

ment of India and of the Governments of certain other countries, and is of the opinion that the said Convention should be ratified by the Government of India."

The motion was adopted.

COMMISSIONS OF INQUIRY BILL

The Minister of Home Affairs and States (Dr. Katju): I beg to move:

"That the Bill to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers, as reported by the Select Committee, be taken into consideration."

I am happy to think that the report of the Select Committee is an almost unanimous one. Hon. Members would have seen by a perusal of the report that the Select Committee has scrutinised almost every single provision of the Bill with the utmost care and has made numerous changes which were unanimously accepted. The object of the Bill as I brought it forward was to meet an obvious inconvenience. Two or three years ago, a Committee was appointed to enquire into certain matters relating to the sugar industry and the Chairman who was a retired Judge of a High Court said that he had not received sufficient cooperation and he had been unable to examine witnesses or call people before him to give relevant information. Thereupon, after a very careful examination of this matter, it was thought desirable that instead of having *ad hoc* legislation in relating to every Inquiry Commission it might be more convenient to introduce some legislation which could be applicable to all Commissions of Inquiry and to authorise the Commissions to examine witnesses and take certain additional steps which invest them with certain powers of a civil court. With that object the Bill was introduced.

It was pointed out in the course of discussion on the motion for consideration before the Bill was sent to the Select Committee that there were enquiries and enquires and there were committees and committees and it may not be convenient, nor would it be expedient, to vest every single commission and committee of enquiry with the powers which this Bill purports to confer upon those committees and therefore some distinction ought to be made. Now that particular point of view has been given effect to by the Select Committee and the House would now observe that the Bill makes it clear that the Act would only apply to those commissions which are specifically appointed under clause 3 of the Bill and the appropriate Government

which would be either the Central Government or the State Government, will in notification appointing the committee say clearly that this was a commission appointed under clause 3 of this particular Bill and thereupon certain powers which are specified in clause 4 of the Bill would automatically vest in the committee.

In the Bill as it was originally framed these powers included the power to send for witnesses, to examine them on oath, to send for documents and records from public offices and also to compel people to give information. There was also the power of searching and seizing documents from any premises. A point was made out that while there might be no objection to the power to examine witnesses, the power to compel people to give information and the power to direct searches and seizures was a little more peremptory and, therefore, required further consideration and every committee should not have that power. Now the Select Committee has also given effect to this view and it is clearly provided that while under clause 4 of the Bill the power to summon witnesses and examine them would vest in every committee, the additional powers which are referred to in clause 5 of the Bill, namely, the power to compel people to give information and power to direct searches, would only be available if the appropriate Government, in the notification appointing the committee specifically says that the committee concerned would have also these powers and I am sure that the appropriate Government would see to it that the additional powers mentioned in clause 5 of the Bill would only be granted in appropriate and proper cases, particularly to those commissions, which are presided over by persons of high-status such as retired Judges of the High Court who may be trusted to use those powers in proper cases. Now that is provided for by clause 5 of the Bill.

Then there are certain minor matters. As the House is aware, the power to appoint commissions of enquiry are included in List I, that is the Union List, and List III which is the Concurrent List. In List III power is given both to the Central Government and to the State Governments to make enquiries or direct enquiries to be made by committees in relation to matters exclusively within the cognizance of a State, namely in List II and also to such matters included in List III, the Concurrent List. The result is that the Central Government is empowered to direct an enquiry into practically all kinds of matters anywhere throughout India, while the

[Dr. Katju]

State Government is limited to the exclusive List II and the Concurrent List III. Now the Bill, as framed, said that the State Governments could not direct an enquiry in a case in which the Central Government has also directed an enquiry and it would not do so for a period of two years. It was thought that this restriction was not proper or reasonable, because the State Government is really primarily responsible for the conduct of affairs in its own jurisdiction. Now that has been removed and it is now quite clearly laid down that if a committee is already making an enquiry into particular State matter, that is appointed by the State Government, then the Central Government would not intervene by appointing another committee of enquiry, unless it is a matter which concerns several States, nor would the State Government appoint a committee of its own if it is a matter in which the Central Government has already appointed a committee. We do not want two rival committees or two parallel committees to function and enquire into one and the same matter at one and the same time. There is no objection if a State Government thinks that an enquiry made by a committee appointed by the Central Government has not quite been very full or comprehensive, or there are some loopholes left, to its appointing a committee of its own later on, after the Central Government Committee has concluded its labours. That has been made quite clear in the definitions in clause 2 and also in clause 3.

A minor point was made that we do not want these committees of enquiry to function and continue to function for an indefinite point of time. We have now made it quite clear that in the notification appointing the committee, as is generally done even now the Government of the State would mention the date by which it is expected that the committee would conclude its labours. Of course, under the rule making power, power would be taken by the appropriate Government to extend the time limit in suitable cases, if an application is made by the commission that they have not been able to conclude their labours within the time prescribed by them owing to some important reasons.

Then comes this question of compelling the disclosure of information. Objection was taken on the ground that it might be a matter of privilege and the witnesses might not be able to give information. Now the position stands thus. There may be a privilege and it may be open to the

person concerned, in several cases, to choose not to commit, not to claim privilege. I have got a right to ask a question. It is the privilege of a witness in suitable cases either to answer that question or to claim privilege and that has been made quite clear, as hon. Members would see, in clause 5(2), namely that while information may be sought for, it would be open to the person concerned, if he chooses to do so, to claim the privilege under any law for the time being in force.

Then there was another minor point made. I do not know why very great fear was expressed that searches might be made by junior officers like inspectors or sub-inspectors. We have tried to allay all those apprehended fears by providing in sub-clause (3) of clause 5 that a search can only be made under the orders of the committee by a gazetted officer and he should conduct the search in so far as the provisions of section 102 and 103 of the Criminal Procedure Code are applicable. The House would recollect that these two sections prescribe that the searching officer shall have available to him the presence of two search witnesses and that he shall make immediate inventories. At the same time these sections confer upon him powers to break open certain locks; if the premises are in possession of women folk then he will take suitable action to see that they are not in any way molested. So we have made that perfectly clear.

Clause 11 is important. As I said, the object of the Bill is now being made quite distinct that it is not to apply to every commission or every committee of enquiry at large. It can only be made applicable to that commission which is appointed specifically under clause 3. But then power is taken under clause 11 that a committee may have been appointed originally, not under clause 3, but afterwards, while that particular committee is functioning, reasons are disclosed why it should be necessary to invest that particular committee with these powers prescribed for a commission appointed under clause 3; then power is given to the appropriate Government to invest that particular committee also with the powers of a commission appointed under clause 3, if it becomes so necessary. This is the gist of the matter.

I find that there are a fairly large number of notices of amendments. I find that there are about twentysix amendments. I must say I confess to

my innocence about this matter. I thought we had discussed this matter in the Select Committee at very great length and considered every single point of view and tried to meet it. The House would see that the committee was a very strong Committee and practically it is a unanimous report. So I thought that the Bill would go through without really any further discussion. I cannot possibly take objection to any notices of amendments. All hon. Members have got a right to press their view-points. But I do suggest that the Bill as it has now emerged should be considered to be workable and should be considered, from the point of view of hon. Members opposite, to have been considerably improved and should therefore, go through without any further expenditure of time over it.

Mr. Chairman: Motion moved:

* "That the Bill to provide for the appointment of Commissions of inquiry and for vesting such Commissions with certain powers, as reported by the Select Committee, be taken into consideration."

Shri M. S. Gurupadaswamy (Mysore): The hon. the Home Minister just now said that it is a workable piece of legislation. With due reverence to what he has said I beg to submit that it is not so workable. I draw your particular attention to one or two significant matters which the Bill has touched upon. My first point is that the Bill seeks to include the subjects which come under the purview of the State List as matters that can be inquired into, and the Central Government is empowered to appoint commissions of inquiry to inquire into the subjects which fall under the purview of that State List, and also the Concurrent List. I shall not talk of the Concurrent List here and shall confine my remarks only to the question of appointment of commissions of inquiry in respect of subjects which come under the purview of the State List.

Sir, you are aware and the House is aware that there are already murmurings among the public that too much of power has been concentrated in the Centre and that our Constitution-makers have taken away most of the subjects from the States and transferred them to the Centre. In the case of Mysore State, for instance, nearly fifteen subjects have been taken over from the State and transferred to the Centre. So there is a great feeling among the Part B and part A States that too much of concentration of power in the Centre has adversely

affected their interest and it is really a fact that the State Governments have been reduced to the position of district boards and municipalities.

