

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.

[Shri P. T. Chacko]

The giver is under no apprehension of suffering any injury if he refuses to give. It is not by fear but by ambition that he is generally induced to part with his money. Such a person is a proper subject of punishment. But there are countries where the case is widely different—where men give bribes to magistrates from exactly the same feeling which leads them to give purses to robbers, or to pay ransom to pirates—where men give bribes, because no man can without a bribe obtain common justice. In such countries we think that the giving of bribes is not a proper subject of punishment. It would be absurd in such a state of society to reproach the giver of a bribe with corrupting the virtue of public servants as it would be to say that the traveller who delivers his money when a pistol is held to his breast corrupts the virtue of the highway man."

4 P.M.

My point is merely to show that this question was actually considered by the authors of the penal code. They made a distinction between the two classes. Where the bribe giver is actually a victim of extortion, they made it clear that they never wanted to punish the victim. In other cases where the bribe giver is actually a seducer, they have provided for punishment under the Penal Code. I am referring to sections 116 and 109 where abetment of offences also is made punishable; under these sections, whether the offence is committed or not, the abetment of offence is punishable under sections 161 and 165 of the Penal Code, the giving of illegal gratification or any valuable thing without any consideration or without a proper consideration, is punishable. Under sections 116, and 109 read with sections 161 and 165, the authors of the code provided punishment for the seducers. The distinction they wanted to make is clearly made in the Penal Code in an indirect way because an abetment under section 116 or 109 is punishable only when the intention is present. An abetment can be only in three ways: either by instigation or by aid or by conspiracy. Supposing, I offer Rs. 100 to a public servant, actually I never wanted any reward for that. I actually paid this Rs. 100 simply because of the oppression of the public servant. It is a case where the money, Rs. 100, is actually extorted from me, and here I will not be punishable under the Penal Code as it is, because the intention is not present.

It cannot be said that I was instigating the officer to accept a bribe or to obtain a bribe from me. Thus the victim cannot be punished. Only in cases where the intention can be proved or, in other words, only in cases where the giver of a bribe instigates or aids or only where there is a conspiracy he can be punished. The gist of a conspiracy or instigation or aid, I need not again say, is the intention of the person concerned. So according to the Indian Penal Code, the seducer—as named by our hon. Minister—and the victim are differentiated and under sections 116 and 109 of the Penal Code only the seducer can be punished because only in such cases the intention is present and that intention, as in the case of any other criminal prosecution, has to be proved beyond the shadow of a doubt by the prosecution itself.

Now under the Criminal Law (Amendment) Act which we passed a few days back, the abetment of bribery itself is made a substantive offence. Of course, there is not much difference, because under the existing law, the Penal Code, an abettor is punishable under section 116 or under section 109 read with section 161 or 165. The same thing is there in the new section 165A. Now, if we pass this clause also, my submission is that the distinction that was nicely made in the Penal Code will vanish. There will not be hereafter any difference between the seducer and the victim. Even if an officer extorts money from me, even if I never wanted any reward for what I paid, even if I never had any intention of paying a bribe, I can be punished if clause 3 of this Bill becomes law, because it is herein stated that the intention may be presumed. Whenever a gratification is given to an officer it may be presumed that it was given as a reward, or as a motive, which has to be proved in a prosecution for an offence under section 165 now. The fact that a valuable thing was paid without consideration or for a consideration which was known to be inadequate which ought to be proved by the prosecution, may also be presumed under this clause. That means the intention need not be proved and so the distinction vanishes as soon as this becomes law. Hereafter bribe giving is punishable not only when it is an abetment of offences under section 161 or 165 of the Penal Code by instigation or aid or conspiracy, but even otherwise. It is almost an amendment of the law of abetment itself, because the prosecution need only prove in this case that I have passed money, I have given something; that alone is necessary. The essential thing that ought to be

proved by the prosecution, my intention according to the Penal Code, that I was instigating or I was corrupting the virtue of a public servant, need not hereafter be proved. Therefore, the difference between these two classes of bribe givers will vanish by passing this Bill. My submission is—if my interpretation is correct—I think it is correct—if this distinction will go away and if every victim of an offence under section 161 or 165 can be punished under section 165A, the purpose of the legislation itself will be defeated, because to my own knowledge, whenever any action is taken against an officer for accepting a bribe or for obtaining a bribe or for attempting to obtain a bribe, the evidence always comes from the person who actually offered the bribe or who was coerced to offer the bribe. In other cases it is not possible to get any other direct evidence. We may get some circumstantial evidence alone, and in most cases when prosecution is launched, we find that the case is finally thrown out for want of evidence unless the bribe givers evidence is accepted. Under section 165A it has already been made a substantive offence. But even now as the law stands, my submission is that by the fact that a particular person has offered a gratification or a valuable thing to a person, he does not become, by virtue of that alone, an offender. Now if this is passed, if the presumption regarding motive is to be made in such cases, he can be punished and the burden is upon him to prove that he is innocent. So my submission is by taking away that distinction between the seducer and the victim, we are closing the source from which we used to get evidence. Hereafter no person will confess that he has offered a bribe or given a bribe because if he has given a bribe, he can be punished even where he was only a victim. He has to prove that the intention was not present. And it is very difficult in most cases. So my submission is, if this Bill is passed, this will only help those corrupt public servants and nobody else. This will not improve the position even to a small extent because this section will only protect those corrupt officers who take bribe because he who has given the bribe, the victim, will never give it out. Because if he gives it out, the entire burden comes upon him. Therefore, my submission is that by passing this clause 3, the entire purpose of legislation will be defeated. So I suggest that this aspect of the question may be considered by the Home Minister. This was considered by the authors of the Indian Penal Code and they made it impossible to punish a victim. Even now the Home Minister is very much in sympathy with those

victims and the Tek Chand Committee also—as evidenced from their report—were in great sympathy with those poor victims from whom bribes are actually extorted. So it is your duty that they should be protected. Only persons who deliberately offer bribes, only in cases where the intention is present, only in cases of instigation or conspiracy should, I submit, the bribe givers be punished and that can be done under the new section 165A.

So my submission is that this aspect of clause 3 must be considered. I would request the hon. Home Minister to consider this: because there is a chance of defeating the purpose of the legislation itself. This clause may be deleted.

Shri A. K. Basu (North Bengal): Clause 3 of the Bill creates a presumption of guilt against the accused and it throws on the accused the burden of rebutting that presumption. According to the principles of British jurisprudence, when a statute creates a presumption of guilt against the accused and there is the burden of rebutting the presumption on him, the onus on the accused is not as onerous, the measure of the burden is not as heavy, as that which lies on the prosecution for proving the guilt of the accused person; the prosecution has to prove the guilt of an accused person beyond all reasonable doubt. But when that onus is placed on the accused he has only to satisfy the court of the probability of that which he is called upon to establish.

These are the principles which cannot be forgotten when you are in this case copying the principles or, in fact, the actual words of the Prevention of Corruption Act of 1916, the English Act. That Act *inter alia* says:

“When in any proceedings against any person for an offence under the Prevention of corruption Act of 1906 . . .”,

—the Prevention of Corruption Act of 1906 creates offences similar to those under sections 165 and 160 of the Indian Penal Code—

“ . . . it is proved that any consideration has been given to a person in the employ of a Government Department by a person holding a contract from the Government Department, the consideration shall be deemed to have been given corruptly as such inducement or reward as is mentioned in the Act unless the contrary is proved.”

You will note the similarity of language, in fact, the sameness of language. It creates the same kind of presumption under the same kind of circumstances and it throws the burden

[Shri A. K. Basu]

on the accused by the words "until the contrary is proved". Therefore, you will see that section 2 of the English Act of Prevention of Corruption of 1916 is almost in identical terms with clause 3 of the Bill, and also, of course, with section 4 of the parent Act, Act II of 1947. In a case under section 2, *Cs. Carr-Briant—All-England Law Reports, 1943, Vol. III, page 156*—the Judge directed the jury—and that was held to be a misdirection—that accused has to discharge the burden of proof to the contrary, that the accused has to prove that the consideration was not given with any corrupt motive. The Judge further went on to say that he has not only to prove this but he has to prove this beyond all reasonable doubt. He asked the jury, "Are you satisfied that it has been proved beyond all reasonable doubt? If you are not satisfied, find the accused guilty." This was considered by the court of appeal to be a misdirection. The court of appeal held that burden on the accused is not as heavy as that which lies on the prosecution to prove the guilt of an accused person beyond reasonable doubt. The onus for rebutting the presumption is discharged when the accused has satisfied the jury with regard to the probability of that which he is called upon to establish.

