लिये जाते हैं। इसलिए अच्छा हो कि सब मंत्री सीधे जनता द्वारा चुने हुए हों।

मुझे खुशी है कि मंत्री महोदय ने यह शुरुआत की है। मैं उस का स्वागत करता हूं। चूंकि यह शुरुआत हो गई है और यह एक वेलकम स्टेप है, इसलिए मैं सदन से अपना यह विधेयक वापस लेने की अनुमति चाहता हूं। मैं आशा करता हूं कि आज नहीं, तो कल या परसों सरकार इस सिद्धांत को स्वीकार कर लेगी कि सभी मंत्री सीधे जनता द्वारा चुने हुए होने चाहिए।

सभापति महोदय : क्या माननीय सदस्य को विधेयक वापस लेने की सदन की अनुमति है ?

कई माननीय सदस्य : जी, हां।

The Bill was by leave, withdrawn.

15·55 hrs.

Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill

SHRI A. N. MULLA (Lucknow) : I beg to move :

> "That the Bill to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters, as reported by Select Committee, be taken into consideration."

The Bill that I have the honour to present before this House relates to the enlargement of the appellate (criminal) jurisdiction of the Supreme Court. This Bill came before this House some time back and was then referred to the Select Committee. The Select Committee held its meetings and also examined a lawyer, an outstanding lawyer on the criminal side, and after recording that evidence it unanimously came to the conclusion that the basic principle contained in this Bill should be accepted and this Bill should be placed before the House for its consideration. I am very grateful to the Members of this House who were functioning as Members of the Select Committee for their support to this Bill. I find from the amendments tabled by the Treasury Benches that they feel that the entire contents of the Bill should not be accepted, but a modification should be made in the scope of the provisions of this Bill. If that had been acceptable to me, I would have accepted it, but I feel that the limitations which the amendment wants to propose would necessarily take away the right of a fair trial of the citizen to a large extent, a right which must be enjoyed by everybody in this country.

I place this Bill before you on three considerations. Firstly, what is the purpose and objective of this Bill ? The second point would be : is the purpose and objective desirable and equitable ? The third point would be : are there any valid considerations that although this purpose is desirable and equitable, yet we should desist from giving this scope and right which is embodied in this Bill to the citizen ?

So far as the purpose of the Bill is concerned, I think all the Members in this House will agree with me that the right of liberty, and a fair trial to safeguard it is one of the most cherished possessions which a citizen have in any democratic set-up. Actually it is an absolute necessity in the concept of a democratic State. If this concept is not accepted, then it goes against the very role of the judiciary as envisaged by the 'Rule of Law' in a democratic set-up.

After a person is prosecuted for any offence, the protection of his liberty extends to the extent that he should have a fair trial. If he does not get a fair trial, obviously his liberty is not protected in the manner as it

[Shri A.N. Mulla]

should be protected. And the reason why this Bill is being placed before this House is that under the existing law of the country, this right of getting a fair trial is not protected by the existing laws.

16 hrs.

I will now illustrate what I mean by drawing the attention of the House to certain provisions of the existing law. Under the existing law, when a man is tried by a court, the court can either acquit him or convict him. In the event of his conviction, he is given the right of appeal in certain cases though not in every case, for example. Where the matter is of an extremely trivial nature or where the penalty imposed is supposed to be trivial, then the right of appeal does not exist, though he can seek a revision of that order by going before the revisionary court. But so far as the case of acquittal is concerned, in the old law, when we were governed by a foreign power, there was a very restricted right of appeal given to the prosecution to go against an order of acquittal. Under the foreign rule, the number of appeals filed against acquittals were negligible : hardly any appeals were filed and it was only after we became independent that we changed the provisions of the Criminal Procedure Code and gave a much wider scope not only to the State to go in appeal against an order of acquittal but also to the complainant that he could also go in appeal against these orders of acquittal. We not only gave this right to the State and the complainant to go in appeal against an order of acquittal, but we also provided that they must be heard before the petition presented by them before the court could be dismissed. How have we treated an accused person against whom an order of conviction is registered for the first time by the appellate court by whom the earlier order of acquittal has been set aside ? We have debarred him from having any right of appeal against that order of conviction. So, obviously, is heavily loaded against the convicted citizen in favour of the State and in favour of the complainant. And it is to remove this imbalance and to protect the citizen in order to safeguard his liberty against wrong convictions that this Bill is placed before this House.

Under the present law, where the high court sets aside the order of acquittal, the high court can impose a sentence of death and a lesser sentence also. Under our Constitution we have provided that if the high court imposes a sentence of death, then under those circumstances a right of appeal is given to the aggrieved citizen. But in those cases, where any other sentence, apart from death, is inflicted by the high court on hearing an appeal, then there is no provision for any appeal being forwarded by him to the Supreme Court. In other words, in that case, the only remedy left to an aggrieved person is to go to the Supreme Court under the provisions of articles 134 and 136 of the Constitution of India, and I am not very happy to say that so far as the criminal appeals are concerned, these articles have proved absolutely things of straw and have not been able to protect his rights at all.

The courts, in the way they have interpreted the provisions of articles 134 and 136, have offered hardly any protection to the aggrieved citizen and they have almost summarily dismissed all the petitions that are presented under these articles. I am not overstating the facts that if 100 appeals are presented, then perhaps there would be five lucky individuals whose appeals might be admitted and the normal result in 95 appeals would be

that they would be summarily dismissed on the very first presentation in the Supreme Court. Article 134 (1) (c) is a dead-letter. There is perhaps not even one case in a hundred in which the high court under article 134 (1) (c) grants an accused person a right to go before the Supreme Court and file an appeal and issue the necessary certificate. Therefore the ground for a citizen is extremely restricted. His right to have a fair trial was completely restricted by the amendments made in the Criminal Procedure Code.

I should here like to place before you what is the law in certain other democratic countries from whom we have imbibed the principles on which we have based our law. The Supreme Court follows the precedents of the Privy Council when it says that we are not a court of criminal appeal. It has, accepted that principle and for that reason it summarily dismisses appeals and it comes to the conclusion that the high court is the final court on facts and the Supreme Court is only concerned with the application of law and not concerned with the facts; not even whether on facts a proper assessment has been made or not. In the first place it seems very strange to me that any court, whether it be the highest court or any other court, should take up this position that it is not a course of justice and it is merely a court of law. For, after all, this position, whether the facts are properly assessed or not, we will not reassess them, indicates that the highest court in this country thinks that justice can be divorced from law and we are only the custodians of law and we are not custodians of justice. It is very difficult for me to accept this position.

Apart from that, there is another aspect. When the United Kingdom developed this convention, it was based on two very important conditions which exist in their administration of criminal justice and which do not exist in our country. In the United Kingdom, there is a jury trial. In the United Kingdom the facts are assessed by a jury first, and it is your peers who come to the conclusion whether the evidence led in the case proves the case against you or not. And you can well understand that the assessment by your peers would be quite different from the assessment of evidence by a judge who would reach his conclusions by certain interpretations of the statute alone. I think in criminal cases, one of the main grievances of the citizen is that evidence is fabricated by the investigating agency. Now, the peers are in a far better position to understand when such a claim is made by a citizen as to which part of the evidence can be accepted to be fabricated or not, or which part of the evidence can be relied upon. The judges are, if I may be excused for saying so, rather, isolated from the people in this matter. They do not understand the difficulties of the citizens of this country.