But the present Bill seeks to encroach upon even the minimum subjects that have been handed over to the State Governments. It seeks to set up commissions of inquiry to inquire into matters relating to subjects which come under the State List. I submit that this is nothing but an infringement upon the minimum autonomy that is given to, or the minimum independence that is being enjoyed by many of the States, and that the Central Government or the hon. Minister has not taken the opinion of the Governments concerned with regard to this matter. The draftsman in the Central Secretariat has just drafted the Bill and it has been submitted to Parliament without reference to anybody.

Clause (a) under the definitions reads: "the Central Government, in relation to a commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution." Here, the addition of List II is superfluous and unnecessary and is dangerous to the autonomy of the States. Suppose the States refuse to co-operate with the Centre in matters of inquiry, then what action the Government contemplates to take I want to know. I feel that in order to protect the autonomy of the States and with a view to give greater scope of freedom to the State Governments in their own matters, it is better not to add the State List under this. I will just cite an example to make my point clear. Land revenue is a State subject. Suppose a commission of inquiry is set up by the Central Government and the State Government does not want to hold an inquiry about that matter. Then it leads to a lot of friction between the Centre and the State, and the peace in the land so far as this matter is concerned will be upset. So, instead of facilitating the smooth working of administration it will rather encourage friction between the Centre and the States. It is not advisable to encourage such a tendency.

Further the Bill contemplates to set up a commission of inquiry by the executive authority. Of course, power should be given to the executive authority to set up commissions of inquiry but the subject matter which should be inquired into by the commission of inquiry should not be decided by the executive authority. I feel that this is

[Shri M. S. Gurupadaswamy]

a matter which should appropriately come under the purview of the legislature. Unless there is a resolution by the House of the people and the Council of States that there should be an inquiry on a particular matter, the Government should not proceed with the inquiry. Government's duty or concern should be confined to the appointment of a commission of inquiry and should not extend beyond that. So the subject matter to be inquired into is important, such things should be decided by the Houses of the legislature and should not be decided by the executive and that is the right of the sovereign Parliament. We have got every right to decide which issue should be inquired into and which issue should not be enquired into. If the executive authority arrogates to itself, all the power of appointing the commission as well as selecting the subjects for inquiry, then it is too dangerous a thing and the consequences will be dangerous.

Further there is no clarification in the Bill about the methods of inquiry, how the commission of inquiry after being appointed would inquire into matters, and whether they should inquire into those matters in the open.

Mr. Chairman: I do not want to interfere with the hon. Member's speech, but for general information of the Members of the House, I would draw their attention to rule 98 which reads as follows:

"The debate on a motion that the Bill as reported by the Select Committee be taken into consideration shall be confined to consideration of the report of the Select Committee and the matters referred to in that report or any alternative suggestions consistent with the principle of the Bill."

I think that hon. Members would, as far as possible, comply with the provisions of this rule.

Shri M. S. Gurupadaswamy: I would like to draw your attention to clause 3:

"The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the people or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the

functions accordingly."

I want to omit the words "may, if it is of opinion that it is necessary so to". Where is the necessity for including that? It may be as well omitted.

I was referring to the method of inquiry. There is no reference here in the Bill that the inquiry is open to one and all. If the people are interested in a particular subject of inquiry, then they must be allowed to come and sit there and observe the proceedings of the commission of inquiry and it should not be conducted *in camera* and in secret. It should be thrown open to one and all, unless the interests of the State demand such a secret inquiry or inquiry *in camera*. So let it be specifically mentioned that the commission of inquiry will hold the inquiry openly and not in secret.

Shri N. Somana (Coorg): On a point of order, Sir. I submit that all these matters that are referred to by the hon. Member are matters of amendments. I think that these matters will come up when we take the Bill clause by clause. It would be a waste of time if we are to go on with all these amendments that have been tabled already.

Mr. Chairman: I had already brought to the notice of the Members of the House as to how the discussion on a motion like this is limited. I think the hon. Member has got certain amendments standing in his name and at that time he can speak in detail.

Shri M. S. Gurupadaswamy: I beg to submit that the hon. Member just now said it is a waste of time. I do not know how it could be so. It is such an important Bill.

Mr. Chairman: However the hon. Member may proceed, and make his points I think he will confine himself within the limitations of rule 98. So far as his amendments are concerned, he will have an opportunity at a later stage.

Shri M. S. Gurupadaswamy: I do not wish to take much of the time of the House. I only wish to say that the Bill should make a specific provision that the inquiries will be conducted in the open. Of course, there are amendments to this effect and these amendments may be included as part and parcel of the Bill before it is enacted.

The most important criticism about this Bill, as I said in the beginning, is that it seems to take away much of the powers of the State and it seems to abridge the autonomy of the State in matters which come under their purview. Moreover, the Government has not taken the consent or the opinion of the State Governments in this matter. Without taking their

opinion how could we proceed with such an important Bill which will affect their future relationship with the Centre. So I beg to submit that these matters may be looked into by the hon. Home Minister and proper safeguards may be provided with regard to others which I mentioned. I also suggest that List II may be omitted wherever it may occur in the Bill.

Shri A. C. Guha (Santipur): The Bill as it has emerged from the Select Committee contains certain improvements from the original Bill, and yet I feel that are some lacunae here. I think that List III should not have been included to be a subject of inquiry by the State Government without the previous consent of the Central Government. List III concerns concurrent subjects and as regards these, I think the State Government should not have any authority to start an inquiry without the previous sanction of the Central Government. The previous speaker was pleading for provincial autonomy in these matters but when the Central Government has the overall responsibility, even as regards matters which fall within List II, I think the Central Government cannot shake off its responsibility for making enquiries under entries enumerated in List II. In the present circumstances, I think we should not stress too much on States' autonomy. It is better that the authority of the Central Government is strengthened and emphasised than the autonomy of the States. In this matter, we started with a very bad legacy. When the Constituent Assembly first met, we started with an extreme variety of provincial autonomy and with the theory of residuary powers vesting with the States. After the Partition, the Central Government retrieved some of its lost ground and now all residuary powers rest with the Centre. So, the logical conclusion is that the theory of provincial autonomy has been checked and the authority of the Central Government has been established and it has to be recognised.

During the consideration stage, before the Bill was sent to the Select Committee, a point was made and my previous speaker also hinted at that, that in the U.K. Act, it is only on the motion of the two Houses of Parliament that an inquiry can be instituted. But, there it is a tribunal of inquiry whereas here it is only a commission of inquiry. The words tribunal and commission have two different connotations and two different implications. Moreover that Act was passed in 1921. Since then, we have moved far towards the centralisation of power.

Rightly or wrongly almost all the States in the world have been moving towards that. We should concede that, particularly when ours is a democratic State with a removable executive, the Government should have the authority to start an inquiry on any matter of public importance. During the last three or four years, we have heard of so many scandals. Some of them might have been real scandals; some might not have been really scandals. Any how, there is public agitation over many matters. Therefore, it is only just and proper that Government should institute inquiries and get at the correct state of affairs and if necessary proper steps should be taken.

But, my complaint is that Government have instituted many inquiries, but they have not implemented the recommendations of these inquiries or commissions. In this Bill also, this is a big lacuna that nothing has been said as regards the intentions of the Government on the recommendations of the commission of inquiry. At least, I would like the hon. Minister to make the position of the Government clear, as to how they intend to implement the recommendations. Our experience for the last few years has been, that many recommendations contained in so many inquiries have not been implemented and in many cases we have not heard of any steps being taken. The Economy Committee inquired into many things and made elaborate recommendations. Government have not taken, practically speaking, any steps. It is no use only having inquiries, unless Government take some steps according to their reports. Even if it is not possible to put it in the Bill, it should form part of the hon. Minister's statement as regards the policy of the Government as to how they will treat the recommendations of these commissions of inquiry.

I do not like that any officer of the commission should have the full authority of the commission in any matter. Previously, in the Bill as originally drafted, there was no limit as regards the rank of the officer. Now, at least the Select Committee has put a limit to it, that is, not below the rank of a gazetted officer. Still, I think any officer of that commission should not have the delegated authority of the commission itself. This is a practice followed in the case of some other previous Acts also, which I do not like the Government to encourage. I do not think Government can give us this assurance that their officers are like Caesar's wife, beyond all doubts and suspicion.

Shri Syamanandan Sahaya (Muzaffarpur Central): Do you mean to say that all officers are Caesar's wives?

Shri A. C. Guha: I say they cannot give this assurance. Delegating the full authority of the commission to certain officers is a policy which I do not like to be encouraged.

There is one provision as regards temporary absence of any member and the existence of a vacancy.

The provision is:

"The Commissionmay act notwithstanding the temporary absence of any member or the existence of a vacancy among its members."

