

LOK SABHA

JOINT COMMITTEE
ON
THE CRIMINAL AND ELECTION LAWS
AMENDMENT BILL, 1968

EVIDENCE

27



LOK SABHA SECRETARIAT

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JOINT COMMITTEE ON THE CRIMINAL AND ELECTION
LAWS AMENDMENT BILL, 1968

COMPOSITION OF THE JOINT COMMITTEE

Chaudhary Nitiraj Singh—*Chairman*

MEMBERS

Lok Sabha

2. Shri Vidya Charan Shukla
3. Shri Maganti Ankineedu
4. Shri S. M. Siddayya
5. Shri C. M. Kedaria
6. Shri A. K. Chanda
7. Shri K. M. Asghar Husain
8. Lt. Col. H. H. Maharaja Manabendra Shah, Tehri Garhwal
9. Shri D. Basumatari
10. Shri Jaipal Singh
11. Shri Y. B. Chavan
12. Shri Hem Raj
13. Shri Jagannathrao Joshi
14. Shri Shri Chand Goyal
15. Shri J. M. Lobo Prabhu
16. Shri H. Ajmal Khan
17. Shri Era Sezhiyan
18. Shri J. H. Patel
19. Shri P. K. Vasudevan Nair
20. Shri M. Muhammad Ismail
21. Shri P. Ramamurti
22. Shri P. Viswambharan

Rajya Sabha

23. Shri Ajit Prasad Jain
24. Shri Mohan Manikchand Dharia
25. Shri Narla Venkateswara Rao
26. Shri Tribhovandas Kisibhai Patel
27. Shri Pratul Chandra Mitra
28. Dr. (Mrs.) Mangla Devi Talwar
29. Shri Ram Sahai
30. Shri Devi Singh
31. Shri Rewati Kant Sinha
32. Shri M. R. Venkataraman
33. Shri B. V. Abdullah Koya

LEGISLATIVE COUNSEL

1. Shri P. L. Gupta, *Legislative Counsel, Ministry of Law.*
2. Shri D. C. Hajela, *Asstt. Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri L. P. Singh, *Secretary, Ministry of Home Affairs.*
2. Shri T. C. A. Srinivasavardhan, *Joint Secretary, Ministry of Home Affairs.*
3. Shri G. K. Arora, *Deputy Secretary, Ministry of Home Affairs.*
4. Shri V. K. Kapur, *Under Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

Witnesses Examined

Sl. No.	Names of Witnesses	Date	Page
I.	Panchjanya, Weekly, New Delhi, <i>Spokesman:</i> Shri D. S. Agarwal, Editor	1-11-68	2
II.	Organiser Weekly, New Delhi, <i>Spokesman:</i> Shri K. R. Malkani, Editor Shri Ved Prakash Bhatia	2-11-68	17
III.	Shri Niren De Attorney-General of India	20-11-68	35

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE CRIMINAL
AND ELECTION LAWS AMENDMENT BILL, 1968

Friday, the 1st November, 1968 at 10.00 hours.

PRESENT

Chaudhary Nitiraj Singh—Chairman.

MEMBERS

Lok Sabha

2. Shri Vidya Charan Shukla
3. Shri Maganti Ankineedu
4. Shri S. M. Siddayya
5. Shri C. M. Kedaria
6. Shri A. K. Chanda
7. Shri K. M. Asghar Husaïn
8. Lt. Col. H. H. Maharaja Manabendra Shah, Tehri Garhwal
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12. Shri Jagannathrao Joshi
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17. Shri P. Ramamurti
18. Shri P. Viswambharan

Rajya Sabha

19. Shri Ajit Prasad Jain
20. Shri Mohan Manikchand Dharîa
21. Shri Tribhovandas Kisibhai Patel
22. Shri Pratul Chandra Mitra
23. Dr. (Mrs.) Mangla Devi Talwar
24. Shri Devi Singh
25. Shri Rewti Kant Sinha
26. Shri B. V. Abdullah Koya
27. Shri M. R. Venkataraman.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri T. C. A. Srinivasavardhan, Jt. Secretary, Ministry of Home Affairs.
2. Shri G. K. Arora, Deputy Secretary, Ministry of Home Affairs.
3. Shri M. D. Godbole, Deputy Secretary, Ministry of Home Affairs.
4. Shri V. K. Kapur, Under Secretary, Ministry of Home Affairs.

LEGISLATIVE COUNSEL

1. Shri P. L. Gupta, Addl. Legislative Counsel, Ministry of Law

SECRETARIAT

Shri D. C. Pande, Under Secretary.

WITNESSES EXAMINED

Panchjanya Weekly, New Delhi

Spokesman:

Shri D. S. Agarwal, Editor

(The witness was called in and he took his seat.)

The Chairman then read out direction 58 to the witness.

Mr. Chairman: Before we record your evidence, we would like to ask you whether you would like to add anything to the memorandum or the suggestions which you have sent to us, or, should I ask my friends to put questions to you.

Shri Agarwal: It is better they ask questions.

Shri Y. B. Chavan: It is better that he explains in brief what is contained in his memorandum.

Mr. Chairman: Yes.

Shri D. S. Agarwal, Managing Editor, "Panchjanya" Weekly, Lucknow

श्री देवेन्द्र स्वरूप अग्रवाल : हम लोगों ने पंचजन्य की ओर से एक प्रतिवेदन भेजा था। वह प्रतिवेदन पंचजन्य के प्रबन्ध सम्पादक श्री यादव राव की ओर से भेजा गया था और उनको आज इस समिति के समक्ष आना था परन्तु किसी कारणवश वे नहीं आ सके हैं और उनकी इच्छानुसार मैं यहां पर उपस्थित हूं।

उस प्रतिवेदन में हमने मुख्यतः प्रेस से सम्बन्धित धाराओं के सम्बन्ध में ही अपने विचार व्यक्त किए हैं। हमारा कहना यह है कि इस बिल की कोई आवश्यकता ही

नहीं है। इस बिल के अन्दर तीन दुर्बलतायें दिखाई देती हैं। पहली चीज तो यह है कि इस समय के सरकार के पास जो अधिकार हैं वे अधिकार ही इतने पर्याप्त हैं कि उनके रहते हुए अलग से और कोई अधिकार लेने की आवश्यकता प्रतीत नहीं होती। उन अधिकारों के अन्तर्गत ही पिछले बीस वर्षों में बहुत कम समाचार-पत्रों पर आरोप लगाये जा सके हैं अथवा उनके विरुद्ध वे आरोप प्रमाणित किए जा सके हैं। यह अच्छा होगा कि हम पिछले बीस वर्षों के इतिहास को देखें कि जो अधिकार हमारे पास पहले से ही हैं उन अधिकारों के अन्तर्गत कितने समाचार-पत्रों को दंडित किया जा सका है और यदि उनको दंडित किया जा सका है तो न्यायालयों के द्वारा कितने अप हेल्ड किए गए, कहां तक उसका समर्थन हुआ।

दूसरी चीज जिसके ऊपर हमें आपत्ति है वह यह है कि बिल लोक तन्त्र की भावनाओं के विरुद्ध जाता है। इसके द्वारा हम विचार स्वातन्त्र्य के ऊपर उसके अधिकारों को धीरे धीरे सीमित करते जा रहे हैं और इस मात्रा तक सीमित करते जा रहे हैं कि किसी भी जिले के अन्दर कोई भी स्थानीय अधिकारी अपनी पर्सनल लाइकिंग और डिसलाइकिंग के आधार पर किसी भी समाचार पत्र के प्रकाशन को बन्द कर सकते हैं, प्रेस को जब्द कर सकते हैं, और सम्पादक को जेल भेज सकते हैं क्योंकि इस बिल के अन्दर इसको

नान-वैलेबिल काग्निजेबिल आफेन्स बना दिया गया है। प्रेस को कन्सल्टेटिव कमेटी तो बाद में आती है, लेकिन उस पर ऐक्शन तो पहले ही हो जाता है। इसलिए एक चीज तो यह है कि अधिकार डिस्ट्रिक्ट मैजिस्ट्रेट या किसी भी स्थानीय अधिकारी को डेलिगेट कर दिए गए हैं और जब भी किसी स्थानीय अधिकारी को अधिकार दिया जाता है तो कभी भी वह उसका दुरुपयोग कर सकता है।

तीसरी चीज यह है कि इस प्रकार का बिल या इस प्रकार का विधेयक किसी इमर-जेन्सी के अन्दर या किस विशेष सिचुएशन में ही बनना चाहिये। यह दुर्भाग्य की बात है कि हमारे देश के अन्दर अनेक प्रकार के टेन्शन्स आज भी विद्यमान हैं, इस चीज को हम अस्वीकार नहीं कर सकते हैं। इस सम्मानित समिति के जो सदस्य यहां पर बैठे हुए हैं, मैं ऐसा समझता हूं, उनमें से बहुत से सदस्य समय समय पर इस बात को उठाते हैं। इसलिए जब तक वह टेन्शन्स हमारे मनों के अन्दर और समाज के जीवन के अन्दर विद्यमान हैं तब तक प्रेस से अपेक्षा करना कि प्रेस उनके बारे में मौन रहे या उन टेन्डेन्सीज ट्रेन्ड्स और टेन्शन्स को समाज के सामने न लाए, यह वस्तुतः लोकतन्त्र की भावनाओं के प्रतिकूल होगा और वह हमारे लोकतन्त्र के स्वस्थ विकास को रोक देगा।

एक पाइन्ट जिसको हमने अपने प्रतिवेदन में उठाया है वह यह है कि स्थानीय अधिकारी किस प्रकार से यह निर्णय करेगा पर्टीकुलर राईटिंग आफ ए पेपर इजालाइकली टु अफेक्ट और लोकल एथारिटी के सामने इस निर्णय की कसौटी क्या होगी? दुर्भाग्य की बात है कि इसमें कम्युनल हार्मनी का शब्द प्रयोग में लाया गया है सेक्शन 6(1) में लेकिन अभी तक संसद् द्वारा कम्युनलिज्म को डिफाइन नहीं किया गया है।

अभी पिछले सत्र के अन्दर ही यह प्रश्न उठा था कि कम्युनलिज्म की व्याख्या क्या है। लेकिन गृह मंत्रालय के प्रवक्ता

ने यह वहां पर स्वीकार किया कि हम अभी तक कम्युनलिज्म की व्याख्या नहीं कर पाये हैं। अब कम्युनलिज्म जिसकी कि व्याख्या नहीं है उस के आधार पर कौन सी राईटिंग हानिकारक है और कौन सी नहीं है इसके निर्णय का अधिकार जिले के एक स्थानीय अधिकारी को नहीं दिया जा सकता है।

जो अंतिम हमारा आरोप है और दुर्भाग्य से पांचजन्य स्वयं उसका भुक्तभोगी है। देखा यह गया है कि सरकार को जब जब अधिकार मिले हैं तो उन अधिकारों का दुरुपयोग पोलिटिकल रीजंस की बिना पर बगैर किसी विशेष कारण के निर्दोष समाचार-पत्रों के विरुद्ध किया जायगा।

मैं एक उदाहरण आप के सामने प्रस्तुत कर रहा हूं जिसका कि उल्लेख हमने अपने प्रतिवेदन में किया है। सन् 1962 में जिस समय चीन का भारत पर आक्रमण हुआ उस समय डिफेंस आफ इंडिया एक्ट के अन्तर्गत भारत सरकार ने विशेष अधिकार प्राप्त किये। यह बड़े आश्चर्य की बात है कि इन अधिकारों का पहला प्रहार हमारे ऊपर किया गया जबकि सम्भवतः कोई भी व्यक्ति इस बात को स्वीकार नहीं कर सकता है कि पांचजन्य और तरुण भारत जैसे पत्र कभी भी भारत की सुरक्षा को आघात पहुंचा सकता हैं। जो कटिंग हमारे पास भेजी गयी जिनके कि आधार पर वह वार्निंग दी गई वह कटिंग मुझे क्षमा करेंगे मैं अपने साथ नहीं लाया हूं लेकिन उन्हें मैं बाद में इस समिति के माननीय सदस्यों को सूचनार्थ भेजना चाहूंगा। माननीय सदस्य जब उन्हें पढ़ेंगे तो हंसी आयगी कि जिन कटिंग के आधार पर हम को वार्निंग दी गई उन में हम ने चीन के आक्रमण के समय जनता को संगठित होने का अवाहन किया था और कहा था कि ऐसे अवसर पर हमें सरकार की समस्त पिछली भूलों को ध्यान में नहीं रखना चाहिए हमारे इस कथन को डिफेंस आफ इंडिया

एकट के अन्तर्गत आपत्तिजनक माना गया । तात्पर्य यह है कि इस तरह के जो भी अधिकार सरकार प्राप्त करती है उन का बहुत ही निष्पक्ष रूप से प्रयोग नहीं हो पाता है और जब उन का प्रयोग सही तौर पर नहीं हो पाता है तो हमें इस बात का विचार करना पड़ता है कि वह अधिकार सरकार को कितनी मात्रा में दिये जायं और कितनी मात्रा में न दिये जायं ।