They do not understand all the hardships they have to face when they are dealt with by the investigating agency or district authorities or other people who yield power. They have their own rigid, wooden notions of assessing whether a doubt is created or not and they act on those beliefs. In the UK, when the facts are assessed by a jury, that by itself safeguards the interests of an accused that at least in many cases the evidence would not be lightly accepted against him.

The other very important fact ignored in our country is this. In U.K. there is no right of appeal against an order of acquittal. We have forgotten both these facts that in U.K. there is

[Shri A. N. Mulla]

a Jury trial and there is also no right of appeal against an order of acquittal and we have blindly followed the principles laid down by the Privy Council in criminal cases that we will not have the Supreme Court interfere in criminal matters so far as facts are concerned.

I would say that the demand in the Bill I have presented before the House is a very just demand. As there is no dispute so far as the nature of the demand is concerned in any section of the House, I think it is not necessary for me to dilate on this point. I come to the other point whether this demand is desirable and equitable or not. Obviously where a person is convicted, it is the basic concept of any fair trial that one court can make an error. Therefore, in order to fortify the decision of the first court, there is a provision of an appeal almost in every civilized country where the rule of law prevails. In other words it has not been entrusted to one court alone to give the final answer to the question whether the man is guilty or not. That order has to be tested by a higher court and only when the higher court also agrees with the lower court it can be said that reasonably the guilt is proved against an accused person. In these cases in which the accused has been acquitted by a lower court, but convicted by the High Court, he is denied the right of appeal. Obviously one does not go in appeal against an order which is in one's own favour. One goes in appeal only against an order which is against one. Therefore, when you have denied the right of appeal after the setting aside of the order of acquittal by a High Court you have taken away the right of appeal from an accused person. Therefore, you have violated the basic principle of safeguarding the interests of the citizens of the country so far as their liberty is concerned, by depriving them of the right of appeal. On principle, he must be given a right to go to a higher court for testing the decision of the lower court against him. That is why I think this is not only desirable but you would be denying the fundamental right of a person to have a fair trial if you do not give him the right of appeal to the Supreme Court.

There is another aspect. In this country, the sentences which are given by the High Court by two judges only. The two judges review the evidence placed before the lower court and they have certain ways of assessing the evidence. I may tell the House, I am a little alarmed at the way we are laying down certain principles as to how evidence should be assessed. Earlier, there was a principle prevalent in criminal cases that if a witness was false on a material point, his evidence became suspect and it became very difficult to rely on the other parts of his statement. But from that position, we have now come down to this that a witness may speak falsehoods on any number of points, but the court in their discretion of what they call distinguishing the grain from the chaff, may disbelieve a witness on ten points, but on one point they may believe him. This is the approach to the evidence of a witness in this country. Seeing the level to which we have gone in assessing evidence, I am extremely doubtful whether we are upholding the liberty of the citizen or whether we are almost cooperating with the investigating agency. Knowing the investigating agency of this country, as well as I do, I think it is a great menace to the liberty of a citizen if we permit the judges to apply this sort of criterion for going on distinguishing the grain from the

chaft to such an extent. I can understand that no witness can be wholly truthful. Occasionally through a mistake or mistaken belief, through wrong memory, he makes slips but, where on important points there are falsehoods clearly visible in his statement, it is very difficult to say that for some reason he may be speaking a falsehood on that point, but on the rest of his evidence, we can believe him. When this is the nature of the assessment of evidence in this country, I think it is very desirable and equitable that this right should be given to an accused person to go in appeal.

I come to the last point: Are there any valid considerations that we should not give this right to an accused person ? I have analysed all the reports and opinions that were submitted to the Select Committee and I find that those objections can be classified under four heads. The first objection is that the status of the High Courts is likely to be lowered, if we permit an appeal to be heard by the Supreme Court. I was surprised to find that no less a body than the Law Commission has said in its report :

> "Although the exercise of the jurisdiction under article 136 of the Constitution by the Supreme Court in criminal matters sometimes serves to present justice, yet, the court might be charry of granting special leave in such matters, as the practice of granting special leave freely has a tendency to affect the prestige of the High Courts."

It is extraordinary that the fundamental rights of a citizen, the rights of justice and the rights of observance of the rule of law are given a secondary place and the status of High Courts and their prestige is supposed to be a more important thing. We are making too many sacrifices for upholding this prestige. We cannot sacrifice the rights of the citizens of this country merely to uphold this prestige.

The second head under which objection is taken is that it will add to the work of the Supreme Court. This is an extraordinary argument. If you compare the rights given to an accused for protecting this liberty and to a citizen for protecting his property, as embodied in articles 133 and 134, you will find that a right has been given to a citizen to go to the Supreme Court in any case where the value of the subject matter of the dispute exceeds Rs. 20,000.

It is extraordinary that if there is a dispute of only about Rs. 20,000 an *ipso facto* right is given to a citizen to agitate the matter in the Supreme Court but if he is given a 10-year or a 20-year sentence, it is not such an infringement of his right that he should be given a right to go to the Supreme Court. I think, we have some very wrong values. We have proceeded on some very wrong values when we framed our Constitution and constitutional rights. In the interests of justice and in the interest of safeguarding these rights it is necessary that we should be safeguarding the interest of an accused person so far as an appeal is concerned.

Now I will give you a summary of what have been the recommendations. Almost all the bar associations have unanimously recommended that these proposals should be accepted. There are quite a few among the associations and also among the Advocate-Generals who have advocated that the scope of this Bill should even be enlarged.

[Shri A. N. Mulla]

Among the Judges who have given their opinion, there is a division. Some Judges are in favour of enlarging the scope and some Judges are in favour of retaining the *status quo* on the plea that the existing provisions of articles 134 and 136 are sufficient to protect the interests of an accused person.

I, as a practitioner, as a citizen and as an ex-Judge, in all the three capacities very strongly feel that articles 134 and 136 are quite inadequate to protect the rights of an accused. Quite an appreciable amount of injustice is being done to the accused persons because there is no other protection except these articles.

So far as the amendment, which would be moved, by the Government of that only in the case imprisonment for life this should be accepted but in the case of imprisonment for 10 years or more this should not be accepted, is concerned, I would only give the figures and data that were supplied by the Government itself to the Select Committee. In eight years there were only 51 cases in which the sentence of 10 years or more but not imprisonment for life was awarded and the order of acquittal was set aside. Can 51 cases, which comes to about 7 or 8 cases a year, be the basis on which the State can come forward and say that this will greatly add to the labours of the Supreme Court ? If there had been a larger number, there might have been some substance in this argument. But with this increase of 7 or 8 cases a year there would be no possibility that the work would be so much that the State must insist on this amendment. After all, the State should consider that it should look to the urge of the people and not only to administrative reasons. I go to the length of saying that the urge and the rights of the people should be the priority and administrative difficulties should be a secondary matter. Actually, the administrative difficulties should be solved in the interests of the people and the interests of the people should not be curbed in the interest of administration. So, I would very humbly request the Deputy Minister of Law who is here that he should ponder over the matter whether this addition of about 8 or 9 cases a year is a matter on the basis of which he should put forward his amendment before the House.