I think in legal phraseology, the singular also stands for the plural. There may be only three members or five members even. When it is said, 'absence of any member', does it mean in the absence of only one, or even in the case of absence of more than one member, two or three members, the commission will go on? Then it is said, 'existence of a vacancy'. Here also, the singular stands for the plural. Government should make it clear. What would be the number of vacancies when the commission should be considered to be not in existence or not authorised to function. Even if the Chairman is absent, will the commission be authorised to function? Government should have the authority to nominate another Chairman or the commission will nominate its Chairman for a particular sitting. But, if the Chairman continues to be absent for some time, for some sittings continuously, then, in that case, there is no provision in this Bill for the Government nominating another Chairman. I think that should also be provided here.

With these few words, I commend this Bill and I hope that the hon. Minister of Home Affairs will consider the suggestions made by me.

Shri Bansal (Jhajjar-Rewari): I consider that this Bill, as has been returned to the House by the Select Committee, is a definite improvement over the Bill that was referred to them. Some of us on this side of the House find it difficult to cope with the changing grounds of the Opposition in regard to the various measures that come up for discussion before this House. I had thought while listening to the debate when the Bill was being referred to the Select Committee in the original form, that the Opposition did not want a very elaborate Bill and that they wanted a Bill to be on the model of the U.K. Act. But, today I was surprised when my hon. friend

from the opposite side said that the Bill did not lay down the procedure as to how the Commission would act.

I thought he did not want, or at least the Opposition did not want that. Then, he again says in the same breath, that the Bill takes away the autonomy of the States. I do not know how to reconcile these two arguments.

I would not take up the time of the House in dealing with those points, but I would like to draw the attention of the House to the fact that the main purposes underlying this Bill are not very new. Most of these powers which are sought to be given to the commissions that will be appointed in future, are already there, and they have been given to the Tariff Commission under the Tariff Commission Act. The only power which is a new power under this Bill is that contained in clause 5 (3), but I am glad that some of the stings of that sub-clause (3) have been removed by the Select Committee and certain wholesome provisions have been made, viz., that when searches will be made and books seized, the officers concerned would have to be within the four corners of the provisions of sections 102 and 103 of the Code of Criminal Procedure. I think this is quite wholesome, but I would like the hon. Minister kindly to enlighten me on this. The sub-clause says:

"The Commission or any officer, not below the rank of a gazetted officer."

Here, I would like that "The Commission or any officer" should be qualified as "The Commission or any officer of the Commission". I would not like any gazetted officer to go and made searches. I would personally suggest that that officer should belong to the commission. If that is possible, I think it will further improve this particular sub-clause of the Bill.

Then, about procedure to be followed by the Commission I personally do not think it is necessary to lay down any elaborate procedure under this Bill. The power as envisaged here is quite sufficient and the appropriate Government or the Central Government, while appointing the commission, will lay that down under the notification.

Shri Vallatharas (Pudukkottai): The anxiety of the Government to have the benefit of a regular

enquiry is patent, but the satisfaction of the desire must be achieved by legitimate means in accordance with the established principles of equity, law and also procedure. This Bill—of course, it should be in existence, I am not disputing the necessity of the Bill—but, when once it is put into operation, several difficulties come up. I have seen that in matters of legislation, there must be a higher degree of conception and a responsible attempt to make a headway towards perfection of at least the material aspects that we are canvassing. In respect of the difficulties felt in the courts, the cost to the litigant, the waste of time of the court are also to be envisaged in the matter of these commissions of inquiry.

I solicit attention to clause 5 (2):
Originally it was:

"The Commission shall have power to require any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry."

Now, the Select Committee has said:

"subject to any privilege which may be claimed by that person under any law for the time being in force."

The statement that "The Commission shall have power to require any person to furnish information on such points" is very vague. On what points? Points which are not covered by the examination of the witness in the box? Can the commission be expected to elicit and ask the person to furnish information on such points or matters? How can a person be required to furnish information? Suppose the person refuses to furnish information, what is the penal sanction for it? Can anybody be forced to give information? That cannot be done also, unless it be under some corner of some definite law.

I make reference to clause 4 (a):

"summoning and enforcing the attendance of any person and examining him on oath".

It is to be presumed now that over and above all matters that are elicited on an examination on oath, any person can be made to furnish information on points or matters which in the opinion of the commission will be useful. So, it contemplates that the examination on oath will not make the

enquiry complete. Is the enquiry of such a higher grade or more complicated nature than enquiries under the Indian Penal Code or any other law for the time being. I do not think a commission of inquiry can assume such a high stage, this being an expeditionary measure, an enabling measure for the Government to get at certain points. So, when a man is examined on oath, there is absolutely no necessity for the commission to require any person to furnish information at its own discretion and the person cannot be forced to furnish information. If he is put on oath, there are certain things which should guide the deposition itself. But under this clause 5 (2) the discretion is arbitrary, and it will not be exercised properly also. So, this clause 5 (2) must be deleted. If it is there, there will certainly be abuse of power, or if the commission does not choose to operate under it, then it is superfluous. So, when there is a provision under clause 4 (a), I do not think clause 5 (2) is necessary, and even if it is considered to be necessary, the limits within which the discretion can be used, the process by which the discretion can be enforced and the penal sanction by which the party has to be forced to depose—all these things are absent there. If the fundamental, substantive portion of the law is silent on these matters, rules cannot be a substitute for that purpose.

The second aspect is clause 6:

"No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

provided that the statement—

(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry."

Here, a man may commit himself to an admission and go and deliberately make a denial. These two are very important matters. Evidence is given on oath and there is no secrecy about it. And so, when the evidence is useful for prosecuting for false evidence, why should not that known evidence be useful for admissions and denials by that particular witness? No law, so far as I can see,

[Shri Vallatharas]

envisages such a prohibition against using them in any manner. If it is not an ordinary enquiry, if it is an enquiry enforced and it is privileged, then that is a different matter altogether. But, here the party who subscribes himself to an elucidation of a certain situation, facts and materials, commits himself to a certain thing, either by admission or by denial. Such admissions and denials must be either for or against him. It must be provided for in that matter also that his right will be preserved. So if that is incorporated, then the witness can dare to say anything and everything in the course of the enquiry, and see that he is enabled to deny or make representation at a later stage without apprehension that those statements would be used against him subsequently. This is very fundamental. Or else, the security of justice cannot at all be achieved.

So far as clause 2 is concerned, hon. Members have made some observations, but I stoutly oppose the encroachment upon State Subjects in List II. So many small subjects are shared with the States. You may refer to List II—State List—No. 10, "burials and burial grounds; cremations and cremation grounds". What is the action for the Central Government to take? Are they going to consider who are fit to be cremated, or if a place is to be declared as cremation ground? And in what manner can that be controlled? And what is the sort of enquiry one can expect out of it? Again No. 7: "Pilgrimages other than pilgrimages to places outside India". Suppose I go on a pilgrimage to Rameshwaram or Kashi or Gaya, whatever it is, should the Central Government make an enquiry about these matters, make it an offence or non-offence, and can the Central Government stoop to such a low level as to go into these minor details which are not even worth the consideration of an ordinary village officer or municipality?

So, the attempt on the part of the Central Government should be restricted. The dignity of the Central Government requires that it should confine itself to great matters of policy such as the safety of the State, and not to smaller matters which are absolutely the concern of the States to control by local legislation.

Further, imitation of over rules and regulations on the model of laws elsewhere is always a dangerous thing. Imitation itself is a dangerous thing. We have got sufficient originality to conceive and embody certain things which suit the conveniences or the

welfare of the people of this country. In the Bill before us, the influence of the U.K. Act on the same subject is quite patent. But the imitation has been done in such a manner that some of the provisions which are not at all suited to our country are also sought to be incorporated.

Above all, I lay great stress on the matter of evidence—how is it to be got, how the statement by a witness is to be viewed by the others, whether it can be used against him or not. All these are things which are highly important and I hope the hon. the Minister will be pleased to concentrate some attention on these points.

The commission, under clause 5 (2) may serve a notice on a person to furnish information on a particular point. Supposing the information is given, how is the commission to verify whether that information given is correct or not. Supposing a person says 'A and B went to Delhi', how is that information to be verified? If the witness is put on oath and then examined, then where is the necessity for an extraneous ascertaining of the information from outside? Even under the Evidence Act and the Criminal Procedure Code, the statements or information that are elicited should be decided by regular procedure, and if so, where is the scope for verifying this information obtained by the Commission? Supposing a person gives a piece of information and the commission receives it, what is it going to do with that information? How is it going to use that? Therefore, I submit, that what has been provided for in this Bill is certainly inconsistent with the conception of the Evidence Law and other such laws governing the procedure of taking evidence in our country. So, I feel that clause 5 (2) and also clause 6 are superfluous, and are highly injurious to the healthy operation of this Bill.