This case follows the very well-known case decided by the House of Lords, Chancellor Lord Sankey presiding, reported in *Law Journal, 104, King's Bench, page 433, of Woolmington vs. Director of public Prosecution*. In this case Woolmington was tried on a charge of murder. Prosecution proved the killing of the wife of Woolmington by him of gun shot. Woolmington took the defence of accident and he gave evidence. On that the Judge charged the jury—and that was held to be a misdirection by the House of Lords—that, "If you are satisfied beyond reasonable doubt that Woolmington has killed his wife then on his plea of accident he will have to satisfy you that it was accident, and that beyond all reasonable doubt." Now this was held by the House of Lords to be a misdirection and the classic words of Lord Sankey, Lord Chancellor, I would ask for your indulgence to read out to you. The trial Judge told the jury, "If the killing has been proved beyond reasonable doubt the accused must satisfy the jury that it was an accident." Lord Chancellor Lord Sankey said:

"Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case he is entitled to the benefit of the doubt, but while the prosecution

must prove the guilt of the prisoner there is no such burden laid on the prisoner to prove his innocence and it is insufficient for him to raise a doubt as to his guilt. He is not bound to satisfy the jury of his innocence. No matter what the charge or where the trial, the principle that prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

This is the settled law of England and this has been followed, as I have said earlier, in *Carr-Briant's case*. There is a conflict of decisions in Indian courts as to whether the English law on this subject is good in this country. There has been conflict between two Judges of the same Court—of the Calcutta High Court—and between seven Judges of the Full Bench of Allahabad, four on one side and three on the other. Like that there has been conflict all over. I shall place some of these decisions before you in short for the purpose of persuading the hon. Home Minister that when he is enacting a provision in our statute book following, and copying in fact, the provisions of an English Act, the procedure of British jurisprudence should also be incorporated in that section.

Mr. Chairman: I have heard the hon. Member at great length in regard to the principles that he wants to propound. He is probably anxious to support his amendment which appears on the agenda paper. At this stage, we are considering only the motion for consideration. This is not the proper time for supporting his amendment. He will have another occasion when he can put forward those arguments. At the present moment, if he has anything to say about the principles of the Bill, only that will be relevant. Let him therefore restrict himself to the principles underlying the Bill.

Shri A. K. Basu: I do not propose to move my amendment. I will abandon it. It is, for that reason that at this stage I am trying to place before the Home Minister some of the circumstances, which he might consider when formulating the Bill.

Mr. Chairman: If he does not intend moving his amendment, I cannot see how his speech will be relevant. He has propounded the doctrine of the benefit of doubt and explained that the benefit of the doubt must be given to the accused at all stages and when there is even a legal presumption against him, the onus of proof must still be with the prosecution. We are at this

stage concerned with the principles of the Bill. We cannot go into the question of defence and content of onus, and as he is not moving his amendment I cannot see the relevancy of his speech.

Shri A. K. Basu: You know the reason for my not intending to move my amendment. Let me not enlarge on that. At this stage, I thought it would be relevant to point out that the Bill is not properly framed and that certain modifications should be effected in it.

Mr. Chairman: I do not want to cut down his speech but he will get another opportunity to explain these points more appropriately. In view of his statement that he does not intend to move his amendment, he may not get that opportunity. So, let him avail of it now, but he should be brief.

Shri A. K. Basu: Very well, Sir. In a case in Calcutta. . . .

Dr. Katju: On a point of order, Sir. May I mention that we are considering an amending Bill. The parent Act stands as it is. Under section 4 of the parent Act, it is a definite rule that if the bribe is of much greater value, then the presumption shall be made that it was being offered as an illegal gratification. Unless the contrary is proved that he did not accept it as an illegal gratification, that shall be the presumption. That section so far as the bribe taker is concerned is not before the House at all. What this amending Bill seeks to do is to extend that particular privilege to the bribe giver also. My learned friend's arguments apply so far as the British jurisprudence or principle of law is concerned both to the bribe taker and the bribe giver. It is really a matter for separate consideration whether we should not amend the parent Act also in accordance with his views.

Mr. Chairman: That is exactly what I was considering. He wants to expatiate on the words "Unless the contrary is proved". But since he has practically finished, I would ask him to conclude in two or three minutes.

Shri A. K. Basu: I will not go into details. I would only say that there is a conflict of decisions between different Judges of the same court and between different Judges of different courts. When you are copying the British enactment of Prevention of Corruption Act, 1916, you should incorporate in your amendment the principles of British jurisprudence also. Not to do that would mean that people would be convicted in a large number of cases on suspicion and that

would be a flagrant violation of the principles of natural justice. I am sure the hon. the Home Minister who is an eminent jurist would not be a party to such a thing. There is no doubt much corruption among public servants these days, but to enact a procedure which is wrong on principle might do more mischief than good. Many of the public servants are honest. They would be worrying from day to day about the harassment because of suspicion and likely prosecution. It is only the dishonest public servants who would not worry. It would not be worth the while of the honest public servant to serve the Government and be under suspicion all the time and run the risk of prosecution all the time. But it would be certainly worth the risk of dishonest public servants to do so. The result would be that in course of time the Government would be left with only dishonest public servants to carry on. That is my fear.

I put an unstarred question to the hon. the Home Minister and his answer to it is very important in this connection. During the calendar years 1947—52 the cases against gazetted officers sent up for trial numbered 118. Number of cases pending in trial courts was 21. Number of cases which resulted in conviction was 37. Number of acquittals was 52. Number of cases in which prosecution was withdrawn was six. Number of cases in which accused absconded was two. Thus, out of 118 prosecutions of public servants, only about 37 convictions took place. I do submit that prosecutions against public servants must be launched with much more care than that. How could you prosecute 118 people without justification. The hon. Minister should see to it that these prosecutions are not launched without due enquiry, not merely on the opinion of the Inspector-General of Police or of the law officers of the Special Police Establishment, but the opinion of Government's lawyers should be obtained in every case before such prosecutions are launched. There are many public servants who, as I have said, are loyal and deserve these safeguards in the hands of their employer, the Home Minister.

Shri Venkataraman (Tanjore): This is a Bill which is consequential in its nature. After we passed the Criminal Law amendment creating the offence of bribe giving as one of the offences under the Penal Code with a specific section 165A, it has become necessary to bring the burden of proof in regard to convictions in respect of those offences on a par with that of offences of bribe taking. In the parent Act, namely, the Prevention of Corruption Act, 1947, provision has been

[Shri Venkataraman]

made for conviction of persons who take bribes and there the ordinary rule of law that a person should be proved to be guilty is modified to a small extent to throw the onus or burden on the other side where circumstances tend to show that there is a chance of corrupt practices having prevailed on that occasion.

It is not as if that a person is merely charged and brought before the court and immediately he is asked to give due proof that he is not guilty of corruption. On the contrary circumstantial evidence is let in and then certain positive proofs are brought forward on the strength of which only the presumption is shifted from the prosecution to the accused. Even in civil cases we know occasions where the burden of proof is shifted from one party to the other. If my hon. friends will read a little more carefully they will find that it is not as if that a person on mere charge is called upon to prove that he is not guilty. On the contrary the evidence that has got to be let in and to be proved is that any gratification or valuable thing has been given or offered. Therefore the first thing that a prosecution has got to establish before the burden shifts to the accused is to show that some gratification was offered and that gratification or that valuable thing may or may not be of very great value, but nevertheless if it was established that some article of value or something of value has been offered to the person concerned, then the burden shifts to him to show that he is not guilty of the offence. If we do not pass this Bill as law, the result would be we would be making a distinction between the bribe giver and the bribe taker, so far as the burden of proof is concerned. In the case of the bribe taker the presumption would apply to him and he would be called upon to defend that he is not guilty of taking bribes, while in the case of the bribe giver the ordinary law that the accused must be proved to be guilty beyond reasonable doubt would prevail. I do not know whether that would be what we all seek for, namely equality before law.

My hon. friend Mr. Chacko referred to the ancient history of Indian Penal Code and said that in those days they made a distinction between the bribe giver and the bribe taker. Possibly the framers of the Penal Code had some idea of the sort of persons whom they were engaging to control and govern the country which was not theirs. They knew probably that the officers whom they were employing would necessarily extract money, because people who were serving a foreign adminis-

tration could not be expected to be so kind and sympathetic to the people of the country. That is why I think the law as it was then framed showed a concession to those who tended to offer bribes.

Shri P. T. Chacko: The same thing continues even now.

Shri Venkataraman: I beg to differ. I pride myself that my country has improved wonderfully and very well. I say categorically that today the officers of our Government do not extract any money from our people and if there is any corruption at all, it is because people who want to get the benefits go and tempt the officers and corrupt their morals. I am in entire sympathy with the amendment to section 165A and I support it wholeheartedly because there is no longer any need or necessity for making a distinction between the bribe giver and the bribe taker in the modern context.

