for "No order made under this section by a civil court which is subordinate to a district judge shall have effect unless it is countersigned by the district judge."

substitute: "No order made by a civil court below the rank and status of a district munsiff's court shall have effect unless it is countersigned by the district judge in whose local jurisdiction the court is situated."

As I have already submitted, the point is very simple. The privilege may be given to sub-judges and district Munsiffs and also to the sub-magistrate because they are now regularised; on the basis of their qualifications, responsibilities are allotted to them under the system of separation of the judicial from the executive. There will be no risk in entrusting that power to them. That is why I move the amendment.

Pandit G. B. Pant: The present procedure, I think, in a way regularises the service of warrants or summons issued by subordinate courts to be forwarded through the district officers both on the civil and on the criminal side. So in cases of this character where any person who is confined in prison has to be dealt with we are doing no more than sticking to the present procedure in respect of ordinary individuals outside. So, I hope the hon. Member will please withdraw his amendment.

Shri Vallatharas: Sir, I am not pressing.

Mr. Deputy-Speaker: There will be no harm in sending these through the district officers. The hon. Member is not pressing.

The question is:

"That clause 3 stand part of the Bill "

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4. (*Power of State Government to exempt certain persons from operation of section 3.*)

Amendment made: In page 2, line 32.

for "the person or class of persons is detained in prison"

substitute: "the confinement has been ordered in respect of the person or class of persons".

—[*Pandit G. B. Pant*]

Mr. Deputy-Speaker: Now, the question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clauses 5 to 8 were added to the Bill.

Clause 9.—(*Power to make rules*)

Amendment made: In page 4, line 14,

for "prisoners" *substitute*:
"persons confined in a prison".

—[*Pandit G. B. Pant*]

Mr. Deputy-Speaker: The question is:

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Clause 10 was added to the Bill.

First Schedule

Amendment made: In page 4, line 38,

for "a prisoner" *substitute*:
"confined".

—[*Pandit G. B. Pant*]

Mr. Deputy-Speaker: The question is:

"That the First Schedule, as amended, stand part of the Bill."

The motion was adopted.

The First Schedule, as amended, was added to the Bill.

5 P.M.

Second Schedule

Amendment made: In page 5, line 10,

for "a prisoner"

substitute: "confined".

—[*Pandit G. B. Pant*]

Mr. Deputy-Speaker: The question is:

"That the Second Schedule, as amended, stand part of the Bill."

The motion was adopted.

The Second Schedule, as amended, was added to the Bill.

Clause 1.—(*Short title etc.*)

Amendment made: In page 1, line 2

for "1953"

substitute: "1955".

—[*Pandit G. B. Pant*]

Mr. Deputy-Speaker: The question is:

"That clause 1, as amended stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

Amendment made: In page 1, line 1.

after "Parliament"

Insert: "in the Sixth Year of the Republic of India".

—[*Pandit G. B. Pant*]

Mr. Deputy-Speaker: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

Title

Amendment made: In page 1,

for the Long Title,

substitute: "A Bill to provide for the attendance in courts of persons confined in prisons for obtaining their evidence or for answering a criminal charge."

-[*Shri Datar*]

Mr. Deputy-Speaker: The question is:

"That the Title, as amended, stand part of the Bill."

The motion was adopted.

The Title, as amended, was added to the Bill.

Pandit G. B. Pant: I beg to move:

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

Shri Raghavachari: I really do not want to take any time of the House now, but I only want to make just one observation. I find all these amendments have come today. I welcome them all and they are very necessary also, but may I respectfully submit that in matters of this kind, these things might have been considered earlier and we might have had an opportunity to see and examine it a little more carefully? Therefore, I just want to enter that protest that these amendments should have been given a little earlier and all of us should have had the benefit of examining it a little more carefully. I certainly welcome this Bill.

Pandit Thakur Das Bhargava: I would also add a word. It would always be better if when the amendments came from the non-official benches this sort of consideration was also accorded to them. Unfortunately owing to the last two days being holidays, I sent in 14 amendments today to the other bill and the hon. Minister was pleased to accept one of them only and he did not accept or consider the rest simply because they came late. I only wish that similar facilities were given to non official Members also.

Pandit G. B. Pant: I quite appreciate the point of view to which Shri Raghavachari had given expression. I am thankful to the Members of the House for having accommodated me in this matter. I may, however, point out that this Bill was introduced in 1953, notices of amendments were given in 1954, but all of us had forgotten all about the Bill and also about the amendments. In order to remind the Members about the amendments of which notice had been given previously, a new set of amendments consisting entirely of the same amendments which had been notified previously was submitted to the Speaker's Secretariat. So, I do not know if we are entirely to blame, but I would certainly like to give every possible facility to the Members sitting opposite and would be glad if still greater facilities were given to them.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, the 2nd August, 1955.