Shri Venkataraman (Tanjore): I was trying to convince the hon. Minister of certain things, which I now want to place before the House.

This is one of the rare occasions when the Select Committee has given an almost unanimous report, and the improvements made in the original Bill are very commendable. Firstly, the sting contained in clause 5 (3) of the original Bill, namely that any person empowered by the commission may enter into any premises etc. is being taken away, and the officer empowered to enter any premises has been fixed as a person not below the rank of a gazetted officer.

Then, the procedure, which my hon. friend on the other side said has not been properly defined, is left to the commission itself. It must be the experience of most of us that when these commissions are appointed, they are allowed to fix their own procedure suitable to the particular subject on which the inquiry is conducted. Clause 8 lays down the procedure to be followed by the commission, and says that the commission shall have powers to regulate its own procedure. I submit that there is nothing wrong in it. The question whether an inquiry is to be held *in camera* or whether it should be done in public again depends on the subject matter of the inquiry and therefore it should be left to the commission to decide in each case whether the whole or any part of the inquiry should be *in camera* or whether it should hold the whole sittings in public. If we pass a law saying that all the inquiries and all parts of the inquiries should be in public, then we would be probably shutting out some very valuable information and evidence which would be available in an inquiry *in camera*. Therefore, it should be left to the commission to decide on the merits of each case as to whether a particular inquiry should be *in camera* or partly *in camera* and partly in public.

12 Noon

My hon. friend Mr. Vallatharas said that the commission has no powers to enforce the provision under clause 5 (2). May I draw his attention to clause 5 (4) which states that "The commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure 1898 (Act V of 1898) and any proceeding before the commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860)". And section 480 of the Criminal Procedure Code details sections 179 and 180 of the Indian Penal Code where refusal to answer questions, or the refusal to sign statements etc. are all punishable as substantive offences, so that if the information is asked for by the commission and it is not furnished by a particular person, then he will be liable to punishment under section 179 or section 180 of the Penal Code, which are made applicable to him by virtue of sections 480 and 482 of the Criminal Procedure Code which have been made part of the law under sub-clause (4) of clause 5. I do not think that there is any great difficulty in this, and I may also tell my hon. friend that if this is a matter for any judicial decision, if it is an arguable point, then we may take

it from court to court, until we decide whether the refusal to answer a particular question or the refusal to furnish a particular information asked for by the commission is covered by the definition of the substantive offences under sections 179 and 180 of the Indian Penal Code.

One other point which has been raised by my hon. friend on the other side is whether the Central Government can have the power to order inquiries in respect of matters which are falling within List II—State subjects. Here, I have a very definite opinion that the Central Government ought to have that power. There is no use merely talking theoretically that we are trying to reduce the autonomy of the States etc. when in the administration of a huge country like ours, we have to bring about at least a sort of rough uniformity in the administration. Take for instance a subject like prohibition. Supposing the Government wants to have the opinion of all the people in this country with regard to prohibition, it is no use saying that the matter is within the competence of the State Legislature as it is governed by List II, and therefore the Central Government ought not to intervene. Take again the instance which my hon. friend Mr. Gurupadaswamy gave, with regard to land revenue. One of the matters agitating the country today is the question of the land revenue—the assessment all over the country, the nature of the tenures under which people hold lands, the nature of the relationship between the landlord and the cultivator—these are matters on which if we are to bring about a certain uniformity, the authority which can order such an inquiry is only the Central Government which can order an inquiry in respect of the conditions existing in all the States, and only the Central Government has got the competence to do so. If we exclude List II from the provisions of this Bill, it will only come to this, namely, that the Central Government will not be competent to order any inquiry in respect of many matters of public importance, or of great social consequences, or of great importance to the welfare of the people of the country, as for instance the matters relating to land reforms, prohibition etc. The State Government will not be able to do, as it will not have the territorial jurisdiction beyond the boundaries of that particular State. Therefore, it is very necessary that the Central Government should have the power to order commissions and committees of inquiry in respect of matters which concern not only one State, but more than one State. I do not think there is much point in the criticism that by

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including List II within the framework of this legislation, we have taken away the autonomy of the States. My hon. friend said "What would happen if the State Governments refuse to co-operate?" In a federal Constitution, one has to hope that the State Governments will co-operate with the Centre, and also between themselves. If they do not, the provisions of the Constitution are ample, and I do not want to say what those provisions are, lest I do offend some State Government. Therefore, if the State Government does not co-operate with the Central Government, the Central Government, will certainly declare an emergency and then take over the administration of that State and carry it on. Therefore, there is no use trying to put up an argument that the State Government will not in some contingency co-operate with the Centre.

We shall always hope that the Governments, responsible as they are, will try to cooperate with each other and even before the Central Government takes up any such measures it will consult the State Governments and try to bring about a sort of co-operation between the State Governments concerned, or with only a particular State Government. Therefore, I commend the Bill as it stands. I am glad that the point I made during the earlier stage before reference to the Select Committee, that all the powers need not be given to the commission, has been accepted by the Select Committee and that provision has been made that all or any of the powers may be given in the notification issued appointing the Committees.

Mr. Chairman: The hon. Minister, Dr. Katju.

Shri Raghabachari (Penukonda): Sir, may I refer to a point about which I have differed from the Select Committee's report? Is it permissible?

Mr. Chairman: Were you a Member of the Select Committee?

Shri Raghabachari: Yes.

Mr. Chairman: I found no hon. Member was anxious to speak, and therefore I called upon the hon. Minister. I do not want to curtail the liberty of any one, but I found that only one hon. Member was anxious to speak and then the hon. Minister was called upon to speak. Anyway, if the hon. Member wishes to say something, he may only refer to that point.

Shri Raghabachari: I only wish to refer to the point on which I differed from the Select Committee and which is the subject of my minute of dissent. I had carefully listened and also read through the debate and the expression of opinion of Members of this House at the first stage of this Bill. Considerable apprehension was expressed as regards the possessing of this power or the investing of this power with the commission particularly that covered by clause 5(3). That relates to the commission having power by itself or through an agent authorised to enter into anybody's house and then seize and take away books of account, copies and so on. I expect ordinarily not only the Government when it invests such power but also the commission when it functions not to use this power to harass people. But yet a fear was expressed in the House that it was liable to be so misused.

The more important question is, is it necessary for every commission to be invested with such a power, this special power of entering into any house and seizure of things? That would be relevant and necessary only in cases where probably there have been evasion of taxation contemplated or important matters of that kind. Therefore, no doubt the Select Committee has accepted that all powers need not be vested with every commission. It is surprising that no Member of this House thought that this is really a matter of serious consideration for them. As I have already submitted, I do not expect any commission to resort to harassment, but this is really a power which appears unnecessary.

Dr. Katju: I should like to draw attention just to one or two points raised. I was surprised to hear that neither the Central Government nor the State Government should have power to appoint a commission of inquiry unless directed to do so by a resolution of Parliament or of the State Legislature. I suggest that it is one of the recognised duties and responsibilities of every administration to see to it that proper inquiries are made on all important points. It would be lamentable if they were to wait for such guidance to be given to them by Parliament or the State Legislatures. The Legislature may not be in session for six months or eight months, and there may be a matter of grave urgency and then the administration must interfere and if the administration does not institute inquiry, there may be complaints.

This is really one of the administrative duties. The provision that on a resolution of the House of the People or the State Legislature the Government must appoint—that is a sort of reflection that you have been remiss in doing your duty and you are, therefore, being directed to do so by Parliament. That is a different matter. I, therefore, think that this aspect should be properly considered.

Secondly, on this question of interference with autonomy, I would ask the House to consider that the commission of inquiry is a purely advisory body. It has got no powers and cannot have any powers, either executive or legislative. The function of the commission of inquiry is to find facts and to make recommendations. If it is a matter exclusively in the State List, then it will be open to the State concerned to take appropriate action. But there may be numerous cases in which fact-finding investigation may be necessary in the interest of the State itself, I quite agree with what was said by my hon. friend over here that no Central Government will act unless it be in the closest collaboration with the State Government concerned. We must attribute some sense, some common sense, some reasonableness to all Governments, and not just say that autonomy is being interfered with because the matter is in List II and therefore, should remain sacrosanct and should not be touched. I have seen numerous cases in the newspapers, complaints made that this matter has not been inquired into and that matter has not been inquired into; and when you get a legal provision for suitable inquiries in matters of urgent public importance, then you show this anxiety for State autonomy and various other difficulties are pointed out. I think that is rather an inconsistent position to take up.