All of us complain that bribery and corruption are rampant. But when it comes to a matter of punishing the culprits, we change our ground. We start shouting: "Hang the black-marketeer, hang the bribe giver and the bribe taker." But immediately Government takes some extra authority that in a case of this kind where a *prima facie* case is established, the burden will be shifted to the other side, then we begin saying that this violates the fundamental principles. This is in accord with and in tune with the conditions prevalent and ought to be passed by this House.

There is one point about which I am in doubt. My hon. friend Mr. Basu said that in this case, the benefit of doubt will not be available to the accused. That startled me. I do not know of any case in India decided in which they have interpreted this particular clause, either in the 1947 parent Act or in any other analogous legislation—wherein the burden has been shifted to the accused—that the benefit of doubt will not be applied to him. The benefit of doubt is a privilege which, unless the statute takes away from the accused, will always be available to the accused person. The court will always be entitled to say that notwithstanding the presumption cast on the accused if the court is not satisfied on the evidence placed before it that the burden of onus has not been sufficiently established beyond reasonable doubt then the benefit of doubt will certainly go to the accused. I was, therefore, taken by surprise at Mr. Basu's argument. I should have liked to go into the decisions in this matter.....

Shri A. K. Basu: I was aware of the decisions, but you, Sir, said that I should be brief. I can give my hon. friend the decision straightway—*Emperor vs. Prabhu, Allahabad Full Bench, Chief Justice Iqbal Ahmed presiding.*

Mr. Chairman: I do not want to interrupt the hon. Member. But from memory I can quote 41 Allahabad 402 where the contrary principle has been accepted.

Shri A. K. Basu: That is why I said there has been conflict of decisions.

Mr. Chairman: Every High Court has accepted the principle that the onus never changes. It always rests on the prosecution. If the accused has to prove to the contrary, the accused has to prove that the original proposition is doubtful and an alternative theory is possible and will be entitled to the benefit of doubt.

Shri A. K. Basu: That undoubtedly is the English practice, but it has not been followed in this country.

Mr. Chairman: It is a principle recognised by all the High Courts—at any rate I can speak of Allahabad and Punjab High Courts. But we need not enter into a discussion of it, because it is not germane to the subject.

Shri Venkataraman: I was only trying to show this paramount principle, namely the benefit of doubt is available to the accused person and is not taken away and cannot be taken away unless the statute itself does it. No statute anywhere has stated, so far as I know that the principle of benefit of doubt is taken away and that the courts no longer have any authority to exercise that right of acquitting the accused person on that principle. The language as it stands in this clause that unless the contrary is proved the accused will be presumed to be guilty does not in my opinion take away the right of the courts to declare an accused person acquitted purely on the ground that the accused has the benefit of doubt and the guilt has not been established beyond doubt. Therefore, I submit that this Bill is only a corollary to the other Bill which we have passed and has got to be supported.

Shri U. M. Trivedi (Chittor): We have heard the hon. Member learned in law discoursing on this subject very well. But speaking as a layman I find this difficulty, and most of us who have at one time or other to deal with bribe takers have this great difficulty, that this section 165A will not serve the purpose for which it is meant.

Mr. Chairman: The hon. Member will remember that we have already passed the Bills enacting section 165A as an offence and the House is committed to the principle in respect of section 165A.

Shri U. M. Trivedi: I am talking of amendment of section 4 in clause 3 of the Bill. I am only talking of the principle of this, and only on this ground that instead of making a law and making a provision to the effect that at least for some time to come he will be afforded some protection we are making this provision that the bribe giver will also be penalised. Everybody hates a bribe giver as much as a bribe taker. There is no doubt about it. But the present position of law is this that somehow or other every man who has some business to do, who has some dealings with Government officials, is forced into giving bribes. He gives bribes and takes advantage of it, but he hates the idea of giving bribes. (*Dr. Katju: Question.*) He will welcome it if there is a provision to protect him rather than that his neck also should be put into it. If you gave him some protection and allowed him saying "although you may give a bribe, we will pardon you, or not prosecute you, or at least we will hold the prosecution or keep it in abeyance for two years", you will find ten thousand cases coming every year against Government servants. I do not know how my learned friend Mr. Venkataraman went on suggesting that all Government officers were very honest. On the other hand we see day after day that corruption is growing. It is growing in such a manner that where you did not find it previously corruption has started setting in.

We are embodying this clause in the amendment of section 4 in the manner provided here in clause 3. And we are saying that anybody who is a bribe giver will also have this presumption against him. This sort of threatening the bribe giver and trying to shut up his mouth is putting a premium on the bribe taker. He is the only principal witness who will be available to us in the sense that he would be an eye witness of the transaction which he himself has conducted.

Dr. Katju: May I know, Sir whether this is in order? Section 165A has actually been enacted, and my hon. friend is discussing the point that bribe givers ought to be protected.

Shri U. M. Trivedi: Am I to understand then that this amendment of section 4 as embodied in clause 3 of the Bill is redundant and a superfluity?

Mr. Chairman: May I suggest to the hon. Member that when we change the law and make the bribe giver also accountable for his offence or conduct, then it follows that as in the case of the bribe taker the presumption is there if any illegal gratification passes, similarly it is logical that the presumption should also be there in the case of bribe giver. A new offence is not being made. Only the presumption is raised, as in the case of the bribe taker.

Shri U. M. Trivedi: I am also talking of the presumption. The law has been very nicely analysed by Mr. Basu as to what the presumption should be and what should be followed in the case of perjury or certain things. But what I mean to suggest is this that the moment there is a question of gratification being given, the presumption that we want to embody by this provision is such that for all practical purposes we are shutting out any evidence that can be forthcoming against a bribe taker. In other words we are giving a premium to the bribe taker.

Mr. Chairman: That is done by the enactment of the provision under section 165A. The result is the bribe giver also becomes guilty—not by this logical extension of the principle. That is the point of the Home Minister.

Shri U. M. Trivedi: He means to say that the provision under section 165A having been enacted, this is redundant.

Mr. Chairman: He did not say that. In that case the Bill would not be brought up.

Shri U. M. Trivedi: That is what I say. Since the Bill has come up, have we not got a right to say that it is bad? I did not know that section 165A would be so bad as the principle.....

Mr. Chairman: But the House is committed to the principle.

Shri U. M. Trivedi: If the House is committed to the presumption also, I have nothing to say.

Mr. Chairman: I am only pointing out how we are committed so far as Section 165A is concerned, because the House has passed that Bill.

Shri U. M. Trivedi: With respect to that section 165A we are providing here:

“Where in any trial of an offence punishable under section 165A of the Indian Penal Code, it is proved that any gratification (other than legal remuneration)—the word used first is ‘gratification’, it is not defined—‘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 beetc.”

When we say all these things, how will any evidence be available against a bribe taker? The moment this thing is there, any iota of evidence that can be forthcoming from a bribe giver—or anybody—will be absolutely shut out. So what I say is: why raise this further bogey against the bribe giver? He might have given it for anything. Do not try to make him an accused. Let him say that he has given it. Let it be said that it was given for a particular object and that it was achieved by this. Do not put a rope round his neck and say: “The moment you utter these words that you have given this gratification—and do not call it ‘gratification’—the moment you give this, you become an accused person by the very process of your giving”. This will deprive us of any evidence that will be forthcoming against the bribe takers. That is the only thing I want to point out.

Another thing to which I wish to draw attention is this. We are inserting a new section, section 5A. The previous section 5(4) provides that “a police officer below the rank of Deputy Superintendent of Police shall not investigate any offence punishable under sub-section (2) without the order of a Magistrate of the first class or make any arrest therefor without a warrant”. Now we are suggesting something more in regard to investigation into “cases under this Act.” We are saying:

“Notwithstanding anything contained in the Code of Criminal Procedure, no police officer below the rank, in the presidency towns of Madras and Calcutta, of an assistant commissioner of police, in the presidency town of Bombay, of a superintendent of police, and elsewhere, of a deputy superintendent of police, shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under sub-section (2) of section 5 of this Act, without the order of a presidency magistrate or a magistrate of the first-class, as the case may be, or make any arrest therefor without a warrant.”

What happens in actual practice is this that a sub-inspector or inspector investigates the cases. We have got

no such provision to give any protection to anybody against whom an investigation has been conducted by a sub-inspector or an inspector of police.

There is no doubt that this is a sort of provision which says 'No'. Supposing you break this, what advantage does a person get by having his case investigated by a person who is much below the deputy superintendent of police or an inspector or a sub-inspector of police? We have absolutely no provision anywhere to suggest that such an investigation will not be taken into consideration or being of such a nature would be void or that no advantage would be taken of it. In actual practice this investigation proceeds and the judges are handicapped. They say: What can be done? Investigation is investigation and let it go on. I would therefore request the hon. Home Minister to look into this and make such a provision in the law as would serve a useful purpose rather than keep it on the statute book.