SHRI G. VISWANATHAN (Wandiwash) : And he will withdraw the amendment.

सभापति महोदय : प्रस्ताव प्रस्तुत हुआ :

"कि आपराधिक मामलों के बारे में उच्चतम न्यायालय के अपीलीय क्षेत्राधिकार का विस्तार करने वाले विधेयक पर, प्रवर समिति द्वारा प्रतिवेदित रूप में, विचार किया जाय ।"

SHRI RANDHIR SINGH (Rohtak): Sir, I fully support the Bill of the hon. Member, Shri Mulla. This Bill was sent to the Select Committee and after profound deliberations and discussions was sent back to the House for consideration. I would like to dilate upon certain points which are very relevant to the issue.

Firstly, this Bill has come to remove or efface discrimination which exists between the individual and the State. I amplify my point by saying that if an accused is acquitted by a Court of Sessions, the State has a right to go in revision to the High Court but on conviction by the High Court that individual has no right to go in revision to the Supreme Court. This is clear discrimination which goes against the very provisions of the

Constitution itself. This discrimination between the State and the individual is something fundamentally objectionable and this should go because this is against the very Preamble of the Constitution.

Secondly, the right of defence is guaranteed by the Constitution itself. Every person has a right to defend himself but if the accused is convicted for life or for a lesser sentence he has no right to defend himself in the Supreme Court. He cannot go there. If he is given a life sentence, he cannot defend himself.

Shri Mulla is very correct in his observation that it seems that a man and human liberty are less important than property. For Rs. 20,000 and over one can go right up to the Supreme Court; that right of appeal is made available—first appeal, second appeal, third appeal—but in case of a fundamental right, where the liberty of a citizen is involved, where he is given a life sentence or a rigorous sentence for 2, 5 or 10 years or more, he cannot go to the Supreme Court simply because we have taken the idea from the Privy Council and other courts that the status of the High Courts should not be curtailed or impaired. This ostentatious sort of thing which we borrowed from other courts or judiciaries is not in keeping with the principles which are embodied and enshrined in our Constitution. Ours is a democratic Constitution which guarantees full appreciation of the values which we attach to the individual. The individual has a fundamental right to defend himself and this lacuna, which is very patent on the face of it, should be removed. I feel, the Government should have no hesitation in accepting it.

Another thing is that only in cases which involve complicated questions of law and the Constitution you can go in revision to the Supreme Court; on facts the Supreme Court will not interfere. This is something extremely fantastic. I fully support Shri Mulla's view that when this is the shape of the law which is prevalent in our country, when an evidence can be partly believed and partly disbelieved, when most of it can be discarded and a part of it can be accepted, when one human being—and Judges are also human beings—will not accept what has been accepted by another human being, it is just possible that what has been discarded by a High Court Judge may be accepted by a Supreme Court Judge or what has been accepted by a High Court Judge may be discarded by a Supreme Court Judge and there is a clear necessity that the Supreme Court should also go into the facts when fundamental questions of liberty are concerned. When you have a case or discussion or probe or scrutiny at the highest level in the Supreme Court on constitutional and legal points, why should it not be available on points of fact? My plea is that on facts also the Supreme Court should be made available to every citizen for getting justice.

The flimsy ground offered against it is that they are very big people, they do not have the time and they will be overwhelmed by work. This is a very flimsy ground and it does not absolutely appeal to reason or sense. It is something which is humiliating also to say that they have no time. Time should be made available. The number of judges should be increased. I certainly do not appreciate that because the number of such cases is less all over the country. So, this provision should be made in the Criminal Procedure Code. Even if there is no case or the number of cases is very insignificant, this should be done

[Shri Randhir Singh]

because this is something which concerns directly the civil liberty or the valuable right of a citizen and he should not be deprived of that.

I have already submitted that I would not be wasting much time of the House. One word and I will finish. In a case it generally happens that on a solitary evidence of one witness, a man is convicted or on the evidence of a minor man is convicted, or on the evidence of an interested witness a man is convicted or on the evidence of a chance witness a person is convicted. In such cases, it is just possible that one judge may agree and another may not agree; the High Court judge may agree and the Supreme Court judge may not agree. In the scheme of law as we have now, this is very glaring lacuna and I feel that there is no sense in following the British laws on this. Of course, we may copy good laws from foreign countries, but whatever is in violation of, or not in consonance with, the provisions of our Constitution or our sanctified values of democracy, we should not accept.

With these observations, I fully support Mr. Mulla's Bill and I hope that Government would agree to make the necessary amendment.

श्री हिम्मत सिंह का (गोंडा) : सभापति महोदय, मैं श्री मुल्ला की तकरीर सुनने के पहले इस बिल का विरोध करने वाला था, लेकिन उनकी बातें सुनकर मेरे मन में यह बात आई कि इसकी जरूरत है । पहले मेरा यह ख्याल था, जब मैं क्रिमिनल कोर्ट में प्रैक्टिस करता था कि सरकार के सिवा दूसरे आदमियों को ऐक्विटल के खिलाफ़ अपील करने का अधिकार नहीं था, लेकिन अब मालूम हुआ कि कम्प्लेनेन्ट को भी अधिकार है कि अगर ऐक्विटल होता है तो वह अपील कर सके । ऐसे मामलों में यदि हाई कोर्ट में आकर सजा दी जाय दस वर्ष या इससे अधिक की तो मैं समझता हूं कि यह एक तरह से पहली अपील में सजा हुई और उसके खिलाफ अपील का अधिकार होना चाहिए । जब प्राइवेट कम्प्लेनेन्ट को भी अधिकार है ऐक्विटल के खिलाफ़ अपील में जाने का तो ऐसी हालत में अगर मुलजिम को हाई कोर्ट में सजा मिलती है तो उसको अधिकार होना चाहिये । मैं समझता हूं कि इस विधेयक में यह रक्खा गया है कि जहां पर अपेलेट कोर्ट सजा देता है दस वर्ष या उससे अधिक की तो ऐसी हालत में अपील का अधिकार मिलना चाहिये ।

अभी संविधान के 134वें आर्टिकल में डेथ के खिलाफ अपील करने का अधिकार है । चूंकि 134 आर्टिकल में डेथ के खिलाफ अपील करने का अधिकार दिया हुआ है इसलिए सुप्रीम कोर्ट जज 136 दफा को काम में लाना नहीं चाहते जबकि खासकर यहां पर दिया हुआ है कि अधिकार को सीमित कर दिया गया है । इसी कारण 136 में जो सुप्रीम कोर्ट में किसी आर्डर वगैरह के खिलाफ अपील करने का अधिकार है वह उस को नहीं मिला है । मैं समझता हूं कि विधेयक पर सेलेक्ट कमेटी ने जो जांच करने के बाद सिफारिश की है उसको हम लोगों को मान लेना चाहिये ।