Then so far as procedure and other matters are concerned, they will come before you, Sir, in the course of the various amendments if they are moved, and the House will have an opportunity of considering them.

Shri C. R. Iyyunni (Trichur): May I put a question, Sir, for information? As per clause 3 of the Bill, the appropriate Government is bound, as per a resolution passed in the House of the People or in the Legislative Assembly, as the case may be, to notify that a commission is appointed. Now it is a bounden duty cast upon the Government concerned as per the resolution passed in the House of the People or the Legislative Assembly, as the case may be. Now as per clause 7, the Government.....

Dr. Katju: Is the hon. Member putting a question to me or entering into a discussion?

Mr. Chairman: If the hon. Member wants to put a question, I will allow it. Otherwise, no discussion is possible now.

Shri C. R. Iyyunni: I want to point out an inconsistency in.....

Mr. Chairman: When we come to the discussion clause by clause, it will be proper to consider that.

The question is:

“That the Bill to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers, as reported by the Select Committee, be taken into consideration.”

The motion was adopted.

Mr. Chairman: We will now proceed with the Bill clause by clause. I find there are a number of amendments. Some of them have been given notice of only today and as such they are clearly out of order because they were not given in time. There are certain other amendments which were received in the office at 4-30 P.M. yesterday and could not be circulated.

The Rules of Procedure say:

“Every notice required by the rules shall be given in writing addressed to the Secretary, and signed by the member giving notice, and shall be left at the Parliamentary Notice Office which shall be open for this purpose between the hours of 10-45 A.M. and 3 P.M. on every day except Sunday or a public holiday.

Notices left when the office is closed shall be treated as given on the next open day.”

Now, the notice required is like this:

“In view of the changed timing of the sittings of the House from Thursday, the 22nd May, 1952, the Parliamentary Notice Office shall be open for receiving notices required by the rules from members between the hours of 8-15 A. M. to 12-30 P.M. on every day except Sunday or a public holiday.”

I, therefore, find that these amendments which were received in the office at 4-30 P.M. are also beyond time and therefore cannot be moved. The Parliamentary Bulletin further says:

“Under the Rules of Procedure notice of an amendment to a Bill or a Resolution or a Motion or a notice of a cut motion to a De-

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mand for Grant is ordinarily required to be given one day before the day on which the Bill or Resolution or Motion or the Demand for Grant is to be considered. In order to ensure timely circulation of all parliamentary papers to hon. Members by the evening on every day, all notices left in the Notice Office after 12-30 P.M. will be treated as given on the next opening day."

I, therefore, think that these amendments are out of order. We shall consider the other amendments as and when they are moved.

Clause 2.—(Definitions)

Shri M. S. Gurupadaswamy: Sir I have been authorised by Dr. Krishnaswamy to move his amendment.

Mr. Chairman: The hon. Member, Dr. Krishnaswamy had been here and now he seems to have gone for attending some meeting of a Select Committee. He had made a request that his amendment should be allowed to be moved by Mr. Gurupadaswamy. But I am sorry I find this cannot be done under the rules. I am therefore really helpless. If I could I would certainly have allowed it to be moved. But there are other Members who have given notice of the same amendment and any one of them could move it.

Shri M. S. Gurupadaswamy: All of them have told me that I can move it.

Shri Jhulan Sinha (Saran North): Sir, as I too have given notice of it I will move it. I beg to move:

In page 1, line 13, omit "or List II".

Shri M. S. Gurupadaswamy: On a point of order, Sir. Am I not entitled to move the amendments of others if they authorise me orally?

Mr. Chairman: As I understand from precedents, during the last so many years, it has never been the practice of this House that amendments standing in the name of one Member could be moved by another Member. Here, however, his purpose is served by the amendment being moved by another Member who also has given notice of it.

Shri Jhulan Sinha: I have heard the hon. Home Minister on this point and I have also heard another hon. Member defending the incorporation of these words in this clause. But I am sorry I am not convinced. The Central Government has either to allow autonomy to the States or else it should

have powers to control those subjects also which are in the sphere of the States. If we take the real position it would be found that the inclusion of these words seems to be unnecessary. If the clause is amended the Central Government will have power to appoint commissions of inquiry to deal with subjects in List I or in List III. Under clause 3 (1) (b) the Central Government has got powers also to appoint commissions on subjects which concern more than one State. Therefore, I do not think there is any sense in having these words earlier too in clause 2. My grounds for proposing for the deletion of these words from clause 2 are these: Firstly, it unduly and unnecessarily interferes with the autonomy of the States. Secondly, it is altogether unnecessary in view of the provisions of clause 3 (1) (b). I would therefore request the hon. Home Minister to consider this point in this background. I do not rely exclusively on the fact that it takes away from the autonomy of the States—the autonomy of the States will be there and only provision will very seriously interfere with it—but it is also unnecessary besides being to a certain extent an encroachment on the autonomy of the States. As I have already said, if you want to appoint a commission to deal with a subject in List I you can do so under clause 2, and if you want to appoint it to deal with a subject concerning more than one State you can do so under clause 3 (1) (b). In this view of things I find the incorporation of the words "or List II" is unnecessary and redundant and unduly takes away from the autonomy of the States. It also casts a reflection upon their capacity and competence.

Mr. Chairman: Amendment moved:

In page 1, line 13, omit "or list II".

Dr. Katju: I oppose this amendment.

Shri M. S. Gurupadaswamy: I wish to draw the attention of the hon. Minister to article 250 (1) of the Constitution. There it says:

"Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List."

So it is only when there is a Proclamation of Emergency that a piece of legislation may be enacted here in Parliament which touches upon matters in the State List. Not otherwise. So, this Parliament is not

empowered under the Constitution to legislate on a matter which affects the State List. This is an important point. It is a constitutional issue.

Shri Jhulan Sinha: I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Shri A. C. Guha: The purpose of my amendment is just the opposite of the purpose sought to be achieved by the previous one. For subjects in List III, the State Government should not be allowed to start an enquiry without the previous sanction of the Central Government.

Mr. Chairman: Is he moving it?

Shri A. C. Guha: Only if the hon. Minister is willing.

Dr. Katju: I am not prepared to accept it.

Shri A. C. Guha: But I want to tell him that this is an important point which he may consider. I do not move my amendment.

Mr. Chairman: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3.—(Appointment of Commis-

Shri A. C. Guha: I beg to move:

In page 2, line 3, after "functioning" add "and within a period of two years from the date the Commission appointed by the Central Government ceases to function."

There was a provision like this in the original Bill, but the Select Committee has deleted this clause. I suggest that such a provision ought to be there. Suppose the Central Government institutes an inquiry and the inquiry commission submits its report today—on the 29th July 1952. The next day the State Government may start another inquiry on the same subject and that inquiry committee may make recommendations which are just the reverse of the recommendations of the Central Government inquiry committee. We should also envisage a situation where the Government in the States and the Government in the Centre may not belong to the same political party or subscribe to the same political ideology. There may also be cases of political scandals. And occasion may arise when the conduct of a provincial Minister may be enquired into and if

that Minister has some pull and influence in the State, he may next day institute a State Government inquiry commission composed of men convenient to him, so that the Central Government may be put to ridicule and contempt before the public. It is a very serious matter and the original provision should be maintained.

Dr. Katju: I greatly regret that I am unable to accept it. My hon. friend should realise that this part of the Bill was discussed at great length in the Select Committee and we thought it best to drop it. I will not go into the reasons. If it is a List II matter, then the report of the commission is only an advisory recommendation and no action can be taken without the concurrence or the initiative of the State Governments and if they think fit they may start a commission of their own. It is impossible for me to accept my hon. friend's amendment.

Shri A. C. Guha: Take the case I have cited. Supposing the conduct of a particular Minister is the subject matter of an inquiry by the Central Government, after the inquiry is over, the State Minister may use his pull and influence and start another inquiry in the State Government and take convenient persons and get them to give recommendations just the opposite of the Central Government inquiry commission's recommendations. This is an aspect I want the hon. Minister to consider. There is nothing sacrosanct about the Select Committee's recommendations. Otherwise, why should we consider its report? I suggest the hon. Minister has not fully realised the implications and I give him a warning that an occasion will arise when he will be put into difficulty.

Mr. Chairman: All that has been answered by him.

Shri A. C. Guha: If he is unable to accept my amendment, I would like it at least to be put to the House and be negated.

Mr. Chairman: The question is:

In page 2, line 3, after "functioning" add "and within a period of two years from the date the Commission appointed by the Central Government ceases to function".