पंडित डी० एन० तिवारी (सारन दक्षिण) : मैं क़ानून की बारीकियों में नहीं जाना चाहता, लेकिन एक लेमैन (layman) के तरीक़े से क़ानूनों के ढरिये क्या होता है और लोग क़ानूनों के ढरिये कैसे शिकार बनाये जाते हैं उसके दो चार उदाहरण में आप के सामने रखना चाहता हूँ। हम लोगों के यहां कहावत है कि, "मर्ख़ बढ़ता गया जैसे जैसे दवा की" किसी बीमारी की दवा कीजिये और वह रोग बढ़ता ही जाये तो हम को सोचना पड़ेगा कि दवा में दोष है, या बैद्य में दोष है या और कहीं दोष है। वैसे ही हम लोग जितना जोर देते रहे कि करप्शन (corruption) बन्द करो, घसख़ोरी बन्द करो, राष्ट्रीय सरकार हो गई है, नौकराना हमारे हैं और उनको राष्ट्रीय हित की दृष्टि से सब काम करना चाहिये, उतनी ही उन में घसख़ोरी बढ़ती गयी। घस देने वाले को जबरन मजबूरी से घस देनी पड़ती है। अभी हमारे बैनकटारमन जी ने कहा कि सब राष्ट्रीय नौकर हैं और उन में घस लेने की प्रवृत्ति कम हो गयी है, मैं इसको नहीं मानता

हूँ, बल्कि बात उल्टी हो गयी है। अब वे समझते हैं कि हम सब राष्ट्रीय हो गये हैं और राष्ट्र का धन जिस तरह से भी हो हम को मिल जाये तो कोई बात नहीं। आप क़ानून बनाइये, आप क़ानून सख़्त से सख़्त बनाइये और जितनी सच्चा घूस देने वाले को देनी हो दीजिये, इस में किसी को एतराज़ नहीं है, लेकिन आप को देखना होगा कि दर असल घूस देने वाला अपने मन से घूस देता है, नफा के लिये देता है, या जबरन अपने को बचाने के लिये, अपने को झंझटों से बचाने के लिये, उसको घूस देने के लिये बाध्य किया जाता है। मैं एक उदाहरण आप को देता हूँ। बिहार में ज़िला बोर्ड्स हैं और वहां पर पक्की सड़कों पर बैलगाड़ियां चलाना मना है। जो पक्की सड़कें हैं उन पर बैलगाड़ी चलाना मना है। उस के लिये चपरासी रखे गये हैं कि वे देखें कि बैलगाड़ी न चलने पावे। लेकिन होता क्या है? जितनी बैलगाड़ियां ह, या यों कहिये कि जितने होशियार गाड़ीवान हैं, चालाक गाड़ीवान हैं, उन सब की गाड़ियां सड़क के ऊपर चलती हैं और कभी भी उन पर केस नहीं होता। जो कम बूझल वाले गाड़ीवान हैं और जो सड़क के नीचे गाड़ियां चलाते हैं उन पर केस चलते हैं और फिर बाध्य होकर उन को भी पैसा दे कर सड़क के ऊपर गाड़ी चलानी पड़ती है जिस से कि केस न चले और पसा जबरदस्ती इस प्रकार उन से लिया जाता है। इस प्रकार के केस होते हैं।

कचहरियों में क्या होता है? हमारा केस (case) है, हम को नक़ल लेनी है। उस के लिये एक दिन के ज़दले तीन दिन लगाये जाते हैं, इसलिये कि हम पैसा दे दें। तो बाध्य हो कर हम को पैसा देना पड़ता है, इसलिये नहीं कि हम को खुशी है कि हम जा कर दो चार रुपये दे दें,

(पंडित डी० एन० तिबारी)

बल्कि इसलिये कि न दें तो न काम हो और दे दें तो काम हो जाये। हम को मजबूरी से देना पड़ता है जिस से कि हम को झंझट में न डाला जाये, उस में देर न की जाये और हमारा काम सुगमता से हो जाये। इसलिये हमको बाध्य होकर घूस देनी पड़ती है। और अगर न दे तो एक दिन के काम में सात दिन लगा दिये जाते हैं अतः बाध्य हो कर रुपये दे कर हमें काम कराना पड़ता है। मुझे मालूम है कि एक बड़े अफसर, डी० आई० जी० पुलिस के रैंक के अफसर ने एक केस में चालीस हजार रुपये लेने की बात की थी। जिन से वह रुपया मांगा गया में उन्हें जानता हूं। वह मेरे यहां घबराते हुए आये और कहा कि कोई उपाय कीजिये कि यह पकड़ा जाये नहीं तो मुझे तो देना ही है। मैं नाम नहीं बताना चाहता, लेकिन मैं अपने प्राविशियल कांग्रेस कमेटी के हेड (head) के यहां गया कि साहब इस का कोई उपाय हो सकता है तो कीजिये। उन्होंने कहा कि कोई उपाय नहीं हो सकता है। उस को पकड़ने वाला कोई नहीं है।

मैं आप के सामने जो रखना चाहता हूं वह यह है कि इस कानून को बना कर छोटे छोटे लोगों को आप तग कर सकते हैं, लेकिन बड़े बड़े सेठ जो घूस देने वाले हैं, उन को कोई नहीं पकड़ सकता है। उन का घूस देने का तरीका दूसरा है। वह कभी १ ऐसे घूस देने नहीं जाते जिस में वह पकड़े जा सकें। और वह खुद जाते ही नहीं हैं, उन के नौकर जाते हैं, उन का मैनेजर जाता है और वह कोई बाहर पबलिक में घूस नहीं देते हैं। कहीं सफर में, रेल गाड़ी में कहीं हट कर या किसी तरह उन के घर पर वह चीख चली जाती है। छोटे छोटे लोग पकड़े जाते

हैं, वह कहीं अपने काम कराने के लिये अपनी जब से निकाल कर दस बीस पचास रुपये देते हैं और वह पकड़ लिये जाते हैं। उन पर केस चलते हैं। पहले दिन माननीय मंत्री ने कहा ही था कि एक रेलवे वाले ने पचीस या पचास हजार रुपये बनाये थे वेगन्स (wagons) की सप्लाई (supply) में। वह रुपये उसने इस लिये नहीं बनाये कि लोग उसे देना चाहते थे, बल्कि इसलिये बनाये कि लोगों को अपनी चीख भेजने की गरज थी और वह एक दूसरे को बिड (bid) करा कर रुपया बनाता था। उस ने एक सिलसिले से गाड़ी नहीं दी बल्कि बिड करा कर ज्यादा से ज्यादा रुपया लेने कोशिश की थी।

डा० काटजू : उस मुकद्दमें में ऐसा कोई सवाल बिड बगैरह का नहीं था।

पंडित डी० एन० तिबारी : उस मुकद्दमे में ऐसा न हो यह दूसरी बात है, लेकिन होता ऐसा ही है। वह सिलसिलेवार गाड़ी नहीं देता था बल्कि एक दूसरे को बिड करा कर ज्यादा से ज्यादा रुपया लेने की कोशिश करता। व्यापारी नहीं चाहता कि रुपया दे, लेकिन मुश्किल यह है कि नहीं दे तो उस की चीख स्टेशन पर पड़ी सड़ जाये। उन का हज़ारों का नुकसान होता है तो सौ दो सौ रुपया दे देते हैं।

जब तक आप लोगों की सुविधा की बात नहीं कीजियेगा यह घूस बन्द नहीं हो सकती। जिस महकमे में सुविधा नहीं है वहां घूस ज्यादा है। पोस्ट आफिस के महकमे में घूस क्यों अधिक नहीं चलती? क्योंकि लोगों को सुविधा है, इस वास्ते घूस नहीं चलती। जहां लोगों को असुविधा है उस असुविधा को हटाने की आप कोशिश

