Marandi, Shri
Master, Shri Bhola Nath
Mody, Shri Piloo
Pahadia, Shri Jagamnath
Pandey, Shri Vishwa Nath
Partap Singh, Shri
Parthasarathy, Shri
Poonacha, Shri C. M.
Pramanik, Shri J. N.
Prasad Shri Y. A.
Radhabai, Shrimati B.
Raghu Ramaiah, Shri
Raj Deo Singh, Shri
Raju, Shri D. B.
Raju, Dr. D. S.
Ram Dhan, Shri
Ram Swarup. Shri
Randhir Singh, Shri
Ranga, Shri
Rao, Shri Thirumala
Rao, Dr. V. K. R. V.
Raut, Shri Bhola
Reddy, Shri M. N.
Reddy, Shri R. D.
Saigal, Shri A. S.
Sayeed, Shri P. M.
Sayyad Ali, Shri
Sen, Shri Dwaipayan
Sequeira, Shri
Shambhu Nath, Shri
Sharma, Shri Modhoram
Shashi Bhushan, Shri
Shastri, Shri Sheopujan
Sheo Narain, Shri
Siddheshwar Prasad, Shri
Singh, Shri D. N.
Snatak, Shri Nar Deo
Somani, Shri N. K.
Sonar, Dr. A. G.
Sonavane, Shri
Supakar, Shri Sradhakar
Suraj Bhan, Shri
Suryanarayana, Shri K.
Swell, Shri
Tiwary, Shri K. N.
Tula Ram, Shri
Verma, Shri Balgovind
Verma, Shri Prem Chand
Virbhadra Singh, Shri
Viswanatham, Shri Tenneti
Vyas, Shri Ramesh Chandra

NOES

Anirudhan, Shri K.
Badrudduja, Shri
Banerjee, Shri S. M.
Bharati, Shri Maharaj Singh
Fernandes, Shri George
Gopalan, Shri P.
Joshi, Shri S. M.
Kalit, Shri Dhireswar
Khan, Shri Latafat Ali
Menon, Shri Vishwanatha
Mulla, Shri A. N.
Nihal Singh, Shri
Rajaram, Shri
Ray, Shri Rabi
Reddy, Shri Eswara
Roy, Shri Bishwanath
Sambhali, Shri Ishaq
Satya Narain Singh, Shri
Subravalu, Shri

MR. SPEAKER : The result of the division is : *Ayes 84; Noes. 19.*

The motion was adopted

SHRI P. L. BARUPAL : Sir, I introduce the Bill......(*Interruptions*).

16.32 hrs.

ENLARGEMENT OF THE APPELATE (CRIMINAL) JURISDICTION OF THE SUPREME COURT BILL

MR. SPEAKER : We shall now take up Shri Mulla's Bill. Shri Mulla may continue his speech.

16.32½ hrs.

[MR. DEPUTY SPEAKER *in the chair.*]

SHRI A. N. MULLA (Lucknow) : Mr. Deputy Speaker, Sir, I had just opened my lips on the last day when this House adjourned. I consider it a privilege to move this Bill for in its scope and im-

port it is an attempt to give to the citizens of this country that liberty which they were promised under the Constitution but which was unfortunately snatched away from them perhaps under the pressure of those who dominated the Home Ministry. It was snatched away by the ruling group within a few years of the passing of our Constitution. It is a privilege to move this Bill not only because it will to a certian extent restore the civilised rule of law but also because it is a crusade to fight for the rights of the dumb millions of this country. When I say 6 millions, I mean millions; I am not using a figure of speech—those dumb millions who cannot coherently voice their pain or fight their battles. To the hon. Members I wish to say that this Bill is a test for them also—whether they believe in liberty or not.

Because liberty is not endangered only on our frontiers. System of law which leads to the curtailment of our liberties is also and perhaps a great danger to our liberty. We all understand when the danger comes from the frontiers.······We face that danger. But when insiduously the rights of the people are taken away, then you are taking away their liberty in a manner which is very difficult for the citizens to find unless they are very vigilant.

Before I enter into the merits of this Bill and the points of grievance. I would like to place the existing state of law so that Members may get themselves acquainted as to what is the system of law under which we are living at the moment. In 1947, when we became independent, then, in the Criminal Procedure Code, there was a section which was known as section 417 of the Criminal Procedure Code, under which a right of appeal against acquittal was given to the State, but in practice, that right was very seldom exercised. I can say it from my own personal experience at least in my province. I cannot say about what was hapenning in other provinces. It was a very rare occurrence that an appeal against acquittal was brought forward by the State. But although our first elections under the Consititution were held in the year 1952, within three years, in 1955, we amended section 417 to the extent that we added the words "in any case" to the existing words of the statute which empowered the State to file an appeal against the order of acquittal in all cases, wherever and whenever case they felt inclined to do so. Obviously, either of these words are redundant, but one of the axioms of interpreting the statutes is that no word is uselessly used and therefore the addition of the words "in any case" by itself indicates that the existing words of the law were not enough to give that scope to the State to file appeals which they wanted by adding the words "in any case."

I wanted to collect the figures of the number of appeals that were filed before 1965 and what was the rising spiral of filing these apeals against acquittals after 1965, but I was not given this information Therefore, it is for the Members want to satisfy themselves whether they would like to secure this information or not, as to what was the rise in the spiral of appeals and as to how this addition of these words "in any case" has changed the aspect of our criminal procedure.

I believe after this addition was made, almost in every case of acquittal appeals bigan to filed. There are always two parties to a case there is the complainant and there is the accused—if the accused has been acquitted, then the complainant either through real grievance or through vindictiveness wants that the matter should be taken to a higher court, whatever the reason might be. After the insertion of these words, when the State instead of taking up this action, only in extremely rare cases, where real, grave injustice has been committed, directed a large number of appeals to be filed. There is very frequently a deal between the complainant and the police. After this deal is reached, the police succeeds in persuading the representatives of the Home Ministry to take up the case and file an appeal on their behalf. I do not know when the State exercises its mind and discretion whether this is a case in which an appeal should be filed or not. I have hardly come across a case in which the State has exer-

[Shri A. N. Mulla]

cised its mind and refused to file an apeal where the prosecuting counsel or the prosecuting inspectors have managed to approach the State through their higher authorities that an appeal should be filed in that case. The procedure to day has become such that almost in every case of acquittal there is a move that an appeal should be filed against the order of acquittal.

Formerly an acquittal was supposed to be a final order so far as the prosecution was concerned.

If you look up the English law, the American law or the law of any European country, there is very little scope for filing an appeal against an order of acquittal. In English law, there is no provision. But through a curious line of reasoning, I am sorry to say that even the eminent members of our Law Commission ignored two basic facts and they thought there is nothing wrong with this approach, that what is prevalent in the Privy Council should be aplied to the procedure which is prevalent here. They forgot that in English law, the findings on facts are reached by a jury and not by a judge. When a jury gives a particular finding, a fair trial is assured for the accused. Again, they forgot that when the Privy Council does not accept any appeal on facts against the judgment of a lower court, it is also conscious of the fact that there is no appeal against an order of acquittal in the English Law.

In our case, only two very learned High Court junges sit together and decide that the finding reached by perhaps an equally eminent mind, because that judge may become a High Court judge within a few months, is wrong. The exercise of these two minds is supposed to be sufficient to inspire confidence that on facts, a fair trial has been given to the accused person and the chances of error have been eliminated. I believe that all of you would agree that it is one of the postulates of a democratic State that a fair trial should be ensured for the accused. Otherwise, we are not functioning as a civilised State.