एक अंतिम चीज जिसे कि मैं उठाना चाहूंगा वह यह है कि ब्रिटिश शासन काल के समय प्रैस के उपर प्रतिबंध लगाने के लिए जब कानून बनाये गये तो उन कानूनों में भी इस बात की सावधानी बर्ती गई थी कि कहीं उन से प्रैस स्वातंत्र्य का गला पूर्णतया न घुट जाय । उदाहरणस्वरूप मैं आप को बतलाऊं कि इसी संशोधन बिल के अन्दर धारा 505 को संशोधन किया गया है । उस के अन्तर्गत जो पिछली धाराएं थीं जिनके कि उपर यह सबसेक्शन 1 बनाया गया है उन धाराओं का एकसेक्शन है । उस एकसेक्शन के अन्दर ब्रिटिश गवर्नमेंट ने आर्मी की म्युटिनी को चैक करने का प्रयत्न करते हुए भी प्रैस को इस बात की स्वतंत्रता दी हुई थी कि जिन समाचारों को सम्पदक निष्पक्ष मानता है और जिनके कि पीछे उन का इरादा गलत नहीं है ऐसे समाचारों को प्रकाशित करने की छूट प्रैस को मिलनी चाहिए । ईवन डैट फैसिलिटी वाज गिवेन बाई दी ब्रिटिश गवर्नमेंट लेकिन यहां उस सेक्शन 505 के संशोधन के अन्दर जो धाराएं नई जोड़ी हैं उन के अन्दर हम ने कोई इस प्रकार का एकसेक्शन नहीं दिया है । इस से यह साफ प्रतीत होता है कि जो संशोधन हम करने जा रहे हैं वह ब्रिटिश काल के संशोधनों से भी कहीं अधिक खतरनाक प्रतिगामी और अनडेमोक्रेटिक है । वास्तव में जितने प्रैस हैं वह समाज के अन्दर जो प्रवृत्तियां विद्यमान हैं उन की वह अभिव्यक्ति करते हैं । प्रैस को इस बात की स्वतंत्रता मिलनी

चाहिए कि वह उन विद्यमान प्रवृत्तियों की रिपोर्ट करें । अब यह बात कि उन के अन्दर दी गई कौनसी चीजें गलत हैं और कौन कौन से आरोप गलत हैं तो इस के निर्णय का काम प्रैस की ही किसी बोडी को सौपना चाहिए और समाचारपत्रों के किसी भी अनुदार-दायी कार्य पर समुचित विचार एवं कार्रवाई करने के लिए प्रैस कोसिल का पहले से ही गठन हो चुका है । इस तरह का निर्णय करने की डिस्कशनरी पावर्स जिले के स्थानीय अधिकारी को नहीं देना चाहिए ।

That will be completely anti-democratic. This is our humble submission.

श्री ए० पी० जैन : आप ने जो धारा 505 के संशोधन के संबंध में कहा कि फौज की म्युटिनी वगैरह के बारे में अगर सच्ची और ईमानदारी से कोई खबर छापी जाय तो उस को संरक्षण दिया जाय लेकिन जो नई 2-3 धाराएं जोड़ी गयी हैं धारा 505 में उन में वह संरक्षण नहीं प्रदान किया गया । यह चीज आप ने अपने मैमोरेण्डम में नहीं उठाई है और यह अभी आप ने एक नई चीज उठाई है क्या यह बात सही है ?

श्री डी० एस० अग्रवाल : ठीक बात है ।

श्री ए० पी० जैन : उस किस्म का संरक्षण अगर नये संशोधनों पर लागू कर दिया जाय तो आप को संतोष हो जायगा ?

श्री डी० एस० अग्रवाल : किसी हद तक ।

श्री ए० पी० जैन : अगर वह संरक्षण, जो जोड़ी गई है नई उपधाराएं, में रख दिया जाय, तब इतना तो आप का ऐतराज हट जायगा ?

श्री डी० एस० अग्रवाल : कुछ मात्रा में हट जायगा लेकिन पूर्णतः नहीं ।

श्री ए० पी० जैन : आप धारा 6 की तरफ देखें ।

You have said:

Section 5 and 6 are the most dangerous sections of the proposed Bill in accordance with which any District Magistrate or First Class Magistrate who is empowered by the Central or the State Government would have the power to suspend the publication of any news or newspaper...

But clause 6 speaks of only Central Government or State Government.

उसमें न डिस्ट्रिक्ट मजिस्ट्रेट की चर्चा है और न फर्स्ट क्लास मजिस्ट्रेट की चर्चा है । अब अगर यह अधिकार किसी ऐसे उच्च कोर्ट के अधिकारी को दे दिये जायं जोकि रोजाना के एडमिनिस्ट्रेशन से संबंध नहीं रखता है तब तो आप को कोई आपत्ति नहीं रहगी ?

Shri Y. B. Chavan: I am afraid this point has not been correctly appreciated by the witness or he has not properly understood clause 6. If you read this clause again very carefully, you will see that the clause speaks of authority by the Central Government or the State Government to pass orders, or any other authority authorised by the Central Government. The State Government are not authorised to delegate it to somebody else. So, there need be no fear that it will be given to a First Class Magistrate. If any delegation has to be made, it has to be made by the Central Government.

Shri Agarwal: What will be its nature?

Shri Y. B. Chavan: It might ask the Commissioner to do that.

श्री ए० पी० जैन : दो तरह के अफसरान हुए । एक हुए एडमिनिस्ट्रेशन के चलाने वाले, अब उन के बारे में आप को आपत्ति है कि अखबार वाले जब उन के खिलाफ लिखते हैं उन की आलोचना करते हैं तो उन के मन में कुछ द्वेष पैदा हो जाता है और वह उनके पीछे पड़ जाया करते हैं तो यह अधिकार किस श्रेणी के अफसर को दिये जायं, होम मिनिस्टर ने यह मामला अभी अभी साफ कर दिया है कि यह अधिकार राज्य सरकार को नहीं होगा बल्कि केन्द्रीय सरकार को ही रहेगा कि वह किसी अधिकारी को यह अधिकार दे । इसलिए अगर इस संशोधन में यह चीज दर्ज कर दी जाय कि यह अधिकार जो रोजमर्रा के जिले के काम चलाने वाले अफसर हैं उन लोगों को न देकर किसी ऐसे अधिकारी को दिये जायं जो कि स्टेट लेवल के ऊपर हो या जोकि जुडिशियल लेवल पर हो तो आप की यह आपत्ति क्या मिट जायेगी ?

श्री डी० एस० अग्रवाल : केवल उसी से यह समस्या हल नहीं होती है । हम ने अपने प्रतिवेदन में यह भी कहा है कि केन्द्रीय सरकार ने ही 1962 के अन्दर डिफेंस आफ इंडिया रूल्स का हमारे विरुद्ध गलत तरीके से प्रयोग किया ।

श्री ए० पी० जैन : आप ने खास आपत्ति उठाई है कि अगर ऐसे अधिकार रोजाना का एडमिनिस्ट्रेशन चलाने वाले जिले के अफसरों को दिया गया, फर्स्ट क्लास मजिस्ट्रेट को दिया गया तो वह उस का गलत प्रयोग करेंगे, इस आशंका का निराकरण अभी होम मिनिस्टर ने कर दिया है । अगर कोई डैलीगेशन करना भी है तो वह भी सेंट्रल गवर्नमेंट द्वारा ही किया जाना है ।

श्री अग्रवाल : हमारा मुख्य उद्देश्य प्रेस स्वातंत्र्य की सुरक्षा करना है । इस के बारे में सेन्ट्रल गवर्नमेंट या स्टेट गवर्नमेंट या कोई भी अथारिटी को पावर्स डेलिगेट की गई हों, अगर एग्जिक्यूटिव अथारिटी हो तो वह तो फाइनल जज नहीं हो सकती । इस का निर्णय प्रेस की ही किसी एजेन्सी को सौंपा जाना चाहिये । उदाहरण के लिये इस समय हमारे यहां प्रेस कौंसिल है । आप प्रेस कौंसिल के सामने इस प्रकार की राइटिंग्स भेजें । प्रेस कौंसिल उन राइटिंग्स के बेसिस पर अगर कहे कि यह कम्यूनल हारमोनी को डिस्टर्ब करने वाली है, तो उस में गवर्नमेंट ऐक्शन ले ।

श्री ए० पी० जैन : प्रेस एडवाइजरी कमेटी को पहले कन्सल्ट किया जाये या नहीं, मामला तो बाद में आयेगा ।

श्री अग्रवाल : मेरा कहना यह है कि इस समय पर जो एग्जिक्यूटिव अथारिटी है वह पोलिटिकल मोटिव से अपनी शक्ति का दुरुपयोग करती है । हम लोग भी इस के शिकार हुए हैं जैसाकि "आर्गेनाइजर" का मामला है । It has also been a victim.

Shri Y. B. Chavan: In what sense have they been the victims?

Shri Agarwal: They were given a warning in 1962. But, later on, it was withdrawn because the charge could not be substantiated. Even now a case has been filed in the court.

Shri Y. B. Chavan: The case is now before the Court.

Shri Agarwal: The writing was never referred to the Press Council.

Shri Y. B. Chavan: It might have been referred to the Press Council. If anything objectionable was found, they could certainly prosecute them.

Shri Vidya Charan Shukla: The normal practice is that if a *prima facie* case seems to have been made out, then the case goes to the court.

Shri Y. B. Chavan: I think that these are minor matters. Now, may I ask a question?

श्री ए० पी० जैन : पैरा 6 में यह है कि जो नोटिस दी जायेगी वह प्रिटर को दी जायेगी, पब्लिशर को दी जायेगी या एडिटर को दी जायेगी । अगर प्रिटर को इस बात की नोटिस दे दी गई है कि फल फल चीज आप-त्तिजनक है इस को मत छापो क्योंकि यह कम्यूनल डिसहारमोनी पैदा करने वाली चीज है, उस के सम्बन्ध में आप कहते हैं अपने मेमोरेन्डम में कि छोटे-छोटे अखबार जो कि अपने प्रेस नहीं रखते हैं, दूसरों से छपवाते हैं । जब प्रिटर को इस को नोटिस दे दिया गया कि आप इस तरह की चीज न छापिये उस में क्या दिक्कत पैदा होती है ? चाहे वह अपने यहां छापे या दूसरी जगह छापे ।

Mr. Chairman: Mr. Jain, this cannot be converted into a personal dialogue.

Shri Y. B. Chavan: The most important part is the approach to the Bill. Is one clause sufficient or not etc., etc.? May I ask what is the approach of the Weekly Panchjanya towards the prob of communalism? Do they believe that there is communalism?

Shri Agarwal: Yes, we do believe.

Shri Y. B. Chavan: May I know in what form is it prevalent? What is your idea of communalism?

Shri Agarwal: The first thing is that communalism is to be defined in terms of certain elements which are trying to isolate themselves from the national current or from the national life. This isolationalist tendency amounts to communalism. After all, we have to define what is the basic trend in which the whole diverse elements of society are to be

integrated and whether that basic trend or basic current is to be created afresh or not. It has a historical background.

Shri Y. B. Chavan: May I ask you one question by illustrating one thing? Take for example the Christians or the Muslims in this country who want their interests to be protected. Will you call this communalism?

Shri Agarwal: What sort of interest do they want to be protected?

Shri Y. B. Chavan: If they feel that they should have a little better services—I am asking you a specific question since you represent a paper as an editor—will you repeat on this specific issue as an Editor of this paper? Would you call it an isolationist tendency from the national trend?

Shri Agarwal: I shall view that in a historical perspective. Unfortunately, since 1857 to 1947, the whole history of Muslims started like this. Firstly they demanded for representation in services and then ultimately, that resulted in the demand for a separation.

Shri Y. B. Chavan: You leave aside Muslims. I hope you agree that there is Hindu communalism also in the country. Would you accept that position?

Shri Agarwal: May be.

Shri Y. B. Chavan: This is an improvement to the situation. Now I am asking you a question. Muslims are in minority. As such, the minority interests should be protected. And if they want to have this sort of feeling, will you call this as communalism?

Shri Agarwal: I have to come to that point. In the beginning their demands seemed to be innocent. But, when we view them in the background of the propaganda that is going on and when that is reflected through the papers and when demands are made manytimes, naturally, they create a tension.

Shri Y. B. Chavan: Suppose somebody makes a speech against a Muslim or anybody. That creates an ill-will or hatred between the two communities. If that hatred is created among the communities, don't you think that it is the duty of the Executive to stop it?

Shri Agarwal: Yes, it is their duty to stop it.

Shri Y. B. Chavan: The only question now is how that should be done effectively?

Shri Agarwal: Here I may come to the freedom of the Press.

Shri Y. B. Chavan: Freedom of the press comes next to this. The main problem that we have is this. The Executive—the Government—has the responsibility of maintaining a peaceful relationship between the two Communities. They have to prevent the possibility of violent acts of one community against the other. Don't you think that it is the responsibility of the Executive to check this?

Shri Agarwal: I entirely agree with you that it is the duty of the Government to check such things.

Shri Y. B. Chavan: I also agree with you that this should be done subject to the freedom of press. I am glad that you say that it should certainly be consistent with the freedom of the press. There is no doubt about that. Suppose the people, by their speeches or by their writings create an ill-will amongst the two communities. Will it not be legitimate for the Government to proceed against such people or prevent such things from happening?