कीजिये । अगर उस असुविधा को हटाने की आप कोशिश नहीं करेंगे तो अगर आप चाहें कि क़ानून से घूस देना बन्द हो जाय यह असम्भव है । घूस लेने वाले मुंह चाये हुये हैं, यह हम सब जानते हैं । हां, घूस कैसे रुके, इसको अवश्य हमें सोचना है । इस सिलसिले में मैं ने कई रिपोर्टें देखीं कि कहीं ऐसी बात है कि कोई ऐसी कोशिश की गई हो कि जिस से घूस रुके, केवल क़ानून बनाने से घूस नहीं रुकती । इस बारे में कोई जांच हुई या नहीं यह हम ने देखा तो हम को दो उदाहरण मिले । एक उदाहरण मिला सन् १९०२ या १९०३ का । उस वक्त एक पुलिस कमीशन बिठाया गया था और उस में जिक्र है कि जब तक पुलिस दुस्त नहीं होती है उस वक्त तक घूस लेना देना बन्द नहीं हो सकता । यदि आपकी पुलिस दुस्त हो जाये तो सारे डिपार्टमेंट में एक दिन में घूस खोरी बन्द हो सकती है । आप का हथियार आप के हाथ पर, सब पुलिस है । जिस तरह से भी हो पुलिस डिपार्टमेंट को, एक डिपार्टमेंट को आप सुधार दें तो दूसरे डिपार्टमेंट में घूस लेना देना सब बन्द हो सकता है । कोई भी मामला हो, इनक्वायरी (enquiry) के लिये वह पुलिस के पास जाता है । चाहे छोटा अफसर हो या बड़ा अफसर यदि वह करप्ट (corrupt) है तो आप का काम नहीं चल सकता ।

फिर दूसरा उदाहरण मैं ने देखा सन् १९३८ में फ्रंटियर (frontier) में जब हमारे खां साहब वहां के चीफ़ मिनिस्टर थे तो उन्होंने एक ऐलान किया था कि जिस को भी कम्प्लेंट (complaint) करना हो, अमुक दिन को अमुक जगह आ कर कम्प्लेंट करे, पब्लिकली (publicly) और कम्प्लेंट करने वाले को यह राहत थी कि उस पर कोई मुकद्दमा न चले । लोग

जाते थे और अपनी अपनी बातें, आफ़ी शियल करप्शन (official corruption) की, पुलिस के करप्शन की, सब बातें उन को कहते थे । उस की इनक्वायरी होती थी या नहीं या क्या होता था यह मैं नहीं कह सकता । लेकिन एक तरीका उन्होंने अस्तियार किया था, करप्शन को दूर करने का । तो मैं आप से कहूंगा कि आप क़ानून बनाइये, सज़ा दो वर्ष, चार वर्ष, दस वर्ष या बीस वर्ष कर दीजिये । लेकिन हम लोगों का जो अनुभव है उस से हम यही जानते हैं कि घूस देने में बड़े बड़े आदमी मुश्किल से ही पकड़े जाते हैं और अगर पकड़े भी गये तो बीसियों इनफ्लूएन्सेज (influences) काम करते हैं जिन की वजह से मुकद्दमें चल नहीं पाते ।

5 P.M.

आप इस को क़ानून बना दीजिये, मैं उसका विरोध नहीं करता, लेकिन एक बात का अवश्य ध्यान रखना चाहिये कि आप का जो मक़सद है करप्शन रोकने का और घूसखोरी एक दम बन्द करने का वह पूरा होता है या नहीं । मैं आप को बतलाऊं कि आज सर्विसेज (services) इतनी करप्ट हो गई हैं कि वह ज़बर्दस्ती किसी न किसी प्रकार घूस लेने का प्रबन्ध कर ही लेती हैं और हम दिन पर दिन गिरते ही जा रहे हैं । और यह समझ बैठना कि हमारी सर्विसेज अच्छी होती जा रही हैं; फूल्स पैराडाइस (fools paradise) में रहना है ।

सभापति महोदय : शान्ति, शान्ति । मैं आनरेबुल मेम्बर को बीच में रोकना नहीं चाहता, लेकिन वह खुद ही फरमाते हैं कि उन्हें बिल पर कुछ नहीं कहना है । इस समय हाउस के सामने यह बिल सिलेक्ट

[सभापति महोदय]

कमेटी से वापस हो कर आया है और इस लिये सिर्फ इस बिल के ऊपर ही इस समय बहस हो सकती है। जो आम मजबून है, कि किस प्रकार से रिश्वतखोरी और करप्शन को रोका जाये, उस के ऊपर आनरेबल मेम्बर ने बहुत कुछ फरमा दिया है। अब अगर आनरेबल मेम्बर अपनी तक्ररीर को जारी रखना चाहें तो वह कृप्या इस बिल के ऊपर कुछ कहें।

पंडित डी० एन० तिबारी : मैं तो इस क़ानून को बनाने का जो असली मक़सद है उस के बारे में कह रहा था। यह क़ानून हम केवल क़ानून की किताब में रखने के लिये नहीं बना रहे हैं, इस क़ानून के बनाने का हमारा एक खास मक़सद है और वह यह है कि इस क़ानून के जरिये हमारे देश में घूसखोरी रुक जाय और रिश्वत लेना और देना दोनों बन्द हो जायें और मैं वह मक़सद कैसे सिद्ध होगा इस पर बोल रहा था।

सभापति महोदय : वह तो आप ने फ़रमा दिया, अब आप इस बिल के ऊपर फ़रमायें कि उस बिल का क्या असर है।

पंडित डी० एन० तिबारी : श्रीमान्, मैं तो एक ले मैन हूँ, कोई वकील नहीं जो मैं बिल के लीगल इम्प्लीकेशनस (legal implications) में जाऊँ और बतलाऊँ कि इस बिल पर क्या असर पड़ता है। ले मैन की हैसियत से मैं बिल की जो दफा तीन है उसी पर तो बोल रहा हूँ कि उसमें जो आपका मक़सद है वह कामयाब नहीं होगा क्योंकि जब तक आप उस धारा में यह न साफ कर दें कि जो किसी कारणवश ज़बरन घूस देता है उस पर मुकदमा न चले, तब तक उन बेचारे मामूली आदमियों को जो घूस देने पर मजबूर

होते हैं, बड़ी तकलीफ और दिक्कत का सामना करना पड़ेगा। आज हमारी सर्विसेज़ में काफी करप्शन मौजूद है, और जैसा कि कुछ लोगों की यह धारणा है कि हमारी सर्विसेज़ स्वराज्य प्राप्ति के बाद से अच्छी होती चली जा रही हैं और हमारे देश का नैतिक स्तर ऊंचा होता चला जा रहा है, मैं इस से सहमत नहीं हूँ बल्कि मेरी समझ में तो ठीक इसका उल्टा होता जा रहा है। इसलिये मुझे इस बिल के सम्बन्ध में यह कहना है और होम मिनिस्टर साहब से इतना अर्ज करना है कि वे मेहरबानी कर के इस क़ानून में ऐसा सेफगार्ड (safe-guard) रखें जिस से ऐसे गरीब लोगों की, जिन को जबरन घूस देना पड़ती है, रक्षा हो सके और वह सताये न जा सकें। बस मुझे इतना ही अर्ज करना है।

Shri U. S. Dube (Basti Distt.-North) rose—

Mr. Chairman: If the hon. Member wants to make any new points in regard to the principles of the Bill, I will certainly allow him.

Shri U. S. Dube: Sir, I want to support the principle of this Bill.

I am surprised to hear some of the speeches made in this House on the principles of this Bill. On the one hand, there is a hue and cry for stopping corruption and for rooting it out from both officials and non-officials. The very fact that the Government has to bring forward a Bill called the Prevention of Corruption Bill is clear proof that some extraordinary measures have to be taken.

Much has been said that the onus of proving the innocence or otherwise being placed on the person charged is not in keeping with the ordinary principles of law. Now, I am reminded of a similar provision in the Excise Act in U.P. When you want to stop a certain vice prevailing in the community, specific measures have to be adopted. Having accepted the principle by enacting section 165A,.....

Shri P. T. Chacko: Then, why this Bill?

Shri U. S. Dube: You have already accepted that the bribe giver is as much guilty as the bribe taker. By enacting this clause you want that the moment it is proved that a particular person has given a certain sum to an official, then, the onus is on this person to prove that the money given is for some reason other than illegal gratification. That is the principle underlying this particular provision of the Bill:

Although I submit that the remedy that is allowed in this Bill is not sufficient to root out the corruption prevalent, yet, the Government has moved, although in a half-hearted way in this matter. When you have got special evils to deal with, some special remedies have also to come in. This House should not grudge the least in giving the Government this Bill and I submit that on this account, the provisions of this Bill are highly to be commended. Of course, as my other hon. friend said, I do not take the view that Government officials have become angels. Government officials and the public, both are to be blamed in this matter. Unfortunately, throughout the length and breadth of the country, there is a stinking atmosphere. Every walk of life has become intolerable. But, in spite of all this, some measures have to be adopted. What those measures should be is a bigger question for this House to take up. The House will have to solve that bigger problem which of course involves the solution of the economic problem, which is beyond the scope of this Bill. That the House will have to take up separately if we have the interests of the country at heart.