पिछले आठ वर्ष के आंकड़े अगर हम देखें तो पता चलेगा कि शायद 50 या 51 अपीलें नई जिन में सजायें हुई थीं लाइफ सेंटेंस से कम की लेकिन दस वर्ष से ऊपर की । इसलिये इस अधिकार को देने से भी बहुत ज्यादा काम नहीं बढ़ेगा । सुप्रीम कोर्ट के वास्ते अनुचित ढंग से काम नहीं बढ़ाना चाहिये, लेकिन आंकड़े बहुत ज्यादा नहीं मालूम पड़ते । इतने कम केसेज अपील में गये हैं कि सुप्रीम कोर्ट के काम पर बहुत असर नहीं पड़ेगा ।

श्री मुल्ला ने जो विधेयक पेश किया है, मैं उसका समर्थन करता हूं ।

श्री राम सेवक यादव (बाराबंकी) : सभापति महोदय, हमारे सामने जो संशोधन विधेयक श्री

मुल्ला ने रक्खा है मैं उसका समर्थन करता हूं और मैं चाहूंगा कि मंत्री महोदय ने इसके बारे में जो संशोधन रक्खा है वह उस को वापस ले लें ।

इस संशोधन विधेयक का समर्थन करने के लिये मेरे पास दो कारण हैं । एक तो यह कि जो सम्पत्ति के सम्बन्ध में कानून है और जो फौजदारी के मुकदमे में सजा के सम्बन्ध में कानून है, उन दोनों की अपीलों के सम्बन्ध में भेद है । वह एक दूसरे के विरोध में है क्योंकि उनमें भेद का जो आधार है वह धन है । धन का आधार मानवीय दृष्टि से कभी नहीं मानना चाहिये, क्योंकि वह जनतांत्रिक परम्परा के विरुद्ध है । जब हम समाजवाद की बात करते हैं तो धन के आधार पर यह भेद भाव बहुत अनुचित है । इसलिये मैं इस भेद भाव का विरोध करता हूं ।

मान लीजिये कोई ऐसा मुकदमा दीवानी में जायदाद के सम्बन्ध में जाता है जिसकी मालियत 20 हजार की है तो वह सर्वोच्च न्यायालय तक अपील में जा सकता है । लेकिन जिसको केवल दस वर्ष की सजा हुई हो, वह नहीं जा सकता । इसका अर्थ क्या हुआ ? यदि उस का जीवन वर्षों में आंका जाय तो क्या वह आदमी एक साल में 2,000 रु० भी नहीं कमा पायेगा ? शायद ऐसे बहुत से लोग होंगे जो साल में 10 हजार रु० कमाते हों । इसलिये इस तरह से भेदभाव पर यह प्रथा आधारित है और इसको समाप्त करना चाहिये । बजाय इस के कोई संशोधन मंत्री जी लायें, मैं समझता हूं कि उन्हें श्री मुल्ला को बधाई देनी चाहिये कि उन्होंने अब तक की पड़ी हुई इस खामी की ओर सदन का ध्यान आकर्षित किया, और मैं चाहूंगा कि जितनी जल्दी हो सके इस सिद्धांत का समावेश उन को कर लेना चाहिये ।

हमें तो बड़ा ताज्जुब हो रहा है । हम लोगों ने अभी पढ़ा कि इंग्लिस्तान में सजाये मौत खत्म हो रही है और हमारे यहां मंत्री महोदय दस साल की सजा की अपील का सर्वोच्च न्यायालय में अधिकार नहीं देना चाहते । यह बात आज हमारे जनतन्त्र में चल रही है । यूरोप, अमरीका और इंग्लिस्तान के कानून में इस तरह के कानून चलते रहे हैं लेकिन अभी अभी उन्होंने ऐसे परिवर्तनों की बात सोची है जो सचमुच जनतन्त्र की परम्परा से सम्बन्धित है और हमको उनकी इस बात में नकल करके इस विधेयक का विरोध नहीं करना चाहिये ।

मैं श्री मुल्ला से भी कहूंगा कि उन्होंने जो शर्तें लगाई हैं उन्हें भी उनको ढीला करना चाहिये । वह 20 हजार रुपयों की बात भी छोड़ें और 10 साल तक की सजा जिनको हुई है उन में भी किसी तरह का प्रीवाइजो या परन्तुक न रक्खें । हर आदमी को आमतौर से अपील का हक होना चाहिये फौजदारी के मामले में क्योंकि धन का भेदभाव ठीक नहीं है ।

इसके साथ ही मैं दूसरा कारण भी आपके सामने रखना चाहता हूं । फौजदारी के मुकदमों में श्री मुल्ला इससे इत्तफाक करेंगे, आम तौर से जुए का खेल होता है । अगर शुबहा पैदा कर दिया और मुलजिम छूट गया तो फिर मैं इसको जुआ ही कहूंगा । इसलिये जो जुआ खेलने की व्यवस्था चलती है वह अपील के सम्बन्ध में आखीर तक जाय । कौन जाने उसकी तकदीर जोर मार जाय और सर्वोच्च न्यायालय से वह छूट जाये तथा दस वर्ष ज्यादा की जिन्दगी बिताकर समाज के लिये अच्छा नागरिक बन जाये तथा देश की उन्नति में हाथ बटाये और धन पैदा करने में हाथ बटाये ।

जैसा श्री मुल्ला ने कहा, इस देश में शहादत गढ़ी जाती है, खासतौर से फौजदारी के मामलों में तो रात दिन गढ़ी जाती है । आप जानते हैं कि कत्ल के मुकदमे में, डकैती के मुकदमे में और फौजदारी के मुकदमे में किस तरह से धनी लोग, अ सरदार लोग और पैसे वाले लोग दूसरों को फंसा ते हैं पैसा लगाकर के । इस सिलसिले में पुलिस के बारे में श्री मुल्ला का एक जबरदस्त फैसला है जो कि पुलिस के लिए उन्होंने एक सर्टिफिकेट इश्यू किया है । मैं कहना चाहता हूं कि अगर किसी

[श्री राम सेवक यादव]

को दस साल की सजा हुई है और उसको अपील का अधिकार न मिले, यह अनुचित है, अन्यायपूर्ण है। हमें अपना तजुर्बा है कि शाहदतें बहुत ज्यादा झूठी गढ़ी जाती हैं। 1960 की बात है। हमारे दल ने सत्याग्रह आन्दोलन चलाया। हमारे खिलाफ वारेंट थे गिरफतारी के। हम एक गांव में सो रहे थे। दोपहर को सोते हुए दरोगा जी वहां पहुंचे और हम को धारा 151 जाब्ता फौजदारी में पकड़ कर ले गये। हमने कहा कि 151 धारा में कैसे पकड़ रहे हो, हम तो सो रहे थे। किस से हम लड़ रहे हैं। यह मामला क्या है? कैसे पकड़ रहे हो? फिर मैजिस्ट्रेट के सामने हमें पेश किया गया। जो बयान वहां उसे दिया गया सुनकर मुझे बड़ा ताज्जुब हुआ। इस गांधी जी के देश में अलफ से लेकर ए तक सब झूठ ही झूठ, कुछ भी सच नहीं। यह बयान दिया कि ये फुलां जगह गांव में हमें मिले, वहां भीड़ इकट्ठी थी, ये भाषण दे रहे थे कि नहर काट दो, तार काट दो, गांव को लूट लो और अगर इनको पकड़ कर न लाते तो बदअमनी फैल जाती। मैं इस सब को सुन भी रहा था और हंस भी रहा था। मुझ से मैजिस्ट्रेट ने पूछा कि आप हंस क्यों रहे हैं। मैंने कहा कि हंस इसलिए रहा हूं कि अलफ से ले कर ए तक कहीं तो कोई सच बात पकड़ने को मिल जाती। अलफ से ए तक सब झूठ ही झूठ है। इस तरह से मामले गढ़े जाते हैं। इसको हम न्याय कहेंगे या अन्याय? इसका फैसला आप खुद करें।