What is the scope of a fair trial ? I received some months ago a copy of a book in which were incorporated the lectures given by a judge of the Supreme Court of America, Mr. William W. Douglas, who came to give lectures in the Tagore series at Calcutta. He has said about what man has been fighting for since the dawn of creation :

> "I think that man's struggle to be free is in a large degree a struggle to be free from oppressive procedures the right to be free from torture, the right to know the charge and to have a fair opportunity to defend, the right to have a system of laws that is not a pitfall for the innocent."

A full opportunity to defend onself is one of the basic human rights, When the United Nations adopted the Charter of Human Rights in 1950, the right to defend was one of the basic rights considered to be a human right. Therfore, we have to see whether under the existing law of this country, we have been given this right to defend ourselves or not.

The right to defend includes the right to defend at the appellate stage also. The definition of trial is not only trial in the trial court but it includes the appellate court. The appellate court is only an extension of the trial and the facts are therefore heard in appeal also.

Therefore, where the right to defend is given the night to defend is given not only in the trial court but also in the appellate court. It is a legal axiom, I think, which cannot be challenged. If the right extends up to the appellate stage, let us see what provisions have been made in our laws. For a person who for the first time is sentenced, not only sentenced, to a small imprisonment but to imprisonment for life, it is extraordinary that even in those cases where a person is convicted for the first time and sentenced to imprisonment for life by setting aside the orders passed in his favour by the trial court he is debarred from claiming that as a matter of right he has a right to go to a superior court to be heard in appeal. I am very much concious of the fact that many of the restrictions placed on the rights of an accused person are explained away by saying that the Supreme Court is overworked and it is not right that we should add to the labours of the Supreme Court

by sending more cases when they are already over-worked. But it seems to me that, at the same time, when this argument is advanced, those persons who advance this argument seem to forget that when the High Courts are also suffering under extreme pressure of work they are adding burden to the work of the High Courts by filing so many appeals against orders of acquittal passed by trial courts. Why are they doing that ? Are they not adding and unnecessarily adding more work to the already over-worked High Courts ? But under the old law this was very seldom exercised (*Interruption*).

There are two reasons given by the Law Commission as to why an enlargement of the appellate right of an accused person should not be made. One I have already discussed, namely, that it is procedure of the Privy Council which has been followed by the Supreme Court. The other reason given by them was that we have to protect the importance of the High courts and we should not do anything which would reduce the image of the High Courts in the people's minds as if they are likely to err and their findings are questionable. I place it before the hon. Members of this House what type of reasoning is this. Does it speak high of those eminent men who have advanced this reasoning ? They are out to protect the image of the High Court. At what cost do they want to do it ? Such protection cannot be given and such an edifice cannot be created on the grave-yard of the rights of the people. Therefore, if there is a conflict between the rights of the people and the image of the High Court which should be protected ? It is extraordinary that we should sacrifice the rights of the people so that the image of the High Courts should be protected.

Sir, I have been a Judge. I have functioned as a lawyer also. Therefore, I have a soft corner for the Judges. But at the same time, there is a responsibility cast on all of us who are here as representatives of the people to see that where such a conflict arises the priority is for the rights of the people and the priority is not for the reputation of the jndges. Therefore those learned members of the Law Commission who were so much concerned with protecting the prestege of the High Court have to quote in the words of Burke—"they pitied the plumage but they forgot the dying bird". It is for the dying bird that we are most concerned. We cannot permit the dying bird to die because it has not been given a right to go against a decision given by two judges of the High Court. who are as much prove to human error as any other trial court.

There is another point which I would like to place before you. There are two articles in our Constitution—articles 133 and 134. Article 133 deals with the rights of appeal in civil cases. Article 134 deals with the right of appeal in criminal cases. Under the provisions of article 133, wherever there is a dispute of Rs. 20,000 IPSO EACTO the right of apeal arises in favour of the aggrieved party. He can immediat. tely take the case to the Supreme Court. Here again, we only talk of liberty, but we seem to be property concious and not liberty conscious. Where a question of Rs. 20,000 comes in a right of apeal is given by our lawmakers in their wisdom, but where a sentance of 20 years is given, no right is given. As a matter of right, he could not go in appeal. I suppose if we judge it from the point of human values, if we come to brass tacks as to what system of law we want to live under, we must protest against this uncalled for and quite ununderstandable discrimination that a person whose, Rs. 20000 is in few poverty has an unfettered might to you in appeal and a person whose 20 years of life are being teken away from him has no such right to go in appeal.

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON) : May I ask whether he has given a fair meaning of article 133 ? It is only in a case of reversal in a civil case...

SHRI A. N. MULLA : Am I not arguing a case of reversal in a criminal case here ?

SHRI GOVINDA MENON : In a case of reversal it will lie.

SHRI A. N. MULLA : Am I not arguing a reversal case ?

SHRI GOVINDA MENON : You did not say that.

SHRI A. N. MULLA : I think I am arguing a case of reversal against acquittal. Therefore, they are exactly at parity. Read the two articles together and you cannat but come to the conclusion that we want to protect a person if his property is involved but we do not care where the High Court might have committed a mistake.

SHRI GOVINDA MENON : In a case of acquittal by the High court, there is an appeal from the High Court to the Supreme Court.

SHRI A. N. MULLA : The prosecution cannot make an appeal in a case of that nature to the Supreme Court because under the criminal law the benefit of doubt has to be given to the accused. It is one of the cardinal principles of criminal law and, therefore, where the High Court has come to that conclusion it would be going against the basic principles of criminal jurisprudence if the State goes in appeal.

SHRI GOVINDA MENON : When the High Court acquits......

SHRI PILOO MODY (Godhra) : If the Law Minister wishes to learn some law, he can have private tuition outside.

SHRI GOVINDA MENON : I am not learning; I am only teaching.

SHRI RANDHIR SINGH (Rohtak) : When partinent questions are put, why should he object ?

SHRI GOVIADA MENON : Because section 417 speaks of appeal from a order of acquittal to the High Court, not to the Supreme Court. So any reference to section 417 was absolutely irrelevant.

SHRI A. N. MULLA : I think the two cases which are sought to be equated by the law Minister cannot possibly be equated. When the High Court passes an order of conviction, there are to ways— one, when it confirms the order of the lower court; the other when it setes aside the order of aquittal. But where the High Court acuites the accused person, as I said before, it shows that the trial court, even if it had convicted him by making one assessment of evidence, the High Court can assess the evidence in a different manner. Therefore, the legal position is that two assessments are possible of the same evidence. The judge at the trial court may be a little less experienced but he exercises his independent mind in assessing that evidence and, well, he may come to the conclusion that the accused is guilty. The High Court being more experienced and two Judges sitting together exercise their mind and they think that reasonable doubt has to be given to the accused and he should be acquittd.

Therefore what the law Minister is saying is that even this giving of the benefit of the doubt should not be considered as final and even in those cases an appeal should be given.

SHRI GOVINDA MENON: No ; I said, it is final. What I said, is that the reference to section 417 of the Code of Criminal Procedure was not relevant to the matter before us because under section 417 there will be an appeal to the High Court in matters of acquittal, not to the Supreme Court.

SHRI A. N. MULLA : It seems that we cannot agree or understand each other on this point.

SHRI RABI RAY (Puri) : There is a qualitative difference.

SHRI A. N. MULLA : Now I would place another point as two how the dice is heavily loaded against an accused person. Normally where two courts come to a particular conclusion it is supposed to close that case because the juristic concept is that there is a likelihood of error by one court and if the conclusions are confirmed by another court then reasonably that likelihood of error is eliminated. But under section 417—I come to it again—the right to the State to go in appeal is not only against the trial court's order but also against the appellate court's order. Therefore, so far as the State is concerned, even where two courts come to a conclusion that the case is not proved against an accused person, the State is the

particular favourite. of the Law and for it can challange even that case.