Shri Agarwal: I agree that Government must proceed against such people.

Shri Mohan Manikchand Dharla: Mr. Agarwal, I believe that you also agree fully with the statement of Mr. Yadav Rao that it is that.

Shri Agarwal: Yes, Sir.

Shri Mohan Manikchand Dharia: I hope you have read these sections—Sections 2, 3 and 4. May I know what are your objections to these three sections?

Shri Agarwal: I have no objection to them.

Shri Mohan Manikchand Dharia: Have you any objection to Section 3 which is an amendment of section 505 of the Indian Penal Code?

Shri Agarwal: Yes.

Shri Mohan Manikchand Dharia: What is your objection?

Shri Agarwal: The two sections which have been added to this subsection do not have any exception for the guarantee of the freedom of the Press. There is an exception to subsection 1. Now the amended section has got one exception which was given by the Britishers but the two new sections which are going to be added do not have any exception. This is one objection.

The second objection is that there is a phrase 'which is likely to create or promote on grounds of' which is a very vague and wide term and it gives discretionary powers.

Shri Mohan Manikchand Dharia: To whom?

Shri Agarwal: To the authority.

Shri Mohan Manikchand Dharia: That is not correct. It will be a judicial proceeding. It is the court which is ultimately to decide. I feel from your memorandum that there is a lot of confusion. Here only in this section 4 we come across the words 'District Magistrate'. What they have done is previously it was the State Government or any other officer authorised by the State Government who may be the complainant. As per

section 4, the State Government or the District Magistrate or some other officers who may be authorised by the State Government may be the complainant. As the hon. Home Minister has explained to you, under Section 6 it is the Central Government or a State Government or any authority so authorised by the Central Government. It is not the District Magistrate who can immediately just serve that order and then confiscate the Press. Again you please try to understand Section 6(2). The press can be seized only in the event of disobedience of an order made under sub-section (1). If some authority has come to the conclusion that there is something which is printed, naturally they can say 'Don't print it' or 'Don't publish it.'

Shri Agarwal: How do they know about it?

Shri Mohan Manikchand Dharia: Supposing a compositor in a Press who is interested in maintaining communal harmony, if he writes that such a sort of thing is being printed which is harmful to the community, if such a sort of complaint is made, the authority concerned can take cognizance of it and act. There will be some good people in the country and they may bring it to the notice of the authorities concerned. In your memorandum your submission is that action should be taken after the offence is committed. Here we are interested in preventing such sort of action which is likely to disturb communal harmony. It is not the District Magistrate but it is the Central Government or the State Government or any authority so authorised who can take action and that too, at the initial stage the press cannot be taken over. If the press is to be sealed off, it can be only in the event of disobedience of an order made under sub-section (1). not otherwise.

Shri Agarwal: It means precensorship.

Shri Mohan Manikchand Dharia: What precensorship?

Shri Agarwal: Since the matter has not been published, it amounts to precensorship. First of all we must not forget the background of this clause which has been taken from the Punjab Special Powers Press Act. This clause was put in a particular background of agitation. There was Hindi agitation and the Government was interested that that agitation should not create ill-will in Punjab. So there was some specific thing to be checked.

Shri Mohan Manikchand Dharia: Don't you feel that the present communal atmosphere in the country is more germane than what was the situation in Punjab. From that point of view some action has to be taken. A preventive measure is absolutely necessary.

Shri Agarwal: We are faced with a communal atmosphere for the last 100 years.

Shri Y. B. Chavan: Therefore is it to be allowed to continue?

Shri Agarwal: My submission is that unfortunately there is a tendency in the society which has to be curbed not the Press. It has to be curbed somewhere else. There is a riot or something. If that news is published in a paper, you will penalise the paper. Do you mean to suggest that the press should be suppressed.

Shri Ajit Prasad Jain: Don't you think that the Press has a role to play in checking the communal tension.

Shri Agarwal: There are two parts of the Press. Reporting is one and other is its comments. So far as comments are concerned, the Press must have the right to improve the atmosphere of the situation. So far as reporting is concerned, there should not be any distortion of facts. There

are certain elements in the society who are bent upon disturbing communal harmony. I do not want to bring this controversy. To get the votes of a particular minority, they pose themselves as the saviours of the minority and harbingers of secularism while those who are trying to maintain the integrity of the society, are dubbed as communalists. Mr. Dharia referred to a compositor in a press who reports to the Government . . .

Shri Mohan Manikchand Dharia: Is it not possible for a compositor who is interested in maintaining harmony, to report to the Government?

Shri Agarwal: We know that in presses there are some compositors who are affiliated to certain political ideological groups. It may also be possible that certain authorities may also be under certain political pressure. Unfortunately we have to view the whole thing in the background of the present political intolerance and rivalry which is prevalent in our country. Though I am not a competent person to bring this charge I feel that many of our politicians who claim to be secularists are in fact rank communalists.

Shri Mohan Manikchand Dharia: My question is regarding the Press Council. Mr. Yadav Rao in his statement has said that the provisions of the Bill have encroached on the rights of the Press Council. May I know how do you say this? Are you aware of the powers of the Press Council?

Shri Agarwal: Personally I want to know if the Government finds anything objectionable against some paper, it has to be referred to the Press Council and the Press Council has to give its recommendation to the Government and it is in the light of these recommendations that the Government may proceed against that particular paper.

Shri Mohan Manikchand Dharia: Under the Press Council Act Sections 12, 13 and 14 describe the powers and functions of the Press Council. Section 13 of the Act empowers the Press Council to act, if it comes to the conclusion that a particular writing in the Press is prejudicial then alone the Council has power to censure it. Section 14 is concerned with powers for calling witnesses etc. Otherwise, there are no powers whatsoever to the Press Council. May I bring to your notice that even the memorandum submitted to us by the Press Council does not contain any reference to this that this is an encroachment on their rights.

Shri P. Ramamurti: Your objection is to section 6, 7 and 8 of this Bill.

Shri Agarwal: We have objection to Section 6.

Shri P. Ramamurti: Section 6 empowers the Central Government or a State Government or any authority authorised by the Central Government to absolutely prohibit the publication of any particular document or any class of matter relating to particular subjects. For example, the Central Government or the State Government under this section can prohibit a paper from publishing any news regarding Harijans in a particular locality and in a particular background if such a publication is likely to arouse the feelings against Harijans. Is that your apprehension?

Shri Agarwal: Partly.

Shri P. Ramamurti: This will be done on the subjective satisfaction of the State Government or the Central Government or by any authority authorised by the Central Government. There is no objective criterion laid down. The subjective satisfaction of the authority is enough to give a blanket order to a paper not to publish a particular point; not only a

particular point but also not to publish any series of matter on certain subjects. May I take it that your objection is to this subjective satisfaction which empowers the Government to give a blanket order prohibiting a paper from publishing a series of matter?

Shri Agarwal: Exactly that is the objection.

Shri P. Ramamurti: The other point is this. We are all interested in communal harmony. But this depends mainly upon the State Governments. There are States in which bodies with a communal bent of mind predominate or may predominate in future. So long as such communal bodies are allowed to function legally in this country there will also be a possibility of such a communal body taking over the administration of a particular State in course of time. If that happens . .

Shri Agarwal: But I have to put a question.

Shri P. Ramamurti: You will not put a question, but you will answer our question.

Shri Agarwal: How do you know that a particular political party has a communal bias? Who is to define it?

Mr. Chairman: I would request you, Mr. Agarwal, to answer the questions.

Shri Y. B. Chavan: What is your assessment of today's Indian political scene? Is there any communal political party in Indian politics today or not?

Shri Agarwal: If a party with a communal denomination and confines its membership to a particular community participates in Elections on communal slogans, it would be considered as a communal party.

Mr. Chairman: The point is whether there is a communal party at present or not today in Indian politics.

Shri Agarwal: There are one or two parties: Muslim League in Kerala and in Madras.

Shri Vidya Charan Shukla: Hindu Mahasabha!

Shri Agarwal: If it is restricted to Hindus then it is a communal party.

Shri Y. B. Chavan: Muslim League has allowed non-muslims also to become members of the Party.

Shri Agarwal: It is the programme of the parties that matters.

Shri Y. B. Chavan: In the case of Hindu Mahasabha, because its composition is only Hindus it is a communal party. Because the Muslim League has opened its membership to non-muslims, it ceases to be a communal party according to you.

Shri Agarwal: We have to go into the background, which is mainly the programme. Communalism has not been defined yet. Unless we have a definition of communalism, how can we say that a particular writing has a communal bias? In the last session of Parliament, it was clearly admitted that the word has not yet been defined. So long as the word is not defined, its application will lead to complexities and confusion.

Shri Y. B. Chavan: There are many things in life which in fact exists but which are incapable of being defined. I think life is itself very difficult to define.

Shri Agarwal: In the realm of philosophy I may accept this thing. But when we come to law, we should have proper definitions.

Shri Pratul Chandra Mitra: Your main opposition to this Bill is that it will be misused by officers who will be authorised under this Act?

Shri Agarwal: That is one of the objections.

Shri Pratul Chandra Mitra: If there are sufficient safeguards against the possibility of such a misuse by the officers empowered to act under this law, then do you think that such a law is necessary?

Shri Agarwal: No, we don't think.

Shri Pratul Chandra Mitra: Just now you said that you are afraid of the misuse of these powers by the District Magistrates or 1st Class Magistrates and they should not be empowered. You have no objection to Sections 1 to 4. The memorandum of Mr. Yadav says that under Sections 5 and 6, which deal with this, the officers should not be empowered. That seems to be your main objection.

Shri Agarwal: That is one of the many objections. We have some objections against Section 3. Exception should be added. A sub-section should be added.

Shri Pratul Chandra Mitra: Exception should be there. There are certain papers which indulge in communal propaganda, though by and large newspapers and periodical do not indulge in communal propaganda. There are a few papers which indulge in communal propaganda.

Shri Agarwal: If every minority community is given every right to ventilate its grievances or to raise its demands then they can come forward and say that such and such are their difficulties and they are only voicing those grievances; in that case, no propaganda will be communal in this country and there would be no communalism in this country because every community and every class may say that they have some genuine grievances and they must be given a right to voice those grievances.

Shri Pratul Chandra Mitra: In this Bill the word 'communalism' occurs nowhere. The only words which oc-

cur are disturbance of communal harmony and so on. If a community or class indulges in an action which creates communal disharmony, is it objectionable or not?

Shri Agarwal: Unfortunately, when there are stresses and strains in the country how can you say that communal harmony could be achieved by only suppressing the publication of certain things?

Shri Pratul Chandra Mitra: At one place, Shri Yadav Rao has said that publication of news items may be prohibited, but some leaflets can be published.

Shri Agarwal: His contention seems to be that if a section is bent upon spreading disharmony or is bent upon propagating its views there are many channels. During the British times they took so much powers to suppress the movement for independence, but there were underground publications.

Shri Pratul Chandra Mitra: So, you want that they should be allowed overboard also?

Shri Agarwal: If you consider it to be a virus it is better that the virus comes to the force.

Shri Muhammad Ismail: I have not been able to follow all that has been said, but I just want to put you some commonsense questions.

There is talk of communalism and the Home Minister has also said something about communalism.

Shri Y. B. Chavan: I did not say anything about it. I merely asked him some questions.

Shri Muhammad Ismail: Certain words are not defined but they are well known. For instance, communal disharmony, ill-will etc. are not defined but people know what these words mean.

There are so many things happening in the country. There are disputes

between members of the same community and also disputes between a member of one community and a member of another community and there is complaint of injury. When a person of one community causes injury to a member of another community, there is the law of the country to take care of such things. Therefore, the aggrieved or injured party may have recourse to the law of the land. But we find situations developing where the members of the community to which the injured party belongs and the community to which the injuring community belongs take up the matter between themselves, instead of going to the court or to the authority which is there in order to get relief on such matters, and the communities begin to quarrel and then something happens between the members of one community and those of another. Do you approve of such a situation in the country?

Shri Agarwal: If the communities can solve their problems among themselves, amicably that would be the ideal situation. That is the situation that we have to create.

Shri Muhammad Ismail: Several things are happening in the country, as you are aware. Sometimes, a hawker enters into a dispute with a buyer. The buyer happens to be the member of a particular community and the hawker happens to belong to another community. Then a dispute develops between the two communities. I am not specifying what the communities are, but I am taking a general case, and I am putting you a commonsense question. Is such a situation warranted or justified anywhere under any circumstances? After all, there are laws in the country to deal with such things and the injured party may go to the court and ask for relief, or the party or community to which the injured party belongs may take up the matter on his behalf to the court and seek redress. Do you approve of a situation where the communities should enter into quarrels between themselves?

Shri Agarwal: Wars in the world have all been fought so far and have been precipitated on very minor issues. So long as the background of tension and stresses is there, any minor incident anywhere may flare up into an ugly situation. First of all, we have to consider how to remove that virus, and we have to see whether it should be suppressed in an unhealthy manner or in a healthy manner. There has to be constructive and unified and non party approach to this matter. Unless we adopt a non-party approach towards this problem of the removal of this virus, we cannot succeed.