But then this small measure which the Government wants to have in its possessions to deal with those who give bribes. A suggestion has been made that some of the people are forced to give bribes; the officers or the Government servants sometimes, in order to extort money, resort to unfair means, and sometimes it amounts to extortion. Extortion is a separate offence punishable under the Indian Penal Code and for that you cannot say that this Bill should make a provision separately. Here you take the very simple view that the bribe giver and the bribe taker, both are equally guilty, and then you have got separate provisions under the Criminal Law Amendment Act where you give pardon to those persons who come forward and say that they have given a particular sum of money, as bribe and in that way they are safe. I do not find that there is any foregoing of the principle in enacting this Bill, and therefore I support it.

117 P.S.D.

The Minister of Home Affairs and States (Dr. Katju): The object of the Bill is a very plain and a very short one. It follows the recommendation of the Bakshi Tek Chand Committee. That Committee reported that bribe-giving should be made a substantive offence. Parliament has accepted that recommendation and that has been made a substantive offence.

Now comes this question about method of proof. In the existing Prevention of Corruption Act, section 4 provides that as a piece of evidence, if you find that something has been taken, accepted by the bribe taker which is out of all proportion to the circumstances of the case, then the court shall presume that the object was an unlawful object. The same thing now must be made applicable to the bribe giver. If any bribe giver goes, let us say, with a diamond necklace to the house of a public servant getting Rs. 300 and offers that diamond necklace to him, the circumstances being that the gift was completely out of all proportion to any lawful object—no relationship, no justification—then, the court shall presume as a rule of evidence that it was intended to be given as an illegal gratification. The amending Bill only wishes to insert it.

My hon. friend whom I have learnt to greatly respect ever since I have come to know him here—I congratulate him on his great research—quoted from a book which I have been longing to see for many, many years, the original report of the framers, not of the Penal Code, but of the draft Penal Code which was prepared by Macaulay when he was 35 years old and he came out as Law Member here. He prepared a draft Penal Code which was subsequently revised 25 years later, considerably altered, amended, and then enacted as our Penal Code here. And he cited some passages from that book. Very well. I mean this book was printed in 1837. I thought back as a matter of history and that was the year when Queen Victoria at the age of 19 ascended the throne of England. Now, in 115 years much water has flown under the bridge. The Constitution of the State has changed. The East India Company was ruling at that time.

An Hon. Member: But human nature has not changed.

Dr. Katju. Human nature remains the same, I know that. But it is really not of much use to us.

Extortion has been there all along, but please remember that seduction on

[Dr. Katju]

a large scale has followed from the Police State becoming a Welfare State. I am not troubled by bribes of Rs. two, Rs. five or Rs. ten; allowing a *gadiwala* to go on a kutchra road etc. Who would prosecute him for that? He is entitled to all our sympathy. We are thinking of prosecuting persons offering bribes of Rs. 10,000, Rs. 20,000, Rs. 50,000 etc. They may not be caught, one hon. friend said. As a lawyer I know it. A bribe is arranged in Allahabad, and is paid in the Punjab Mail somewhere near Etawah. Sometimes it is a very difficult proposition, but that is the danger. It is those things to which it will be applied.

And do not let us be very wasteful of our sympathy upon these bribe givers. They never come to give evidence, you may take it from me. They never do it because it is not their purpose to corrupt one particular individual officer. They want to corrupt the whole department, a whole series of officers. Some one put it very mildly and said well, that is one particular individual. That is not the case. They want to corrupt "A" and his successors one after the other, and if they were to give evidence, then the result would be that they would be ostracised by the whole department. They may get one officer punished, but the result would be the entire office will not allow them to come again, and their business will completely suffer. I do not want to go into all that.

There is one circumstance which has been overlooked in this discussion, viz., that there is the Government or the superintendent of police or the district magistrate whoever it may be, who starts the prosecution. You must attribute some sense, some common sense, to the person who starts the prosecution. If it is a case of extortion, then, only a fool will ever prosecute the bribe giver, treat him as a witness, and produce him as a first witness in the case. It is only when the bribe giver is the seducer that the question of his prosecution always starts, and these seducers are people very highly placed. No one is going to prosecute the poor *mamuli* givers as they are called. I do not want to take up the time of the House, for we have discussed that at great length.

The object of this Bill is a very short one, viz., to apply that rule of law, the rule of evidence which is applicable to bribe takers and which forms part of our parent Act. And then there is one particular amendment which speaks of

the new offence of criminal misconduct—the House knows about that, that in 1947, in order to punish corrupt officers, an offence was invented, if I may say so, called criminal misconduct. If you are in possession of property, riches, far exceeding your emoluments, then the presumption is that you have made this money out of illegal gains, and you may be punished. Now, one particular High Court said a man who is guilty of criminal misconduct cannot be prosecuted for criminal breach of trust—a proposition, which is not acceptable. So, one of the amendments is for the correction of that. The other amendments are for the purpose as to who should investigate into these cases of criminal corruption. The parent Act provides that the investigation should be by a senior police officer of the status of deputy superintendent of police. In different provinces there are different officers of that status, but under different names, and so we have provided that.

There is nothing else in this Bill. So I would respectfully suggest that after this explanation that I have ventured to give, the House will take the Bill into consideration and will pass it, may I say, within ten minutes or 20 minutes, and be done with it, be done with bribe givers and bribe takers for the time being.

Mr. Chairman: The question is:

"That the Bill further to amend the Prevention of Corruption Act, 1947, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3.—(Amendment of section 4 etc.)

Mr. Chairman: The hon. Member Mr. P. T. Chacko has given notice of an amendment. That is not in order because it seeks merely to negative the entire clause.

Shri P. T. Chacko: Even though the amendment is not in order I am entitled to oppose the clause.

Mr. Chairman: That is a different matter. First I am considering only the amendments to this clause 3. If there are no amendments, the hon. Member can have his chance to speak on this clause.

As I find no amendments are being moved, I shall call upon the hon. Member to speak. I may remind him that he has had his full say on this provision when he was speaking on the motion

for consideration. I shall therefore request him not to repeat those very arguments which have already been made.

Shri P. T. Chacko: I shall be very brief, Sir. I want to speak because I find that my speech on the motion for consideration has not been understood properly or perhaps I did not make myself sufficiently clear.

The point I wanted to make clear was that the Indian Penal Code, as it is, has made a distinction between those who are victims of extortion, and those who are seducers. The hon. Minister was saying that I was quoting from a book which was printed in 1837. It is true, but the value of that book and the observations in it have not decreased in importance by the change of times. The conditions are now worse actually. Mr. Venkataraman said that our officers have become angels. I do not believe for a moment that the officers have become angels simply because we have attained independence. They have become worse now. This very fact that the hon. Home Minister thought of introducing a Bill of this nature and getting it passed into an Act, and the fact that in the last so many years we were having the Prevention of Corruption Act in force, show that the conditions have not improved. I, therefore, wanted to make clear the distinction which was drawn by the authors of the Code themselves.

The question is, how is it that they maintain the distinction? Some of my hon. friends were saying that simply because we accepted section 165A in the Criminal Law Amendment Bill, we have accepted the principle that bribe givers should be punished. My submission is that it is not so. Under section 165A what is stated is merely this, that an abettor of an offence under sections 161 and 165 of the Penal Code is punishable with so many years of imprisonment. Under that section, even as it is passed by this Parliament, only an abettor of an offence under section 161 or section 165 is punishable, not all givers of bribes. Under section 165A, I still maintain that anybody who offers a bribe or attempts to offer a bribe cannot be punished, because that section contemplates punishment for an abetment of the offence under sections 161 and 165 only.

Now the question arises as to what is abetment. Many of my hon. friends may not know it, but those who are acquainted with the provisions of law know what it is—it can only be by instigation or by aid or by conspiracy. What is the gist of the offence? The

gist of the offence is the intention. If it should be that my offering a bribe of say Rs. 100 to a public servant should become an offence under the new section 165A, my intention to instigate the bribe taker to accept that bribe should be proved by the prosecution, may I say, beyond the shadow of a doubt. Even by passing section 165A, my submission is that we have not accepted the principle that every person who offers a bribe should be punished. We have maintained that distinction between those persons who are really victims and those who actually seduce the officers or impose a bribe on them. Under section 165A—also as was previously in the Indian Penal Code—only abetment is punishable. Even before the passing of the section 165A abetment of an offence under section 161 or section 165 was punishable under sections 116 and 109. These latter sections deal with abetment of an offence, one of them deals with a case where the offence is committed, while the other deals with a case where the offence is not committed or has not taken place. What we have done in section 165A was simply to bring these two together into one single section in the amending Bill. The legal position remains as it was before. So the position is the same as at the time that original Penal Code was drafted, and when those remarks which I referred to a little earlier were made.