मंत्री महोदय से मैं कहना चाहता हूं कि आप सलाहकारों पर मत चला करो। जैसा मुल्ला साहब ने कहा कि उनकी तीन हैसियतें हैं। वह वकील भी रहे हैं, जज भी रहे हैं और फिर जनता से भी कुछ उनका सम्बन्ध रहा है। उनके तजुर्बे से आप लाभ उठाओ। आप अधिकारियों और अफसरों से डरा मत करो। दूसरों से सलाह लेने से भी आप घबराया न करो। आपको कायदे कानून से उतना मतलब नहीं होना चाहिये जितना तथ्यों से और असलियत से होना चाहिये और तथ्यों और असलियत के साथ कायदे कानून को चलाने की कोशिश होनी चाहिये, उनके साथ उनको बांधने की कोशिश होनी चाहिये। जिस दिन आप यह रुख अपना लेंगे सचमुच न्याय विभाग चुस्त हो जाएगा, जनता को न्याय मिलना शुरु हो जाएगा, चीज ठीक हो जाएगी। जो झूठी शहादतें गढ़ी जाती हैं उनको आप रोकें। इस चीज को रख कर आप देश में न्याय व्यवस्था ठीक नहीं चला सकते हैं। आप ज्यादा मीन मेख, तर्क वितर्क न करें। साधारण सा संशोधन है इसको आप मान लें। मुल्ला साहब से भी मैं कहूंगा कि प्राविसो को वह न रखें। जिसको दस साल की सजा हुई हो उसको भी सर्वोच्च न्यायालय में जाने का अधिकार हो, उसकी पूरी छट हो। अदालतों के पास काम ज्यादा है, समय नहीं है, यह तर्क न्यास प्रदान करने में कभी नहीं उठना चाहिये। अगर इस तर्क को आप लेते हैं तो कोई भी मुकदमे उनके पास आप जाने न दो।

इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूं।

SHRI G. VISWANATHAN (Wandiwash): The Bill which is before the House introduced by a former eminent Judge, Mr. Mulla, has to be supported by all shades of opinion in this House. This Bill is long due and we are very glad that it has come at last before the House.

The House heard arguments of the previous speakers and I am glad to note that all of them are unanimous in supporting this Bill. In India we are basing our criminal law on certain presumptions and conventions and particularly we follow the British law. In India an accused is presumed to be innocent unless he is proved to be guilty and again our principle is that hundreds of criminals can escape from the clutches of law but not a single innocent man should be punished.

Again we know that there are hundreds of judgements which observe that the prosecution must stand on its own legs and any weakness in the case of the defence should not strengthen the case of the prosecution. In view of this background, I would like to support this Bill and there is no point and I think nobody can oppose this Bill on any ground whatsoever.

We find that there are only two amendments circulated in the name of Shri Govinda Menon and Shri M. Yunus Saleem. I am sure that after hearing the arguments of the members, the hon. Ministers would withdraw their amendments.

Though Art. 134 and 136 of the Indian Constitution have given appellate powers to the Supreme Court, they are not sufficient to safeguard the rights and liberty of the individual citizen in this country. Hence this amending Bill. Under Art. 133 of our Constitution any case where the subject matter is worth about Rs. 20,000 can straightaway go to the Supreme Court. An appeal lies there. But when an accused is punished with life imprisonment or imprisonment for 10 years or more, he cannot go to the Supreme Court. Is it not a surprising argument that a case of property worth Rs. 20,000 can go to the Supreme Court but when the life of an individual is involved or a sentence of imprisonment for life or for 10 years or more is passed, he cannot go to the Supreme Court? Is property worth Rs. 20,000 more valuable than the life of an individual? Is the life of an individual less superior or less valuable than Rs. 20,000? We have to accept the argument of Mr. Mulla and pass this Bill.

There are some objections, as pointed out by the previous speaker, Mr. Mulla, that the prestige and status of the High Court will be affected if all these cases are allowed to go to the Supreme Court. I would like to say that the right and liberty of an individual, of a citizen, is more important than the status and prestige of the High Court. Again, as has been pointed out, there are only a few cases which are coming up before the Supreme Court. There are hardly 7 or 8 cases, as has been pointed out and the argument that it will increase the burden of the Supreme Court will not hold water. Again I would like to point out that there is a saying in Tamil:

Aridhu aridhu, Manidanai (p) pirathal aridhu.

It is not easy to be born as a human being. To be born as a human being is a rare phenomenon. It is such a valuable life and we should not interfere in an individual's life without giving him a chance to go to the Supreme Court by way of appeal. There are some judgments against this principle and we find very often the Judges do not give their grant of leave or certificate under Article 134 or 136. They are very restrictive. I think there is a judgment and I would like to cite this judgment. It is AIR 1958 Supreme Court 145 where their Lordships have observed:

> "This Court has repeatedly called the attention of the High Courts to the legal position that under Art. 134(1)(c) of the Constitution, it is not a case of 'granting leave' but of 'certifying' that the case is a fit one for appeal to this Court. 'Certifying' is a strong word and therefore, it has been repeatedly pointed out that a

[Shri G. Vishwanathan]

> High Court is in error in granting certificate on a mere question of fact, and that the High Court is not justified in passing on an appeal for determination by this Court when there are no complexities of law involved in the case, requiring an authoritative interpretation by this Court."

After passing these observations, the Judges of the Supreme Court have further said:

> "On the face of the judgment of the learned Chief Justice, the leave granted cannot be sustained....."

It is a case from Calcutta High Court. In this case the accused was involved in a rape case and was sentenced only for 5 years and the circumstances were such that it was a heinous crime committed by that man. He happened to be the Secretary of an After-Care Home and he committed rape on an inmate of the Home. Sir, here I beg to differ from such sort of judgements and the Judges are very strict in issuing special leave or certificate for appeal. It is, therefore, more and more necessary that this Bill should be passed immediately with the approval of the whole House.

Again on behalf of the mover of this Bill I request the Ministers to withdraw their amendments.

SHRI TENNETI VISWANATHAM (Visakhapatnam) : In addition to the arguments already advanced, I would say this. The question of prestige of the High Courts has been brought in. But I see from the memoranda presented to the Select Committee that almost all the High Court were in favour of the provisions of the Bill and it was only the Supreme Court which said that the prestige of the High Court would be affected. Therefore that point can be disposed of this way.

16·51 hrs.