The motion was negated.

Shri Jhulan Sinha: I beg to move: In page 2, after line 9, insert:

"Provided that it shall be open to a State Government, in cases covered by sub-clause (a) of

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section (1) to refer for report to the Commission with the previous sanction of the Central Government any matter relevant to the issues under enquiry."

According to me, this is another clause which impinges on the autonomy and freedom of the State Governments. They are prohibited from appointing a commission when the Central Government has appointed one. Supposing a State Government feels that in the terms of reference of an inquiry commission there is something lacking and there is a lacuna, I suggest that it may with the previous sanction of the Central Government refer that matter to the commission already appointed for inquiry and report. This will not in any way restrict the freedom of the Central Government but will provide for a contingency where it is found out that some matter as has been omitted by the Central Government when it instituted an inquiry commission and is strictly relevant to the points of inquiry may be referred to the commission.

Dr. Katju: I have great sympathy with the object my hon. friend has in view, but I suggest that the committee having been appointed by the Central Government, it would look rather odd if another Government, namely, the State Government, is able to refer any points to another committee for examination and report. I suggest that it is very likely that whenever the State Governments want any further point for clarification or investigation, the Central Government would not stand in the way of that point being referred to the original commission itself. The proper procedure would be that instead of going through the process of taking the previous sanction of the Central Government and the Central Government giving it, the State Government should say to the Central Government, "Here is a matter or point which you have overlooked and which requires investigation. Will you please direct your commission of inquiry to look into it?"

So, instead of the State Government being the forwarding agents, the better course would be that the appointing authority, namely the Central Government should itself take that action on the recommendation of the State Government. My hon. friend himself recognises that the Central Government should have the approving power. Therefore, it is really a matter of executive action. The amendment as it stands would really serve no useful purpose.

Shri Jhulan Sinha: In view of the explanation of the hon. Minister I wish to withdraw my amendment.

Mr. Chairman: Has the hon. Member leave of the House to withdraw his amendment?

Some Hon. Members: No.

Mr. Chairman: Then I shall put the amendment to vote.

The question is:

In page 2, after line 9, insert:

"Provided that it shall be open to a State Government, in cases covered by sub-clause (a) of section (1) to refer for report to the Commission with the previous sanction of the Central Government any matter relevant to the issues under enquiry."

The motion was negatived.

Dr. M. M. Das (Burdwan—Reserved—Sch. Castes): I beg to move:

(i) In page 1, omit lines 35 and 36; and

(ii) In page 2, omit lines 1 to 3.

My amendment seeks to omit proviso (a) to clause 3. In this proviso the Central Government takes away from the State Government the right to set up a commission or enquiry committee during the time when a commission set up by the Central Government upon the same subject is functioning. I am not very keen to press my amendment, but I wish to know one thing. According to item No. 45 of the Concurrent List the Central Government has got the right to set up committees of enquiry even about a State subject. But I would like to know whether on the strength of item 45, the Central Government has got the constitutional sanction to prevent a State from setting up a commission upon a subject which is exclusively a State subject.

Dr. Katju: There should not be two parallel committees functioning; that is the idea of this provision.

Dr. M. M. Das: On the strength of item No. 45 of the Concurrent List, the Central Government has got the authority to set up committees of enquiry. Has it got the authority to deprive a State of this right to set up enquiry committees?

Dr. Katju: I think so.

Dr. M. M. Das: Then, I do not wish to pursue my amendment.

Shri K. C. Sodhia (Sagar): I beg to move:

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

These commissions or committees are likely to enquire into matters of great public importance and therefore instead of having one member, the findings of the commission or committee would carry greater or more weight, if there were three members on it, instead of one. Even on ordinary commissions, usually more than one member is appointed. I hope the hon. Minister will appreciate the necessity of my amendment and accept it.

Dr. Katju: This is a matter which must be left to the discretion of the Central Government or the State Government. In the past there have been commissions presided over by one High Court Judge. I refer to the commission of Mr. Justice Gangadhara. Recently another commission was appointed with one learned Judge of the High Court of Bombay. You cannot lay down hard and fast rules that every commission must have at least three persons. It all depends upon the circumstances of each case. The strength of the commission—whether it would consist of one, two or three—would depend upon those circumstances.

Mr. Chairman: The question is:

"In page 2, line 10, for 'one' substitute 'three'."

The motion was negatived.

Dr. M. M. Das: I have got another amendment.

Dr. Katju: It is more a matter of procedure which should be left to the commission itself.

Mr. Chairman: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4.—(Powers of Commission)

Mr. Chairman: There are two amendments, one by Mr. Chacko and the other by Shri Ram Shanker Lal.

Dr. Katju: In regard to Mr. Chacko's amendment, under the General Clauses Act the word "oath" would mean general affirmation as well. It need not, therefore, be particularised in every Bill.

Shri P. T. Chacko (Meenachil): My amendment includes "oath, affirmation or otherwise".

Dr. Katju: There is no otherwise.

Shri P. T. Chacko: There are cases where witnesses have to be examined without oath or affirmation.

Mr. Chairman: I take it Mr. Chacko does not wish to move his amendment.

The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5.—(Additional Powers of Commission)

Shri P. T. Chacko: I beg to move:

In page 3, for lines 1 to 5, substitute:

"(4) When any such offence as is described in sections 175, 178, 179, 180 or 228 of the Indian Penal Code (Act XLV of 1860) is committed in the view or presence of the Commission, the Commission after recording the facts constituting the offence and statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Act V of 1898) may forward the case to a magistrate having jurisdiction to try the same.

The magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused as if the case is one forwarded to him under section 482 of the Code of Criminal Procedure, 1898 (Act V of 1898)."

Under clause 4 the commission is vested with powers which are vested in other courts under sections 480 and 482 of the Code of Criminal Procedure. Under section 480 of the Code of Criminal Procedure a court is vested with the power to convict offenders under sections 175, 178, 179, 180 or 228 of the Indian Penal Code. They are offences, I may say, where a person refuses to sign the statement or refuses to take the oath or refuses to answer a question or when one insults the court. Under section 480 of the Code of Criminal Procedure, power is vested in a court to try such offences and convict the offender. But under section 482 of the Code of Criminal Procedure a court may transfer such a case to a magistrate who is having jurisdiction to try such an offence.

The purpose of my amendment is to restrict the power of the commission. My aim is that the commission should not be vested with the power to convict the offender then and there

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under section 480 of the Code of Criminal Procedure, mainly because I fear that many of the members of the commission may not be acquainted with the procedure or with the law of contempt and things of that sort. Under section 482 of the Code of Criminal Procedure, those cases which are committed in the view or the presence of the Commission and which come under sections—175, 178, 179, 180 or 228 of the Indian Penal Code may be transferred to a magistrate who is having jurisdiction to try the case. Then he will try the case according to law and if it is a case for punishment he can punish the offender. That is what is contemplated under section 482 of the Code of Criminal Procedure. The only purpose of my amendment is to restrict the power vested in the commission to that under section 482 of the Criminal Procedure Code and not to vest powers under section 480 of the Criminal Procedure Code in the Commission. I hope the hon. Home Minister will accept my amendment.

Dr. Katju: I am again in sympathy with the object of the amendment and I am prepared to accept it subject to certain verbal changes, because there might be some difficulty in the constitution of these offences unless there was a clear declaration in the Bill that the commission shall be deemed to be a civil court. Therefore, if the hon. Member is prepared to agree that his amendment should be inserted after the first line, namely, "The Commission shall be deemed to be a civil court"—and then his amendment will come, namely "and when any such offence...is committed, etc."—then I am prepared to accept it, because I do not want that the commission should have power to sentence anybody to imprisonment or put him to fine.

Mr. Chairman: Does the hon. Member accept the suggestion?

Shri P. T. Chacko: I am prepared to accept it like that, but there is no difficulty even otherwise.

Mr. Chairman: Then I shall put the amendment as modified.

Dr. Katju: May I just add one word, because this clause consists of two parts. One is that the commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure. That is what we are dealing with. Then the second part, from the 3rd line, says that any proceeding before the commission shall be deem-

ed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, that is giving false evidence etc. which can only be tried before a magistrate. That can remain. I therefore suggest that the amendment may be that "The Commission shall be deemed to be a civil court", then the amendment suggested by Mr. Chacko may be incorporated, and then the other three lines that "any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code" may remain. They should not be cut out. That is how the amendment should stand.