But we are now making a vital change in the law. It is not just allowing the court to draw a presumption in the case of the main perpetrator of the offence, as provided for in the parent Act, where only the case of persons who receive bribes is contemplated, to whom only the presumption applies. I have no doubt every one will agree that in all cases the persons who receive bribes are guilty. But in the case of those who offer bribes, they are not guilty in all cases. In the Indian Penal Code that distinction between those innocent victims and those guilty is nicely kept and maintained, and even while we were passing section 165A, we made no alteration. We are now trying to take away that distinction by this clause 3, by making a person who offers a bribe or a gratification or a valuable thing without consideration or without adequate consideration, punishable. I submit that we are making a vital change in the law, by means of this clause 3. I am not saying anything about the presumption, or about the onus of proof, but about the principle itself. It is true that by passing the Criminal Law Amendment Bill we accepted the principle of that Bill. But in this case, we are making

[Shri P. T. Chacko]

a drastic change in the law. What will be the effect? It will simply be advantageous to the main perpetrator of the crime, the person who actually gets the bribe will get a protection and not the person who offers a bribe even though he is a poor victim.

My submission is that as we are making an alteration which is vital in law, the House should consider this clause with some seriousness as to what will be the consequences.

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.—(Amendment of section 5 etc.)

श्री विभूति : मिश्र (सारन व चम्पारन)

एक लफ्ज होम मिनिस्टर साहब ने फरमाया है । उन्होने कहा है...

.....

Mr. Chairman: Order, order. We are considering clause 4. This is no time to make any request to the hon. Minister. If the hon. Member wants to speak on clause 4, he will get an opportunity.

श्री विभूति मिश्र : एक लफ्ज आनरेबुल होम मिनिस्टर साहब ने फरमाया है कि इस में डी० एस० पी० (D.S.P.) जांच करेगा मेरी प्रायना है कि इस में डी० एस० पी० जो पुराने हैं उन को न रक्खा जाये । वह लोग नीचे से उठ कर ऊपर आये हैं, सब इन्स्पेक्टर और इन्स्पेक्टर्स से डी० एस० पी० बने हैं, इस लिये उन की शुरु में ही बूस लेने देने की आदत पड़ी हुई है । मैं चाहता हूँ कि इस में नये इंडियन पुलिस सर्विस (Indian Police Service) के लोगों को जांच का काम दिया जाये, यह बड़ी जरूरी चीज है क्योंकि अंग्रेजों के जमाने के लोग जो डी० एस० पी० बर्गरह बने उन हैं की आदत खराब पड़ गई है । जो वकील लोग हैं वह इस सम्बन्ध में काफ़ी जानते हैं कि नया खराबी हुआ करती है । इस में इतना सुधार कर दिया जाये ।

Mr. Chairman: Order, order. Clause 4 deals with an entirely different subject. It has nothing to do with deputy superintendent.

The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5.—(Insertion of new section 5A etc.)

Dr. Katju: May I, Sir, move a small amendment of my own? It is a purely verbal change, in page 2, line 16. It says: "...in every case where he makes such investigation, the inspector shall as soon as may be, send a report of the same to a magistrate of the first-class, together with the circumstances in which the investigation was made". Instead of the word "inspector" we have the words "police officer" whatever may be his rank.

I beg to move:

In page 2, line 16, for "the inspector" substitute "the police officer".

Mr. Chairman: Amendment moved:

In page 2, line 16 for "the inspector" substitute "the police officer".

Shri V. P. Nayar (Chirayinkil): Is there any definition of "police officer" anywhere?

Dr. Katju: No. In the context it is said: "Provided that a police officer of the Delhi Special Police Establishment, not below the rank of a inspector of police..." Therefore the search may be made by a Superintendent or a deputy superintendent or by an inspector. When the draftsman was drafting it, he ought to have realised that the search may be made by any one of these three officers. He used the word 'inspector' there. So you have got to read it in that context.

Mr. Chairman: The question is:

In page 2, line 16, for "the inspector" substitute "the police officer".

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 6 was added to the Bill.

New Clause 7

Mr. Chairman: There is an amendment to add a new clause. It is sought to be moved?

Dr. Katju: Sir, it is out of order.

Mr. Chairman: Objection has been raised that it is out of order, as in this amending Bill, Government have not sought to move an amendment to section 7. Therefore, it is outside the scope of the Bill. I would like to hear the hon. Member if he wants to say anything.

Shri M. L. Agrawal (Pilibhit Distt. cum Bareilly Distt.—East): I would submit that it is in order as I will show in one minute. Section 7 of the parent Act says:

"Any person charged with an offence punishable under section 161 or section 165 of the Indian Penal Code or under sub-section (2) of section 5 of this Act shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial".

I consider this section as a benefit and concession to the accused. Since section 165A.....

Mr. Chairman: May I just point out to the hon. Member that I have not to consider whether this section is useful or is harmful to the accused. That is not the point which we are considering. The only point is whether it is relevant, because objection has been raised that the amending Bill does not relate to section 7. Therefore, the hon. Member is not entitled to move an amendment.

Shri M. L. Agrawal: I would submit that section 165A has been added as a consequence of the amendment to the Criminal Law (Amendment) Act which we have just passed and the addition of this clause as a natural consequence in the Prevention of Corruption Act is necessary. Similarly, this clause should also be added as a consequence in this Bill and I hope the hon. the Home Minister will accept this amendment.

Dr. Katju: Subject to the point of order that I have raised, I have no objection whatsoever. Let the bribe giver come and give evidence on oath. Let section 165A be added.

Mr. Chairman: The hon. Minister does not object. So the hon. Member may move the amendment.

Shri M. L. Agrawal: I beg to move: In page 2, after line 28, add:

"7 Amendment of section 7, Act II of 1947.—In section 7 of the principal Act after the word and figures 'section 165' the words, figures and letter 'or section 165A' shall be inserted."

I do not want to take up much time of the House in commending this amendment. I have already submitted that this becomes a consequential amendment on the passing of the Criminal Law (Amendment) Act. The same benefit should be given to the accused who is alleged to be a bribe giver as to those accused who are charged with the offence of bribe taking. If they can give evidence to clear their position, the bribe giver should also be given the benefit, the concession, to appear as a witness.

Mr. Chairman: The question is: In page 2, after line 28, add:

"7. Amendment of section 7, Act II of 1947.—In section 7 of the principal Act after the word and figures 'section 165' the words, figures and letter 'or section 165A' shall be inserted."

The motion was adopted.

The New clause 7 was added to the Bill.

Clause 1 was added to the Bill.

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

Dr. Katju: I beg to move:

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

Mr. Chairman: Motion moved:

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

Shri Raghavaiah (Ongole): Before this Bill is passed I would like to refer to two or three points which have not been referred to by any of the Members who have spoken on this Bill at length. In the Statement of Objects and Reasons it is stated that Government appointed a Committee "to review the working of the Special Police Establishment and to make recommendations for the improvement of the laws relating to bribery and corruption." Not only this but the other piece of legislation also which we passed here—that is the Criminal Law (Amendment) Bill, 1952—also aims at the same object. But in spite of these two pieces of legislation the purpose does not seem to be fulfilled. The other day I chanced to go through a small booklet entitled *Corruption* in

[Shri Raghavaiah]

which account has been given of a good number of cases which have been acquitted. The main reason for these acquittals and for those offenders having escaped punishment is the collusion between the bribe takers and the Special Police Establishment. That is the way in which the case has been stated in that booklet. It is not just a pamphlet written for the sake of party propaganda or with any biased view by any cheap journalist, but it is a responsible gentleman who has written it. Some of the cases have been verified and some are still under investigation. These cases involve high officials of the administration in the various branches of governmental machinery. But it is unfortunate that not a clause do we find either in this Bill or in the Criminal Law (Amendment) Bill providing for ways and means of checking collusion between the Special Police Establishment and the bribe taker.

Mr. Chairman: Does the hon. Member want a provision to prevent collusion between the bribe taker and the Special Police Establishment? But that also will be a case of bribery.

Shri Raghavaiah: I refer to collusion which has resulted in the acquittal of the bribe taker.

Mr. Chairman: I see.

Shri Raghavaiah: So it is really surprising that nothing has been said on this point by the hon. Members who spoke during the various stages of the Bill or by the framers of the Bill.

Another point that I would like to touch upon is this. Now we have made bribe-giving also an offence. But nowhere in the parent Act or in this amending Bill do we find any definition of "bribe". The hon. Minister in his introductory speech as also in his reply has stated that bribe givers involving sums of hundreds and thousands of rupees alone come under this legislation and not people who give one rupee or two for getting their things done. Well, all these things the hon. Minister has said. It may be convenient for him to say so when this Bill is under discussion, but when it comes to a question of implementation then the whole trouble arises. When the term "bribe" is not defined any person giving from an anna to a thousand rupees is liable to be brought under the operation of this legislation. It has been defined neither in the parent Act nor in this Bill. That will certainly involve any amount of trouble for the common man who wants to get things done

by paying a rupee or two or even four or five annas.