Shri Muhammad Ismail: You do not approve of this situation, I suppose; you are speaking of tension; but how is the tension caused? When tension is caused by such small incidents, there must be some extraordinary powers to deal with such situations.

Shri Agarwal: But this has nothing to do with it.

Shri Muhammad Ismail: If there is such a thing there must be something to deal with that situation.

Shri Agarwal: We should think about it.

Shri Muhammad Ismail: I have gone through the memorandum and I agree with several things which are said there. But one point is that there are laws in the country but they have not been enforced properly. Your idea seems to be that if they had been properly enforced, there would have been less trouble, but the fact is that the present situation has arisen because they have not been enforced properly. Is that your idea?

Shri Agarwal: The first thing is that whatever laws are there must be enforced properly and effectively. But I would submit that the general behaviour of the press has not been very bad in this country. The history of the press over the last 20 years indicates that the behaviour of the press has been exemplary and good. It has not been of a condemnable type which warrants the Government's asking for such discretionary powers.

As far as the present situation is concerned, it is not there just for a day or two, and, therefore, unless some remedy is found we would be facing it in the future also.

Shri Muhammad Ismail: We were speaking of injury inflicted by one person upon another. Some paper comes forward and says that this man is a Hindu and he has done it because he is a Hindu and therefore that community should be taught a lesson. Will that be justifiable? If he does that; should not action be taken against that paper or person or party?

Shri Agarwal: If one paper has reported a statement or the proceedings of a meeting or any such thing and had no intention to create tension, it is fair reporting.

Shri Muhammad Ismail: Would you not also grant that if one man does some such thing, there would be the expected reaction? So how can you say that he did not have intention in such cases?

Shri Agarwal: How can you say that the thing which is going to be reported or published by the paper is not factually correct or had been done with bad intention? Who should decide?

Shri Muhammad Ismail: That is an extreme case. But is this not likely? That is to say, certain things done with intention or no intention, are likely to create tension and trouble. Can you not know or judge that such and such action is likely to bring in such and such result? Therefore can you not avoid doing such a thing as would create tension? Again, will it be wrong to punish a man if he has not avoided doing such a thing?

Shri Agarwal: How can you? You think something is bad from your angle. Who should decide?

Dr. Mrs. Mangla Devi Talwar: Does your magazine subscribe to or propagate any political ideology or social reform or secularism or national point of view?

Shri Agarwal: We have defined our aim as the promotion of national unity, national consciousness and a sense of patriotism, within these bounds, we publish our paper.

Dr. Mrs. Mangla Devi Talwar: You have said that the press is not the only agency that one has to curb or modify or guide in order to prevent tensions already present in the country. You would certainly agree that the press is one of the very important agencies in this regard; by their comments or reporting of the different versions given by correspondents, they can have a good or bad influence on the public because people are now very much newspaper-minded. In view of such an important role for the press, Government have also to take note of it and in present circumstances it is necessary to have some legislation of this type to guide the press to play its responsible role constructively. That being so, is not a certain amount of control or restriction essential?

Shri Agarwal: That must be left to the press itself. Some such agency should be evolved within the press which should be in complete liaison with Government to impose curbs on unhealthy trends, because the press is the most important and responsible agency in a democracy. It has to safeguard democracy. It is always possible for a party in power to misuse such power for its own party political ends. Such powers should be given only in very exceptional and emergency circumstances, not in such normal situation as we are today. The tensions which are there are not the creation of yesterday; they are the outcome of a long process and they will continue to be so. Before we give such wide discretionary powers to the executive, we must be sure that they are not going to be exploited for political purposes.

Shri Y. B. Chavan: Your statement that the executive must not be given all the powers all the time is unexceptionable. But you do concede that in emergency and exceptional cases

occasions may arise when such power is necessary to the executive.

Shri Agarwal: May be.

Shri J. R. Joshi: In the absence of any authoritative definition of communalism, do you find any difficulty in propagating even the family planning programme which is opposed by the Paper and would therefore be wounding the susceptibilities of one community, thereby disturbing communal harmony?

Shri Agarwal: Unfortunately, communalism being undefined, it is very difficult to say which propaganda is communal and which is not.

Shri J. R. Joshi: As things there are certain laws concerning Hindus only. Do you feel difficulty in asking for a uniform civil code because it would disturb the feelings of some communities?

Shri Agarwal: There should be a common civil code for the whole population of this country if we are to improve the social organisation of the country. No particular community should be excluded.

Shri Asghar Husain: Your main objection appears to be to section 6. Don't you think there is safeguard against misuse of this power by the authorities in the form of consultation with the press consultative committee?

Shri Agarwal: First action will be taken by the authorities and then the paper will represent to the Central or State Government and then the Government will consult the press consultative committee. Apart from the fact that the composition of the press consultative committee is not very clear from this Bill, that committee will come into the picture when the wrong has been already committed. The remedy comes much afterwards. Why should not the writings considered objectionable be sent to the consultative committee first? They should be the final authority to decide whether a particular writing is objectionable or not.

Shri Asghar Husain: You have conceded that in emergency cases, prior consultation is not necessary.

Shri Agarwal: But section 6 does not have anything to do with emergency situations. It is meant for normal times. In normal situations, nobody can think of giving such wide discretionary powers to the executive.

Shri Asghar Husain: If clause 6(1) is passed and it comes to stay, have you any alternative suggestion to have a healthy check on the likely misuse of the powers?

Shri Agarwal: There is no question of any fresh legislative powers. We have started from the position that the existing laws are sufficient.

Mr. Chairman: We are thankful to you, Mr. Agarwal, for having given us your views.

Shri Agarwal: Thank you, Sir.

(The witness then withdrew.)

(The Committee then adjourned.)

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE CRIMINAL
AND ELECTION LAWS AMENDMENT BILL, 1968.

Saturday, the 2nd November, 1968 at 10.00 hours.

PRESENT

Chaudhary Nitiraj Singh—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Vidya Charan Shukla
3. Shri S. M. Siddayya
4. Shri C. M. Kedaria
5. Shri A. K. Chanda
6. Shri K. M. Asghar Husain
7. Lt. Col. H. H. Maharaja Manabendra Shah, Tehri Garhwal
8. Shri D. Basumatari
9. Shri Hem Raj
10. Shri Jagannathrao Joshi
11. Shri Shri Chand Goyal
12. Shri H. Ajmal Khan
13. Shri J. H. Patel
14. Shri P. K. Vasudevan Nair
15. Shri M. Muhammad Ismail
16. Shri P. Viswambharan.

Rajya Sabha

17. Shri Ajit Prasad Jain
18. Shri Mohan Manikchand Dharia
19. Shri Pratul Chandra Mitra
20. Shri Ram Sahai
21. Shri Devi Singh
22. Shri Rewti Kant Sinha

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri T. C. A. Srinivasavardhan, *Jt. Secretary, Ministry of Home Affairs.*
2. Shri G. K. Arora, *Deputy Secretary, Ministry of Home Affairs.*
3. Shri V. K. Kapoor, *Under Secretary, Ministry of Home Affairs.*

LEGISLATIVE COUNSEL

Shri P. L. Gupta, *Addl. Legislative Counsel, Ministry of Law.*

SECRETARIAT

Shri D. C. Pande, *Under Secretary.*

WITNESSES EXAMINED

'ORGANISER' WEEKLY, NEW DELHI

Spokesmen:

1. Shri K. R. Malkani, *Editor 'Organiser'*.
2. Shri Ved Prakash Bhatia.

(The witnesses were called in and they took their seats.)

Mr. Chairman: Before you give evidence before the Committee, I would like to inform you that the evidence is liable to be treated as public and published unless you desire the whole or any part of it to be treated as confidential. Even if you desire your evidence to be treated as confidential, such evidence is liable to be made available to Members of Parliament.

The memorandum which you have given is rather too short. I would like you to explain your viewpoint clearly before the Members start asking questions.

Shri K. R. Malkani: My first point is that no case has been made out for this kind of a Bill. Sections 153-A and 505 of the Indian Penal Code have been part of the statute book all the time. But, during the last 21 years, I do not think there have been even 21 prosecutions under these two provisions throughout the country.

The implication is clear that whatever communal trouble has taken place has not been due to press writings. They might have had some marginal role. But the real causes are very deep. I think that alone can explain the fact that these two sections of the Indian Penal Code have rarely been used. My first submission is that no case has been made out whatsoever for making these two sections more stringent than they already are.

Having made this general remark, I would like to go into the details of the proposed Bill. Clause 2 makes certain additions. These additions refer to 'place of birth', 'residence', 'language', etc. I think, these are

really redundant because in Section 153A there is already a provision for 'or any other ground'. If anybody is trying to create disturbance between any two groups for whatever reason, e.g., religion, race, language, caste or community or any other ground, he comes under the Act. For that reason, to add 'place of birth', 'residence', etc. is redundant.

A much more serious objection to this Bill is that it makes these two offences cognizable. I am not much of a lawyer. As I understand it, this empowers a very ordinary police officer, something like a sub-inspector, to walk into any newspaper office and arrest anybody without warrant. I think, this is too extreme a provision, too extreme a power, to be given in the hands of anybody, least of all an ordinary police officer.

Another major objection to this Bill is that for certain types of offences, under these two sections, a minimum punishment has been prescribed, that is, a minimum of two years in jail, I think, this is another very extreme provision. Again, if I might repeat I am not much of a lawyer. I understand that, at present, there are only two sections in the entire Indian Penal Code which prescribe a minimum sentence. Firstly, it is for murder and, secondly, it is for dacoity with attempt to murder. So, to bring this kind of an offence on par with murder and dacoity is an absolutely extreme step taking a very hysterical view of things, as I look at it.

The third objection is that under Section 153A, a man may be found to have committed an offence but he may have never intended it. Under

Section 505, you have to have an intent to create a disturbance. Section 153A does not refer to intention. Still, in a case like that, you prescribe a minimum punishment and that is a very extreme step.

I am inclined to believe that Section 153A, even as it is, is probably *ultra vires* of the Constitution. During all these years, this particular Section has not been tested by the Supreme Court. My lawyer friends tell me that it might infringe article 19. Unless an article is of such a kind that it is clearly written with violent intent and if you do not do something, it is likely to erupt into violence, unless it goes to that point, you cannot take action. If you take action short of that, it infringes article 19.

Another major objection is with regard to Section 505. As it is today, the whole Section is being converted into sub-section (1) and two more sub-Sections are being added to it. Firstly, these sub-Sections (2) and (3) are, I feel, repetition of what is already contained in Section 153A. Secondly, the present Section 505 has an Exception as under:—

“It does not amount to an offence, within the meaning of this Section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes, or circulates it without any such intent as aforesaid.”

‘Intent’ is very important here. Even if the report is proved false, if you believed it to be true, there is no offence. But this Exception is not applicable to sub-sections (2) and (3) that are now being added to it.

Section 505A, as it stands today, refers to something to create mutiny in the Army. There is an Exception to that. If Mr. ‘A’ writes something which looks like promoting a mutiny in the Army, but if he had no such

intention, he escapes from this Section. But no such Exception has been made applicable to sub-Sections (2) and (3) which are minor offences. If somebody writes something which tends to create mutiny in the Army, it is not a cognizable offence and he may not be arrested without warrant. But for these, comparatively minor offences, he can be arrested without warrant.

Then, there is a provision that if anybody has a complaint, he can make a representation and the matter will be placed before the Press Consultative Committee. It is difficult to comment upon it because it is not clear what it is going to be like. I do not see any reason why a new Committee should be formed when the Press Council already exists. It looks it will, perhaps, be a purely nominated body. It will be like a puppet nominated body. It will be like a puppet body. This will be the impression in the mind of the publisher and the editor. I think, that will be very unfortunate.

Perhaps, the most extreme clause in this Bill is the power to executive authority to seize the press. I do not know what it means, seizing for a short while or confiscating it. I think, it is an absolutely extreme provision. Provisions of this kind have no place in a country which prides itself on democracy.

If I may repeat again, my first submission is that the whole thing has been done in a hurry. Not much thought has been given to the subject. Late Mr. Kairon had introduced a similar Bill in Punjab and the people did not think too well of that. It was confined to a small area. Late Mr. Kairon—I have great regard for him—was a very strong type of man and he thought he had to put down something. It was a temporary measure which was not used after 1956 or 1957. But to incorporate such extreme measures in the Indian Penal Code, I think, will be a blot on the Indian Code Bill itself.

Shri Hem Raj: You have said that there is no exception to the proposed

sub-section; (2) and (3) whereas, so far as previous Section 505 is concerned, there is an Exception. If that exception is put to all the clauses, will you be satisfied?

Shri K. R. Malkani: It will be less bad than what it is. It is not that it will be acceptable to the normal editor but will make it less vicious than it is now.

Shri Hem Raj: You have mentioned in your Memorandum that the powers will be given to the executive magistrates. If the powers are given to the judicial magistrates, will you be satisfied?

Shri K. R. Malkani: It will not satisfy me. It will only make it less bad than it is. That is all. These are extreme measures in any case.