And look at the gross inequality in the two positions. In those cases in which to the High Court it goes in appeal the maximum sentance that can be given is only four years because it is only those cases which are tried by the assistant sessions judge which would come up in appeal before the sessions judge.

MR. DEPUTY-SPEAKER : The hon. Member's time is up.

SHRI A. N. MULLA : What about those days, those months, those years of my silence ?

Therefore, as I said, you find that an assistant session judge can give a sentance of only four years. Now the State has been given a right to go in appeal even against these trivial cases if it feels that the judgement must be set aside. But even in a sentance of imprisonment for life an accused person is not given this chance and the only plea that the Law Minister is taking is that the High Court's decision is final. Those decisions were given by the lower courts ; they were not given by the High Court. Therefore, there is a distinction, that what the High Court does is infallible and we cannot to challange what the High Court has done. I have already said that that was a pitfall into which the Law Commission fell when it said that we have to protect the image of the High Courts.

I have already placed the English law before you. Now I will place the American law before you. It varies from State to State. Normally there are States where there is no right of appeal against acquittal but there are a few States in which this right of appeal is given against the order of acquittal. If you collect the figures, you will find that very rarely such appeals are filed. The right exists in the statute to file an appeal but very rarely such appeals are filed.

As I said, it has become a common occurrence, so far as we are concerned, that such appeals are being filed again and again. I put this argument both ways. If there are very few appeals in which this interference is being made by the High Court, it does not matter at all; the present strength of the Supreme Court can safely deal with these added appeals because there would be only a few additional appeals. It would only be because a lagre number of cases are being disturbed by the High Court that an occasion would arise to say that work in the Supreme Court would increase. What an alarming situation that in such a large number of cases our High Courts are disturbing the orders of acquittal. Is our liberty worth having when the High Courts are disturbing it in such a large measure ?

As I have said, I have also a regard for the High Courts. But I cannot infallibly place reliance on the correctness infalliblity of the findings reached by the Hingh Court. Anybody who says that the High Courts are infallible is pleading a point which cannot be maintamed. In the interests of the liberties of the peoplea, it is necessary that there should be higher tribunal. Where there are two different judgments which are conflicting with each other, there should be a third court which should hear all facts and decide whether the case is there or not.

17 hrs.

MR. DEPUTY-SPEAKER : Motion Moved :

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

There is a motion for circulation by Shri Vishwa Nath Pandey—he is not here.

SHRI N. C. CHATTERJEE (Burdwan) : Mr. Deputy-Speaker, Sir, if you look at article 134, it says :

> "An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(Shri N. C. Chatterjee)

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death ; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death ; or

(c) certifies that the case is a fit one for appeal to the Supreme Court :"

Now, my learned friend, Mr. Mulla, is pointing out that clause (c) is really inconsistent with the principles of justice. Grant of an appeal under article 134(c) is not a matter of course. About article 136, I must also say, that article has practically reached the vanishing point of jurisprudence. That is practically wiped out in criminal cases. This is what the Supreme Court had said, in 1950. AIR 1950 S. C. on p. 169 :

"Generally speaking, Supreme Court will not grant special leave to appeal in criminal cases unless it is shown that exceptional and special circumstances exist,t hat substantial and grave injustice has heen done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against."

If says, firstly, exceptional and special circumstances must exist ; secondly, it must be substantial and grave injustance and, thirdly, there must be features of sufficient gravity to warrant an appeal.

Sir, the House should consider it carefully. When a trial judge has heard the witnesses, has seen the witnesses and heard the facts and acquits him, should we be content only with one appeal if that appellate court who has not heard the witnesses, has not seen the witnesses and has not direct touch with the witnesses, comes to a differcnt conclusion ? Then, as a matter of course, there should be an appeal to the highest Court in the country. I think that is only proper. I do not know why the Law Minister intervened in regard to that. Section 417 of the Criminal Procedure Code says :

"The State Government may direct the public prosecutor to present an appeal to the High Court from original or appellate order of acquittal passed by any court other than a High Court".

Even after two courts' findings, the public prosecutor may lodge an appeal against acquittal. If that is so, I think, there is a good deal of force in what my learned friend says.

In England, you know, there is no appeal against acquittal that is in the Colonies and in the Dominions. Unfortunately, we have got it. I think, the time has come to seriously think over it.

We have given so many elections cases to the Supreme Court. The Supreme Court is burdened, to some extent, with them. But that does not mean the Supreme Court should be relieved of all the responsibility in regard to election cases. If you can do that, why don't you admit this ? The only thing he has asked is that clause (c) should be altered and certificates should be granted whenever there is an imprisonment for life or imprisonment which extends to ten years or more than ten years.

I think, it is a very good suggestion and we will be justified in accepting it. The House should consider it very carefully. Even if it goes to any Select Committee, I do not mind ; it should be thoroughly delt with...

SHRI PILOO MODY : Pass it here and now.

SHRI N. C. CHATTERJEE : Yes ; it will be very good.

My friend has pointeb out that against acquittal, there should not be only one appeal. If that appellate court reverses that, the Supreme Court should, as the highest court in the country, review it.

SHRI HANUMANTHAIYA (Bengalore) : Two learned members who are well-versed in matters relating to law have spoken. Personally I have got great respect for them. What I want to place

before the House is not the point of view of the profession of law or the jurisdiction of the judges, but the position of the litigant.

My learned friend, Mr. Mulla, quoted the famous phrase about sympathy more for the plumage than for the bird. Following the implication of this phrase, let us analyse who is the bird and who is the plumage.

When one comes to the Supreme Court, please consider the procedure that we have to follow. I have got great respect for the independence of the judges whether of the High Court or of the Supreme Court. I have no evidence to contradict the position that our judges and our courts are discharging their functions with commendable impartiality. Therefore, I am not quarrelling with the judges personally, either of the High Court or of the Supreme Court. But I want to present the position of the diets. We have such a system of judicature that one has to come here to Delhi all the way from every corner of India. How much the travelling and staying here cost, any one of you can imagine. To live in Delhi for a day costs a considerable sum of money. Then we have to engage two sets of lawyers the senior lawyers and the advocate on record. We have to pay two sets of fees. Nowadays fees in the Supreme Court are so high that the minimum is Rs. 1,000 per day......

SHRI S. M. KRISHNA (Mandya): The barest minimum.

SHRI HANUMANTHAIYA : Yes.

SHRI M. N. REDDY (Nizamabad) : He can keep quiet, if he cannot afford.

SHRI HANUMANTHAIYA : Then the records have to be printed. Even if it is a case of not much consequence, the amount involved in a case comes to a high figure. The client cannot afford it; he will have to pledge, borrow or sell his property in order to have recourse to these legal procedures. This is the position. There is a famous saying in my language about a man who goes to court of law, in this system of delay and expenses "he who succeeds is as good as defeated and he who is defeated is as good as dead".

AN HON. MEMBER : Say that in your lauguage.

SHRI HANUMANTHAIYA : In my language they say (*Spoke a few words in Kannada*).

I am speaking with full knowledge, as I have myself been in the profession and I know the condition of the clientele. Now if you extend the jurisdiction of the Supreme Court, I do not question the wisdom of the court in doing justice, but, in actual practice, who is benefited ? It is the legal profession that gets more employ ment or engagement. And the Judges will have better satisfaction of having bigger jurisdiction. Therefore, the plumage in this case is the Bench and the Bar, and the bird is the clientele.