Shri P. T. Chacko: It will read like this, Sir:

"The Commission shall be deemed to be a civil court and when any such offence as is described in sections 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission after recording the facts constituting the offence and statement of the accused as provided for in the Code of Criminal Procedure, 1898, may forward the case to a magistrate having jurisdiction to try the same. The magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused as if the case is one forwarded to him under section 482 of the Code of Criminal Procedure, 1898."

Dr. Katju: You can call it (4) (a) and if you keep the last three lines that "Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code" and call it (4) (b), it will be quite clear.

Shri Venkataraman: Sir, may I suggest that this may stand over till the afternoon? Then it can be properly redrafted.

Dr. Katju: Yes, Sir.

Mr. Chairman: Clause 5 will stand over. We will turn to other clauses.

Clauses 6 to 12 were added to the Bill.

Mr. Chairman: Then we shall take up clause 5, and the amendment moved by Mr. Chacko and accepted by the hon. Home Minister.

The question is:

In page 3, for lines 1 to 5, substitute—

"(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code (Act XLV of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Act V of 1898), forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482, of the Code of Criminal Procedure, 1898.

(5) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860)."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clause 1 was added to the Bill.

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

1 P.M.

Dr. Katju: I beg to move:

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

Shri V. P. Nayar (Chirayinkil): I wish to speak something about this.

Mr. Chairman: I think it will be better if we take it up in the afternoon.

The House then adjourned till Half Past Three of the Clock.

The House re-assembled at Half Past Three of the Clock.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

Mr. Chairman: Motion moved:

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

Shri V. P. Nayar: I object to the passing of this Bill. In doing so, let it not be misunderstood by the House that I object to it for the sake of objection. Certainly not.....

I am sorry, Sir, there is nobody on the Treasury Benches.

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Mr. Chairman: The hon. Member may proceed somebody will be coming soon.

Shri V. P. Nayar: Will I be in order, Sir, in addressing the House when there is no one on the Treasury Benches?

Mr. Chairman: By the time the hon. Member proceeds, in a minute or two, they will be coming.

Shri V. P. Nayar: At this third reading stage, I want to speak on some very important points. It is very very.....

Mr. Chairman: The hon. Home Minister is in the Select Committee.

Word has been sent to him. The hon. Member may continue. The Minister will be just coming.

Shri V. P. Nayar: Sir, it should not appear that I am speaking to the House without a Government.

Shri K. K. Basu (Diamond Harbour): Let there be a temporary recess.

Shri V. P. Nayar: In the meanwhile, may I make a submission, Sir?

It was announced when the House adjourned this noon, that the House will meet again at 3-30 P.M. I feel that it is a sort of discourtesy shown to the House by the Treasury Benches that none of the Ministers has come here in time. This fact may kindly be taken serious notice of and necessary directions issued.....

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha) came in.

Shri V. P. Nayar: I feel that it is a sort of insult to the House that nobody from the Treasury Bench which consists of several Members, has cared to attend in time.

I object to this Bill. As I said before, I do not object to this Bill for the sake of objection. I am conscious that this Bill was considered in detail by the Select Committee and this morning also we have had a very detailed discussion on this matter. All the same, I feel that it is my duty to bring to the notice of the House certain very important points which unfortunately were not raised in the discussion before the Select Committee or before this House this morning.

As stated in the Statement of Objects and Reasons, we see that this Bill is primarily intended to obviate certain difficulties for setting up commissions to inquire into certain matters of public importance. In the Statement of Objects and Reasons, you will find the following sentence:

"It is felt that there should be a general law authorising Government to appoint an inquiring autho-

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rity on any matter of public importance, whenever considered necessary, or when a demand to that effect is made by the legislature and that such a law should enable the inquiring authority to exercise..... etc."

My objection is to the use of the words "whenever considered necessary". These words mean very much. They are not so simple as they appear to be. So far, there is no indication as to the possible result of inquiries made by such commissions as may be set up under this law.

The Bill can be considered only as an elaborate piece of legislative make-believe. Nothing more than that. It is nowhere made clear in this Bill what action Government would take on the decisions of these inquiry commissions. The hon. Minister said this morning that the inquiry commission is expected to decide only on facts. I see that. But what will happen to such findings of the inquiry commission? Will the Government act upon them or will the Government throw such findings into the waste paper basket? That is what I would like to know. There is no mention, not even a mere suggestion, in the whole Bill as to the course of action, mandatory or directive, which would result from the findings of the commissions. This is highly objectionable. What is then the meaning of setting up inquiry commissions? You go through an elaborate process of formal inquiry; you observe certain rigid rules promulgated under this law. In the end all this will fizzle out. There is no guarantee that the decisions of this inquiry commission will be acted upon by the Government.

We have been seeing how such laws have been working. Admittedly, there has been some legislation: *ad hoc*, my hon. friend would call it. The question is, how such legislation has been used in the inquiry into matters of public importance. It is only necessary for you kindly to look at the history of this country for the last few months. For the last two or three months, what have we seen in this country? It began from the State from which I come—Travancore-Cochin. In that remote mountain range Pasumalai, three persons were shot dead sometime back. Tens of thousands of our people raised their voices of protest in rightful indignation. What did that Government do? That Government did not pay any attention to public opinion. There were laws there also, but that Government did not do anything. Subsequently, you find.....

Mr. Chairman: Let me remind the hon. Member that this is absolutely irrelevant so far as this Bill is concerned.

Shri V. P. Nayar: I shall not speak one word irrelevant to this, Sir. I am conscious that I am speaking at the stage when we are having the third reading. I crave your indulgence to hear me patiently Sir. What I was striving to stress was the futility of such laws merely kept on the statute book without being implemented.

After Pasumalai, we have had incidents at Gorakhpur and Jodhpur and recently in the great city of Calcutta. The people of the country said that the police indulged in acts of ruthless violence, shot down defenceless people tear gassed non-violent demonstrators and lathi-charged innocent women and children.....

Mr. Chairman: I am very sorry to interrupt the hon. Member. So far as this Bill is concerned, it does not deal with any matters that have already happened. It is only a Bill which envisages the appointment of certain inquiry commissions, their reports, etc. It has got nothing to do with past events in which such inquiry was instituted.

Shri V. P. Nayar: I should be still more sorry that I may have to stress this point again Sir. I am pointing out to the House how useless it is to have such legislation when there is a condition that the whole purpose of this legislation is to institute inquiries upon matters of importance when Government consider it necessary. It is about that that I am saying.....

Mr. Chairman: I am sorry to interrupt the hon. Member again. The hon. Member must realise that this is the third reading stage. He can only oppose or support the Bill. Now, he cannot say that this thing is not there or that thing is not there. The hon. Member was there and he ought to have sent in amendments and seen them carried through. He cannot now go in to all those details of the Bill.

Shri V. P. Nayar: May I request you, Sir, to hear me for a minute? What I was striving to point out to you was this: that there is no purpose in having a law like this solely depending upon a decision of Government to institute an enquiry. Either it is for the Government to decide whether a matter would justify a public enquiry, or in the alternative there must be a resolution of the legislature. I am not

touching the second. I am only speaking about the first. That is why I said that we have seen many incidents. I do not go back to Pasumalai, but I go to a very near place comparatively, that is, Gorakhpur. At Gorakhpur and at Calcutta...

Mr. Chairman: It is not a question of distance of the place. The question is about relevancy.

Shri V. P. Nayar: In all these places you found that the whole people, all sections of public opinion, raised their voice in indignation, and it was not acted upon by Government. Government did not consider such situations necessary for.....

Mr. Chairman: I do not want to interrupt the hon. Member, but I have warned him several times that here those events are not in dispute, and that the only question he is discussing is whether in a certain contingency it is the Government alone who can institute an enquiry or the House should pass a resolution. He wants to make a point that these two alternatives are not sufficient to meet the situation in the country. Is it his point that another body should be authorised to have such a committee appointed? But to refer to certain events in which an enquiry committee has not been instituted is, to my mind, absolutely irrelevant.

Shri V. P. Nayar: As I find that the Chair is almost insistent, I will not refer to such incidents. I ask your pardon, Sir, for saying this. But, Sir, we find Government has not acted properly in deciding whether a matter is of public importance or not. It is always found that Government has justified the acts of its executive officers. It is precisely for that that this Bill is introduced. You do not find in this Bill a single word for an enquiry to be conducted by a non-official. It is always a Government official who will be appointed to this. We know that in several cases after a firing incident, the district magistrate in whose area and under whose very nose a firing incident takes place, makes a sort of enquiry and reports to Government. It will be a mere white washing of.....

Shri Venkataraman: On a point of order, Sir. How is this relevant to the Bill relating to the commissions of inquiry. The hon. Member has repeatedly referred to Gorakhpur and other incidents over and over again, and I want the Chair to give a ruling.