Shri Jagannath Rao Joshi: You said that in clause 2 there is a mention of 'or any other ground' apart from other grounds, 'religion' 'race', 'place of birth', 'residence', etc. I would like to know whether there were any such cases before; or is it that some cases were taken up against some community by the Government only to show its impartiality? Is it the fear that to prove the Government's impartiality such nationalist papers will be harassed?

Shri Malkani: The fear is certainly there. I do have some experience of the way Government machinery functions. We feel that we, a good many of us, are being persecuted. We certainly get this impression in a variety of ways, not only by prosecution but by withholding advertisements from us and not giving us newsprint. Incidentally, I may mention that we get only one-third of the newsprint quota that we need and use. These kinds of pinpricks and harassment go on all the time.

As for prosecution, if I may give a brief history, the first prosecution

against us was under the Punjab Public Safety Act or something of that kind. That was way back in 1950. We had published something about the riots in East Bengal etc., and pre-censorship orders were imposed upon us. We took the matter to the Supreme Court and the orders were held *ultra vires*. After that the Punjab Safety Act was never used. I think, it was to get out of this that the Constitution was specially amended to include public order in that and a new Act, called the Press Objectionable Matters Act, was passed. It was used against us and we were acquitted by the unanimous verdict of a jury. That Act has never again been used. I do not know what happened to that Act but I would submit that it is no use going on passing Bills and never using them because there are enough powers with the Government already.

Official Representative: The Objectionable Press Matters Act was repealed.

Shri Malkani: I am glad to hear that.

Shri Shri Chand Goyal: How long have you been in the profession of journalism?

Shri Malkani: Since 1948.

Shri Shri Chand Goyal: Has the Government ever brought it to your notice in any manner that you have been carrying on any propaganda, which is usually termed 'communal propaganda', which is likely to create feeling of hatred between two communities or religious sections of society?

Shri Malkani: No such warning has ever been conveyed to us. I would actually suggest that if anybody in authority thinks that something published is factually wrong, it is the duty of the executive authority to draw our attention to that. We are not angels; we can make mistakes. I am surprised that Government never tells us that

certain facts are wrong and they should be corrected. I have not had any such letter from Government in 21 years.

I did have one warning of a different kind from the Government. That was soon after the Chinese attack. Under the Press Emergency Ordinance or whatever it was—it was part of the emergency laws—they sent to me scores of extracts from writings torn out of context and warned me that if I persisted in that kind of writing, drastic action would follow. I took up this matter with them saying that I would like to know which of those writings offended which section of the Emergency Ordinance and why I was not called upon to explain. Government had no answer to that; they withdrew the warning formally. Apart from this warning, which was withdrawn by the Government, I have not had any warning from the Government on any occasion.

Shri Shri Chand Goyal: You say that papers are persecuted in various ways. Has your paper also suffered with regard to advertisements, newsprint quota or in any other manner?

Shri Malkani: Till two years ago we were not getting any advertisements from the Government of India. We occasionally used to get a few from the provincial governments direct. Then, just before the elections, the Secretary of Shri Raj Bahadur's Information Ministry called us and conveyed to us Shri Raj Bahadur's decision, whom we had met earlier, that thenceforth papers blacklisted in Delhi would start getting Government advertisements. After that we got something. But I understand that there is an informal decision not to give any advertisements any more but it has not been conveyed to us formally.

Shri Shri Chand Goyal: Could you tell us something about your experience of the last 20 years about the press laws?

Shri Malkani: I do not think there is any press law as such. There is

the I.P.C. and there were the Press Objectionable Matters Act and the emergency powers. If Mr. Chairman will permit me a bit of a digression, we feel that perhaps Government tries to influence the press in an undue manner and is trying to discipline us. We are all interested in the freedom of the press and that the press could maintain a very good standard. There are no two opinions about that. The way the Press Council was constituted, I think, was unfortunate. As I look at it, it is a purely nominated body. Three or four organisations were asked to send long panels of names, about 10 or 20 names, out of which they were to pick 4 or 5. This, we feel, makes the Press Council a nominee of the Home Ministry; it does not represent the press as such. If the Press Council consisted of editors selected by us, their opinion would carry much greater weight with editors than the opinion of a nominated or semi-nominated body. I, for example, would have greater deference to the opinion of such a Press Council about any writing in the *Organiser* than the opinion of a second class or third class magistrate, because any responsible editor would like to be judged by his peers, people who understand the functioning of the press, not only the freedom of the press but also that the press should have right standards. The ordinary run of the magistracy is not a competent authority for this purpose. In many States, they are a part of the executive and are subordinate to the D.C. Incidentally, I may tell you that two weeks back I was prosecuted under section 505 and the magistrate told me—I hope, it is not contempt of court...

Mr. Chairman: You should limit yourself to the question.

Shri Malkani: I am limiting myself to the question of harassment and am giving this example.

The magistrate told me in the court that he and other magistrates trying

communal cases had been told by the D.C. to finish all such cases by Nov. 15. This kind of a thing goes on all the time.

Shri Shri Chand Goyal: You have suggested that there is no rationale and that the Government has not been able to make out a case for bringing forth this piece of legislation. But you also know that certain decisions were taken at the Srinagar Integration Council meeting, where they had felt that communal relations were getting worse day by day and that for keeping those relations harmonious, it was necessary to bring forth some new legislation. Do you not think that that justifies this Bill?

Shri Malkani: No, I do not think so. Communalism a very ambiguous term. It can have any number of meanings. I do not think that legislation of this kind can do anything about it because these sections have already been there and all that the Government now proposes to do is to make them more stringent. But my submission is that these sections have not been used; it was not found necessary to use them. If a law is not used, it becomes a dead letter. It will only mean some harassment to us. We feel that Government is being unfair to us. We know that there are problems. Every nation has problems. These problems are deeprooted and simply making laws, I think, is not of much use. We have to apply a very different angle to these problems.

Mr. Chairman: I have to request hon. Members not to repeat questions and to ask questions which will bring forth what has already been stated by the witness in his opening address.

Shri Shri Chand Goyal: There used to be an exception to section 505 which used to protect *bona fide* journalists. Do you propose that this exception must also form part of the entire section and that will remove your objection?

Mr. Chairman: I think, he has already answered to this.

Shri Malkani: I am opposed to the whole Bill. If it has to come, then that would make it a little less bad.

Shri Ajit Prasad Jain: Section 153A is of general applicability. It does not apply to journalists alone. In view of its general applicability, what special objection have the journalists got with regard to this section?

Shri Malkani: Even then, I would say that it applies to writers and editors...

Shri Ajit Prasad Jain: You said, no action has been taken on it so far...

Shri Malkani: I did not say, 'no action'; I said, 'very little action'. Not even 21 prosecutions have taken place in 21 years. This is all that I said.

Shri Ajit Prasad Jain: You said that the concept behind the place of birth, residence, is covered by 'any other ground'. Some people think that there is some ambiguity about it and, therefore, the matter is clarified by making an express provision, including the place of birth. What objection could you have to it?

Shri Malkani: I have no objection. It sounds redundant. If some people think that it is necessary to make it more explicit, it is perfectly all right.

Shri Ajit Prasad Jain: So far as clauses 2 and 3 of the Bill are concerned, your objection would be very much diluted if the existing exception to section 505 of the Indian Penal Code is made applicable to the new clauses 2 and 3...

Shri Malkani: There are two other exceptions—making them cognizable and prescribing minimum punishment. A man may be found to have committed an offence without his intending to

do it. Suppose somebody makes a speech in a mosque or Gurdwara without intending to excite and subsequently he is found guilty under this; even for such a man, there is the minimum punishment.

Shri Ajit Prasad Jain: The exception that you referred can be enforced only by the court. The person making the arrest cannot go into the question of exception; he will have to make the arrest on *prima facie* grounds.

Shri Malkani: It is a matter of the right of the accused.

Shri Ajit Prasad Jain: That comes later when the case goes to the court.

Shri Malkani: I do not think so. As at present drafted, the section is to end where it is. 505 just becomes 505(1). The exception ends there. The exception does not apply to sub-sections (2) and (3).

Shri Ajit Prasad Jain: There is communal tension in the country. It may be due to historical or other causes. But don't you think that, in recent times, the communal feelings have been aggravated and there is more of tension now between the communities than what it used to be some years ago? In this connection may I remind you of Rourkela and Ranchi?

Shri Malkani: It is a matter of assessment. Let us concede for the sake of argument that there has been an increase in communal feeling. The question is how far the Press has contributed to that. The trouble in Ranchi was a serious one. But was it the responsibility of any writer or editor? There are other factors—very deep and different factors—which are at work. What kind of press exists in Chhota-Nagpur or Jamshedpur or Rourkela?

Shri Vidya Charan Shukla: There is a press there.

Shri Malkani: But what kind of press? Have they been prosecuted? I do not know all the languages of those areas. Suppose, one paper was guilty. Was it prosecuted? If not, why not? So, the general observation that the Press is guilty is being unfair to the press.

Shri Ajit Prasad Jain: I am prepared to concede that the Government have defaulted so far in not taking sufficient rigorous action against the papers and others who were promoting communal disharmony. What role would you like the Government to play in future so that in this country where there are many races and many religious people live in peace and harmony?

Shri Malkani: There are very many things which could be done. I need not go into them at this stage. But I would just say this. Suppose, you find that a journalist has exceeded the bounds of propriety. Just present him before his peers, the editors of his States or Union Territory, whatever it is. If they feel that he has actually exceeded the limits and if they snub him and reprimand him, there can be no greater humiliation for him than that.

Shri Ajit Prasad Jain: You would not like to give any powers to the court in that regard?

Shri Malkani: That will not really serve the purpose. To ask an editor to run about in the sub-magistrate's office for an exemption will not improve matters. Suppose I have exceeded the limits; if the editor of the *Hindustan Times* or any other paper says, "we wish you had not written this", this will have a greater effect on me than what a small magistrate is going to tell me.

Shri Ajit Prasad Jain: You think that this is practicable?

Shri Malkani: Yes.

Shri Ajit Prasad Jain: Assuming that the Government calls for a small panel of names from the groups which are desired to be given representation on the Press Advisory Council or whatever it is—not 20 or 30 names for one seat but three or four names—, will that meet your objection?

Shri Malkani: The panel business does not impress me. I saw how it worked when the Emergency Press Committee was constituted. The President of the A.I.N.E.C. suggested certain people. But the Home Minister insisted that so and so should not be there. For days together the names were not announced. Why can't you trust your people? Are they your enemies? If the President of the A.I.N.E.C. thinks that five persons represent the consensus opinion of the Press and they should be in the Committee, I do not think that the Home Minister need necessarily veto that kind of a decision. The President was a Congressman and a member of Parliament, and even his opinion was vetoed. This is the danger of the panel. Even if we suggest three or four names, the Government will see who is likely to be inconvenient to them from their point of view and keep him out. This is not a fair representation; it is tantamount to nomination by the Government.

Mr. Chairman: You said that minimum punishment is provided in the Bill. I think you are referring to sub-clause (3) to section 505. It is only there that certain minimum punishment is prescribed.

Shri Malkani: It is there earlier also in section (2) Sub-section (2). Whoever commits certain offence, he is punishable.

Mr. Chairman: The minimum sentence is for a limited purpose where an offence is committed in a place of worship and no where else. Do you agree to that provision? That is the provision.

Shri Malkani: I think that prescribing minimum punishment is a very serious thing. As I said, at present it obtains only for murder and dacoity. To put these things on par with things of that kind is to take a disproportionate view of things. That is what I feel.

Shri V. C. Shukla: You said that no prosecutions have been launched or very few prosecutions have been launched under these sections. What, according to you, is the reason why prosecutions had not been launched? Is it your case that the press by and large had not indulged in communal writing or they have not had any appreciable share in the generation of communal atmosphere in the country? Is this your case?

Shri Malkani: This is precisely my case. The Press had only a marginal role. But these other kinds of reasons are different. I think this has not come in the Delhi press. What was the root cause of the riots in Jamshedpur, Rourkela and Ranchi 5 years back? My impression is, it was not really a Hindu Muslim affair. It was a tribal Muslim Affair. At the root of it was the land laws. The land laws of Bihar do not allow a tribal to alienate his land. The tribal can't sell his land to non-tribal.

Shri V. C. Shukla: The root cause is always very different. The root cause need not necessarily be communal. But once that kind of thing starts, it takes a communal shape. And then the whole trouble starts. In many cases of communal trouble the original reason was innocuous. There was trouble in Nagpur, where there was dispute between a barber and a customer. The whole thing starts out of that.

Shri Malkani: If I may continue my old point, in Bihar, this is how it started. It was found that many Muslims, well-to-do people, were marrying tribal girls and buying tribal land in their name. The tribal people did not like it. They demanded that

the tenancy law should be changed or it should be abrogated because if it was abrogated they would get very good price in open market. Nobody has so far alleged that the 5 years old riot in Jamshedpur and Rourkela were caused by the writings of the press. It was a mass affair at the village level and nobody could stop it.

Shri V. C. Shukla: It spread by the press writings. It spread over to Madhya Pradesh. It spread over to Raipur, Bilaspur and other places. It was the local men who had spread it to other places.

Shri Malkani: Bulk of the killings were by tribals.

Shri V. C. Shukla: It spread into places where there was no trouble. How can it spread?

Shri Malkani: It is a fact of history of over a thousand years. Something has got to be done about it.