MR. DEPUTY-SPEAKER : Apart from the cost of litigation and other factors, as Mr. Chatterjee put it very succintly as a matter of principle where the State is permitted a right of appeal straightaway, the private citizen in such cases is debarred. That principle is involved. I am putting it in brief.

SHRI HANUMANTHAIYA : I am putting forward a new point of view. I am not concerned with the technicalities. The question is jurisdiction of the Supreme Court. Here whether the State has the right or some other person has the right, that is a question which relates to only jurisdiction. It is not that I am so much interested in the legal niceties as in seeing that the poor man is protected. The extension of the jurisdiction on any matter under the present system of judicial system means that more birds will have to die for the sake of plumages.

We are so much immersed in the existing systems. If you begin to live in a fish market, you begin to relish the smell of even the rotten fish. There is much to be done in the judicial system in order to protect the bird and fix the plumage in it proper place. The reverse process of limiting the jurisdiction, and limiting the number of appeals has to be

[Shri Hanumanthaiya]

devised and adopted. Justice cannot be done in isolation. Justice can only be done effectively and properly if there is a great speed in the disposal of cases and if it is as near the spot as possible. If you remove the judicature more and more away from the spot, theoretical considerations will weight more and more in judgments.

The extension of the jurisdiction of the Supreme Court is a formality which may satisfy the requirements of niceties. I am seeing how it will profit the client. In fact we have to devise a judicial system where there is only one trial and one appeal, not a series of appeals. I would say perchance, as some people used to ask in the olden days, if we had allowed the jurisdiction of the Privy Council in London to continue, I am sure there would have been any number of appeals from the Supreme Court to the Privy Council. This spirit of litigation knows no end. I want this spirit of litigation to be limited as far as possible (*Interruptions*) at the level of the High Court. If at all if there is any imbalance in favour of the State, as you have pointed out, it should rather be curtailment and not extension of the jurisdiction of the Superme Court. The client has to be saved from ruination.

श्री मोलहू प्रसाद (बाँसगाँव) : क्या जो दृष्टिकोण यह प्रकट किए हैं क्या माल के मुकदमे में भी यही दृष्टिकोण रखेंगे ?

MR. DEPUTY SPEAKER : As I tried to put it, a basic principle is involved. There is a certain amount of discrimination between the State's right and the citizen's right to go to the Supreme Court. The cost of litigation and other things are extraneous matters. I would like the hon. Member to stick to the principle only.

SHRI K. M. KOUSHIK (Chanda): I rise to support the Bill introduced by my honourable colleague, Mr. Mulla and I am in agreement with the arguments advanced by Shri N. C. Chatterjee and Shri Mulla. But the only point that I wish to say is this.

As you said, with apologies to Mr. Hanumanthaiya, the question we are considering is not as to what would be the cost and whether the man would be able to bear the cost and all that. We are not here to consider that aspect. I would only say this : You give the right of appeal only in a particular case under Act. 134 of constitution. You have fixed it arbitrarily in the case of death sentence. But, why cannot it be for 10 years' imprisonment ? After all, 10 years' punishment means the person will be confined in jail for such a long time and it is slow death, for that fellow. It is wrose than being condemned.

Therefore, this arbitrary limit should be relaxed in favour of a sentence like transportation for life or for 10 years punishment or more. This is what I have to submit. This arbitrariness has to be removed and it should be liberalised I see that Mr. Mulla's Bill is a little conservative and it should have been a little more liberal.

That is all that I want to submit on this Bill.

SHRI RANDHIR SINGH (Rohtak) : My hon. friend Mr. Mulla has done yeoman service to the Bench and the Bar and to the litigent public by bringing forward this Bill and I support it wholeheartedly.

To me it appears to be a denial of equality of opportunity. Under Section 323 I.P.C. one can be convicted for Rs. 51 by a petty magistrate. He can go on appeal to the session judge and get the orders rescinded. So is the case under Section 427 I.P.C. If the executive magistrate responds, under Section 107, 109 or 110 ther is right of appeal to the session judge. Then the orders can be rescinded or can be set aside. But there is absolutely no right of appeal for a sentence of transportation for life or in regard to rigorous imprisonment of 10 years etc. by a High Court. This is a very serious lacuna.

We are a progressive society. How could we apply the British law to our

condition in India ? Here the sessions judge is there; he is the boss of the whole situation. The analogy of the British law to the situation in India is most untenable. They are having trial by jury, the judge being the presiding court.

Another point is this. It is not in keeping with the principles of natural justice, equity and good conscience.

There is a right of defending oneself or by counsel which is enshrined in the Constitution itself. The accused person can defend either by himself or by his counsel. If the case is withdrawn from the session court or if the case is acquitted by the session court and an appeal is filed to the High Court, and conviction is made by the High Court while trying such a case, there is no appeal from such a case to the Supreme Court when the sentence is transportation for life or imprisonment for life. We have to take note of this situation.

Shri Mulla has very rightly stated that people manipulate. They conspire with the agency of investigation with the staff in the States. Somehow they contrive or manipulate to get the appeal filed in the High Court. The cases are multiplied. They go on multiplying. By the time they go on multiplying, what would be the number of people who are to be denied justice ? That also gets multiplied. But, if a person is innocently convicted, if one person is acquitted who should not be acquitted, it is worse than one thousand prisoners released from jail. That is what a Persian quotation says. If a man is given certain right under the Constitution, it is a breach of Fundamental Right as such not to provide such opportunity.

This is how I put it. There are certain remedies and solutions given to a citizen in the Constitution itself. They are being denied to him. What I feel is that Justice Mulla has raised a pertinent point in saying that property is more important than liberty. A person may be sentenced for life and he has no right of appeal. This power is exercised only very sparingly. Within five minutes his special appeal is thrown out. How humbly the lawyer may feel when moving a special leave application ? There is no intention to cast any reflection on Supreme Court Judges. Certainly the idea is that the Supreme Court cannot be converted into an ordinary appeal court. Why ? The fundamental liberty and freedom of people is much more important than the Supreme Court itself. We may have to employ any number of Supreme Court Judges. But justice should not be denied to the citizens.

I, therefore, fully endorse the views expressed by Justice Mulla. If you feel necessary, you can send it to the Select Committee. Otherwise, eliciting public opinion is a prolonged and long procedure. That will mean delay in passing the Bill and to that extent denial of justice to citizens.

I would appeal to the Treasury Benches and the Law Minister himself to give a second thought to this. This is a lacuna not only in the Constitution itself but in the procedure of the Supreme Court itself. This is something which affects the very fundamental rights of the citizens of this country.

SHRI HUMAYUN KABIR (Basirhat) : I also wholeheartedly support Shri Mulla's Bill. I would say that he has made two points very clear. First, that there is a distinction between the right given to the State and the right given to an individual. The State can appeal even when there have been two appeals already. In spite of that, the State can go to the Supreme Court. But in the case of an individual, this right is denied to him. This is a very clear distinction. Secondly, there seems to be greater concern for property than liberty. These two points Shri Mulla has established very clearly.

My Hon. friend Shri Hanumanthaiya who is usually very persuasive and logical has not been able to meet any one of these arguments. The analogy of plumage and bird got mixed up. We want to safeguard the life of the bird. In order to save expenditure on plumage, he wants to have the person condemned and sentenced for life. If a

[Shri Humayun Kabir]

man is condemned to 10 years or 14 years of imprisonment, what is it but life in death ? In order to save the plumage a few rupees he has condemned the bird. I think there is a very simple answer to that.