[SHRI M. B. RANA *in the Chair*]

As for the Law Minister's objection, I would refer to the evidence tendered before the Committee. Somehow he was labouring under a misapprehension that this becomes a case where the Supreme Court is made a court of second appeal if this right is conceded. Actually, it is not so, because the man was acquitted in the first court. Therefore, he had no right of appeal. He has not appealed. The only punishment was when the High Court reversed the acquittal on enhanced the punishment to ten years. So the appeal to the Supreme Court is really a first appeal; it cannot be a second appeal.

SHRI M. YUNUS SALEEM: He means to say that the appeal to the High Court was not an appeal?

SHRI TENNETI VISWANATHAM: He did not appeal there. Where was the question of appeal so far as he was concerned? The court acquitted him. He would not appeal against his acquittal. Therefore, appeal to the Supreme Court is not second appeal.

But assuming that it is second appeal, what is the harm? In olden days, the British Government wanted to see that the prestige of the Magistrates was kept very high. A number of High Court Judges were I.C.S. men who were not even trained in law. They wanted to preserve an aura of prestige in these courts and said that that must be safeguarded. That is an argument which

has now been exploded. But even assuming it is a second appeal, there is no harm in having a second appeal when there is a reversal and higher punishment. If the punishment is death, Government accept a right of appeal. But we want that whether it is life imprisonment or imprisonment of ten years, the same should apply.

SHRI M. YUNUS SALEEM: In the case of life imprisonment, we have accepted.

SHRI TENNETI VISWANATHAM: Then accept the other imprisonment also. Even imprisonment of ten years is as hard as life imprisonment. Between life imprisonment and ten years' imprisonment the difference is not much. Those who have undergone prison life know it. Life imprisonment would be reduced if a person behaves well to 11 years and odd. So the difference is very little between ten years' imprisonment and life imprisonment. If the hon. Minister can accept right of appeal in the case of life imprisonment, there is no harm in his accepting it in the case of ten years' imprisonment.

Prison life is a hard one. The accused must have the right to go to the higher court. I do not mean any reflection on the High Courts when I say that in these days it is particularly necessary that citizens should have access to the highest court of appeal.

So I support Shri Mulla's Bill and oppose the amendment proposed by Government. Without saying harsh words, I would express my hope the Minister would be good enough to withdraw his amendment and let the Bill be passed as it is.

SHRI K. NARAYANA RAO (Bobli) : I strongly support Shri Mulla's Bill to enlarge the appellate jurisdiction of the Supreme Court in criminal matters. This is not a matter which has to be looked at the academic level or the intellectual plane as such, but we have to look at it as practising lawyers or judges would look at it. If you look at art. 134(2), the framers of the Constitution had themselves envisaged such a situation. If I may say so, we have not gone far enough in terms of that clause of the article, and as the situation warrants.

The comparison we draw has to be qualitative and not quantitative. Now if the amount involved in a case is Rs. 20,000 an appeal to the Supreme Court can lie. But not so in a criminal case where the punishment meted out by the lower court is life imprisonment or ten years imprisonment.

As Shri Viswanatham rightly pointed out, the Law Minister seems to be under a misapprehension that the appeal to the Supreme Court would be a second appeal. Just now the hon. Deputy Law Minister contended that the appeal to the High Court would be a first appeal and that to the Supreme Court would thus become a second appeal. This is over-simplification. We are not referring here to a tribunal or a court where there is first appeal, second appeal, third appeal or fourth appeal. It all depends upon the person who has the right of appeal. It is more personal than institutional. That is a fundamental point which must be accepted. If the accused has been acquitted by the sessions court, the appeal is preferred by the interested State to the High Court. Suppose the High Court reverses the acquittal and convicts the person. Is it then suggested that the accused should have no right of appeal at this stage to the Supreme Court? In the sessions court, he was acquitted. I was on the initiative of

[Shri K. Narayana Rao]

the State that the matter was taken to the High Court. So the right of appeal against the High Court's judgment if it goes against the accused, should not be taken away from him at that stage because for him it is only a first appeal. At what point of time was the accused given an opportunity to appeal at all if his appeal at this stage to the Supreme Court is construed as a second appeal? There is no answer to this argument.

Secondly, if you look at Art. 134(1)(b), it anticipates a situation where the High Court has withdrawn for trial before itself a case from a lower court and there inflicts a punishment. In such a situation, where does the right of appeal lie? Therefore, let us not confuse issues. Let us see the merits of the case. As I find the hon. Minister is rather indifferent and is not interested in his own amendment, I hope he will not press it.

Then it is one of the accepted principles of criminal jurisprudence that at least one right of appeal should be provided to a person affected. About this, there can be no dispute. If we have to anticipate all these cases, we must provide for this appeal as envisaged in the Bill.

Again offence are of different types. There are offences under I.P.C. or various other laws. Trial may take place in the first instance in the lower court. There are certain offences like murder or other serious offences. The first trial takes place in the sessions court.

That is to say, after the Court tries it, there are two Courts above that, namely, the High Court and the Supreme Court. You are stopping at the High Court. Therefore, where is the right of appeal provided. As Shri Randhir Singh rightly pointed out in criminal matters it is not so much the law that is more important, it is the appreciation of evidence that is more important. In the first instance, the Sessions Court goes into the entire evidence and also sees personally the witnesses who depose and comes to a conclusion that a person is innocent. Therefore, if two competent Courts come to different conclusions on the same set of facts, there is a conflict. Is it not just in such a case to provide the right of appeal to the Supreme Court?

17 hrs.

I fully appreciate that in the Supreme Court there is a lot of litigation and arrears, but that should not affect the right being given. The Constitution itself in Article 138(2) provides for enlargement of jurisdiction of the Supreme Court in certain matters. Further, we have been doing this continuously. For instance,we amended the Representation of the People Act and gave the right of appeal to the Supreme Court in certain matters. Yesterday we passed the Monopolies Bill which makes provision for appeal to the Supreme Court in certain matters. All this is adding to the burden of the Supreme Court. Such being the case, the argument should not be advanced that this Bill is going to add to the burden of the Supreme Court. It is not the question of the burden of the Supreme Court, it is a question of principle.

The Law Minister has asserted the principle that in the case of life imprisonment there should be the right of appeal. He has realised that the present position under the Constitution is not adequate. He is going out of the way to meet a challenging situation. Such being the case, the argument of the Law Minister for not accepting the rest of the Bill is only academic. As Shri Mulla has rightly pointed out, nobody is ever convicted for eight years. Therefore, if we went to give

justice to the people, it is necessary that this Bill should be accepted and I request the Law Minister to withdraw his amendment.

SHRI M. YUNUS SALEEM : I have not moved.

SHRI SRINIBAS MISRA (Cuttack) : At the outset, I congratulate Mr. Mullla for bringing this timely Bill to enlarge the appellate powers of the Supreme Court.

Under Article 134, three things are appealable. One is when there is the reversal of the acquittal order and passing of death sentence. Secondly, if a High Court tries as an original Court and sentences the accused to death there is right of appeal. The argument may be advanced, though so far it has not been advanced by the Law Ministry, that the Supreme Court becomes a Court of second appeal, that the High Court being an appellate Court regarding fact and law, no such right of appeal to the Supreme Court should be provided. From the laymen's point of view, the Supreme Court being the highest Court in the land should try the most valuable suits in the country What is more valuable than life itself? When you allow an appeal for a civil suit involving Rs. 20,000 to the Supreme Court, you do not say it is a second appeal. Really, it is more than a second appeal. So, why fight shy of giving a second appeal when life is involved which is more valuable ? I do not think the Law Minister will come forward with an argument that life is less valuable than Rs. 20,000.