Shri V. C. Shukla: We are making a law. Did the press spread, the local press, any communal feeling?

Shri Makani: No. If any paper has exceeded the bounds, they can prosecute. No prosecution has been done so far.

Shri V. C. Shukla: The reason why Government desisted from launching prosecution even though there was a good case was this, I am not making an authoritative statement. The intent is a difficult thing to prove. In law courts this happens. In the law of defamation if the intent cannot be proved, the person is let off. Because, they could not prove. The person concerned did something in some bonafide, believing that it was not a defamation. He is let off. This is precisely the lacuna. And since this has not been effective, we have to make it effective. You might dispute the necessity of making it effective. But whether this particular exception really takes away the effectiveness of the provision or not, this is the main

point, because of which we have brought forward this Bill.

Shri Malkani: As the law stands, some guilty person escapes. It is quite possible. The Indian penal code is based on the Roman Law whose basic principle is: Let a 100 guilty person escape, rather than one innocent person be punished. It will not be 100 or one; it will be very different under this kind of thing. Many innocent people will be punished. We have to think of law and order. We have to think of freedom of speech and all these things have to be properly balanced.

Shri Mohan Manikchand Dharia: I don't know whether you have compared old and new sections. You will find that there are some additional amendments, it is stated: place of birth, residence, disharmony, ill-will and all that. Are you aware of it? Do you welcome it?

Shri Malkani: As a student long years ago, I read Harold Laski who says Freedom of speech must continue. Where it is likely to turn into violence, only then you stop. You say these very general things like disharmony and all that. This is a matter of opinion. Disharmony has been all over the world. They will be there always. You can't convict simply because some magistrate thinks that somebody is promoting disharmony.

Shri Mohan Manikchand Dharia: What about other words, place of birth, residence and all that?

Shri Malkani: I thought it to be redundant.

Shri Mohan Manikchand Dharia: There is the original section and the proposed section. There is the exception which exempts from the operation of section 505 certain cases. They are:

"Where the person making, publishing or circulating any statement, rumour or report has reasonable

grounds for believing that such statement, rumour, or report is true and makes, publishes and circulates it without any such intention as aforesaid."

But, so far as these communal disturbances are concerned, there are occasions when the news is published in the very form, it is likely to aggravate the matters in some other States.

Under these circumstances, as a preventive measures, if this section is brought forward without that exception, the whole of this could be removed. So, from this point of view, if we want to prevent the outbursts of communal or regional disturbances, these exceptions may go against the intention of the very amendment itself.

Shri Malkani: Of course, I am opposed to the whole amendment. If I may make this submission. When the British Government could manage with the I.P.C., why should the free Government of India make it more stringent? You know, Sir, that the British Government managed these communal forces with the I.P.C. before same got out of their hands as intended by them. Why can't we do that? Such a thing did not happen in British days. It is all due to bad administration I think. It is a failure of the Government.

Shri Mohan Manikchand Dharia: You know the law is better administered now in India. Under the very Evidence Act which even continues to-day if there are hundred murderers, 99 are set free and only one is caught that is because the charges could not be substantiated against the other 99. What we want to do is that even though that one innocent person too should not be punished, it still continues. Under these circumstances, if some of the offences are to be brought under the law, there is no other alternative but to amend the Act. There is no use imitating the Britishers. We are having our own problems and the problems are to be tackled. Naturally, some amendments are called for.

Generally the witnesses are not supposed to put questions. Anyway since you have put the question, I have to reply.

Now, I come to the Press Council. You have made a reference to the Press Council. The whole idea of Sec. 6(1) is to prevent publication of news which is likely to affect public order. At present if such a news goes out of the press, it does harm to the public. In order to prevent that, Section 6(1) is called for. At the same time don't forget that the step seizure of the press is to be taken by the District Magistrate. It is to be done by the Central Government or the State Government or by any other authority to be appointed by the Central Government. So, this power is not completely given to all the Officers at the district level. It is not at all correct if the Press Consultative Committee is to be formed at the State level also, that is to be consulted by the State Government. Here, so far as functions of the Press Council of India are concerned, they are meant for the whole of the country and they are not having their units at the State levels. Therefore, will you suggest that while forming the Press Consultative Committee, the Press Council should be consulted by the State Government?

Shri Malkani: I would suggest that if the Government either at the Centre or in the States feel like taking action against any paper, let there be a convention that the matter should be referred to the Press Council.

Shri Mohan Manikchand Dharia: It will take a long time.

Shri Malkani: You know, Sir, that there is a case pending against me for a writing done in last September. But, I am prosecuted only this year. Why? If the Government of India can take as long as 11 months to prosecute me, can't they wait for a few weeks to consult the Press Council? I find that when the Government is anxious to prosecute a person, it

rushes to the Court. If wants to delay the matter it tries to give the impression of acting by referring the matter to the Press Council. The matter ends there. You know, Sir, as to how these things are functioning.

Shri Ajit Prasad Jain: Section 6 is a preventive section.

Shri Malkani: I know that. But, it is intended to prohibit, for a period not exceeding two months, the printing or publication of alarming, incorrect or provocative news or of views. Under the law, what prevents the Government from continuing this order at the end of every months?

Shri Mohan Manikchand Dharla: My last question is this. That is regarding a statement by Mr. Malkani in his memorandum viz. 'Communal, sectarian, linguistic and regional feelings are very unfortunate. But, they can be cured gradually by education and not by the magic wand of desperate laws.'

You may perhaps know that I am in the habit of reading the *Organiser*. I have read several such news as appear in the *Organiser*. I shall take for example the sensational news of 'League Plan to Link Moplastan with Pakistan. Pakistan has formed a special coastal navy unit and recruited 10,000 Kerala Muslims to man it.' 'every Haji brings a Diana gun', 'Sarojini Naidu and Asaf Ali were British Agents'. There are several such news of this type. I have no time to refer to all of them. By such types of sensational news, are you going to educate the masses by and large?

Shri Malkani: Let me first take the the first one 'Moplastan'. I don't think that there is any line or word in the despatch which is contrary to the known facts. And I stand by what is stated in it. When some news is a fact and it is in public interest, it must be brought to the notice of the public. The people should be told what is the meaning

of this. It is very strange when something was raised by Congress once and now they come round and say that that should not be done.

Shri Mohan Manikchand Dharla: I can understand to a certain extent that they wanted to have a district of their own community. But the news is 'League Plan to link Moplastan with Pakistan. Pakistan has formed a special coastal navy unit and recruited 10,000 Kerala Muslims to man it'. Kerala Muslims are Indian Muslims. If they are recruited by Pakistan, it makes the matter so serious. You should substantiate that these 10,000 have been actually recruited by Pakistan. Otherwise this creates feelings of hatred and ill-will among the caste Hindus, Christians and other National Muslims too in that area. Who is responsible for such things? And how are you going to educate the public by and large by such news?

Shri Malkani: When I say Kerala Muslims I do not mean Indian Nationals—but the Muslims who come from Kerala but who now have domicile in Pakistan. Let anybody challenge me that this is not correct. I stand by what is stated here.

Shri Vidya Charan Shukla: According to him, the Kerala Muslims are Pakistani Muslims:

Shri Malkani: I say that they were Muslims who came from Kerala originally.

Shri Mohan Manikchand Dharla: Anyway that statement is not here. But it does create an ill-will. I can understand if you say that 10,000 Pakistanis originally coming from Kerala are recruited. Now an explanation has come at this meeting. This *Organiser* has published a sensational news and it goes all over the country. That is how this feeling is generated. That is how this ill-will and hatred are created. Elsewhere you say that both Sarojini Naidu, a great patriot of this country.

and Asaf Ali were British agents. Have you got any evidence to substantiate your case that they were British agents? I have gone through the whole news.

Shri Malkani: Let any of the relatives challenge us to come out with facts. I shall do that.

Shri Vidya Charan Shukla: Mr. Malkani, you have two points—one is regarding the minimum punishment and the other is regarding the exception. Are you aware that in the Food Adulteration Act also, such a minimum punishment is provided for?

Shri Malkani: It has recently been provided for. But it is not in I.P.C.

Shri Vidya Charan Shukla: According to you, it is not a minor offence. But, in the Food Adulteration Act Minimum punishments have been provided for.

Shri Malkani: I say it is a very serious offence. It can even kill a man.

As the Indian Penal Code stands to-day, communalism is not a serious offence comparable to murder.

Shri V. C. Shukla: There are many more laws which provide for minimum punishment. It is not as if there are only two sections and this is the third in the country.

Shri Malkani: Are there any others in the IPC?

Shri V. C. Shukla: I could cite many laws where minimum punishments are provided. It is not only in the IPC. In the IPC there may be only one or two. Secondly, you said that it is easier for editors to reprimand other editors and they should not be left to be tried by petty magistrates. How do you feel about magistrates who are entrusted with duties connected with law and order? According to us, nobody, even though he may be an editor, is above law. If a

person commits breach of law, whether he is an editor or a Member of Parliament or a Minister, he should submit himself to law, which means to the court which has been entrusted with the task of enforcement of the law—whether you call him a petty magistrate or a district magistrate. It is on this premise that we should go. Is it your case that editors should be exempted from this?

Shri Malkani: Of course not. Law is there and everybody is equal before that law. What I said was this: If you really want to improve matters in the press, I thought it is better to refer the case to the Press Council before sending the man to a magistrate. This is my opinion.

Shri V. C. Shukla: Whenever there is a *prima facie* case, we would immediately take that case to the court. whenever there is a writing in the press which is patently in bad taste, it is referred to the Press Council. But if there is a *prima facie* case of violation of law, then there is no need to go to the Press Council. That matter can be referred to legal adjudication and law courts can give their verdict whether there is an offence committed or not. But if there is some writing which is not in violation of any law but which is blatantly in bad taste, then the Press Council is there to discipline such writers. In other words, cases which cannot be taken to a court of law can be taken to the Press Council.

Shri Malkani: Recently the DC or DM of Ajmer recommended action against a paper in Ajmer and Jaipur under IPC. But Government did not take it to court. They sent it to the Press Council. I do not want to go into the reasons why they did so. So, what you said is not quite correct. Here the lower authority recommended action under IPC, but it was not done.

Mr. Chairman: You agree that communal writings incite communal hatred and that leads to murders?

Shri Malkani: I do not think that a man who reads such writings in a paper takes a gun and commits murder.

Mr. Chairman: But it will agitate his mind and he may just join a riotous mob and commit murder.

Shri Malkani: I won't say no, but the educated man who reads newspapers does not indulge in this kind of thing.

Mr. Chairman: Suppose such a writing leads to murder, where is the harm if compulsory punishment is provided especially when it is provided for dacoits and murders?

Shri Malkani: I do not think that any riot in India in recent years has been sparked off by newspaper reports. There have always been a number of factors. One, two or more papers might have added to it. But they have never been the prime cause.

Mr. Chairman: You concede that press might have added to it.

Shri Malkani: It is bound to have made a marginal contribution.

Shri P. C. Mitra: Is it a fact that 'Organiser' is the mouth-piece of the Jan Sangh?

Shri Malkani: No, because 'Organiser' was first published in July, 1947 and, if I remember right, Jan Sangh was born in October 1951. It is certainly true that I and others connected with 'Organiser' generally agree with Jan Sangh points of view on most of the matters. But it is not a kind of official organ of the Jan Sangh.

Shri Jagannath Rao Joshi: In what way is that question relevant to the issue that we are considering?

Mr. Chairman: He was just asking about the background of the paper.

Shri P. C. Mitra: Is it not a fact that the Jan Sangh wants to ban Communist Parties, both Right and Left?

Shri Malkani: I think this question should be addressed to the Jan Sangh.

Shri P. C. Mitra: You agree that there must be some rule or some law to prohibit unlawful activities of certain parties or certain groups of people who think in a certain way?

Shri Malkani: I think it is a very general or hypothetical question. What is unlawful activity, what is or what is that. If you could ask a more specific question, I can give a more specific reply.

Shri P. C. Mitra: Do you accept that Government have not misused their powers to prosecute papers under 153A or 505 so far?

Shri Malkani: After the Srinagar Conference of the National Integration Council, there seems to have been some kind of crusade to get half a dozen people connected with some papers in jail. Before that it was all normal. Now it sounds like a political prosecution of some papers.

Shri P. C. Mitra: I would like to know whether you accept that there are certain writings in certain papers which may accentuate communal feelings and whether your attention was drawn to such reports.

Shri Malkani: There are bound to be writings of that kind. But 153A would take care of it.

श्री राम सहाय : श्री मलकानी ने अपने मैमोरेण्डम के पैरा 1 में यह बात मानी है कि बिल शक कम्युनल, सैक्टरियन, लिंगविस्टिक और रीजनल फीलिंग्स बहुत अनफौरचुनेट हैं। जैसाकि आप ने अपने मैमोरेण्डम में लिखा है कि ऐसी फीलिंग्स बहुत अनफौरचुनेट हैं तो क्या आप ऐसी फीलिंग्स को मौजूदगी व अस्तित्व को मानते हैं ?