I am reminded of a gentleman from the city where my hon. friend Shri Mulla comes from and he, Mirza Abu Talib Khan, about 170 years ago—he was not a lawyer himself—made one of the remarkable anticipations of the findings of Marx. As early as 1793 he said that all over the world at one time Judges used to be paid by litigants. Very often it was so. In Shakespears references are found as to how the Judges used to join this side or that side and therefore State realised that Judges should be paid by the State and the State started paying Judges. In 1793 Mirza Abu Talib suggested that Advocates must be paid by the State and not by the parties. This would meet to a very large extent the point made by my hon. friend, Shri Hanumanthaiya. But the final and clinching argument is this that nobody is compelling anybody to go to the Supreme Court. After all it is only a right you are giving that if a man feels aggrieved, if he feels that injustice has been done to him, he should have the right to go to the Supreme Court of the land. I think it would be travesty of justice to deny him that right. I would appeal to the Hon. Law Minister, even at this late stage, if possible to accept a motion for Select Committee. I am not in favour of passing an Important Bill like this on the spur of the moment. It is always better to have a small Select Committee for a brief period to examine the actual implications of the wording. But I would request him to accept the principle. The moment the Bill is referred to a Select Committee, it means that the Government has accepted the principle. My hon. friend who spoke last has very eloquently supported this Bill, and the temper of the House is that the principle should be accepted, I hope the hon. Minister will support it. The actual words and phrases can be examined by the Select Committee. I am sure that my hon. friend, Shri Mulla, will accept the Motion for reference to Select Committee, if you permit it.

श्री रवि राय (पुरी) : उपाध्यक्ष महोदय, श्री मुल्ला जी के द्वारा जो विधेयक पेश किया गया है, मैं उसका जोरदार समर्थन करने के लिये खड़ा हुआ हूं। मुझे ताज्जुब हुआ जब मुल्ला जी अपने तर्क प्रस्तुत कर रहे थे, हमारे कानून मंत्री जी बड़े तिल-मिलाये और घबराहट में खड़े होकर उनको टोकते रहे, लेकिन उनके तर्क में कोई तथ्य नहीं था।

मुल्ला साहब ने एक बड़ा मौलिक सवाल उठाया है, यह एक तरफ राज्य और दूसरी तरफ नागरिकों का सवाल है। राज्य और नागरिक दोनों में सदियों से झगड़ा चला आ रहा है और वह राज्य जो नागरिकों के मौलिक अधिकारों की रक्षा करता है, वह सचमुच प्रजातान्त्रिक राज्य है, गणतान्त्रिक राज्य है। मुल्ला साहब ने अपने दिल में इसी मानवता के सवाल को उठाया है, इसमें पैसे और सम्पत्ति को गौण रखा गया है। मैं इसके लिए मुल्ला साहब को धन्यवाद देना चाहता हूं।

जिस समय हमारा संविधान बनाया गया था, उस समय संविधान बनाने वालों के दिमाग में—चूंकि वे लोग बड़े वकील थे, इसलिए उनके दिमाग में सम्पत्ति की रक्षा ने जितना प्रभाव डाला था, मनुष्य की स्वाधीनता और आजादी की रक्षा की बात उनके दिमाग में नहीं आई थी। मैं इसीलिए मुल्ला साहब को धन्यवाद देना चाहता हूं कि संविधान की जो गलती थी, खास कर जबकि राज्य को अपील करने का अधिकार दिया जाता है, नागरिक को नहीं दिया जाता है—इस अन्याय का उन्होंने पर्दाफास किया है और भांडा फोड़ किया है।

उपाध्यक्ष महोदय, मैं तो दंग रह गया—ला कमीशन की जो रिपोर्ट थी, उस रिपोर्ट में यह तर्क दिया गया था—चूंकि सुप्रीम

कोर्ट के केसेज् बहुत बढ़ जायेंगे, केसेज् की तादाद बढ़ जायगी, इसलिए सुप्रीम कोर्ट को इस तरह की अपील नहीं लेनी चाहिए-- कितना अजीब तर्क है। ला कमीशन और सरकार के दिमाग में नागरिकों के अधिकारों की रक्षा करने का विचार जाना चाहिए था, लेकिन ला-कमीशन ने ऐसा नहीं किया। मैं ला मिनिस्टर साहब से अर्ज करूंगा कि वह ठण्डे दिल से इसके बारे में पुन: सोचें। यह मनुष्य की शहरी आजादी और उसके मौलिक अधिकारों का सवाल है। इसलिए अगर वह इसको सिलैक्ट कमेटी को भेजने की बात भी मानली जाय तो अच्छा होगा।

SHRI TENNETI VISWANATHAM (Visakhapatnam): Sir, in offences the State is supposed to be the aggrieved party and that is the reason why the Criminal Law is weighted in favour of the State. That is the reason why the States are given certain rights of appeal, which are denied to the private party. That is why Section 117 of the Criminal Procedure Code is worded in the way it has been worded. The most important thing is that the right of appeal is a very valuable right enshrined in our Constitution. So far as criminal matters are concerned, we just copied simply the old Government of India Act and the previous procedures and the essence of certain judgments given by the Privy Council. The Privy Council did not entertain criminal appeals and it is seperated here that the Supreme Court shall not be made a court of criminal appeal.

As has been pointed out by Shri Mulla, the reason offered is that it would appear that the image of the High Court would be spoiled if the right of appeal to the Supreme Court is given. Its image is not going to be spoiled in matter involving Rs. 20,000, if its judgment is appealed against. In several matters it will be 20,000 in these days of devaluation and in these days of currency depreciation, even two acres of land either in Malabar or in Andhra will now cost Rs. 20,000.

I shall read out the particular clause in the Canstitution because there seems to be some confusion :

> "An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil procedure of a High Court in the territory of India if the High Court certifies that the amount or value of the subject matter of the dispute in the court of first instance and still of dispute on appeal was and is not less than twenty thousand rupees..."

And where the judgment is a confirming judgment, there should be a substantial question of law involved, if it is a reversing judgment, it automatically goes But in this case, where the right of appea . is a valuable right of the citizen, it is denied in criminal matters. There was no substantial principle involved in the provision here excepting that the St ate should have suprior rights over the private citizen. Therefore, the law was overweighted in criminal matters in favour of the state. The previous society was overweighted in favour of property. The property concept has been there. But now things are changing and we are evolving a new concept of society. Property may be there; but liberty is also valuable.

Then art. 134 (1) (a) says :

> "...if the High Court has on appeal reversed an order of acquittal of an accused and sentenced him to death".

That is only in case of a sentence of death can the private citizen have the right to go to the Supreme Court. It is this that Shri Mulla seeks to enlarge. It is really enlarging the right of the accused, nat the jurisdiction of the Supreme Court. Even ten years imprisonment, as Shri Kabir has said, becomes a living death, if not sentence of death altogether.

Therefore, I suggest there is nothing here which the Law Minister can with conscience object. He may object because the Bill is sponsored by the Opposition, by a private Member. It has been suggested to us that on the spur of the moment we should not pass legislation.

[Shri Tenneti Visvanatham]

I say on the spur of the moment we should not also reject legislation. Therefore, let us have a select committee. I have no objection. But the principle is quite clear. In these days, when the right of appeal is one of the valued rights of the citizen, to deny him this right except when he is sentenced to death, is something which does not appeal to civilised conscience. Therefore, I heartily support the Bill.

SHRI SHIVAJI RAOS, DESHMUKH (Parbhani) : I propose to add my humble voice in support of the Bill moved by the senior jurist and respected lawyer of this House. The Mover has done literally yeoman service to the criminal law of the country.