The second appeal is of course a bogey that is being raised. Is there not such a right even now under article 134(1)(c) when the High Court certifies that it is a fit case for appeal? Is that not a second appeal ? When special leave is granted by the Supreme Court itself, is that not a second appeal? So, there is provision for second appeal under these two circumstances. So, why fight shy of giving the right of appeal to the accused himself.

Mr. Mulla's Bill seeks to give the right of appeal to the accused himself in hard cases involving more than ten years of imprisonment and cases where a judgment of acquittal by the trial Court is set aside. If the High Court after withdrawing a case from a lower Court sentences the accused to death sentence or imprisonment for life or imprisonment of not less than ten years, there also I think it is very reasonable that this appeal should be provided. I do not think the Law Ministry should oppose this. This is a timely Bill. It gives much needed relief to the accused who were striking their heads against the wall of the Supreme Court. If this right is given to the accused, the Supreme Court can go into the facts and law and provide the necessary relief.

With this I support the Bill wholeheartedly as it is drafted, not as the Deputy Law Minister wants it.

श्री शिव चन्द्र झा (मधुबनी) : इस विधेयक का जिसका समर्थन सभी लोगों ने किया, मैं भी करना चाहता हूं लेकिन कल इसके कि मैं समर्थन करूं जैसा कि कहा गया कि इसमें विरोध की कोई गुंजाइश नहीं है, मैं देख रहा हूं कि इसमें विरोध की गुंजाइश है और मुल्ला साहब ने खुद विरोध के लिए फाटक खोल दिये हैं, जबकि क्लाज 1 के (2) में वह कहते हैं :

"whole of India except Jammu and Kashmir".

जिस संकीर्णता में यह सरकार चल रही है, घूम रही है क्या आप उससे ऊपर उठ सकते हैं ? आप व्यक्ति को उठाना चाहते हैं लेकिन देश को कहां ले जाना चाहते हैं ?

[श्री शिव चन्द्र झा]

देश गौण है क्या ? एक तरफ आप इन्साफ़ चाहते हैं, लेकिन देश के लिए बेइन्साफ़ी हो– इस पर थोड़ा विचार कीजिये । जब हम ने एक बड़ा आदर्श अपने सामने रखा है कि अपना जान को बचाने के लिये सैकण्ड अपील की बात सुप्रीम कोर्ट में हो–हम सब इसका समर्थन करते हैं और जैसा कि इन्होंने और डी० एम० के० के भाई ने कहा कि प्रापर्टी के लिए सैकण्ड अपील हो सकती है, लेकिन अपनी जिन्दगी के लिये, जान के बचाने के लिये सैकण्ड अपील नहीं हो सकती है, यह कैसा इन्साफ़ है ? खास कर आज के ज़माने में जबकि दुनिया में कैपिटल पनिशमेन्ट, फांसी की सजा खत्म हो रही है, उस ज़माने में यदि उसको सैकण्ड अपील की गुंजाइश न हो, तब क्या यह सही जनतन्त्र होगा ।

सभापति महोदय, यह गांधी शताब्दि का साल है । गांधी शताब्दि साल के लिये यह बिल बहुत उपयुक्त है । इस को हमें मान लेना चाहिये, लेकिन बात यह है कि लाइफ-इम्प्रीज़नमेन्ट हो या उससे ज्यादा हो, अपील करने की गुंजाइश हो– यह बात क्यों हो, इसकी जड़ में क्या बात है ? इसकी जड़ में हमारे समाज की बनावट है, इकानामिक गैर-बराबरी इसकी मूल वजह है । यदि हकीकत में आप इस विधेयक की स्प्रिट को कामयाब रखना चाहते हैं तो हमारी पुरज़ोर कोशिश होनी चाहिये कि यह जो व्यवस्था है, जो क्लास-व्यवस्था है, क्लास-सोसायटी है, मुनाफाखोरी है, शोषण है, इसको खत्म करें यानी पूंजीवादी व्यवस्था को खत्म कर देते हैं, समाजवाद की व्यवस्था को लाते हैं तो इन्साफ़ ज्यादा बढ़ जायगा, ये बातें आयेंगी ही नहीं, सैकण्ड अपील की ज़रूरत ही नहीं पड़ेगी और यह विधेयक जो कागज़ पर होगा, इसको कार्यान्वित करने के मौके ही कम आयेंगे ।

सभापति महोदय, डेविड थौरो जब जेल में था, तो एमर्सन उस से मिलने के लिये गया । उन्होंने पूछा कि तुम जेल में क्यों हो ? थौरो ने कहा कि तुम बाहर क्यों हो ? जिस वजह से तुम बाहर हो उसी वजह से मैं अन्दर हूं । इस समाज का जो कानून है, जो बेइन्साफी का कानून है, इसको मैं तोड़ना चाहता हूं । इसकी एक-एक ईंट बेइन्साफ़ी और जुल्म से बनी हुई है । इसलिये मैं अन्दर हूं और तुम बाहर हो, क्योंकि तुम इसका समर्थन करते हो ।

सभापति महोदय, इस विधेयक की स्प्रिट अच्छी है, इसलिये मैं इसका समर्थन करता हूं लेकिन "एक्सेप्ट जम्मू एण्ड काश्मीर" की बात इसमें नहीं लानी चाहिये । यह वहां क्यों लागू नहीं होगा ? आप उस फ़िजा को बदलिये जो शोषण की फ़िजा है । अगर आप इस को खत्म कर देते हैं तो इसके कार्यान्वित करने का मौका ही कम आयेगा । मानव इन्साफ़ के लेवल से ऊपर उठ सकेगा और इन्साफ़ और जनतन्त्र का नया रूप हमारे सामने आयेगा ।

THE DEPUTY MINISTER IN THE MINISTRY OF LAW & IN THE DEPARTMENT OF SOCIAL WELFARE (SHRI M. YUNUS SALEEM) : Mr. Chairman, Sir, I want to go on record before this hon. House that certain aspects of the issue should also receive the consideration of this House before this Bill is adopted by the House.

It is a question of common knowledge that for the reforms of judicial administration, the Law Commission has been functioning. Before the 14th report was published in 1958, the Commission did consider the question of enlargement of the appellate jurisdiction of the high courts. But no organisation or individual came forward to give any evidence or place any material before the Commission enabling the Commission to give its opinion with regard to the enlargement of the jurisdiction of the high courts.

As regards the enlargement of the jurisdiction of the Supreme Court, this question was again considered by the Law Commission and the Law Commission in its 41st report relating to the

revision of the Code of Criminal Procedure of 1898 has made these observations :

> "We, however, do not think it would be wise to extend further this right of appeal that is, article 134(1)(a), to cases where the high court, after reversing the order of acquittal sentences the accused person to imprisonment for 10 years or a longer period".

SHRI RANDHIR SINGH : That is not binding on us.