श्री मलकानी : हम मानते हैं और उस में लिखा भी है।

श्री राम सहाय : यह भी आप मानते हैं कि ऐसी अनफौरचुनेट फीलिंग्स को किसी भी प्रकार दबाया जाना चाहिये ?

श्री मलकानी : दबाना शब्द मैं यूज नहीं करूंगा।

श्री राम सहाय : उनको रोकने की आवश्यकता थी ?

श्री मलकानी : रोकना नहीं सुलझाना।

श्री राम सहाय : उसे रोकने की जरूरत गवर्नमेंट को और नेशन को नहीं है यह दोनों बातें आप मानते हैं ?

श्री मलकानी : यह रोकने से नहीं रुकेगा।

श्री राम सहाय : रुकेगा या नहीं वह तो अलग चीज है इस बात को तो गवर्नमेंट देखेगी। मैं तो आपसे यह जानना चाहता हूँ कि रोकने की आवश्यकता है या नहीं ?

Shri Malkani: This is a different kind of problem requiring a very different kind of solution. I am trying to explain that. The general feeling is that the Muslims of India are better off. What is happening in Pakistan? There is general agreement that the condition of Hindus is no

good. It is conceded to be worse than the condition of Muslims here.

श्री राम सहाय : मैं यह पूछना चाहता हूँ कि रोकना जरूरी है या नहीं ?

श्री मलकानी : मेरा यह कहना है कि रोकना गलत शब्द है।

श्री राम सहाय : अब मैं आपसे दूसरी चीज पूछ रहा हूँ। क्या आप नेशनल मूवमेंट को रोकना और इस प्रकार कम्युनल प्रचार की बातों को रोकना इन दोनों बातों को एक ही कैटेगरी में रखते हैं ?

Shri Malkani: The question is whether you put the national movement and the communal movement on par.

Shri Malkani: No, no. I have said that communal, sectarian, linguistic and regional feelings are very unfortunate.

Some hon. Members: No, no.

श्री राम सहाय : मेरा सवाल यह है कि नेशनल मूवमेंट और इस प्रकार की जो एक्टिविटीज हैं, कम्युनल, सैक्टरियन, लिंग्विस्टिक, रीजनल इन दोनों को एक ही फुटिंग पर रखेंगे ?

श्री मलकानी : बिल्कुल नहीं।

श्री राम सहाय : फिर इसमें आपने रोलेट ऐक्ट की मिसाल दी है और एक ही फुटिंग पर रखा है ?

Shri Malkani: I would put it this way. Rowlatt Act has nothing directly to do with the Press.

श्री विद्याचरण शुक्ल : श्री रामसहाय जी जो पूछ रहे हैं उसका उद्देश्य एक ही है। आपने जो मेमोरेण्डम दिया है उसमें एक प्रकार से तुलना की है और यह कहा है कि अंग्रेजों ने यह किया। सरकार कम्युनल मूवमेंट को दबाना चाहती है।

श्री राम सहाय : मेरा कहना है कि आपने इस चीज को बड़ा-चड़ा कर इसमें कहा है या नहीं? मेरा डाइरेक्ट क्वेश्चन यह है कि इन दोनों बातों की मौजूदगी में आप यह मानते हैं या नहीं कि आपने नेशनल मूवमेंट की मिसाल देकर और रोलेट ऐक्ट की मिसाल देकर इस बात को बड़ा-चड़ा कर कहा है या नहीं?

Shri Malkani: It is a matter of opinion.

Shri Ram Sahai: This is not a matter of opinion.

Shri Malkani: I think it is hon. Member's opinion.

श्री राम सहाय : आप इन्टरप्रिटेशन जो चाहे करें लेकिन आप इतना बतायें कि यह बड़ा-चड़ा कर कहा है या नहीं?

Shri Malkani: There are questions which cannot be answered in 'Yes' or 'No'. It has to be explained.

Mr. Chairman: In your memorandum in paragraph 2 you have referred

to the Rowlatt Act. The Rowlatt Act was meant to curb the National Movement. Do you mean to suggest that this Bill is similar to the Rowlatt Act?

Shri Malkani: What I am trying to say is that the Rowlatt Act was much more limited in its position than this Bill. I am not comparing the communal movement with the National Movement. I am only comparing the laws, not the movements.

श्री राम सहाय : क्या मैं यह समझूँ कि आप दोनों की क्यों जरूरत मानते हैं?

श्री मलकानी : जी नहीं, मैं बिल्कुल नहीं मानता।

श्री राम सहाय : आप यह बताइये कि आपने बड़ा-चड़ा कर कहा है या नहीं?

Shri Malkani: I was comparing the laws, not the two movements. That is No. 1. No. 2 is it was applicable only for one year at a time. No action could be taken unless the Governor first referred the matter to a High Court Judge and only after the green signal is given, the prosecution is made before a sessions judge.

श्री राम सहाय : अफसोस तो यही है कि आपका इस प्रकार से एग्जाजरेशन करना गवर्नमेंट को मजबूर करता है कि वह इस प्रकार के कायदे बनाए।

Shri M. Muhammad Ismail: Mr. Malkani, says that he refers to the provisions relating to Press and the Newspapers. Now, I just want to ask him a simple question and that is this. Supposing that the composition of the Press Consultative Committee as envisaged in the Bill is satisfactory to such friends as Mr. Malkani, and if a provision is made that the recommendations of not less than .75 per cent of the Members of the Committee should be binding upon the Government, will it satisfy him?

Shri Malkani: It will make the Bill less bad, because as it is, my contention is that this Bill should not be moved at all. No case has been made out for such a Bill. That is my basic contention. If it has to be there, a little improvement will make it less offensive.

Shri M. Muhammad Ismail: He spoke of intentions and exceptions provided in the existing Section 505 and his objection was that they were being removed from the present amending Bill. Whatever may be the intentions, are there any such words which if used inadvertently or unintentionally would create commotion amongst the people or create objections?

Shri Malkani: This is true. As I said, I feel that an offence of that kind where the intention is not there should not be made cognizable, which in effect means arresting a person without warrant.

Shri M. Muhammad Ismail: A court of law takes note of the intention and the motivation while giving a sentence and punishment. But, what will be the position when the Government or the public are concerned with the actual facts, with the actual happenings in the country and the results thereby?

Shri Malkani: If every offence is made cognizable, a small petty police officer who has the authority gets all

the powers of entering into premises, conducting a search and also arresting a person without warrant, though subsequently he may be released on bail etc.

Shri M. Muhammad Ismail: Supposing a provision is also made that an officer of not less than a certain rank is not allowed to act in such cases of arrest etc., his objection will be a little less, if not completely removed.

Shri Malkani: Only a lawyer can say something about this. I don't think that a particular type of this officer alone can do this and others cannot do this if an offence remains cognizable. I would prefer it not being made cognizable.

Shri M. Muhammad Ismail: As has been pointed out already by more than one friend, rather than having such laws a proper system of education should be set afoot, which would be a surer remedy for all these evils. Whenever there is some interruption in such a course of education, should not the authorities who have set in motion the educational programme take some effective steps to remove the obstacles which have come in the way of educating the people? Any kind of education can be interrupted; any propaganda can be prevented.

Mr. Chairman: He says yes to your question.

Shri M. Muhammad Ismail: Therefore, such a measure is intended for carrying on such an educational programme. I leave the question about Muslims, Hajis, 10,000 Keralites etc. where Mr. Dharia had left. I will also leave the question of possibility of smuggling even 10 people inside the country by any group of people. I would leave it to the Government and such other authorities to ascertain the facts with the help of Mr. Malkani and other agencies. With regard to Ranchi, Mr. Malkani said that there were only Muslim contractors. Were there not non-Muslim contractors there at all?

Mr. Chairman: That is a factual affair. We are more concerned with the provisions of the Bill.

Shri C. M. Kedaria: It does not come within the purview of this witness.

Shri M. Muhammad Ismail: That question was put to him. It indirectly connects the provisions of this Bill.

Shri Vidya Charan Shukla: May I clarify? The main provocation at that time was the influx of East Bengal Refugees into that area. On account of this, even the tribals got into this atmosphere. It was a matter of economic issue. I don't think only Muslim contractors were responsible for the offences. Even non-Muslim contractors have been doing all these things.

Mr. Chairman: Let us limit ourselves to the Bill. If the witness has gone astray, let us also not go astray.

Shri M. Muhammad Ismail: Our country is multi-racial, multi-religious and multi-linguistic. That is recognised by our Constitution. Whatever may be one's religion or culture or language, he forms part of the nation. That is what our constitution adumbrates and therefore, should we not do something if there is anything against this position which has been established by the Constitution. This bill seeks to provide for the fulfilment of what is adumbrated in the Constitution.

Shri Malkani: I think the present law as it exists now is adequate for the purpose.

Shri A. P. Jain: Mr. Malkani, I drew your attention to the fact that Section 153(a) of the Indian Penal Code is generally applicable. Suppose you do something in your capacity as a private person, which comes under the mischief of this Section, you are liable to bear the consequences. If

you write something in your paper in your capacity as Editor, which comes under the jurisdiction of this section, then also you are liable for the consequences. You stated that the Editors of newspapers must be finally judged by the peers. Is it your intention that if you, as Mr. Malkani, do something which comes under the mischief of Section 153(a) you should be tried by a Court of Law? But if you do the same thing in your capacity as Editor of Organiser you should go to your peers for the final decision.

Shri Malkani: What I said was that it would be better to get a thing processed by the Press Council before launching proceedings against a particular writing.

Shri A. P. Jain: Am I correct in understanding that you are just suggesting a method and it is not that you want the Editors to be excluded from the jurisdiction of the Court?

Shri Malkani: I would not suggest that. If someone writes something horrible, why should he escape the law? He should be penalised.

Shri A. P. Jain: For whatever comes within the mischief of the law.

Shri Malkani: But, many times there are marginal cases which should be refined to the Press Council.

Shri M. Muhammad Ismail: Wherever the offence may be committed, if they are heinous according to the provisions of the Bill, would Mr. Malkani agree to the suggestion that the punishment shall be 5 years or even more and no distinction should be made—whether the offence is committed in an ordinary place or anywhere else?

Shri Malkani: Subject to correction, my feelings is that nobody has been convicted under this section upto now and sentenced for even one year. Already there is a provision of two years. Nobody has been punished.

What is the use of such threatening procedure? This is not necessary. Two years is a great deal; one year is a great deal; one day is a great deal. This is meant for dacoits. This is not meant for educated people.

Mr. Chairman: But if educated people by their writings bring out riots, etc., should they be left out? Is that your proposition?

Shri Malkani: I did not say that.

Mr. Chairman: Thank you. We thank you for having come here.

I may tell you that the proceedings of this committee are confidential and nothing shall be published until this committee decides to make that public. Thank you very much.

(The witnesses then withdrew)

(The meeting then adjourned)

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE CRIMINAL
AND ELECTION LAWS AMENDMENT BILL, 1968.

Wednesday, the 20th November, 1968 at 16.15 hours.

PRESENT

Chaudhary Nitiraj Singh—Chairman.

MEMBERS

Lok Sabha

2. Shri Vidya Charan Shukla
3. Shri C. M. Kedarīa
4. Lt. Col. H. H. Maharaja Manabendra Shah, Tehri Garhwal
5. Shri Jagannathrao Joshi
6. Shri Shri Chand Goyal
7. Shri J. M. Lobo Prabhu
8. Shri H. Ajmal Khan
9. Shri P. K. Vasudevan Nair
10. Shri P. Viswambharan

Rajya Sabha

11. Shri Mohan Manikchand Dharia
12. Shri Pratul Chandra Mitra
13. Dr. (Mrs.) Mangla Devi Talwar

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri L. P. Singh, Secretary, Ministry of Home Affairs.
2. Shri T. C. A. Srinivasavardhan, Joint Secretary, Ministry of Home Affairs.
3. Shri G. K. Arora, Deputy Secretary, Ministry of Home Affairs.
4. Shri V. K. Kapoor, Under Secretary, Ministry of Home Affairs.

LEGISLATIVE COUNSEL

Shri P. L. Gupta, Addl. Legislative Counsel, Ministry of Law.

SECRETARIAT

Shri M. C. Chawla, Deputy Secretary.

WITNESSES EXAMINED

Shri Niren De—Attorney-General of India.

(The witness was called in and he took his seat)

Mr. Chairman: Friends, we form a quorum. I have already drawn attention of the witness to some of the Sections of the Bill since some of us felt some difficulty about certain problems. The witness will enlighten us. I shall now request my friends to ask questions.

Shri Shri Chand Goyal: Mr. Attorney General, we have little apprehension that with this substituted Section 153(a) of the IPC which is being incorporated as Section 2 of this legislative measure, this has never been tested either by the Supreme Court or the High Court. According to me it places the restriction on our freedom of speech and expression which has been guaranteed by Article 19 of the Constitution. The provision is most stringent from two aspects in the sense that the offence has been made a cognizable offence and the arrest will be without warrant. This is stringent from another aspect also. So far as the Indian Penal Code is concerned, the minimum punishment has been provided for two offences, namely, murder and dacoity. Now please see sub-clause (2) on page 2. It reads thus:

"Whoever commits an offence specified in sub-clause (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment which shall not be less than two years, but which may extend to five years and also be liable to fine."