If I may say so, our Constitution suffers from a little basic deformity. On the one hand, it has been most liberal in conferring fundamental rights and enshrining them in a special chapter therein. It has even provisions for the enforcement of fundamental rights against the State. The same chapter has got a series of articles on proprietory rights also. Further freedom of man has been upheld, freedom from imprisonment has been safeguarded, freedom from exploitation has been granted. No citizen can be deprived of movement and certain basic human freedoms except under the authority of law. The same Constitution, when it comes to the appellate jurisdiction of the court, is a little bit conservative. And as has been pointed out by a series of Members here, the Constitution has been interpreted more in favour of proprietory classes and landlords that in favour of those who may be faced with a charge of criminal offence. I think, Sir, that it is time to consider liberally the sense ofthe term of jurisprudence. A most innocent person can be charged with a most heinous offence and under the law, the most respected, the most considerate and the most liberal court can come to a conclusion to convict an innocent person of the offence charged with. The law ordinarily should prescribe protection against such unlawful convictions. So, is it not strange that under the Indian Penal Code when a High Court is supposed to be empowered to confirm the sentence of death passed by a Sessions Court, the same High Court hears the appeal against conviction and also confirms the death sentence? Under what law can it be supposed that the original court, in any case, passed the sentence of death? Even within the limited sphere, the High Court ordinarily should be expected to be an ordinary court of appeal under the criminal jurisprudence of the term. And yet we find that even in cases of death sentences, the Supreme Court may come to a conclusion that it is a case of grave injustice or as error of law.

Now, thanks to the legal profession that what ever may be the judgment of the trial court, the least injustice that can be attributed is to the errors of law. Even there an innocent man who has no recourse to learning of law is presumed to go in appeal. Is it not therefore strange that even if the law courts convict the person, the law prescribes that on the basis of error of judgment, there can be no right of appeal ?

Right of appeal is a fundamental right and under Article 134 as has been pointed out by Shri Mulla, even in cases falling under sub-clauses (a) and (b), sub-clause (c) becomes operative and the High courts in India are unanimous, this, even though they are conservatives, in awarding the certificate of leave. Under the rules followed by various high courts, it is a fact that the litigant has to approach the same Bench for a certificate of leave to appeal to the Supreme Court. Is it not humane that the same eminent judge who, according to his own conscience, if he passes a certain judgment, would see the light of the day one day and would say that his judgment was wrong-there was a grave error of law and he did not bring the facts properly.

Even allowing for liberal interpretations that our judges are eminent enough to concede that if there is any error pointed out to them, they are humane enough not to resist stubbornly that they have committed the error. Unless the jurisdiction of the Supreme Court is enlarged, on the basis of the present Bill,

I think that the litigant on the criminal side would stand to lose. They stand to lose some fundamental freedoms which our Constitution has conferred on them.

So, I support Shri Mulla's Bill which seeks to correct the sort of imbalance which is inherent in the present arrangement of articles of the Constitution. • Therefore, Sir, while wholeheartedly supporting this Bill, I beg of Shri Mulla to specifically bring forward an amendment at the appropriate time that in cases where a death sentence has been passed, *ipso facto* the right to go in for a certificate for leave to appeal should be given to the person.

With these words, I support this Bill.

SHRI M. N. REDDY (Nizamabad) : Mr. Deputy Speaker, Sir, I heartily welcome and support this Bill moved by Shri Mulla who has been an experienced judge and jurist. No less a person than Shri N. C. Chatterjee himself supported this Bill. All the other hon. Members supported this Bill except Shri Hanumanthaiya, whose speech was a little amusing to me because he has subsituted economic argument for a legal proposition. That was the point I took exception to. Only rarely such occasions arise in the High Courts. But even for the rarest occasion we should have provision in the Constitution under criminal jurisprudence. It is time we had a salutary provision in our constitution. The evolution of law takes place only by experience and wherever there is a lacuna it should be corrected. Since this matter had been raised by an experienced jurist who had dealt with such cases, it is welcome heartily. The addition of work to the Supreme Court consequent upon the passing of this Bill could not be a ground for the refusal of this amendment. The late Pandit Nehru had said in this Parliament when referring to the retirement age of Judges of the Supreme Court that the number of 11 Judges fixed for the Supreme Court could be increased when there was more work ; there is a Constitutional provision for the appointment of *ad hoc* judges. Luckily they retire at 65 and some Judges are always available for work after retirement.

Section 417 of the Cr. P. C. was substantially amended in 1955 by Parliament. A complainant has been given the additional right of appeal against acquittal before a High Court. Normally under criminal jurisprudence whether a complaint is filed by a private party or by the Government, the moment conviction takes place and the sentence is given by way of fine or imprisonment, that becomes the responsibility of the Government. But an additional right had been given to the complainant. In non-cognizable petty offences, normally the sentence would not be more than a few days of imprisonment or Rs. 50 fine. Even in such cases this Parliament has considered it proper to amend section 417 in 1955. As a trial court lawyer still practising, not like Mr. Hanumanthaiya who gave up practice long ago, I submit this. In a case I defended the accused was acquitted of the charges under section 302 IPC. But an appeal was filed against him and he was convicted and sentenced by the High Court. No appeal should have been filed in this case and the appeal would have been untenable. Normally where poor people become accused and they are acquitted by the Sessions Court, appeals are filed by the Government. What type of *amicus curiae* is appointed and what type of assistance is given to the High Court we all know ; depending upon the pressure of work sometimes, justice is not done. Therefore, as a matter of right there should be appeal to the Supreme Court and the criteria should not be the amount of work. We can add some more judges but we cannot do away with a valuable right of a citizen. I support this Bill and I hope in all fairness the hon. Minister of Law would accept at least the motion for reference to the Select Committee.

SHRI S. M. KRISHNA (Mandya) : Mr. Deputy-Speaker, Sir, Mr. Mulla has made a very convincing case for the Bill. He has also made a very forceful case in favour of the liberties of the persons who are involved. The only note of dissent came from Shri Hanumanthaiya. When

[Shri S. M. Krishna]

he was speaking, even though he was throwing considerable force in the arguments that he advanced, about the cost of litigation in this country which is becoming increasingly high, whereby we are reaching a stage or a situation wherein a man without the proper means cannot get justice, and that would be a dangerous situation if it goes uncheked, in spite of it, I am sure that even Shri Hanumanthiya, if the cost of litigation is redoced and if the accused is not forced to pay so much money to an advocate or a lawyer, would in principle agree with this Bill. After all, what are we conferring upon the accused or anybody in this case ? It is yet another chance for him either to get justice or to go scot-free.

The point has been made out by more than one speaker in the debate that some of the present laws are more property—oriented rather than freedom—oriented or liberty—oriented. Even in the face of two concurrent judgments by two courts below, the right of appeal lies to the Supreme Court when the subject-matter is property. But whereas the subject-matter—

SHRI GOVINDA MENON : Under what article, when there is a concurrent judgment ?

SHRI S. M. KRISHNA : 133 (a) and (b). Even where there are two decisions then there is a right of appeal,—

SHRI GOVINDA MENON : If the two decisions are concurrent. there is no appeal.

SHRI S. M. KRISHNA : If the amount is Rs. 20,000 or more. In this country we have to treat the liberties of the people as much more precious than even the property rights of the peaple. The Supreme Court is rather allergic and many of the high courts are rather allergic to grant the special leave certificate and in more than one case it has been said that the Supreme Court has also held that the conditions pre-requisite for the exercise of the discretionary power to grant a certificate under article 134 (1) (c) cannot be precisely formulated but it should be exercised saparingly and not to convert the Supreme Court into an ordinary court of criminal appeal. I do not see anything wrong if in the ultimate analysis the Supreme Court were to be the ultimate court for criminal appeal in this country.