Mr. Chairman: There is no point of order. He has himself admitted that he is not going to refer to these incidents. He will not refer to such incidents. I have already said that it is irrelevant.

Shri Venkataraman: But he again does.

Shri V. P. Nayar: I also know the law of evidence, Sir, and I know what is relevancy. I had been and still am confining myself to relevant matters.

Shri Venkataraman: There is no proof of it here.

Mr. Chairman: Order, order. Let him proceed.

Shri V. P. Nayar: In such matters where on the one side you find executive officers of Government, and on the other there are the people; each side using violence, resulting in injuries to both the parties, what is the decision which Government takes in such a situation? Does Government think that the matter is of public importance, and there should be an enquiry? No. Never has it thought so. That is why I am pointing out that the only possibility is of misusing this law. It is on this ground that I object to this sort of legislation.

Mr. Chairman: I am very sorry to interfere so often, but there is absolutely nothing in this Bill which makes it obligatory on the part of Government to appoint officials only. Also there is nothing in it which has any connection with shooting or trial of armed strength on both sides, etc. I would request the hon. Member to come to the actual Bill and give his reasons why he is opposed to it or supports it.

Shri V. P. Nayar: If there was one word said about the possibility of such an impartial enquiry, in cases in which Government use their armed strength, I would not have said anything. I listened, with the utmost interest, to what the hon. Home Minister said. He did not even touch the aspect upon which I am objecting to the passing of this Bill. It is not the form or the content of the Bill in general, which I object to, but I object to this Bill being passed, because this legislation is primarily intended to be used upon the decision of Governments which resort very often to the use of armed force. Imagine such a case as I pointed out just now. There is the general law of evidence. Is it open for the people who have been tortured to go to the courts? But just imagine another case where the executive officers of the State are not involved, say an affray between two sections of the people. Then the State Police drag both parties together to the court, and there they stand trial. You know, Sir, in such matters the courts of justice weigh the entire evidence. The right of private defence is also recognised there. What

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is the right of private defence to a person who is the victim of the use of force by the police?

Mr. Chairman: I am very sorry the hon. Member is straying away out of the scope of relevancy. He is talking of private defence and other things which do not arise in this case. They have nothing to do with this Bill. I would request him to advance some other arguments.

Shri V. P. Nayar: I confess, Sir, it is not possible for me to put forth an argument and established a position with one single sentence. I have to give illustrations. I am not competent enough to drive home a point with one single sentence. I can only establish a point, making reference to some incident if necessary. I beg of you that I may be allowed to go into the.....

Mr. Chairman: The hon. Member has already made the point that the Government always appoints these commissions of inquiry with a set purpose. That is all that the hon. Member has to say. He need not illustrate the point with reference to any incident.

Shri V. P. Nayar: What I said was that in such cases the general law of the land is of no help to the unfortunate victim. The general law of the land does not expect a man who himself is the aggressor to modulate his defence step by step in all cases. He may have exceeded the right of private defence, but even then there is protection. What I submit is that as the law stands at present, there is ample protection to a person, but not so in cases whenever his aggressor is a police man. Even if you have this law passed, there is going to be no material change in the position of the people because it is always the case that the matter will be sent up for enquiry by a commission only when Government decide or when the House passes a resolution.

Does it mean that if neither Government takes a decision nor this House passes a resolution about a matter of public importance, such matter is not one of public importance? We all know that the best judges about "public importance" will be the public around the place where an incident takes place and not a set of people to whom we know there is only second hand information. "Republic" without its "pub" is only a relic. I am not going to say anything more on this.

We have seen much in the past four years in this country. (*Interruptions*)

I am coming to the point. There are such a large number of blackmarketeers. Every hon. Member knows that. And we have several laws in force to bring them to book. But what is the state of blackmarketing today? It has passed from the epidemic stage and is now in the endemic stage. I am reminded of a verse which I heard from the hon. Member, Shri Harindranath Chattopadhyaya the other day.....

Mr. Chairman: The hon. Member has come from firing to blackmarketing. He should give arguments in support or against this Bill. He is referring to all matters which are outside the scope of the Bill. Blackmarketing has nothing to do with this Bill.

Shri V. P. Nayar: As I said before, Sir, I am drawing an illustration to show how this Bill will only be a piece of legislative "make-believe." It will not serve the real purpose which it is supposed to serve.

Mr. Chairman: That point the hon. Member has already made.

Shri V. P. Nayar: I wanted only to convince the House by reference to a certain illustration that having a law on the statute book or in the shelf of some library will not help the people. The important point is that it will defeat the very purpose of legislation. Take for instance the law relating to usury. You find that in spite of it, the moneylender is sucking the lifeblood of the debtors, through the system of private compound interests and so on. The question is not really one of lack of proper legislation, but the lack of the proper machinery by which we can enforce these laws and put them into effect. So long as we do not have such a machinery, there is no purpose in this legislation.

I am very sorry to say that this point has not been considered by the Select Committee or thereafter by this House, although we have had a very lengthy discussion on the Bill. We do not bring forward legislation for the sake of legislation. We have to legislate with the sole object of putting the laws into effect. But recent history shows that such a thing does not obtain in practice. It shows that the laws are more observed by their breach than by their observance. What then is the purpose of legislation like this?

Mr. Chairman: The hon. Member has repeated this argument several times, and I would request him not to reiterate this again.

Shri V. P. Nayar: I am an humble lawyer, sometimes apt to indulge in

slight repetitions in a desire to take others along the correct path. I request I may be pardoned if there has been any repetition. Now, Sir, my submission is that this House should take a very serious view about the impossibility of putting this law into effect. From several instances in recent history, we know that with the machinery which is now in the possession of Government, it will not be possible to put this law into effect. Even after six months or one year you will still find that in spite of the fact that this legislation is there, the same condition will still be prevailing. In spite of the fact that the hon. Home Minister has considered it fit to have a general legislation instead of existing *ad hoc* legislation, you will find that things will only be in the same condition as they are now.

One of the two causes of such inquiries as has been stated in the Statement of Objects and Reasons, will be a decision taken by the Government regarding the public importance of a case. But my submission is that Government will never take a decision consistent with the opinion of the public. It has never done so, all this time. That is why I object to the Bill.

Dr. Katju: The hon. Member who has just spoken will forgive me if I say that I really have nothing to say. I have spoken twice or thrice on this Bill which speaks for itself. I therefore, beg that the Bill, as amended, be passed.

Mr. Chairman: The question is:

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

The motion was adopted.

PREVENTION OF CORRUPTION (SECOND AMENDMENT) BILL

Mr. Chairman: The House will now proceed with the further consideration of the motion for consideration of the Bill further to amend the Prevention of Corruption Act, 1947. Two hon. Members have already spoken on this. If any other Member is desirous of speaking, he may have his chance now.

Shri P. T. Chacko (Meenachil): According to me, this Bill practically defeats the purpose of this legislation itself. I wish to draw the particular attention of the hon. Home Minister to one or two specific things. While moving for the consideration of the Criminal Law Amendment Bill, the hon. Minister classified the bribe givers into two categories. He said there are of course victims from whom money is

extorted by the officers and there are also seducers who actually seduce the officers and impose a bribe on them. He was very sympathetic when he spoke last as regards those victims from whom bribes are extorted by the officers. He also said that the Tek Chand Committee also sympathises with those class of bribe givers who are actually the victims from whom extortion of money is made. This Bill makes not only no difference between the two classes, but it penalises both classes.

I may be permitted to explain a little further. Clause 3 of the Bill reads:

"... the following sub-sections shall be inserted, namely:

'(2) Where in any trial of an offence punishable under section 165A of the Indian Penal Code Act (XLV of 1860), it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 161 of the Indian Penal Code or, as the case may be, without consideration or for a consideration which he knows to be inadequate.'

Therefore, if it is proved in any trial of a case under section 165A of the Indian Penal Code, that a person gave or attempted to give any gratification or valuable thing without consideration to an officer, it is to be presumed by the court that the intention was present to bribe the officer.

This question of making a distinction between those bribe givers who are really the victims of those who take the bribe, and those who are seducers was actually considered even by the authors of the Indian Penal Code. This is what they say in their note on the draft Indian Penal Code:

"In all states of society, the receiving of a bribe is a bad action and may properly be made punishable. But whether the giving of a bribe ought or ought not to be punished is a question which does not admit of a short and general answer. There are countries in which the giver of a bribe ought to be more severely punished than the receiver. The giver is generally the tempter, the receiver is the tempted. The giver is generally rich, powerful, well-educated,—the receiver needy and ignorant.