Now we want to have your views on this aspect as to whether this will be a reasonable restriction so far as freedom of speech and expression guaranteed in Article 19 is concerned? Or, do you think this is all right? We would like to be enlightened on this aspect.

Shri Niren De: Mr. Chairman and hon. Members, I have been asked

whether 153A, as proposed by way of amendment, encroaches on Article 19 of the Constitution. I quite agree that it does encroach on the freedom of expression so far as the press is concerned. But I am not concerned with the policy of it. I am only concerned with the question as to whether it violates Article 19 of the Constitution. The only question is that so far as Article 19 is concerned whether this restriction is reasonable in the interests of the public or in the general interest I have no doubt in my mind that so far as the object of the clause is concerned, it attempts to prevent people from freedom of expression for the reasons mentioned in the proposed clause itself, that is to say, in order to promote harmony or to put it the other way, in order to stop anything which will result in disharmony or feelings of enmity or creation of illwill not only on the basis of language, caste or community, but also on the basis of birth and residence which you are bringing in now. I am quite clear in my mind that it is constitutional.

Shri Shri Chand Goyal: On page 2, sub-clause (b) it is said—

"commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb public tranquillity."

We want to have your views whether it is not necessary to add the word 'intentionally' and say "commits intentionally any act..." etc. because otherwise a person who may otherwise be innocent and may never have intended to create these feelings, may come within the mischief of this provision. Don't you think therefore that it will be advisable to qualify the word 'commits' by adding the word 'intentionally' after it because I think the element of *mens rea* must be there?

Shri Niren De: It is a difficult question that you have asked me. But even without this element I think the Bill as it stands today is not unconstitutional because here is only says 'commits any act which is prejudicial to the maintenance of harmony....' From that point of view I do not think it is unconstitutional.

Shri Shri Chand Goyal: I was suggesting that in order to protect the *bona fide* journalists.

Shri Niren De: I agree.

Shri Sri Chand Goyal: Do you agree with me?

Shri Niren De: I agree that if intention is brought in it will safeguard their interests better. But even without bringing in 'intention', I do not think it is unconstitutional. It is for Parliament and you, gentlemen, to decide whether it should have been probably better if you had brought in intention.

Shri Sri Chand Goyal: Now I come to clause 3. The position here is that the exception which forms part of section 505 of the Indian Penal Code will now be confined only to sub-section (1) and not to the entire section as was originally the case. In other words, this exception will not govern the other two sub-clauses, namely, sub-clauses (2) and (3) of clause 3. Don't you think that it will be advisable to make the exception applicable to the whole section? I shall draw your attention to the exception which says:

"It does not amount to an offence, within the meaning of this section, when the person making publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes, or circulates it without any such intent as aforesaid.

Here, the *bona fide* journalists have been protected by the insertion of this exception which governs the entire section 505. What has been done in the present Bill is that this exception has been made applicable only to sub-section (1), and sub-sections (2) and (3) have been left out of its purview. We want to have your views as to whether it would not be advisable to apply the exception to the entire section?

Shri Niren De: This is the first thing that struck me when I was reading this Bill. You have asked me two questions. The first question is: Is it constitutional as it stands? The second question is: Is it advisable? These are two different questions. I think the section, as it stands, is Constitutional. But at the same time I must tell you that my view may be found to be wrong. As I see it now, there is no unconstitutionality attached to the section without the exception. The second question was about advisability. From the point of view of a prudent lawyer, I think I am inclined to agree with you.

Shri V. C. Shukla: Virtually the original section has been reproduced here without any change. Still do you find it objectionable? At present the Law Commission is going into it. And we thought that instead of revising it in anyway, we should keep it as it exists to-day. Would you consider this unreasonable. Should it have been changed? Or is it all right as we have put it now?

Shri Niren De: The present section—Section 505 as it stands to-day has an exception in it.

Shri Vidya Charan Shukla: I am referring to Section 153A.

Shri Shri Chand Goyal: We are concerned with only 505 and not 153A.

Shri Vidya Charan Shukla: The Bill as it stands has a proviso which is

quite constitutional. This question has already been answered.

So far as 153A is concerned, it is quite constitutional. Whether we should keep it as it is or not is a matter of opinion.

Shri Vidya Charan Shukla: Whether the intention is clear in this section is my question. You did say that.

Shri Niren De: I did say that. I do feel most strongly about it. Section 505 originally had an exception. You are re-casting it along with that exception. But you are bringing in another sub-section in 505 without the exception. I don't like this discrimination in the same section.

Shri Mohan Dharia: Is it your suggestion that instead of having this new clause in 505, there should be an altogether new section?

Shri Niren De: Proposed changes are in the same sub-section. I have not considered what the effect will be if they are split-up into two different sections.

Shri Shri Chand Goyal: The purpose of this Bill is to curb the communal tensions that are growing all over India. And it is with a view to dealing with that that this legislative measure is being brought forward.

I want to know whether the present law is adequate enough or not to deal with such situations or feelings of communal hatred or disharmony.

Our experience has so far been that under Section 153 and 505, 21 prosecutions have been launched during the last 21 years. Don't you therefore think that the present law is adequate enough to deal with such eventualities?

Shri Niren De: The provisions of the new bill are surely additions to the existing law. Indeed none of these new ground is covered by the existing

law. To that extent I would say that it can be justified. Whether you can stop the communal tension by any law is a matter of opinion.

Shri Shri Chand Goyal: Will it be desirable to enforce the law in the country? Can we authorise the Central Government to enforce that in whatever are or whatever time they feel it necessary?

Shri Niren De: I cannot answer that. It is a matter of policy.

Shri Shri Chand Goyal: My last question is this. In Clause 6 there is a sub-clause (2) which deals with seizure of the printing press. Please see sub-section (2) of Section 6 on page 5 of the Bill. The clause reads as follows:—

“In the event of disobedience of an order made under sub-section (1), the Central Government or the State Government or the authority issuing the order, as the case may be, may, without prejudice to any other penalty to which the person guilty of the disobedience is liable under this Act or any other law for the time being in force, order the seizure copies of the publication made violation of an order made under sub-section (1), and of any printing press or other instrument or apparatus used in the publication.”

So, don't you think that this provision of seizing the printing press is too harsh a provision in a democratic functioning of the press?

Shri Niren De: It may be too harsh a punishment in a democracy. But, I am not concerned with that. The only question with which I am concerned is whether this is constitutional or not. I see there is nothing wrong about it.

Mr. Chairman: You should put it to Government and not to the Attorney General.

Shri Jagannathrao Joshi: I have a submission to make for example, I am not convinced about the arguments that have been advanced. You just now enlightened us that the law as it stands to-day covers more grounds. Is it not possible to curb this situation or to keep this situation under control with the existing law? I do not know much of the law. But, I would like to ask a specific question. Are there any cases where the Government wanted to book the culprits, but could not do so in the absence of any adequate law?

Shri Niren De: I am sorry I could not catch your question. Will you kindly repeat it?

Shri Jagannthrao Joshi: As the law stands to-day, is it not possible for the Government to keep this situation under control? What is the good or necessary of bringing in this piece of legislation? This is my simple quesetion.

Shri Niren De: As I said before, there are elements in the bill which are not covered by the existing legislation. Take for instance Sec. 153A. The suggestion is that we should have not only the existing elements but bring in also the place of residence and so on under this section. This was not covered before. The intention is to include in Clause 2 the grounds which might cause enmity between different groups on the basis of place of birth, or residence as well. These are additions which have been incorporated in the Bill. Whether the existing law really is effective for the purpose of promoting some of the objectives which the Bill seeks to envisage is a question to which I cannot answer.

Shri Shri Chand Goyal: You see Sec. 153. The words 'or any other ground whatsoever' occurring after the words 'caste or community'.

Shri Niren De: But this Bill makes it more specific. To that extent it may be necessary. The words 'on

any other ground whatsoever' may be consider to be related to the words occurring previous to that expression on the principle of ejusdem generic. These will not include 'residence or place of birth' which we have now included.

Shri Lobo Prabhu: It is strictly constitutional. I want to know whether it would be unconstitutional if the word 'class' is added after the word 'caste'. I raise this question because a number of conflicts between the employers and employees arise at present which are disintegrating the society. That is why I would like to know whether this would be consistent with the amendment to Sec. 153A and 505 of the I.P.C. as well as with the Statement of Objects and Reasons.

Shri Niren De: If you introduce the word 'class', and by that, you would mean 'labour class', 'capitalist class' and so on, I am not sure you would want that as struggle is inherent in the existence of these two classes. So, I cannot answer this as it is more or less a question of policy.

Shri Lobo Prabhu: My question is this. Would it be unconstitutional if it is the statement of Objects and Reasons?

Shri Niren De: It would not be unconstitutional if the object of the Bill is to remove the tensions which are disintegrating the society. If you refer to clashes that take place between classes, which are disintegrating the society, it would be all right. But which classes you will bring in is a matter of policy and I cannot answer that.

Shri Lobo Prabhu: But, it would not be unconstitutional.

Shri Niren De: No.

Shri Lobo Prabhu: I was suggesting this because a lot of tensions arose in the past because of under-statement or over-statement; in other words, lack of a clear statement. Would it not be better to have the word 'mis-understanding' in the section?

Shri Niren De: The word misunderstanding is very vague. I don't know what would be the position if the expression was to be tested in a Court of Law

Shri Manabendra Shah: The punishment proposed here is imprisonment, which is awarded for a murder or dacoity. I want to know whether it is justifiable to include such a kind of punishment here in this Bill.

Shri Niren De: My answer is that it is not unconstitutional. A law can provide any appropriate measure of punishment. To make it one year or three years is a matter of policy, and also whether it should be compulsory or optional is really a matter of policy for the Legislature.

Shri Shri Chand Goyal: The point is whether it is worthwhile to equate this with offences like murder and dacoity where the punishment is imprisonment.

Shri Niren De: I am afraid I have to consider it as a matter of policy.

Shri Manabendra Shah: Here the place of birth and residence are brought in. All regions have their natural aspirations, economic or otherwise. When you put them into this clause, don't you equate them with other grounds like religion, race, etc., Don't you think that you are trying to crush the natural aspirations of a particular region?

Shri Niren De: Do you mean to suggest that this particular clause should not be introduced because it will have an effect on the natural aspirations of a particular region?

Shri Manabendra Shah: The inclusion of place of birth and residence is a new thing; it is not there in the Indian Penal Code. When it is included here, that means no agitation for the fulfilment of natural aspirations of a particular region can be there.

Shri Niren De: But that is a matter of policy.

Shri Manabendra Shah: The title of this Bill is The Criminal and Election Laws Amendment Bill, 1968. In this amending Bill, they have included new clauses which do not form part of any existing act. Do you think it is proper to have new things in an amending Bill or should the new things be there separately?

Shri Niren De: The Legislature has the power to pass a law in any form it likes. The law can be completely a new law or in the very same law there can be parts which may be new or parts amending the existing law. There is no restraint on Parliament.

Shri Manabendra Shah: Clauses 2 and 3 relate to Penal Code, but the provisions regarding Press and Press Consultative Committee do not form part of any Act.

Shri Niren De: But there is no incompetence in that.

Shri Vasudevan Nair: I would like to draw your attention to Clause 6 under which both the Central Government and the State Governments have the power to take action against prejudicial publications. When the Government at the Centre tries to deal with a newspaper in a State, will there not be scope for some kind of encroachment on the legal rights of a State Government and interference with the powers of a State Government? As the scheme as it stands at present in this clause, I would like to know whether there is any possibility of a conflict arising between the Centre and the State.

Shri Niren De: It is an interesting question. As you know, the subject matter of legislation is in concurrent list. So this Section is not invalid. But the interesting part of your question is about the possibility of a conflict between the Centre and the State. I am afraid that is a matter of policy and I cannot answer that question.

Shri Shri Chand Goyal: We are trying to have your guidance. It would not be advisable to pass a legislation which may give rise to conflicts between the Central and the State Governments. Would it not be advisable to remove that possibility if we could?

Mr. Chairman: It can be done by amending the Constitution and framing a new concurrent list.

Shri Shri Chand Goyal: The Attorney-General can give his views.

Shri Niren De: There may be a conflict between the orders of the Central Government and the State Government. But I am talking about the power to do it, about the competence to do it. As this is a concurrent subject, both the Centre and the States have powers. Regarding the other question about the possibility of a conflict, I cannot answer.

Mr. Chairman: We had a valuable discussion the other day. It was said that there is discrimination because the press has been provided with a consultative body, but there is no identical provision for individuals.

Shri Niren De: The press has got to have a consultative committee; not the individuals.

Shri V. C. Shukla: You said about the exception to section 505. What is the practical value of this exception?

Shri Niren De: I am just reading the first three lines of the proposed section: "Whoever makes, publishes or circulates any statement or report containing, rumour or alarming news with intent to create or promote, or which is likely to create or promote . . ." It is in the last part that the exception might be necessary.

Shri Shri Chand Goyal: This safeguard is necessary.

Mr. Chairman: We are thankful to you for having come here and given your advice. The proceedings of this committee are confidential unless the committee decides to make them public. Thank you very much.

Shri Niren De: Thank you very much.

(The witness then withdrew).

(The Committee then adjourned).

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