If the image of the high court has to be maintained or has to be restored, naturally, there should not be any miscarriage of justice also. If there is for some reason some miscarriage of justice, then the image of the high court stands shattered. So, we will have to guard ourselves against this also. So, I see no eason why the hon. Law Minister should be hesitant to look at the whole thing.

SHRI GOVINDA MENON : I only corrected your statement regarding civil appeals.

SHRI S. M. KRISHNA : *de novo,* with an open mind and, therefore, I earnestly appeal to him that he should agree that the whole matter should be entrusted to a small Select Committee which should go thorouhgly into every aspect of the matter.

SHRI ERASMO DE SEQUEIRA (Marmagoa) : Mr. Deputy-Speaker Sir, I shall neither appear at the Bar nor sit on the Bench. My only potential is as adefundant. Please allow me therefore to add the voice of the layman in support of the considerable legal expertise that has been on display in this House today.

Two points have been made repeatedly, logically, and emphatically. The first point is that a difference exists between the State and the individual in the matter of an appeal from judicial decision. This needs correction.

The State may be considered the aggrieved party in a criminal case, but unfortunately the State cannot rot in jail, and the defendant can.

Secondly, Mr. Mulla has said that there is more respect for property than for liberty. This unfortunately is very true in this country. If the principle of this Bill is to help to reverse this,—I am sure it will help—I would like to congra-

tulate Mr. Mulla for bringing this Bill forward, and knock myself on the head, for not having done it myself.

I support the motion for referring the Bill to a Select Committee, if you allow it. I would say that I would like to see the jurisdiction of the Supreme Court considerably liberalised. For example, clause 2 (b) could say—

> "If the High Court has withdrawn for trial before itself any case from any court subordinate to its authority..."

I think the jurisdiction of the Supreme Court should include this, because a case may arise where the High Court's decision is the only and the final decision at the same time, and it may not be a fair decision.

Mr. Hanumanthaiya raised the question of our justice being expensive. I agree justice is very expensive and that the expenditure should be reduced, so that the jurisdiction of the Supreme Court is enlarged and people are able to take advantage of it.

With these words, I support the Bill.

श्री जार्ज फरनेन्डीज (बम्बई दक्षिण) : उपाध्यक्ष महोदय, जैसा कि इस विधेयक का समर्थन मेरे दल के नेता ने किया है मैं भी उसका पूरा समर्थन करता हूँ। इस अवसर पर मैं एक, दो बातों के ऊपर मंत्री महोदय का विशेष ध्यान दिलाना चाहता हूँ।

नम्बर 1 यह कि इस सदन में और इस सदन के बाहर एक अर्से से यह बहस चल रही है कि अदालतों में वर्षों तक मुकद्दमे पड़े रहते हैं और जिनको कि हल करने में काफी समय लगता है। इसके लिए जजों की संख्या बढ़ाने वाली बात इस सदन में कही गई है और बाहर भी कही गई है लेकिन अफसोस होता है इस बात को देखकर कि पिछले कई वर्षों से इसको लेकर बहस तो यहाँ पर चलती रही लेकिन उधर अदालतों में मुकद्दमें भी ऐसे ही बढ़ते गये। अंग्रेजी में जैसे कहावत है : **जस्टिस डिलेड इज जस्टिस डिनाइड,** वह पुरानी हालत चलती रही। मैं चाहता हूँ आज मंत्री महोदय इस अवसर पर इस प्रश्न के बारे में गम्भीरता से सोचें और तत्काल कोई एक फैसला लेने का काम करें।

दूसरी बात जिसका मैं जिक्र करना चाहता हूँ वह जजों की तनख्वाह के बारे में है। आज सुबह यहां पर चीफ जस्टिस श्री बी० पी० सिन्हा के मामले को लेकर प्रश्न उठाया गया जिसमें कि हिन्दुस्तान के चीफ जस्टिस यहाँ से रिटायर होने के बाद श्री हरिदास मूंदड़ा की एक कम्पनी में अफसर बनकर चले गये। अब यह सिर्फ उनकी ही जात का सवाल नहीं है बल्कि यह पूरे इस व्यवसाय को भी शोभा देने वाली चीज नहीं है। आपको मालूम होगा कि बम्बई उच्च न्यायालय के एक जज श्री एच० आर० गोखले ने इस बात को उठाकर बाद में इस्तीफा दे दिया कि उन्हें बतौर जज के जो तनख्वाह मिलती है वह कम मिलती है। मैं यह नहीं कहना चाहता हूँ कि जजों को यह 3000 या 5000 की तनख्वाह कम है, वह तर्क मेरा नहीं है, लेकिन इनकमटैक्स के काटने के बाद जिस किस्म का जीवन उनको चलाना होता है उन सारी चीजों को देखकर यह जजों की तनख्वाह के बारे में सोचा जाना चाहिए। विशेष कर रिटायरमेंट बैनीफिट के बारे में इस ढंग से सोचना चाहिए कि जजों के रिटायर होने के बाद उन्हें बाद में नौकरी वगैरह खोजने की जरूरत न पड़े।

अन्त में मैं इतना ही कहना चाहता हूँ कि अदालतों में जो काफी खर्चा होने की बात यहाँ पर माननीय सदस्यों द्वारा आमतौर पर उठाई गई तो उस ओर अवश्य ध्यान दिया जाना चाहिए। मैं अभी-अभी अदालत से दो वर्ष की परेशानी के बाद बाहर आया हूँ। बम्बई की अदालत में बम्बई की जनता के फैसले को बचाने के

[श्री जार्ज फरनेन्डीज़]

लिए मुझे, श्री एस० के० पाटिल ने जो मुकद्दमा दायर किया था, उसके लिए मुझे एक लाख रुपया खर्च करना पड़ा और सुप्रीम कोर्ट में मुझे 50,000 रुपये खर्च करने पड़े। अब मुझे जैसे आदमी के लिए जोकि बम्बई की सड़कों पर जाकर लोगों से पैसा मांग सकता है और मेरे जैसे आदमी के लिए वकील लोग भी अपना समय देने को तैयार हो जाया करते हैं मुझे जब काफी परेशानी का सामना करना पड़ा तो सामान्य आदमी की तो बात ही क्या है? सामान्य आदमी चुनाव नहीं लड़ सकता है लेकिन बिलफर्ज अगर वह ऐसे पूंजीपतियों के जो दलाल हैं उनके मुकाबले में जीत भी जाय तो उनके द्वारा उसे अदालत में ले जाकर उसकी जिंदगी को बर्बाद करने और परेशान करने का काम किया जाता है। इसलिए यह बहुत जरूरी है कि यह जो खर्च वाला मामला है इस पर नये ढंग से सोचा जाय।

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON) : Sir, I have to admit at the very outset that there is a very good deal of weight principle in the amendment brought by Shri Mulla. When I interrupted him once or twice it was thought that I am going to say that there is nothing good in what he has brought. That was not my intention in interrupting. For example, one hon. friend said with respect to appeal in civil matters that even when two courts have concurred there is an appeal to the Supreme Court where the subject matter is Rs. 20,000 or more. I interrupted only to say that is not the correct position. That is all that I wanted to do.

I will put Shri Mulla's case—I cannot do it better than he has done—this way. He referred to Section 417 of the Criminal Procedure Code I think for this purpose. Suppose there is a sessions case, say, for a capital offence-murder and the accused is acquitted by the sessions court, then it is open under Section 417 of the Code of Criminal Procedure—not under an amendment made in 1955 as pointed by Shri Reddy because it was there all along......

SHRI M. N. REDDY : I pointed out only in the case of the complainant, a private person.