Mr. Chairman: The hon. Member may kindly remember that "illegal gratification" is defined. But what the hon. Minister said was only this, that in this case illegal gratification is not voluntarily given but the thing is extorted. Unless it is voluntarily given there is no bribe giving—it is merely a case of extortion. On this point the hon. Minister was quite clear.

Shri Raghavaiah: It is really surprising to hear two contradictory statements. One hon. Member who preceded me said that things have changed for the better and there is not more of bribe-giving than bribe-taking. The hon. Minister says that 150 years have passed, times have changed, but human nature remains the same, men have not become angels. But the hon. Member says human nature also has changed officials have become angels. One statement contradicts the other. The hon. Member instead of defending the Home Minister has offended him and done grave injustice to his own cause. I would certainly take the statement of the hon. Minister for granted that human nature remains practically the same in spite of the so-called achievement of freedom. The machinery as it stands is corrupt to the core. The booklet to which I referred shows a number of cases of bribery involving some crores of rupees. Some of these cases I have already referred to in the course of my speech during the discussion on the Works, Housing and Supply demand. There is another case in which the order for prosecution has been given but has not been carried out. The prosecution order relates to a ghee contractor who happens to be a High Commissioner in a foreign country. If necessary I can specify all the details. When things have gone to such a climax and prosecution orders have either not been investigated or been hushed up, even at this stage of our freedom it requires any amount of effort on the part of the public as well as on the part of the Government to see that corruption is checked. When such a serious attempt has to be made both by the public and by the Government, I find there is no provision either in this Bill or in the previous one to ensure and invite co-operation from the public. I do understand that to provide for receiving suggestions or recommendations from the public may be outside the scope of this measure or of the parent Act. But provision should have been made for co-operation of public bodies like, say, anti-corruption committees. Their

ay in the matter has got a greater value because it is a people's committee and a people's committee alone can fight corruption more effectively than any legislation that we may enact.

Mr. Chairman: The hon. Member himself will realise that he is speaking on the third reading stage of the Bill. He himself was pleased to say that no such amendment was possible to the parent Act. At this stage to make suggestions for the improvement of the Bill will not be in order. I would request him to be relevant and to speak within the scope of the third reading stage of the Bill.

Shri Raghavaiah: Sir, while suggesting that a provision ought to have been made, I would like to give the alternative.

Mr. Chairman: That cannot be done now. Either the Bill has to be supported or it has to be rejected. I am requesting him to advance only such arguments as are for either rejection or acceptance.

Shri Raghavaiah: With due respect to your ruling, Sir, I would like to make some suggestions. Wherever people's committees exist.....

Mr. Chairman: While he says he respects my ruling, he does not seem to respect it either in spirit or in letter. No new suggestions are possible now. Either he can support the Bill or advance arguments for its rejection. I am sorry to interrupt but this is the rule.

Shri Raghavaiah: I do not want any new provision to be made at this stage, but in implementing this legislation due weight must be given to anti-corruption committees and other non-official peoples' representative bodies. The other day Mrs. Vijaya Lakshmi Pandit said at a public meeting that in some countries they utilise the peoples' anti-corruption committees. The main purpose in life of these bodies is to fight corruption. Hence, instead of merely depending upon the Special Police Establishment and other official channels, Government may consider giving weight to these non-official bodies.

We have passed many legislations here, and despite them, the life of the people is not any more disciplined than it was before. In a railway station you find the board "Please do not trespass" and yet a good number of people—not illiterate ones but educated ones—committing trespass. So, the life of an individual citizen cannot be disciplined simply by legislation but

by associating the peoples' bodies in the implementation of these measures.

I wish to say that it is really deplorable that this piece of legislation puts the bribe taker on a par with the bribe giver. After all, in our country there are more illiterates than literates and the illiterate common man may give something to get things done. It is really tragic that we include such a man in this legislation. My predecessor who is one of the respected peoples' workers and a Congressman from some district has already said that in our country officials are not angels. We know how the whole machinery is corrupt. Instead of reforming the whole administrative apparatus from the top rung we are trying to include the poor common man in the category of punishable. I can only characterise it as tragic.

There as one other observation I want to make. There is a consistent effort on the part of our Government to appease the industrialists and the landlords and such other people who are in the habit of committing corruption. Only the other day such people were exempted from sales tax. Again today they are being left out. I can give the Home Minister a large volume of cases in which these big fish have been acquitted. Why should we try to bring in only the illiterate people who do not know to write their language and can merely speak in it? Only these innocent people are roped in here and the Damocles' sword is hanging on them. It is very unfortunate indeed, I do hope that the Home Minister will see to it that the big ones are not left out and only the common people are brought to book. The latter should be exempted from the scope of this Bill.

Dr. Katju: We have just heard a very eloquent plea on behalf of the common man. The common man if he is compelled to pay bribes deserves our sympathy, but if he pays them in order to get a favour I do not think he is entitled to our sympathy in the same measure. This House has been discussing bribe takers and bribe givers now for the last two weeks. Before we take leave of them in the legislative sense, I should just like to say one thing. I am sometimes pained to hear general denunciation of officials. They are done with such a gusto as if they are something delicious, something like the *rasagullas* in Calcutta. People love to talk about it and dilate upon it. I sometimes wonder wherefrom these people come, and this is a matter of great importance. If they were foreigners, we would hate them, but they exist in this very House. I speak as a Member

[Dr. Katju]

of the House. All these corrupt officials are our relations, our friends, sons, nephews and cousins of the first, second, third or fourth degree. They are related by marriage and so on. Do we exercise moral pressure upon them? (Interruption). There is no use denouncing bribe takers generally. (Interruption). So long as there are bribe givers who want to get some favour done, whether they be rich men or common men, the evil will exist. I have said this so many times that I have become tired of repeating it. I keep aside extortion, but talking of the common man himself, let us consider an example. I am talking of Allahabad where there is octroi. The so-called common man takes a load of kakries in the morning into the city. He has to pay octroi. Now he ought to pay an octroi, let us say, of two annas. What he does is he offers one kakri to the octroi clerk, just pays two pice and runs away. Of course he is a common man; but he gives that kakri in order to avoid payment of an anna and a half more. Your common man is not foolish. We have learnt one thing from the General Elections that the common man and the common woman whom you represent and whom I represent on this side, are intelligent people. Out of seventeen and a half crores of voters nearly seven crores exercised their franchise. When I talk on this side and you do on the other side, we say: we have got a mandate in favour of this. You say that you have a mandate in regard to civil liberties and that we are curbing them. So, the common folk are intelligent people, intelligent to form judgments on vital matters of public welfare. But when it comes to the question of the common man who gives a bribe, you say he is an innocent man and he ought to be forgiven and not prosecuted. He is simply robbed—by whom? By his own countrymen. I am not saying anything in praise or disparagement of the bribe taker or bribe giver. Let us, therefore talk commonsense. People denounce corruption and say that officials from top to bottom are corrupt. It is like a game of badminton—you have to strike on both sides.

6 P.M.

So you have to build up a strong social opinion. Supposing your son is employed in the police department

and he brings his first catch of fishing expedition. He brings a thousand rupees and hands it over to mother or father or wife. How many fathers are there who would say "My boy, I do not like to see your face; you have disgraced us, away from the house." On the other hand, it would be a day of jubilation in the family. One thousand rupees extra has come in. Probably the father would say: I would like to have a necklace. Or the father would say I have some debt to repay; I shall pay it today. If the inspector is of marriageable age, everybody would like to give his daughter to him. Let us therefore, be candid about it.

For instance a common man who is a cultivator goes to the patwari and asks him to make an entry in the village records. The patwari would say: I would like to have a necklace. Or the father would say I have some debt to repay; I shall pay it today. If the inspector is of marriageable age, everybody would like to give his daughter to him. Let us therefore, be candid about it.

Therefore, let us, for God's sake build up a strong public opinion, as said in the other House: Let us have a sort of social boycott, namely, one shall deal on equal terms with either the bribe giver or the bribe taker. Cut him off. Do not go to his house, do not accept his parties, do not accept his invitations. Then you will find corruption disappearing. It will disappear by generalising that the country is full of bribe takers, that the whole official machinery, consisting of Indians, my relations, my friends is corrupt. Let us, therefore, have some sense of proportion about this and deal with this evil in the right manner and not merely by declaration.

Shri Raghavaiah: Is the Government of India prepared to boycott senior most corrupt official in the CPWD? He has been promoted in spite of the fact that he is corrupt at the end of his period of service has been extended in spite of expiry.

Mr. Chairman: The question is:

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

The motion was adopted.

The House then adjourned till Quarter Past Eight of the Clock Wednesday, the 30th July, 1952.