SHRI M. YUNUS SALEEM : I am only placing the facts. It further said :

> "In our opinion the high courts position as the final court in all criminal matters subject to appeal only in exceptional circumstances should be maintained".

The Law Commission accordingly proposed a fresh section to be added as 117B to the Code of Criminal Procedure, 1898 which reads :

> "Where a high court has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life, he may appeal to the Supreme Court".

As regards the appeals to the Supreme Court, under article 134(1)(b), the Law Commission has observed as under :

> "Cases of the type mentioned in Article 134(1) are of such rare and infrequent occurrence that apart from being successful it will not make any material difference whether if the scope is widened to include cases where the high courts sentence the accused to imprisonment for life or for a longer term or even for a short period. We have, therefore, recommended above that any person convicted in a trial held by a high court may appeal to the Supreme Court unless the sentence passed by the high court is one of "imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees".

This recommendation of the Law Commission goes much beyond the provisions proposed in clause 2(b) of the Bill as reported by the Select Committee.

We also tried to collect some material which may be placed before this House in order to receive the serious consideration of the hon. Members who have supported this Bill, which will show, if this Bill is enacted, what will be the position of the appeals which are likely to be filed every year before the Supreme Court. The present position is this. The data available from 1960 to 1968 indicates that only six criminal appeals were filed before the Supreme Court under article 134(1) of the Constitution of India. If this bill is enacted, then the position will be that 64 criminal appeals per year are likely to be filed according to the data received from the different high courts as to what has been the disposal of the cases—

AN HON. MEMBER : What is the harm ?

SHRI M. YUNUS SALEEM : I do not say there is any harm. I am only placing the facts. I am not saying that there is any harm or not.

SHRI SRINIBAS MISRA : Are the figures for article 134(1), (a), (b) and (c) together, or separate ?

SHRI M. YUNUS SALEEM : Article 134(1), (a) and (b).

SHRI A. N. MULLA : We are concerned with (c).

SHRI M. YUNUS SALEEM : I am saying about (a) and (b). We are considering only 134(1), (a) and (b). This will be the position. Whereas only six appeals were filed from 1960 to 1968—eight years—the number of appeals will now be 64 per year under 134(1), (a) and (b).

SHRI G. VISWANATHAN : How did you come to this conclusion ?

SHRI M. YUNUS SALEEM : We have received from every high court the number of their disposals indicating category (a) and category (b) separately. Every high court has given the disposals and the numbers showing in how many cases there was a sentence of life imprisonment and in how many cases there was a sentence for more than 10 years. From that data, we are giving these facts, that these cases will become automatically appealable to the Supreme Court. In cases where the high court has for sentences of more than 10 years made them appealable, that would tentamount to adding the number of appeals before the Supreme Court according to the disposal of the different high courts—

SHRI. G. VISWANATHAN : But all of them will not go to the Supreme Court.

SHRI M. YUNUS SALEEM : When you provide an appeal as a matter of right, they will go.

SHRI G. VISWANATHAN : But it does not matter.

SHRI M. YUNUS SALEEM : I am placing the figures because it was submitted before the House by certain hon. members including the hon. Mover that very little difference would be caused if the Bill is enacted. In eight years, there were only 6 appeals. Now it will be 64 per year.

Sir, the Bill moved by Mr. Mulla has received the unanimous support of the House. I do not propose to move my amendment and I accept the Bill as it is.

SHRI A. N. MULLA : Sir I must thank the Deputy Law Minister as well as the other members who have unanimously supported the Bill that I had the honour to present before the House. A point was raised by Mr. Jha. He objected to limiting the scope of the Bill and to the exclusion of Jammu and Kashmir from it. I do not know whether he is an advocate or not, but I believe he is at least conversant with law, even if he is not an advocate. He should realise that the moment you include Jammu and Kashmir, you turn an ordinary Bill into a Constitutional Bill which requires different majorities and a different way of enacting the Law. Therefore that method was not adopted. It is for the Government of India to smoothen our relations with Kashmir and to get our laws implemented in Jammu and Kashmir. Then naturally all these Bills would apply there also.

While I am grateful to the Deputy Minister for not moving his amendment, he has said something to which I would like to add some thing. The law Commission has said that it would not be wise to extend the scope of this provision unless there are exceptional circumstances. If my notes are not wrong, this is what was read out by the Deputy Minister. Is it difficult to assume that the reversal of an order of acquittal and registering an order of conviction is an exceptional circumstance and not a normal process of law and therefore, because this exceptional circumstance occurs even in the terminology of the law Commission, this right

should be given to an accused person where this happens? It is for this House to determine whether it is an exceptional circumstance or not, even if it is inclined to accept the dictum of the Law Commission.

The Deputy Minister has given certain figures. Perhaps the chart before him is different to the chart before me, which was provided to the members of the Select Committee. From this chart, I find, although no figures were given for Kerala, UP and Rajasthan figures were given about other High Courts and in eight years, the total number of cases in which the sentence of acquittal was reversed and a sentence of life imprisonment was imposed was 408. I do not know from where my hon. friend has collected the figures. My figures are quite different. When I said that there would be only a marginal increase, I said that on the basis that the Government had already conceded that part of the Bill where a sentence of life imprisonment is imposed after setting aside an order of acquittal. If you remove that part of the Bill, where is the objection to my contending before the House that only a marginal increase would take place, when the total number is only 51 in eight years.

Either the numbers are very few or the numbers are many. If the numbers are few, they do not appreciably add to the work load of the Supreme Court at all. If the numbers are many, that poses even a more dangerous situation for it means that in such a large number of cases our High Courts are interfering with orders of acquittal. That indicates a great menace to the liberty of the citizen against which we must take steps. I think it is better for the Government to say that the numbers are less and not more, so that the image of the High Courts which they want to preserve may not get even more tarnished.

MR. CHAIRMAN: The question in "That the Bill to enlarge the appellate jurisdiction of Supreme Court in regard to criminal matters, as reported by Select Committee, be taken into consideration."

The motion was adopted.

Clause 2

MR. CHAIRMAN: Since the Government is not moving any amendment, I will put the clauses to vote.

The question is: "That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

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

SHRI A.N. MULLA: I beg to move: "That the Bill, as reported by Select Committee, be passed."

MR. CHAIRMAN: The question is: "That the Bill, as reported by Select Committee, be passed."

The motion was adopted.

SHRI S. M. BANERJEE: We are very happy that in this House, this Bill has been passed and in the other House, the Bill for abolition of privy purses has been passed.

श्री रणधीर सिंह: कितनी अच्छी गर्वनमैन्ट है।

श्री कंवर लाल गुप्त: प्राइम मिनिस्टर ने तो बहुत-कोशिश की, 40 मिनट तक लाबी में बैठी रहीं कि वह बिल पास न हो लेकिन उनकी मरजी के खिलाफ वह बिल वहां पर पास हुआ। ....(व्यवधान) ....

श्री तुलसी दास जाधव (बारामती): प्राइम मिनिस्टर की रिपोर्ट तो पहले से ही है ....(व्यवधान)....

श्री स० मो० बनर्जी: लेकिन स्वतंत्र पार्टी ने उसका विरोध किया था।