SHRI GOVINDA MENON : There is a provision in the Code under which the State may go in appeal to the High Court from the order of acquittal by the Sessions Judge, and hon. friend Shri Viswanatham reached the crux of the matter when he said that in every matter, in every criminal matter the State is presumed to be the complainant and if there is aberration of justice or failure of justice in a case of acquittal the State is given a residuary power to appeal to the Supreme Court under Section 417. That is what Shri Viswanatham rightly pointed out. It may be there are occasional abuse of the power vested with the State in filing appeal. As a result of an appeal under Section 417 if in a case of acquittal by the Sessions Court in a murder case the High Court convicts him, say, for imprisonment for life, under the Constitution as it is, there is no right of appeal to the Supreme Court. In a case like that the accused has to take recourse to two provisions, either under article 134 (c) seek a certificate from the High Court and, if that is not available go to the Supreme Court under article 136. It may be in many cases they may get justice. But should there not be a right of appeal in a case where the accused is sentenced for life by the High Court in reversal of an acquittal order by the Sessions Court when right of appeal is there? If the High Court had cared to pass a sentence of death on the accused then there is a right of appeal. If anybody had said that the Supreme Court is not a court of criminal appeal, whether it be the Law Commission or anybody I would not have agreed with them. The Supreme Court is also a court of criminal appeal because in cases falling under article 133 where there is a reversal etc., there is a right of appeal and the Supreme Court is exercising powers as a court of criminal appeal. In other cases they make a special leave to appeal and that.

Shri Mulla's amendment would come to this. Where there is a right of appeal today, when the High Court as an original court after with drawing from the Sessions Court or in appeal, for the first time gives a sentence of ten years or more, should there not also be a right of appeal ? That is the question raised by him. I think there is considerable weight in what he has said. What I objected to was regarding the interpretation of section 417 Cr. P. C. which provides for an appeal to the High Court. There no distinction is made between a State and an individual. Because, the State is supposed to look into the matter and where in the opinion of the State an offence has been committed against the community and there has been acquittal wnich was wrong, there should be an appeal to the High Court.

18 hrs.

But I would request Shri Mulla and other members of this House to remember this. I see that all sections of the House have supported this Bill. What vested interest have I in this matter ? Government have no vested interest in this matter. All the same, I wish to tell him that the present Law Commission has been requested by me to completely amend the existing Code of Criminal Procedure. I had a talk with the Chairman two days back and he was telling me that the report would be in my hands in the next few days. This is a matter which can fall under the amendment of the Code of Criminal Procedure, because under article 138 the Code of Criminal Procedure will be a parliamentary legislation. Articale 138 says that other jurisdiction can be conferred on the Supreme Court than what is contained in articles 132 and 133. If the hon. Members think that they can wait till I introduce a new Code of Criminal Procedure in amendment of the existing Code of Criminal Procedure, if the House thinks so—I would put it that way—I would request him not to press it now. But if the House thinks that it is important enough meriting immediate consideration, I would not stand in the way of the matter being referred to the Select Committee. That is my position.

SHRI RANDHIR SINGH : Sir, under rule 388 I beg to move :

"That rule 75 (2) (a) of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires the moving of the amendment that the Enlargment of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968 by Shri Anand Narain Mulla be referred to a Select Committee at an earlier stage, be suspended."

MR. DEPUTY-SPEAKER : The question is :

"That rule 75 (2) (a) of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires the moving of the amendment that the Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968 by Shri Anand Narain Mulla be referred to a Select Committee at an earlier stage, be suspended."

The motion was adopted.

SHRI RANDHIR SINGH : I beg to move :

"That the Bill to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters by Shri Anand Narain Mulla, be referred to a Select Committee consisting of 22 members, namely, Shri N. C. Chatterjee. Shri Krishna Kumar Chatterjee, Shri C. C. Desai, Shri Shivajirao S. Deshmukh, Shri Shri-Chand Goyal, Shri K. Hanumanthaiya, Shri S. M. Jhoshi. Shri S. M. Krishna, Shri Krishnan Manoharan, Shri Vikram Chand Mahajan, Shri Bhola Nath Master, Shri P. Govinda Menon, Shri Bakar Ali Mirza, Shri H. N. Mukarjee, Shrimati Sharda Mukerjee, Shri Anand Narain Mulla, Shri K. Ananda Nambiar. Shri Mrityunjay Prasad, Shri K. Narayana Rao, Shri Sheo Narain. Shri Tenneti Viswanatham, and Chaudhuri Randhir Singh, with instructions to report by the first day of next session."

SHRI SONAVANE (Pandharpur): On a point of order, Sir. I whould like to know whether the hon. Mover of the motion for reference of the Bill to the Select Committee has obtained the consent of Members who are included in this. Under the rule their consent is necessary.

MR. DEPUTY-SPEAKER: Will the hon. Member resume his seat? I am myself going to ask that quistion. I presume that he has obtained the consent of all the Members concerned.

SHRI RANDHIR SINGH: The names are included with the consent of the different party leaders and of the Minister of Parliamentary Affairs.

SHRI SONAVANE: Individual consent is necessary.

MR. DEPUTY-SPEAKER: That is all right. I shall now put the motion to the vote of the House.

The question is:

"That the Bill to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters by Shri Anand Narayan Mulla, be referred to a Select Committee consisting of 22 members, namely, Shri N. C. Chatterjee, Shri Krishna Kumar Chatterjee, Shri C. C. Desai, Shri Shivajirao S. Deshmukh, Shri Shri Chand Goyal, Shri K. Hanumanthaiya, Shri S. M. Joshi, Shri S. M. Krishna, Shri Krishnan Manoharan, Shri Vikram Chand Mahajan, Shri Bhola Nath Master, Shri P. Govinda Menon, Shri Bakar Ali Mirza. Shri H. N. Mukerjee, Shrimati Sharda Mukerjee, Shri Anand Narain Mulla, Shri K. Ananda Nambiar, Shri Mrityunjay Prasad, Shri K. Narayana Rao, Shri Sheo Narain, Shri Tennetti Viswanatham, and Chaudhuri Randhir Singh, with instructions to report by the first day of next session."

The motion was adopted.

18.07 ¼ hrs.

CONSTITUTION (AMENDMENT) BILL

(Amendment of articles 75, 164 etc.)

श्री कामेश्वर सिंह (खगरिया): उपाध्यक्ष महोदय, मैं इस सदन में संविधान की धारा 75, 164, 336 के संशोधनों के लिए प्रस्ताव पेश करता हूँ। मैं कुछ कहने के पहले इसमें से कुछ अंश को पढूंगा। हमारे बिल के मुताबिक:

"In articles 75 of the Constitution, in clause (1), for the words "The Prime Minister shall be appointed" the words "The Prime Minister, who shall be an elected member of the House of the people, shall be appointed" shall be substituted."

दूसरा है इसमें धारा 164 में संशोधन:

'In article 164 of the Constitution in clause (1), for the words "The Chief Minister shall be appointed" the words "The Chief Minister, who shall be an elected member of the Legislative Assembly, shall be appointed" shall be substituted."

18.08 ½ hrs.

[SHRI THIRUMALA RAO *in the Chair*]

और तीसरा जो मैंने संशोधन पेश किया है, वह बहुत ही महत्वपूर्ण है देश में जो स्थिति जा रही है उस को देखते हुए। मैं वह भी पढ़ कर सुनाता हूँ:

"In article 326 of the constitution. for the word "twenty-one", the word "eighteen" shall be substituted."

चेयरमेन साहब! अपने बिल के स्टेटमेंट आफ आबजेक्ट्स एन्ड रीजन्स में मैंने इसको साफ कर दिया है। वह भी मैं पढ़ कर सुना देता हूँ:

"It is highly undemocratic that persons not directly elected by the suffrage of the people should head the